

1 IN THE HONORABLE SENATE OF THE STATE OF ILLINOIS
2 FOR THE NINETY-SIXTH GENERAL ASSEMBLY
3 SITTING AS AN IMPEACHMENT TRIBUNAL

4 In re:)
5 Impeachment of)
6 Governor ROD R. BLAGOJEVICH)

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11 Hearing held before the HONORABLE CHIEF
12 JUSTICE THOMAS FITZGERALD on the 26th day of
13 January, 2009, at the hour of 12:01 p.m., in the
14 Senate Chambers, Illinois State Capitol,
15 Springfield, Illinois.

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19 TRANSCRIPT OF PROCEEDINGS

20 VOLUME 1

21
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23 REPORTED BY: Brenda S. Tannehill, CSR, RPR, CRR
24 LICENSE NO. 084-003336

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I N D E X

WITNESS	DX	CX	RDX	RCX
JOHN JOSEPH SCULLY				
By House Prosecutor Kasper	84			

1 (Whereupon, the following
2 proceedings were held in
3 the above-entitled cause.)

4 CHIEF JUSTICE FITZGERALD: Mr. President, I,
5 again, attend the Senate in accordance with your
6 notice and in fulfillment of my responsibilities under
7 Article IV, Section 14 of the Illinois Constitution
8 for the purpose of joining with the Senate in the
9 trial of the impeachment of Rod R. Blagojevich,
10 Governor of the State of Illinois.

11 The script allows me some brief remarks at
12 this time and I exercise my right to tender those
13 remarks to you Senators. This is a solemn and
14 serious business that we are about to engage in.
15 Both you and I have taken an oath to do justice, in
16 essence, to be fair. I know that I, and I'm
17 sure that you, come to this Chamber and these
18 proceedings prepared to be true to that oath. So it
19 should be.

20 Madam Secretary, please call the names of
21 each Senator and record their attendance.

22 MADAM SECRETARY: Althoff?

23 SENATOR ALTHOFF: Present.

24 MADAM SECRETARY: Bivins?

1 SENATOR BIVINS: Present.
2 MADAM SECRETARY: Bomke?
3 SENATOR BOMKE: Present.
4 MADAM SECRETARY: Bond?
5 SENATOR BOND: Present.
6 MADAM SECRETARY: Brady?
7 SENATOR BRADY: Present.
8 MADAM SECRETARY: Burzynski?
9 SENATOR BURZYNSKI: Present.
10 MADAM SECRETARY: Clayborne?
11 SENATOR CLAYBORNE: Aye.
12 MADAM SECRETARY: Collins?
13 SENATOR COLLINS: Present.
14 MADAM SECRETARY: Cronin?
15 SENATOR CRONIN: Here.
16 MADAM SECRETARY: Crotty?
17 SENATOR CROTTY: Here.
18 MADAM SECRETARY: Dahl?
19 SENATOR DAHL: Present.
20 MADAM SECRETARY: DeLeo?
21 SENATOR DeLEO: Present.
22 MADAM SECRETARY: Delgado?
23 SENATOR DELGADO: Present.
24 MADAM SECRETARY: Demuzio?

1 SENATOR DEMUZIO: Present.
2 MADAM SECRETARY: Dillard?
3 SENATOR DILLARD: Present.
4 MADAM SECRETARY: Duffy?
5 SENATOR DUFFY: Present.
6 MADAM SECRETARY: Forby?
7 SENATOR FORBY: Present.
8 MADAM SECRETARY: Frerichs?
9 SENATOR FRERICHS: Present.
10 MADAM SECRETARY: Garrett?
11 SENATOR GARRETT: Here.
12 MADAM SECRETARY: Haine?
13 SENATOR HAINE: Here.
14 MADAM SECRETARY: Harmon?
15 SENATOR HARMON: Present.
16 MADAM SECRETARY: Hendon?
17 SENATOR HENDON: Present.
18 MADAM SECRETARY: Holmes?
19 SENATOR HOLMES: Present.
20 MADAM SECRETARY: Hultgren?
21 SENATOR HULTGREN: Present.
22 MADAM SECRETARY: Hunter?
23 SENATOR HUNTER: Present.
24 MADAM SECRETARY: Hutchinson?

1 SENATOR HUTCHINSON: Present.
2 MADAM SECRETARY: Jacobs?
3 SENATOR JACOBS: Aye.
4 MADAM SECRETARY: Emil Jones.
5 SENATOR E. JONES: Present.
6 MADAM SECRETARY: John Jones?
7 SENATOR J. JONES: Present.
8 MADAM SECRETARY: Koehler?
9 SENATOR KOEHLER: Here.
10 MADAM SECRETARY: Kotowski?
11 SENATOR KOTOWSKI: Present.
12 MADAM SECRETARY: Lauzen?
13 SENATOR LAUZEN: Here.
14 MADAM SECRETARY: Lightford?
15 SENATOR LIGHTFORD: Here.
16 MADAM SECRETARY: Link?
17 SENATOR LINK: Present.
18 MADAM SECRETARY: Luechtefeld?
19 SENATOR LUECHTEFELD: Here.
20 MADAM SECRETARY: Maloney?
21 SENATOR MALONEY: Here.
22 MADAM SECRETARY: Martinez?
23 SENATOR MARTINEZ: Present.
24 MADAM SECRETARY: Meeks?

1 SENATOR MEEKS: Here.
2 MADAM SECRETARY: Millner?
3 SENATOR MILLNER: Present.
4 MADAM SECRETARY: Munoz?
5 SENATOR MUNOZ: Present.
6 MADAM SECRETARY: Murphy?
7 SENATOR MURPHY: Here.
8 MADAM SECRETARY: Noland?
9 SENATOR NOLAND: Here.
10 MADAM SECRETARY: Pankau?
11 SENATOR PANKAU: Present.
12 MADAM SECRETARY: Radogno?
13 SENATOR RADOGNO: Present.
14 MADAM SECRETARY: Raoul?
15 SENATOR RAOUL: Present.
16 MADAM SECRETARY: Righter?
17 SENATOR RIGHTER: Present.
18 MADAM SECRETARY: Risinger?
19 SENATOR RISINGER: Present.
20 MADAM SECRETARY: Rutherford?
21 SENATOR RUTHERFORD: Present.
22 MADAM SECRETARY: Sandoval?
23 SENATOR SANDOVAL: Here.
24 MADAM SECRETARY: Schoenberg?

1 SENATOR SCHOENBERG: Present.

2 MADAM SECRETARY: Silverstein?

3 SENATOR SILVERSTEIN: Present.

4 MADAM SECRETARY: Steans?

5 SENATOR STEANS: Present.

6 MADAM SECRETARY: Sullivan?

7 SENATOR SULLIVAN: Here.

8 MADAM SECRETARY: Syverson?

9 SENATOR SYVERSON: Present.

10 MADAM SECRETARY: Trotter?

11 SENATOR TROTTER: Here.

12 MADAM SECRETARY: Viverito?

13 SENATOR VIVERITO: Present.

14 MADAM SECRETARY: Watson?

15 SENATOR WATSON: Here.

16 MADAM SECRETARY: Wilhelmi?

17 SENATOR WILHELMI: Present.

18 MADAM SECRETARY: And Mr. President Cullerton?

19 SENATOR CULLERTON: Present.

20 CHIEF JUSTICE FITZGERALD: Please be seated.

21 In conformance with Article IV, Section 14 of the

22 Illinois Constitution.

23 MR. KAISER: Your mic, Judge.

24 CHIEF JUSTICE FITZGERALD: Try that again. In

1 conformance with Article IV, Section 14 of the
2 Illinois Constitution and the Senate's Impeachment
3 Rules, the Secretary will administer the Oath to
4 Senator Watson who was unable to be present when
5 the Oath was previously administered. Senator Watson,
6 please rise and raise your right hand. Madam
7 Secretary, please administer the Oath and make a
8 record of the Senator's response.

9 (Whereupon, the Senator was
10 duly sworn.)

11 MADAM SECRETARY: Senator Watson responds I do.

12 CHIEF JUSTICE FITZGERALD: Thank you, Senator.
13 Please be seated. President Cullerton. Senator
14 Cullerton.

15 PRESIDENT CULLERTON: Thank you, Mr. Chief
16 Justice. Pursuant to the Impeachment Rules adopted
17 under Senate Resolution Number 6, I move that the
18 Senate resolve itself into an impeachment tribunal
19 for the purpose of commencing the trial of the
20 impeachment of the Governor.

21 CHIEF JUSTICE FITZGERALD: President Cullerton
22 moves that the Senate resolve itself into an
23 impeachment tribunal for the purpose of commencing
24 the trial of the impeachment of the Governor.

1 Seeing no objection, it is so ordered. The Senate
2 is now resolved into an impeachment tribunal.

3 Madam Secretary, reading and approval of
4 the Journal.

5 MADAM SECRETARY: Senate Journal for the
6 impeachment tribunal of January 14th, 2009.

7 CHIEF JUSTICE FITZGERALD: Senator Hunter.

8 SENATOR HUNTER: Mr. President, I move that the
9 Impeachment Tribunal Journal just read by the
10 Secretary be approved unless some Senators has
11 additions or corrections to offer.

12 CHIEF JUSTICE FITZGERALD: Senator Hunter moves
13 to approve the Journal just read by the Secretary.
14 There being no objection, it is so ordered. Madam
15 Secretary, issuance and return of summonses.

16 MADAM SECRETARY: Pursuant to Senate Rule -- I'm
17 sorry, Senate Resolution 7, summons to the Governor
18 was issued by the President on January 14th, 2009 and
19 was served upon Andrew Stolfi, Deputy General Counsel
20 to the Governor, as provided for under Impeachment Trial
21 Rule 9(b) on that same date. Return of summons was
22 made in accordance with Impeachment Trial Rule 10
23 and filed with the Secretary on January 22nd, 2009.

24 CHIEF JUSTICE FITZGERALD: Madam Secretary,

1 appearances and answers.

2 MADAM SECRETARY: No appearance has been filed,
3 and no answer has been filed either by the Governor
4 or counsel on his behalf.

5 CHIEF JUSTICE FITZGERALD: The record will
6 reflect that the Governor has failed to appear or
7 to answer the Article of Impeachment either in person
8 or by counsel. Pursuant to Impeachment Trial Rule
9 11(b), the trial shall proceed as if the Governor
10 had entered a plea of not guilty.

11 Madam Secretary, motions to dismiss and
12 challenges to the sufficiency of the Article of
13 Impeachment under Impeachment Rule 14.

14 MADAM SECRETARY: No motion to dismiss or
15 challenge to the sufficiency of the Article of
16 Impeachment had been filed by the Governor or
17 counsel on his behalf.

18 CHIEF JUSTICE FITZGERALD: The record will
19 reflect that the Governor has failed to file any
20 motion under Impeachment Rule 14. Pursuant to
21 Impeachment Trial Rule 14, the trial shall proceed
22 as if the sufficiency of the Article had been
23 established by a record vote.

24 Madam Secretary, requests under

1 Impeachment Rule 15.

2 MADAM SECRETARY: The following requests have
3 been filed by the House Prosecutor: A motion for
4 additional witness testimony requesting live
5 testimony by Andrew Morriss. I have like motions
6 seeking additional witness testimony from Auditor
7 General Holland; former Assistant U.S. Attorney
8 Scully; Representatives Rose, Howard, Miller,
9 Hannig, Franks, Durkin, Lang and Mendoza; and Vickie
10 Thomas, all of which were filed on January 21st,
11 2009.

12 Provisional motion for additional witness
13 testimony requesting live testimony by Special
14 Agent Cain filed on January 21st, 2009; provisional
15 motion for subpoena of witness testimony to secure
16 the testimony of Special Agent Cain filed on
17 January 21st, 2009.

18 Motion number 1 for additional documents
19 or materials related to the requests for live
20 testimony from Representative Rose. I have like
21 motions, Numbers 2 through 21 seeking additional
22 documents or materials related to the requested
23 testimony of the persons previously mentioned, all
24 of which were filed on January 21st, 2009; motion

1 for additional documents related to the Kirk-Foster
2 Amendment, which was filed on January 22nd, 2009;
3 modified motion for additional witness testimony
4 relating to the previously filed motion requesting
5 live testimony by Special Agent Cain, which was
6 filed on January 23rd, 2009; a motion for
7 additional evidentiary material regarding a tape
8 recording of federal wiretaps, which was filed on
9 January 24th, 2009; a motion for additional
10 evidentiary material regarding a tape recording of
11 the Don Wade and Roma Show, which was filed on
12 January 24th, 2009; modified motion for witness
13 testimony, which was filed on January 26th, 2009; and
14 a modified motion for additional documents, which
15 was filed on January 26th, 2009.

16 CHIEF JUSTICE FITZGERALD: Have any requests
17 under Impeachment Rule 15 been filed by the
18 Governor?

19 MADAM SECRETARY: No requests have been filed
20 by the -- by the Governor or counsel on his behalf.

21 CHIEF JUSTICE FITZGERALD: The record will
22 reflect that the Governor has failed to file any
23 requests for the issuance of a subpoena or for the
24 admission of additional witness testimony or

1 evidence.

2 Madam Secretary, responses to requests?

3 MADAM SECRETARY: No responses to requests have
4 been filed by the Governor or counsel on his
5 behalf.

6 CHIEF JUSTICE FITZGERALD: The record will
7 reflect that the Governor has failed to file a
8 response to any of the requests of the House
9 Prosecutor.

10 Madam Secretary, orders -- other filings
11 by the parties?

12 MADAM SECRETARY: The House Prosecutor has
13 filed a notice of appointment of staff on
14 January 22nd, 2009 and has also filed an errata to
15 the House Impeachment Record on January 24th, 2009.

16 CHIEF JUSTICE FITZGERALD: Have any other
17 filings been made by the Governor, Madam Secretary?

18 MADAM SECRETARY: No other filings have been
19 made by the Governor or counsel on his behalf.

20 CHIEF JUSTICE FITZGERALD: The following
21 Senators are appointed to the Committee to Escort
22 the House Prosecutor and the Governor into the
23 Chambers: Senators Trotter, Link, Viverito,
24 Righter, Brady and Murphy.

1 Will the Committee of Escort for the House
2 Prosecutor and the Governor please report to the rear
3 of the Chamber to escort the House Prosecutor and
4 his staff into the Chamber?

5 Is the Governor present? Is there anyone
6 present on behalf of the Governor? The record will
7 reflect that the Governor has chosen not to be
8 present either in person or by counsel. I would like
9 to extend my welcome to the House Prosecutor and his
10 staff to the Chamber.

11 President Cullerton, for what purpose do
12 you rise?

13 PRESIDENT CULLERTON: Thank you, Mr. Chief
14 Justice. I just wanted to also welcome the House
15 Prosecutor and his staff to the Senate and to remind
16 my colleagues that we all have taken an oath to
17 follow the Constitution. We have all unanimously
18 approved of rules that we would -- be very important
19 for us to review them during the course of this
20 trial and we also have passed out decorum rules
21 during the impeachment trial that I would ask that
22 we all follow as this is a very serious matter and
23 I know we all take it as such. Thank you.

24 CHIEF JUSTICE FITZGERALD: Senator Radogno, for

1 what purpose do you rise?

2 SENATOR RADOGNO: Thank you, Mr. Justice. On
3 behalf of the Republican Caucus, I also would like
4 to welcome all of our guests to the Chamber here
5 today. These proceedings are definitely
6 unprecedented in Illinois history, and it's
7 unfortunate that we have to write this chapter. But
8 despite the frenzy that's being created outside the
9 doors here, I think that we together have worked on
10 a fair and open process, one that will allow both
11 sides to present their case. The rules have been
12 established in accordance with the Constitution,
13 with Illinois law and our own responsibility to
14 fairness.

15 The trial -- during the trial, we will all
16 have to be very vigilant to ensure that the process
17 is carried out with dignity and respect. We will
18 work expeditiously, but efficiently, and we will be
19 fair and thorough. That is the only way that we
20 can move beyond the immense challenges that we face
21 today and to deal with the business of this State.

22 As has been pointed out, we've all taken
23 the oath to do justice according to the law, and I
24 know that everyone has taken that oath seriously

1 and that no one will stand in the way of justice.
2 The voters have sent us here, and they have
3 empowered us with the authority and the
4 responsibility to conduct these proceedings. We
5 will make a decision, and it will be thoughtful,
6 deliberative and fair. On behalf of the Republican
7 Caucus, I just want to assure you that everyone
8 will do justice according to the law. The voters
9 of Illinois have asked for nothing more, and they
10 deserve nothing less.

11 CHIEF JUSTICE FITZGERALD: Now we will proceed
12 -- now we will proceed to recognize the House Prosecutor
13 so that he may present his errata to the House Impeachment
14 Record and his Impeachment Rule 15 motions. The House
15 Prosecutor is recognized to explain his errata to
16 the House Impeachment Record.

17 HOUSE PROSECUTOR ELLIS: Mr. Chief Justice,
18 thank you very much, and Members of the tribunal,
19 thank you very much. With regard to our motion for
20 the errata, your Honor, the House Special
21 Investigative Committee considered a summary report
22 drafted by Auditor General William Holland with
23 regard to the agency efficiency initiative
24 payments. It was put into the record in the House.

1 It was supposed to be transmitted to the Senate,
2 and through some clerical error, it was
3 inadvertently omitted. We would simply seek leave
4 to move that the record be corrected to add this
5 summary report.

6 CHIEF JUSTICE FITZGERALD: House -- the House
7 Prosecutor seeks leave to correct the House
8 Impeachment Record. There being no objection,
9 leave is granted, and the House Impeachment Record
10 will be corrected.

11 The House Prosecutor is -- is recognized
12 to clarify the status of his provisional subpoena
13 motion regarding Special Agent Cain.

14 HOUSE PROSECUTOR ELLIS: Thank you, your Honor.
15 The House Prosecutor would like to withdraw that
16 motion. We -- we anticipate Mr. Cain's appearance,
17 but he will not require a subpoena, so we'd seek leave
18 to withdraw that motion.

19 CHIEF JUSTICE FITZGERALD: The House Prosecutor
20 seeks leave to the Senate to withdraw his
21 provisional subpoena motion regarding Special Agent
22 Cain that was filed on January the 21st, 2009.
23 There being no objection, leave is granted.

24 The House Prosecutor is recognized to

1 clarify the status of certain motions under
2 Impeachment Rule 15 that were filed after
3 January 21st, 2009.

4 HOUSE PROSECUTOR ELLIS: Thank you very much,
5 your Honor. We had a filing deadline for Rule 15
6 motions of this past Wednesday. A number of things
7 have transpired since that time, things that we
8 didn't know would happen, we couldn't know,
9 and therefore, we have filed motions with regard to
10 these developments in our attempt to give the
11 Members of the tribunal the best evidence we can,
12 the most evidence that we can.

13 Most notably -- and I'm not going to get
14 into the merits of my motions, but just by way of
15 explanation, most notably, we recently secured the
16 testimony of Special Agent Daniel Cain. He is the
17 special agent of the FBI who signed the 76-page
18 affidavit. We also recently, very recently,
19 received authorization from the federal court in
20 Chicago to play intercepted audiotapes for the
21 Senate Chamber with regard to one specific part of
22 that complaint. In addition to that -- those are
23 both things that happened after the Wednesday
24 deadline, and so we filed motions reflecting these

1 developments, obviously, late.

2 We have a motion with regard to the
3 Kirk-Foster Amendment. That's an amendment that
4 was put on a bill in the -- in a House Appropriations
5 Committee in Congress. I believe it was put on
6 Wednesday afternoon, which is when our filing
7 deadline was. As soon as we found out about it, we
8 -- we presented that motion to admit that. We have
9 -- we seek to admit an audiotape from a radio program
10 on WLS-AM involving Governor Blagojevich. Again, that
11 program happened on Saturday, so it was, obviously,
12 well after the deadline.

13 In addition to that, the only other two
14 motions that we filed after the deadline were
15 motions we filed this morning. We have a modified
16 motion for witnesses and a modified motion for
17 documents, and both of these are really compelled
18 by the appearance now of Special Agent Cain in the
19 case. And again, I won't go into the merits, but
20 if Special Agent Cain is permitted by you to testify,
21 the testimony of a number of other witnesses,
22 particularly State Representatives who are going to
23 summarize the record, will no longer be needed, and
24 we'll need to revise our list.

1 So all of these things have come up as a
2 result of new information and new developments.
3 Your Honor, I would seek leave to present these
4 motions and to argue the merits of them instanter.

5 CHIEF JUSTICE FITZGERALD: The House Prosecutor
6 seeks leave to argue instanter his certain
7 Impeachment Rule 15 motions, which were filed after
8 January 21st, 2009. There being no objection,
9 leave is granted. The House Prosecutor is now
10 recognized to present and argue these motions. He
11 shall be allowed 30 minutes to present these
12 motions unless he requests additional time.

13 HOUSE PROSECUTOR ELLIS: Thank you very much,
14 your Honor.

15 I would like to start with the modified
16 motion related to Special Agent Daniel Cain. After
17 Governor Blagojevich was impeached, I made contact
18 with the United States Attorney's Office in
19 Chicago and told them that we would very much like
20 to be able to have to testify the man who signed
21 the affidavit, the 76-page affidavit detailing the
22 allegations against Governor Blagojevich. I
23 thought that while we could certainly summarize the
24 testimony through anybody, I thought that the best

1 evidence for the Senate would be for you to hear
2 from the person who led the team that verified that
3 all the tapes were accurately written into the
4 affidavit, confirmed that the voice identifications
5 were, in fact, the voice of the Governor and
6 confirm that everything in that affidavit is true
7 and accurate.

8 The U.S. Attorney was responsive to the
9 request, but the United States Attorney has an
10 obligation under federal law, under Department of
11 Justice regulations, not to allow for any evidence
12 in a state tribunal to interfere with an existing
13 ongoing federal investigation. So when a state
14 tribunal like ours, like yours, requests an FBI
15 agent, we hit squarely on those Department of
16 Justice regulations. It's the U.S. Attorney's
17 decision whether to allow Mr. Cain to testify and
18 to what extent. He can say yes, no or yes with
19 conditions.

20 We had several conversations, and at the
21 end of last week, on Thursday, January 22nd, the
22 U.S. Attorney for the Northern District of
23 Illinois, Patrick Fitzgerald, indicated that he was
24 willing to release Special Agent Cain to testify

1 subject to limitations. This was in my motion, but
2 I think it might be helpful to explain them. I
3 want to be very clear about what we're doing here.

4 Special Agent Cain will be able to testify
5 with regard to his background and responsibilities
6 as an FBI agent. He will be able to testify
7 whether the affidavit he executed, the 76-page
8 affidavit, was accurate to the best of his
9 knowledge and belief at the time he executed it,
10 whether the summaries of the conversations that
11 were intercepted and the quotations intercepted,
12 including the voice identification, accurately
13 reflected the information available to him at the
14 time he executed the affidavit and the general
15 procedures that Special Agent Cain and other law
16 enforcement agents working with him followed in
17 verifying the accuracy of the summaries and the
18 voice identification.

19 It's limited testimony. It is not a
20 freewheeling discussion. I think -- I hope that
21 we can all understand that the U.S. Attorney can't
22 permit that. The U.S. Attorney is still in the
23 process of -- at least they say they're preparing
24 to indict the Governor in April. And they have

1 said in court filings they are continuing to gather
2 evidence. They could have said no completely, and
3 I -- I would like us -- I would like to accept this as
4 -- as being much, much, much, much better than nothing.
5 And I hope that the Senate would agree. But I do want
6 to be clear, the United States Attorney's Office
7 controls this testimony, and they would have an
8 Assistant United States Attorney present, probably
9 sitting very close to the witness, and if a
10 question that I ask or that the Senators ask or, if
11 the Governor appears with counsel, Governor's
12 counsel asks, if any of those questions go beyond
13 the scope of the authorization, the United States
14 Attorney will instruct the witness not to answer.

15 We have to live with those rules. I think
16 it's worth it. This is the man who led the
17 investigation into Governor Blagojevich. This is
18 the man -- rather than me just showing you that he
19 signed the affidavit, he will take the witness
20 stand, and he will swear to every paragraph that it
21 was true and accurate. I think it's important for
22 us to hear that. It would be my humble request
23 that we allow this testimony subject to those
24 restrictions. I just want everyone to be very

1 clear. It's a little bit unorthodox. I want you
2 to understand the restrictions.

3 The next motion that we have filed is a
4 modified motion for additional witness testimony.
5 Now, this is conditioned on Special Agent Cain for
6 the most part. What I mean by that is if Special
7 Agent Cain testifies, then the testimony of
8 Representative Durkin, Representative Hannig and
9 Representative Mendoza, all of whom were going to
10 summarize the complaint for you, will become
11 unnecessary, and we would withdraw them as
12 witnesses.

13 In addition, unrelated to Agent Cain, we
14 are seeking to -- we have decided to withdraw a
15 couple of other witnesses, Representative Miller
16 and Representative Jack Franks. So again, this
17 motion is really contingent on Special Agent Cain.
18 If -- if the Body decides that I cannot present
19 Special Agent Cain, then we're back to
20 Representatives Durkin and Mendoza and Hannig
21 to summarize the testimony.

22 So those are the two motions I have with
23 regard to witnesses, Special Agent Cain and then
24 our modifications to the witness list if Special

1 Agent Cain does not -- does not -- is -- is allowed
2 to testify. We -- the modified witness list is really
3 no different than what we've showed you before when we
4 filed those flurry of motions on -- on the Wednesday
5 deadline. We will hear from Special -- former Assistant
6 U.S. Attorney John Scully, who will testify today hopefully
7 about the process for securing court authorization to
8 intercept oral and wire communications, what we
9 commonly think of as planting bugs and wiretaps.
10 He will explain that process.

11 Representative Chapin Rose would be called
12 to testify briefly with regard to information
13 concerning Ali Ata and Joseph Cari and the Health
14 Facilities Planning Board. Now, some of that will
15 be covered by Special Agent Cain. We're not going
16 to duplicate it, but Special Agent Cain is going to
17 be limited to the complaint, and there is
18 information in the sworn federal court testimony of
19 these individuals and in their plea agreements
20 beyond the complaint that we think is helpful. So
21 Mr. Rose's purpose would be to supplement that
22 testimony.

23 We will be calling Auditor General William
24 Holland to talk about the three audits that are the

1 subject of the Article of Impeachment, the flu
2 vaccine procurement, the I-SaveRx program and the
3 agency efficiency initiatives. We have slightly
4 expanded his testimony such that Representative
5 Franks's testimony was no longer necessary. And
6 again, we withdraw Representative Franks as a
7 witness.

8 We will call Vicki Thomas, who's the
9 executive director of JCAR to talk about the issues
10 related to JCAR, the Governor's violation of the
11 Administrative Procedure Act in his defiance of
12 JCAR in implementing the FamilyCare Program.

13 We will call Representative Lou Lang, who
14 is a member of JCAR who will testify about the
15 Governor's defiance and his refusal to provide any
16 information related to the FamilyCare Program once
17 he put it into place. Mr. Lang's testimony will
18 not replicate Vicki Thomas's. It will supplement
19 it.

20 We will also call Andrew Morriss, who is a
21 law professor at the University of Illinois. He's an
22 expert in administrative law. He will testify
23 about the illegality of the Governor's conduct.

24 And finally, we will call Representative

1 Connie Howard, who will testify about the injury to
2 the people of the State of Illinois as a result of
3 the Governor's actions. And we will, through her,
4 admit a number of things that have -- have happened since
5 his arrest, including, you know, a drop in our bond
6 ratings and constitutional officers throughout the
7 State calling for the resignation of the Governor,
8 National Homeland Security Department revoking the
9 Governor's clearance, security clearances. And if
10 you allow us to put in the Kirk-Foster Amendment,
11 the fact that legislators in Congress are now
12 specifically writing legislation to get around
13 Governor Blagojevich. Those are our witnesses, and
14 that would complete our request for witnesses.

15 I will talk briefly about the -- the motions
16 we filed after the deadline. Excuse me. I've already
17 just briefly mentioned the Kirk-Foster Amendment.
18 What Congress did, Representative Mark Kirk and
19 Representative Bill Foster filed a bipartisan
20 amendment in the House Appropriations Committee
21 last Wednesday. This was dealing with President
22 Obama's stimulus package.

23 And the amendment says, and I'm summarizing
24 it, I'm not quoting it, it says that there

1 will be restrictions put on the federal money sent to
2 the State of Illinois as long as Rod Blagojevich is
3 Governor. We think that is relevant to show the --
4 the -- the stain that the Governor has put on this
5 State, the injury to the State caused by his misdeeds.

6 I think I've already briefly talked about
7 the wiretap. We will be seeking to play before you
8 four intercepted phone conversations about five
9 minutes in total that would detail one specific act
10 of what we have been calling pay to play, of the
11 Governor trading campaign contributions in this
12 case for the signing of legislation related to the
13 horse racing impact fee legislation. With your
14 leave, we will play those tapes.

15 We'll play the -- we may seek to play -- we
16 certainly would seek to introduce into evidence the --
17 the transcript or -- I'm sorry, the audio recording
18 from the -- I believe it's the Don Wade and Roma
19 Show on WLS where Governor Blagojevich admits that
20 the words on those tapes were his and apologizes
21 for them, not for the content, but simply for the
22 profanity.

23 Beyond those three new document motions,
24 which is the Kirk-Foster, the wiretap and WLS, we

1 have -- we have filed today one wrap-up motion for documents,
2 a modified motion for documents which encapsulates
3 everything we previously filed. And our purpose
4 for doing so after talking about this with staff is
5 if you grant these motions, if you grant all the
6 motions that I have just summarized for you,
7 everything else will be withdrawn. This will
8 supplant everything that comes before it.

9 I will take you very briefly through the
10 documents that we do, at this point, intend to
11 introduce; first of all, a flow chart detailing the
12 process that John Scully will elaborate on as to
13 how one goes about securing a court order to
14 intercept oral and wire communications as the FBI
15 and the U.S. Attorney did in our case, in this case
16 with Governor Blagojevich.

17 Second, we would seek to introduce an
18 excerpt of a transcript from the Chief Judge of
19 the Northern District of Illinois's hearing where
20 the House was fighting to secure these four
21 wiretaps that we've now secured. It's an excerpt
22 where Judge Holderman makes it clear --
23 unequivocally clear that the U.S. government
24 followed procedure and law to the letter, that the

1 Governor scrupulously made -- I'm sorry -- that the
2 Chief Judge scrupulously made sure that the U.S.
3 Attorney's Office followed the letter of the law in
4 their wiretaps.

5 We will introduce excerpts from Exhibit 3,
6 which is the affidavit of Special Agent Daniel
7 Cain. As I think you know, there are a number of
8 quotes, either summaries of quotes or verbatim
9 quotes in that complaint. And we would like, as a
10 demonstrative -- as demonstrative exhibits, plural,
11 as they are being discussed on the witness stand by
12 Agent Cain, we would like to show them to you as
13 blowups.

14 We would admit -- seek to admit a document
15 that -- that is from the Change to Win website. Change
16 to Win is an organization composed of several unions
17 that the evidence will show the Governor was
18 interested in joining as one of his -- the benefits
19 he was contemplating in his plot to what we would
20 call selling the Senate seat. It's just a
21 description of what Change to Win is.

22 We would seek to admit the front page of
23 the December 5th, 2008 Chicago Tribune. That is
24 the day that the Chicago Tribune disclosed that the

1 Governor was being secretly recorded by the federal
2 government. That's part of our story because we will
3 -- we will present evidence that the Governor, the day
4 before that, was instructing a particular
5 individual to go solicit campaign contributions.

6 The next day, the story arrived. He
7 talked about that story with this individual, and
8 he said, forget it. Let's undo that. We think
9 that's relevant to his knowledge that what he was
10 doing was illegal and his actions to avoid being
11 caught.

12 We will seek to admit certain excerpts
13 from Ali Ata's trial testimony, certain excerpts
14 from Joseph Cari's trial testimony. We will seek
15 to introduce a timeline detailing Ali Ata's -- the
16 chronology of the story of Ali Ata from -- from when
17 he was first speaking with Congressman Rod Blagojevich
18 until he was named executive director of the
19 Illinois Finance Authority. Again, that's for
20 demonstrative purposes.

21 We will seek to admit the bill status of
22 House Bill 4758, that's the horse racing impact fee
23 bill, just to give context to the timing of all
24 these things. That's, of course, a public

1 document, but we would seek leave to introduce
2 that.

3 We will seek to introduce letters back and
4 forth from the Governor and the Secretary of Health
5 and Human Services and/or the FDA, and these are
6 letters dealing with the Governor's attempt to
7 bring prescription drugs -- to import prescription
8 drugs from other countries. These are -- this is the
9 correspondence in which he asked for a waiver from
10 the federal law, and he was denied the waiver.

11 There will -- we will seek to introduce
12 various newspaper articles and -- and press releases
13 -- and a press release, a single press release dated
14 September 16th, 2006 dealing with the I-SaveRx
15 program in which we would argue that the Governor
16 acknowledged the findings of the Auditor General
17 and essentially ignored them.

18 We will seek to introduce a timeline
19 detailing the events that transpired during the
20 procurement of the flu vaccine program, including
21 such things as when the Governor was told by the
22 federal government that it would be illegal to do
23 so, when he was told by the federal government that
24 he didn't need any additional vaccine in Illinois

1 anymore, when the Governor entered into contracts
2 to purchase these flu vaccines even after knowing
3 that he couldn't have them imported and even after
4 knowing that they weren't necessary, those kind of
5 things, a -- a detailed timeline.

6 We would also seek to introduce as a
7 demonstrative exhibit a timeline relating to the
8 I-SaveRx program, again, the prescription drug
9 program, same kind of an idea, the chronology of
10 events.

11 We would then seek to introduce documents
12 related to the Joint Committee on Administrative
13 Rules. This, again, goes to the JCAR issue, and
14 this would be official statements of JCAR objecting
15 to both the preemptory rules, to the temporary
16 rules -- I'm sorry -- the emergency rules and then
17 I think ultimately the -- the final rule that was
18 proposed as well.

19 Finally, we would seek to admit a letter
20 from Barbara Flynn Currie, who's the chair of the
21 House Special Investigative Committee, in which the
22 Special Investigative Committee, refers the four
23 wiretaps that we just got from the federal government
24 to the House Prosecutor to be played in the -- before

1 the Senate impeachment tribunal.

2 I think that completes -- well, let me --
3 hold on one second, please. All right. I stand
4 corrected. One other thing that we would seek to
5 introduce are Chicago Tribune editorials that
6 criticized Governor Blagojevich, called for his
7 recall, called for an investigation into his
8 impeachment and other critical documents. This
9 is relevant to the allegations related to the
10 Tribune Company and the Governor's attempt to
11 trade his provision of financial assistance to
12 the Tribune Company for having those editorial
13 board members at the Chicago Tribune fired.

14 Okay. So if the motions that I have just
15 run through are granted, and I -- I certainly request
16 that they would be, every other motion, your Honor,
17 would be moot, and we -- I would seek at that point, if
18 that should happen, to withdraw the rest of the
19 motions. Thank you, Judge.

20 CHIEF JUSTICE FITZGERALD: Thank you, Counsel.

21 Madam Secretary, has the Governor filed
22 any response to the Impeachment Rule 15 motions of
23 the House Prosecutor?

24 MADAM SECRETARY: No response has been filed by

1 the Governor or counsel on his behalf.

2 CHIEF JUSTICE FITZGERALD: Per Senate
3 Resolution 7, we are scheduled to hear responsive
4 arguments on these requests from the Governor or
5 his counsel, however, as neither the Governor nor
6 counsel on his behalf has appeared or filed any
7 responses, we will proceed directly to take written
8 questions from the Senators regarding the House
9 Prosecutor's request under Impeachment Rule 15.

10 President Cullerton, for what purpose do
11 you rise?

12 PRESIDENT CULLERTON: Thank you, Mr. Chief
13 Justice. I would like to ask for a Democratic
14 caucus for the purpose of formulating questions to
15 ask the House Prosecutor on his motions that have
16 been filed. I would ask for exactly one hour, and
17 I would ask that we return in one hour
18 promptly back to the Chamber.

19 CHIEF JUSTICE FITZGERALD: Senator Radogno, for
20 what purpose do you rise?

21 SENATOR RADOGNO: Thank you, Chief Justice. I
22 would like to request a Republican caucus in order
23 to formulate questions, and I believe we can be
24 completed in an hour as well.

1 CHIEF JUSTICE FITZGERALD: The Senate will
2 stand in recess to the call of the chair during the
3 caucuses. We will return after caucus at the
4 hour of 20 minutes to 2:00 for questions of the
5 House Prosecutor. The Senate stands in recess to
6 the call of the chair.

7 (Whereupon, a short recess was
8 taken.)

9 CHIEF JUSTICE FITZGERALD: The Senate will come
10 to order. Madam Secretary, have any questions been
11 submitted?

12 MADAM SECRETARY: Yes. A question list has
13 been received from both the Democratic Caucus and
14 the Republican Caucus.

15 CHIEF JUSTICE FITZGERALD: I will pose the
16 written questions from the Senators beginning with
17 the ones submitted by the Democratic Caucus and
18 then alternate to one from the Republican Caucus
19 until all questions have been posed. The House
20 Prosecutor shall limit the answers to any
21 particular question to five minutes.

22 There is a preliminary matter I want to
23 touch upon, if I may. It is customary in a -- in a
24 trial to exclude witnesses who may testify later in the

1 trial. And -- and in order to avoid them being present
2 during the testimony of a witness giving similar
3 testimony, they are excluded from the courtroom.
4 Consistent with that procedure, I will order that
5 any -- any person now in one of the galleries who knows
6 that they would be a potential witness in this case
7 would kindly please absent themselves from the
8 Chamber at this time pursuant to the rule I've just
9 announced.

10 Thank you.

11 The first question comes from Senator
12 Garrett. And it's directed to the House Prosecutor,
13 and it says are the State Representatives who were
14 called upon to provide testimony in the Senate
15 tribunal now in agreement to have Agent Cain
16 replace them as a witness?

17 HOUSE PROSECUTOR ELLIS: Yes, Senator. I did
18 speak with Representatives Durkin and Hannig and
19 Mendoza, and they were both prepared -- all prepared
20 to testify, but I think we all agreed that as the FBI
21 agent has personal knowledge of the information contained
22 in the affidavit, he was best to talk about it.

23 CHIEF JUSTICE FITZGERALD: The next question
24 comes from the Republican Caucus from Senator Dale

1 Righter, and it's -- it's a multipart question.

2 With reference to the House Prosecutor's
3 motion for additional documents on newly discovered
4 evidence as it relates to the Kirk-Foster
5 Amendment, what is the purpose of introducing this
6 document? Were either Congressman Kirk or
7 Congressman Foster contacted by you or -- or someone
8 on your behalf and asked to testify themselves as to
9 why -- why they sponsored this amendment? If so, what
10 was the response? If not, why?

11 HOUSE PROSECUTOR ELLIS: Senator, the -- the purpose
12 of introducing this amendment, I think, is to show, on a
13 national level, the reaction of the Governor's arrest
14 and really this speaks to the harm. I mean, the whole
15 purpose of an impeachment inquiry is to protect the
16 citizens from harm. And I think what we would have
17 suggested is that this, like other things, like
18 bond ratings falling and revocation of the national
19 security clearance, this indicates to us that
20 punitive action is being taken against the State of
21 Illinois specifically. We're being singled out by
22 the federal government because of who our governor
23 is.

24 When we learned about this amendment, my

1 staff learned about this Kirk-Foster Amendment, I
2 believe we did contact one of the congressmen's
3 offices simply to get ahold of the documents
4 because this was real time. I mean, this was, I
5 believe, the same day that we heard that it
6 happened. I think we first saw some kind of a news
7 story about it and reached out and spoke with
8 somebody from their staff. We did obtain documents
9 from the staff. I think the documents we attached
10 came from Washington, D.C.

11 I think the last thing I need to answer
12 here is whether either of them have been asked to
13 testify, and the answer to that is no. As far as
14 I'm concerned, nobody has asked us to -- asked
15 that Representatives Kirk or Foster testify.

16 CHIEF JUSTICE FITZGERALD: The next question
17 from the Democratic Caucus comes from Senator
18 Rickey Hendon. Couldn't the Kirk-Foster Amendment
19 hurt the State of Illinois bond rating and
20 creditworthiness? Isn't the Kirk-Foster Amendment
21 a political amendment that further prejudices the
22 case against the Governor?

23 HOUSE PROSECUTOR ELLIS: Senator, if I can turn
24 this way, could the Kirk-Foster Amendment hurt the

1 State of Illinois's creditworthiness? I suppose
2 it's possible that it could. I certainly don't
3 hold myself out as an expert in these kind of
4 things. You know, I'm an attorney, and I work in
5 the legislature. I suspect the answer would be
6 yes, but I don't know. I couldn't speak beyond
7 just what my assumption would be.

8 With regard to the second question, is it
9 a political amendment that further prejudices the
10 case against the Governor, I think that with regard
11 to his criminal case, it may well be the case that
12 it prejudices his criminal case. I'm not really
13 qualified to speak to what he is planning to do
14 with regard to his criminal case. It -- I think it is
15 fair to characterize this as a political amendment.
16 It is a political amendment. Whether it prejudices
17 the case here, what I would submit is that this is relevant
18 here, so it is probative to, again, the injury
19 inflicted on this State by the Governor's actions.

20 CHIEF JUSTICE FITZGERALD: The next question
21 from the Republican Caucus comes from Senator Kirk
22 Dillard. U.S. Senate Democratic Leader Harry Reid
23 acknowledged that he discussed the Obama Senate
24 vacancy with Governor Blagojevich. In order to

1 assure a full record of the alleged sale of
2 President Obama's former Senate seat, why are not
3 the wiretaps of Leader Reid or a subpoena issued for
4 Senator Reid to testify?

5 Follow-up question, apparently, wouldn't the
6 Democratic Leader in the U.S. Senate be in a premier position
7 to know the behind-the-scenes of who would join his
8 caucus from a critical big state like Illinois,
9 especially since it's a seat left vacant by the
10 President of the United States?

11 HOUSE PROSECUTOR ELLIS: Well, Senator, with
12 regard to the first part of your question, the
13 testimony that would be elicited that we're talking
14 about, contents of recorded wiretaps, yes, the
15 U.S. Attorney did agree to release one very limited
16 wiretap, but other than that, we have been denied
17 that by the federal government. We cannot subpoena
18 the federal government to give us the wiretaps.

19 We -- I mean, as I sit here, I -- you know,
20 I think I saw that on television myself. I don't even
21 have personal knowledge that there are wiretaps
22 involving Harry Reid, but I think you're referring to
23 -- I think he's spoken publicly about this. It would
24 be my understanding that if I were to ask the U.S.

1 Attorney's Office for information on this subject,
2 not because it's any particular person, but because
3 it falls within the subject matter, the U.S.
4 Attorney had declared this subject matter to be
5 off-limits. And I guess that would be the reason
6 why we are not -- we have not issued any subpoenas
7 in that regard, and we're not pursuing that
8 testimony.

9 I think the second part of your question
10 it's -- it's -- I certainly understand the point.
11 Wouldn't the Democratic Leader in the Senate be in
12 a good position to know? I think that that subject
13 matter would be off-limits, and I would further add
14 that -- you probably would agree with me on this.
15 The best person who's in the best position to know
16 is the Governor, and the Governor can come here and
17 testify.

18 CHIEF JUSTICE FITZGERALD: Our next question
19 comes from the Democratic Caucus, Senator Kim
20 Lightford. How relevant is the Kirk-Foster House
21 Amendment that passed only the House Chamber and
22 was not heard in the United States Senate Chamber
23 and further not signed into law?

24 HOUSE PROSECUTOR ELLIS: Well, that's certainly

1 a good point. It has not been passed completely yet.
2 I think the fact that it got -- as I understand it,
3 it got placed on the bill in committee and may have
4 passed the House Chamber. I'm going to have to
5 update my own knowledge on that. It's certainly a
6 fair point to say it only got halfway out. I -- what
7 we would respectfully argue is it still happened.

8 Congressmen from Illinois put language on
9 a piece of legislation, not congressmen from other
10 states, congressmen from Illinois put this on, and
11 you know, I think that says something about the standing
12 of our Governor, but I acknowledge it's a fair point.
13 I suppose in debating the weight and the credibility
14 of the evidence, you could take into account that
15 maybe the Senate hasn't even passed it.

16 CHIEF JUSTICE FITZGERALD: Our next question
17 comes from the Republican Caucus, Senator Christine
18 Radogno. Are you intending to have live witnesses
19 present the documents you seek in your modified
20 motion for additional documents or materials? If
21 not -- if no, why not?

22 HOUSE PROSECUTOR ELLIS: Well, Senator, the
23 answer is for the most part, yes. We're using a
24 lot of the documents for demonstrative purposes.

1 We are using a lot of documents that the witnesses
2 have personal knowledge of. I can tell you that
3 the answer is not an unqualified yes. There will
4 be some instances where we do not have a witness
5 with personal knowledge. I'll give you an example.

6 I'm going to be -- we're going to be
7 seeking, with your permission, to put in evidence
8 relating to the bill status of the horse racing
9 impact fee bill. Before Agent Cain became
10 available, I thought that I was putting that
11 testimony on through Representative Susana Mendoza,
12 and she would have been perfectly qualified to talk
13 about that bill and the bill status.

14 Agent Cain will not talk about that bill.
15 That is beyond the scope of what he can talk about.
16 He's going to be sticking with his affidavit. So
17 at this point, rather than drag in a State
18 Representative just to ask one or two questions, I
19 would probably be more likely to simply ask that it
20 be admitted, it is a public record after all, and
21 then submit it, just sort of publish it to the
22 Members as that becomes relevant during the
23 testimony. I think the vast majority of the
24 documents will be used and introduced during live

1 testimony.

2 CHIEF JUSTICE FITZGERALD: Next question from
3 the Democratic Caucus from Senator Delgado. How
4 and when did you become aware of the pay-for-play
5 pattern in the Governor's office?

6 HOUSE PROSECUTOR ELLIS: When did I become
7 aware of it?

8 CHIEF JUSTICE FITZGERALD: Would you like me to
9 repeat the question?

10 HOUSE PROSECUTOR ELLIS: No, sir. No, sir.
11 I think I heard it. Thank you, Your Honor.

12 Well, other than what I've read in the
13 newspapers for several years which -- well, other
14 than what I've read there, I would say that I --
15 my knowledge became detailed probably after the
16 Governor was arrested and most particularly when
17 the House voted to create a Special Investigative
18 Committee. And I was counsel to that committee, so
19 I, in turn, scoured that criminal complaint and got
20 to know it pretty well. That was when I probably
21 would have had the first detailed knowledge other
22 than just things that we've been reading in the
23 newspapers for the last few years.

24 CHIEF JUSTICE FITZGERALD: The next question

1 from the Republican Caucus, Senator Chris Lauzen.
2 Note that no one is testifying as to Paragraph 13
3 of the House Impeachment Article regarding hiring
4 and firing practices. Why not? How are we to make
5 a decision on the Article if no one testifies as to
6 this Item 13? Why is Z. Scott not testifying to the
7 -- as the Executive Inspector General report regarding
8 hiring and firing practices? Wouldn't it be
9 important to have Z. Scott here if we have any
10 questions of this report?

11 HOUSE PROSECUTOR ELLIS: Sure. The Z. Scott
12 report is a document that we put in the record. We
13 have had - why don't I say it this way - we do not
14 have a witness that could speak to their personal
15 knowledge of that report. Our understanding is
16 that was a collaborative effort by the Executive
17 Inspector General's Office. We did attempt to
18 secure the testimony of Ms. Scott and another
19 witness, another person who helped author it. That
20 was -- did not meet with success in the House. But
21 more importantly, the message that we got was that
22 there was no one person who could speak to this in any
23 kind of detail, that it was a collaborative effort.
24 And to be perfectly honest, we don't know who the

1 person was who did the vast majority of the
2 drafting of this.

3 We think that the document is very
4 detailed, it's well-documented, but we don't have a
5 live witness who can speak, who can make it any
6 better than it already is. And so we would submit
7 it for your consideration, and we could certainly
8 talk about it. I could certainly summarize it
9 during the closing argument, but it was not our
10 intention after thinking about it more to just
11 bring in somebody to summarize it.

12 CHIEF JUSTICE FITZGERALD: Next from the
13 Republican Caucus, Senator Dave Syverson. Is
14 Representative Howard the person with the most
15 knowledge regarding the injury to the State of
16 Illinois by its bond rating being lowered? If not,
17 who is? Why not have Treasurer Giannoulis
18 testify? Why is there no expert analyst here to
19 provide us all the information as to the reason for
20 bond rate -- the reason the bond ratings were
21 lowered?

22 HOUSE PROSECUTOR ELLIS: I don't know that
23 Representative Howard is -- has the most knowledge. I
24 think that what we would -- what we would say is that the

1 -- as I understand the documents explaining the dropping
2 of the bond rating, the documents on their face say
3 it's because of the Governor's legal problems, and
4 so it's really more the fact of its existence at
5 all, the fact that the bond rating went down for
6 that reason. Whether that is -- whether that's
7 true or not, whether that's a good enough reason, I
8 guess what I -- we would argue is that's the reason
9 they're giving. And so fair or not to the State of
10 Illinois, that's what we're being told.

11 Representative Howard, we thought, would
12 be a good witness to testify about the harm, and we
13 thought that she was as -- certainly as qualified
14 as the next person to talk about it. Treasurer
15 Giannoulis, you know, certainly he did not testify before
16 the House. Certainly be no reason why we wouldn't call
17 him, but that was just -- it's just -- you know, we were
18 sticking with House Members and people who testified in
19 the House to prepare our case, and that's -- those are
20 the witnesses we're prepared to go forward with at the
21 time -- at this time.

22 CHIEF JUSTICE FITZGERALD: And now from the
23 Democratic Caucus, Senator Haine. Will the
24 officer, Cain, testify as to whether there are

1 exculpatory statements by the Governor or anyone
2 acting in his employ on the portions of the tapes
3 that are not heard by the Senate?

4 HOUSE PROSECUTOR ELLIS: Well, I think the
5 answer is yes because I think that that's in the
6 affidavit. I think there were a couple of places
7 in the affidavit, and I'm trying to place them. I
8 believe one of them is the last paragraph, and I
9 believe there's another paragraph that's probably
10 in the high 50s in which Agent Cain details other
11 phone calls. I can tell you that Agent Cain will
12 be limited to the affidavit. He's not going to
13 start talking about other people he's interviewed
14 or other people who have been involved in the case.
15 He will have to limit his remarks to the affidavit.
16 But hearing this question, Senator, I will make it
17 a point of drawing those out from him. I will
18 highlight those. You have my commitment to that.

19 CHIEF JUSTICE FITZGERALD: Senator Bill Brady
20 from the Republican Caucus. Why haven't you
21 requested the testimony of individuals involved in
22 the corruption in the Health Facilities Planning
23 Board, specifically Mike Noonan, Cuthenbaum --
24 Kiferbaum, rather, and Herb Franks, and will you

1 amend your request to do so?

2 HOUSE PROSECUTOR ELLIS: Senator, I think,
3 again, you know, when the United States Attorney
4 first corresponded with the House as to the people we
5 could call as witnesses, his answer was not limited
6 to individuals by name, you can talk to these four
7 people, but not these 20. It was subject matters.
8 You cannot talk about people within the subject
9 matter of our criminal investigation, and I think
10 that this would fall within that.

11 We have always understood that all of the
12 things in the complaint, unless we could get a
13 particular release from the U.S. Attorney, and
14 we've tried many times on many fronts. We do have
15 Agent Cain. We did get the wiretaps. We're
16 grateful for both of those things, and I hope that
17 you'll allow us to present those two pieces of
18 evidence, but it's our understanding that this
19 would be denied if we tried.

20 CHIEF JUSTICE FITZGERALD: I believe that
21 concludes the questions from the Republican Caucus.
22 I have a couple more from the Democratic Caucus.
23 Again, from Senator Rickey Hendon. Today you
24 amended your charges to include new evidence. Are

1 you under any obligation to bring any evidence
2 forward that might exonerate the Governor on any
3 charge?

4 HOUSE PROSECUTOR ELLIS: Well, Senator, we
5 have put -- we put the entire House record in,
6 first of all, and that included some exculpatory
7 evidence that the Governor's attorneys put in.
8 Whenever there is a complete document to put in,
9 we've always put in the complete document, not
10 just the part that favors our position.

11 For example, Ali Ata testified in federal
12 court under oath subject to cross-examination. We
13 put the cross-examination in there. We put all of
14 it in. Same with Joseph Cari. If -- you know, if
15 I came into possession of evidence that I thought
16 exonerated the Governor, I would bring it to your
17 attention. I've not seen that. Is it my obligation?
18 I would consider it my obligation whether it is or not.
19 We have -- you know, we are doing our best to give you
20 everything that we possibly can. It's been a
21 challenge, but that's a challenge we're trying to
22 meet, and that would include anything that was
23 exculpatory.

24 CHIEF JUSTICE FITZGERALD: There is a further

1 question from the Republican Caucus from Senator
2 Dale Righter. As to the Kirk-Foster Amendment, did
3 you or someone on your behalf ask either Congressman
4 Kirk or Congressman Foster to testify as to why it was
5 introduced? If not, why not? If not, why, rather?

6 HOUSE PROSECUTOR ELLIS: No. We contacted
7 their office for the documents themselves. We did
8 not reach out to them to ask them to testify, I
9 guess, primarily because in our view, the amendment
10 speaks for itself. It's not so much the motive
11 behind it, but the fact that it's there, that at
12 least for the moment -- and you know, Senator
13 Lightford makes the point it may never become law.
14 Fair enough. But at least for the moment, at least
15 one chamber, at least one committee in Congress has
16 singled out the State of Illinois in the
17 presidential stimulus package because of who our
18 Governor is. And whether they had some motive for
19 doing so, it's certainly a valid question to ask,
20 but in our mind, it was the fact of the amendment
21 at all that was what was most relevant.

22 CHIEF JUSTICE FITZGERALD: Okay, the next question
23 also comes from Senator Rickey Hendon. Is giving
24 healthcare to children an impeachable offense, or

1 does it fall under executive privilege? In 1974,
2 the United States Senate Impeachment Committee
3 ruled against impeaching President Richard Nixon
4 over the secret bombings of Cambodia citing
5 executive privilege. How does this differ?

6 HOUSE PROSECUTOR ELLIS: Well, first of all, I --
7 the first thing I would say is that the Senate will
8 decide what is an impeachable offense. Each one of
9 you Senators individually will decide. I think a
10 lot has been written on that subject that, you
11 know, it's really in the eye of the individual
12 Senator. There's no strict standards put in place.

13 Certainly when the framers of the
14 Constitution created the remedy of impeachment,
15 they did not put it in the judicial branch with its
16 strict rules of evidence and procedural rules and
17 standards. They put it in the legislative branch and
18 have often referred to it throughout time as, you know,
19 political crimes and crimes against society, things
20 that injure the public. Those are really in the
21 eye of each individual Senator. I -- Senator Hendon,
22 I am not going to tell you what is an impeachable
23 offense, but I will do my best to answer your
24 question, sir.

1 What we would say about the JCAR issue is
2 that it's not about healthcare. It's about
3 following the law and following the Administrative
4 Procedure Act and respecting the separation of
5 powers. So when JCAR says we like -- we see your
6 rule here. You've got something dealing with SCHIP
7 and the federal government where we have a true
8 emergency, but maybe we don't think this other part
9 of your rule is an emergency, could you separate
10 them out, and the Governor says, no and so JCAR
11 says no to that, and the Governor just goes ahead
12 and implements the plan himself.

13 When we talk about those things, we're not
14 really talking about healthcare, per se. We're
15 talking about the process and the separation of
16 powers. And I think that that was pretty clear
17 that the members of JCAR were saying the same thing
18 at the time. It wasn't opposition to healthcare.

19 Senator, the second part of your question
20 dealing with President Nixon, I have to confess
21 that I am not familiar with this decision of the
22 Senate Impeachment Committee ruling against
23 impeaching President Nixon over executive
24 privilege. Certainly every individual Senate or

1 committee thereof would, you know, make their own
2 decisions on that, and I don't think any of that
3 would, obviously, be binding on you. If it is
4 informative to you, then so be it.

5 I think that's about as much as I can
6 answer, Senator, because I really don't feel like
7 I'm in a position to tell you or any of the Members of
8 this Body what is or is not an impeachable offense.
9 I am presenting the charges of the House. We will
10 be asking you to convict the Governor and remove
11 him from office. But ultimately, you will have to
12 decide whether these are impeachable offenses.

13 CHIEF JUSTICE FITZGERALD: We have another
14 question from the Republican Caucus, Senator Dan
15 Rutherford. Understanding the Inspector General's
16 report was a collaborative effort, would you please
17 clarify again why Z. Scott has not been subpoenaed
18 to testify?

19 HOUSE PROSECUTOR ELLIS: Our understanding, and
20 I did not speak directly with her, but my
21 understanding from staff is that she would
22 personally not be able to, you know, add a great
23 deal to it, that the document speaks for itself as
24 far as, you know, her -- anything she would add,

1 from what I understand, would not be sufficient to,
2 you know, to justify bringing her in. And I don't
3 want to speak for her.

4 That's the reason I'm hesitating, is I
5 don't want to speak for this person and state her
6 position for her. My understanding is that she
7 felt like this was a confidential situation, which,
8 you know, under the Ethics Act, there is a
9 confidentiality provision, and our subpoena
10 overcame that, but my understanding -- again, my
11 understanding -- I don't want to speak for her --
12 is that she felt like this was confidential
13 information and she wouldn't want to talk about it.
14 We weighed taking a subpoena that would probably
15 end up in a court fight and balance that against
16 what we would get from that, which is probably just
17 a marginal benefit at best, and we decided not to
18 pursue it.

19 CHIEF JUSTICE FITZGERALD: Only -- we're left
20 at this point with Democratic questions only. Let's
21 see if we get more from the Republicans. And this is
22 from Senator Rickey Hendon. In doing my research, I
23 haven't found any other impeachment case in which
24 all of the charges are lumped together into one

1 Article of Impeachment. Why did the House decide
2 to go against the precedent of separating the
3 charges into the proper categories?

4 HOUSE PROSECUTOR ELLIS: Well, there is
5 precedent for doing charges as part of a pattern or
6 a course of conduct. Going back to the very early
7 days of our republic, of the United States of America.
8 I'm going from memory right now, so I guess it's -- you
9 know, I would tell you that this is to the best of my
10 memory. I believe that there was a Supreme Court
11 justice named Samuel Chase, who very early on was
12 charged based on a pattern of abuse of authority, some
13 kind of a course of conduct.

14 My understanding from reading literature
15 is that there have been many instances of that. In
16 our case, we felt like the evidence demonstrated a
17 pattern of abuse, and it was the way we decided to
18 present the Article of Impeachment. We did not
19 view it as unusual, but certainly in Illinois,
20 there is virtually no precedent for this at all,
21 for any impeachment, virtually no impeachment ever.
22 So you know, we certainly have had a fairly clean slate
23 in Illinois. Nationally, it's our understanding
24 this is not -- you know, this is not an unheard of

1 way of proceeding.

2 CHIEF JUSTICE FITZGERALD: All right. This
3 is a very similar question from Senator Hendon.
4 The impeachment case brought March 6th, 1868
5 against President Andrew Johnson had 10 Articles
6 of Impeachment. July 27th, 1974, President Richard
7 Nixon contained three separate Articles of
8 Impeachment, and in 1998, the charges against
9 President Clinton were separated into four
10 categories, thus, allowing the Senators to
11 change -- a chance to vote on each count
12 separately.

13 By lumping all of the charges together in
14 this case, isn't the House, in fact, restricting
15 the right of the Senators to judge and rule on the
16 charges separately? If so, why was it done this
17 way, and would you oppose separating the charges
18 into four main categories, bribery, abuse of power,
19 high crimes and misdemeanors?

20 HOUSE PROSECUTOR ELLIS: Well, again, I think
21 that it's not without precedent to proceed based on
22 a course of conduct, a course of abuse of conduct
23 or a pattern of abuse. I don't think we're
24 restricting the rights of Senators to vote. I

1 think each Senator will have to make the decision
2 for himself or herself whether there has been a
3 pattern alleged. And I hope that there's nothing
4 that we've done that would make any Senator feel
5 like they're not free to make that decision on
6 their own because I believe that they are.

7 As I read the last part of the question, I
8 would first say that in terms of referring to these
9 things as main categories, certainly, you know, you
10 can break these down a number of different ways.
11 I've, you know, had the occasion to read a lot
12 about impeachment in the last month, and, you know,
13 there's various ways to categorize the kinds of
14 charges.

15 Senator, you mentioned high crimes and
16 misdemeanors, and I acknowledge that that is
17 language that appears in a lot of constitutions,
18 and I know you know that it's not in our
19 Constitution. If that's the way that an individual
20 Senator wants to view these things, then that is
21 the prerogative of that individual Senator.

22 In terms of separating these into separate
23 counts, first of all, I think I would be powerless
24 to do that. This was an Article of Impeachment

1 that was sent over by the House, and I think this
2 is the Article that we will be prosecuting, but
3 more to the point, I think that would be
4 frustrating, you know, the will of the House
5 resolution that sent this over here.

6 The House could have broken this up into
7 pieces. It's certainly within their power to do
8 so, but they were equally within their power of
9 having this determined as a pattern. And I think
10 when you look at the scope of what we are alleging
11 here, the different areas it covers, I think that
12 referring to this entire collective group of
13 actions as a pattern is appropriate, and that was
14 ultimately the decision that the House made, and
15 it's the Article that we present to you today.

16 CHIEF JUSTICE FITZGERALD: Senator Hendon
17 withdraws two of his questions.

18 Senator Syverson from the Republican
19 Caucus asks, with other financial outlets giving
20 different reasons for bond warnings such as the
21 State's pension debt and overspending, why not have
22 an expert in to discuss technical reasons for bond
23 ratings?

24 HOUSE PROSECUTOR ELLIS: Well, again, I can

1 only speak to the documents that we were seeking to
2 introduce, and they -- as I understand it, they
3 indicate on their face the reason for why they did
4 what they did. You know, you do a lot of line
5 drawing in a case like this, and you try to decide
6 what the best evidence is and the most effective
7 use of everyone's time, and, you know, that was
8 just not an area we decided to pursue.

9 CHIEF JUSTICE FITZGERALD: Senator Cullerton?
10 Senator Cullerton?

11 PRESIDENT CULLERTON: Thank you, Mr. Justice.
12 I move that the Senate consider these motions on a
13 single roll call.

14 CHIEF JUSTICE FITZGERALD: Senator Cullerton
15 seeks leave of the Body to grant the House
16 Prosecutor's Impeachment Rule 15 motions on a
17 single roll call. There being no objection, leave
18 is granted.

19 I'm sorry. Senator Hendon?

20 SENATOR HENDON: Thank you, Mr. Chief Justice.

21 I object and move that the question be separated,
22 taking out the Kirk-Foster motion and that we deal
23 with that one on a separate vote because it is
24 injurious to the State of Illinois to have this out

1 there. As Senator Lightford has pointed out, it has
2 not even passed. So to have an amendment that
3 hurts the creditworthiness and the bonding power of
4 the State of Illinois is not a good idea, so I
5 would like that one moved. I would like that one
6 separated from the other five, is it, Mr. President.

7 CHIEF JUSTICE FITZGERALD: On the objection of
8 Senator Hendon, a roll call will be taken on each
9 of the motions. The question is, shall the Senate
10 grant the House Prosecutor's motion for additional
11 documents relating to the Kirk-Foster Amendment,
12 which was filed January 22nd, 2009.

13 All those in favor of -- all those in
14 favor will signify by voting aye. Those who are
15 opposed will vote nay. The voting is open.

16 Have all voted who wish? Have all voted
17 who wish? Have all voted who wish?

18 Madam Secretary, please take the record. On the
19 question, there are 48 ayes, 11 nays and zero
20 voting present. The motion having received the
21 required majority is granted.

22 The question is, shall the Senate grant the
23 House Prosecutor's motion -- modified motion for
24 additional witness testimony regarding Special

1 Agent Cain, who was -- which was filed on January 23rd,
2 2009. All those in favor will signify by voting aye.
3 Those opposed will vote nay. The voting is open.

4 Have all voted who wish? Have all voted
5 who wish? Have all voted who wish?

6 Madam Secretary, please take the record. On
7 that question, there are 59 yea, zero nay, zero
8 voting present.

9 The motion having received the required
10 majority is granted.

11 The question is, shall the Senate grant the
12 House Prosecutor's motion for the admission of the
13 tape and transcript from the Don Wade and Roma
14 Show, which was filed on January 23rd, 2009. All
15 those in favor will signify by voting aye. Those
16 opposed will vote nay. The voting is open.

17 Have all voted who wish? Have all voted
18 who wish? Have all voted who wish?

19 Madam Secretary, please take the record. On
20 the question, there are 59 yeas, zero nays and zero
21 voting present. The motion receiving the required
22 majority is granted.

23 The question is, shall the Senate grant
24 leave to the House Prosecutor -- motion for the

1 admission of tapes and transcripts from certain
2 federal wiretaps, which was filed on January 24th,
3 2009. All those in favor will signify by voting
4 aye. Those opposed will vote nay. The voting is
5 open.

6 Have all voted who wish? Have all voted
7 who wish? Have all voted who wish?

8 59 yea, zero nays, zero present, zero not
9 voting. Madam Secretary, please take the record. On
10 the question, and again, it is 59 to zero to zero to
11 zero.

12 The motion having received the required
13 majority is granted.

14 The question is, shall the Senate grant the
15 House Prosecutor his modified motion for additional
16 witness testimony, which was filed on January the
17 26th, 2009. All those in favor will signify by
18 voting aye. Those opposed will vote nay. The
19 voting is open.

20 Have all voted who wish? Have all voted
21 who wish? Have all voted who wish?

22 Madam Secretary, please take the record. On
23 the question, there are 57 nay -- I'm sorry --
24 57 yea and two nay and zero voting present. The

1 motion having received the required majority is
2 granted.

3 The question is, shall the Senate grant the
4 House Prosecutor's modified motion for additional
5 documents, which was filed on January 26, 2009.
6 All those in favor will signify by voting aye.
7 Those opposed will vote nay. The voting is open.

8 Have all voted who wish? Have all voted
9 who wish? Have all voted who wish?

10 Madam Secretary, please take the record. On
11 the question, there are 58 ayes, one present. The
12 motion having -- the motion having received the
13 required majority is granted.

14 The House Prosecutor is recognized to
15 clarify the status of the remaining Impeachment
16 motions.

17 HOUSE PROSECUTOR ELLIS: Your Honor, thank you
18 very much. And at this time, we would seek leave to
19 withdraw the motions for the testimony of
20 Representatives Durkin, Hannig, Mendoza, Franks and
21 Miller and withdrawing motions numbered 1 through
22 21 that were filed on January 21st, 2009.

23 CHIEF JUSTICE FITZGERALD: The House Prosecutor
24 seeks leave of the Senate to withdraw his remaining

1 motions. There being no objection, leave is
2 granted.

3 The Senate will stand at ease for a few
4 brief moments to attend to Chamber preparations.
5 At ease.

6 (Whereupon, a short recess was
7 taken.)

8 CHIEF JUSTICE FITZGERALD: The Senate will come
9 to order. The House Prosecutor is recognized for
10 the purpose of making an opening statement. He has
11 30 minutes in which to present his statement.

12 HOUSE PROSECUTOR ELLIS: Thank you very much,
13 Mr. Chief Justice. May it please your Honor,
14 President Cullerton, Members of the impeachment
15 tribunal. I hope everybody can hear me okay. My
16 name is David Ellis, and I am the House Prosecutor.
17 I'm honored to be serving as House Prosecutor. I
18 am joined by Michael Kasper and Heather Wier, an
19 attorney from my staff, as additional trial counsel
20 in this case.

21 The first statement I want to say to you
22 on their behalf and mine is thank you, thank you
23 for allowing us to be guests in your honorable
24 Chamber. And more importantly, thank you for the

1 awesome task that you are undertaking today, for it
2 is, indeed, an awesome task.

3 The State of Illinois has been in
4 existence since 1818, and we have never impeached a
5 Governor, much less removed one from office. It
6 is, always has been and I hope always will be an
7 unusual event, but we think the evidence will show
8 that these are unusual circumstances.

9 On January 14th, the Illinois House of
10 Representatives for the 96th General Assembly by a
11 vote of 117 to one impeached Governor Rod
12 Blagojevich and issued a single Article of
13 Impeachment alleging a pattern of abuse of power.
14 The vote came after a lengthy process before the
15 House Special Investigative Committee, which
16 accumulated a great volume of evidence, heard a
17 great deal of testimony and deliberated at length.

18 It was not a vote that the House undertook
19 lightly, and I recall after the vote coming to
20 this Chamber as a designated House Prosecutor and
21 standing where I'm standing right now exhibiting
22 the Article of Impeachment on January 14th in this
23 Chamber and the look on all the faces around me as
24 I did so and the utter silence in the Chamber when

1 I did so. And I know that this Body does not
2 undertake this task lightly, either.

3 I'd like to talk very briefly and
4 generally about impeachment and removal from
5 office, what it is and what it isn't, what it means
6 and what it does not mean. Impeachment and an
7 impeachment trial is not a criminal proceeding. It
8 is not punitive in nature. We are not here today
9 to punish Governor Blagojevich. The purpose of
10 impeachment is remedial. It is to protect the
11 citizens of this State from the abuses of an
12 elected officer. When a public official so abuses
13 his authority, so breaches the public trust, so
14 clearly violates his oath of office that he is no
15 longer fit to govern, the Constitution places the
16 responsibility in the General Assembly to carry out
17 the remedy that we seek from you today.

18 So in this trial, we will not attempt to
19 prove the elements of any particular State or
20 federal crime. What we will do is show you that
21 the Governor repeatedly and utterly abused the
22 powers and privileges of his office. We will do
23 this in many ways. Some of the things we will talk
24 about came to light from the ongoing federal

1 criminal investigation and the arrest of the
2 Governor, and some of it is entirely unrelated to
3 that investigation. And I would like to speak
4 briefly about each one of those.

5 In the early morning hours of
6 December 9th, 2008, federal agents arrested
7 Governor Rod Blagojevich at his home on federal
8 corruption charges, and before long, we all knew
9 that the federal government had been secretly
10 recording conversations of the Governor at his
11 campaign office and on his home telephone. These
12 words captured by the federal government, secretly
13 recorded when the Governor didn't know he was being
14 listened to, dozens and dozens and dozens of
15 conversations throughout this affidavit that we
16 will talk to you about in this case.

17 These words will be front and center in
18 our case. The evidence will show that these words
19 went well beyond harmless chatter or idle
20 speculation to active plotting to personally enrich
21 himself in exchange for official acts that the
22 Governor might take, affirmative directions to
23 other people to carry out his plots. These words
24 at times may shock you. At times, they will

1 probably disgust you. These words will demonstrate
2 a fundamental breach of the public trust, a
3 violation of the Governor's oath. These words from
4 the Governor's own mouth, not other people, not the
5 actions of other people, not the words of other
6 people, but from the Governor's own mouth, will show
7 that the Governor put his office up for sale.

8 In this trial, you will be presented,
9 among other things, with the criminal complaint
10 against Governor Blagojevich and as we've
11 discussed, the 76-page detailed affidavit from
12 Special Agent Dan Cain. You will hear from Agent
13 Cain, who was one of the primary, if not the
14 primary, case agents on the Blagojevich case. He
15 will take this witness stand, and he will testify
16 that all of the claims made in that affidavit are
17 true and accurate, that all of the conversations,
18 whether they're summarized or quoted verbatim, were
19 true and accurate to the best of his knowledge and
20 belief when he prepared the affidavit and signed
21 it. And he will testify that every time there are
22 words in that complaint or in that affidavit that
23 are attributed to the Governor, that the Governor's
24 voice was positively identified, that they were, in

1 fact, the words of the Governor.

2 And in one discrete instance, we will also
3 present to you actual audio recordings, four
4 recordings related to one discrete event -- we've
5 talked about it a little bit already -- relating to
6 the Governor's plot to trade the signing of
7 legislation for political contributions. We will
8 have one opportunity to play those live tapes for
9 you.

10 I would first like to speak about the Senate
11 seat, the Governor's plot to obtain a personal
12 benefit in exchange for the vacant U.S. Senate
13 seat.

14 The evidence is going to show that the
15 Governor actively plotted to obtain this benefit,
16 that he didn't just speak idly but that he actively
17 set in motion several different plots to obtain
18 something of value for his appointment to fill the
19 vacant United States Senator seat.

20 At a time when Illinois was celebrating
21 the election of one of its own, one of this
22 Chamber's own, to the highest office in the land,
23 the Governor was busy trying to figure out a way to
24 personally benefit from this development.

1 In unequivocal terms, the evidence will
2 show the Governor referred to his appointment power
3 in terms such as golden, their golden goose, things he
4 will not give away for free. In one instance, he
5 will compare it -- he will compare having the power
6 to appoint a U.S. Senator to being a sports agent
7 shopping a star athlete to the highest bidder.

8 The evidence will show that the Governor
9 began with high hopes, hopes of potentially an
10 appointment to a cabinet-level position in the
11 Obama administration or an ambassadorship. And
12 as we take you through the different paragraphs of the
13 complaint, you will come to see -- I'm sorry -- the
14 different paragraphs of the affidavit, you will
15 come to see the frustration as the Governor
16 repeatedly expresses his anger and frustration when
17 he senses that he is getting nothing in return for
18 the things he's asking for, when he senses that the
19 President-elect is not going to give him what he
20 wants.

21 You will hear him react in violent terms
22 that if all he's going to get for -- is -- if all
23 he's going to get for appointing someone the
24 President-elect wants to be Senator is appreciation,

1 then that's not good enough. Appreciation won't
2 do it. He wanted something tangible.

3 As time goes on, we will see his asking
4 price shift, shift from a cabinet-level position to
5 a position at one point with an organization called
6 Change to Win, a company -- an organization composed
7 of several unions that represents union interests,
8 also talking about getting his wife jobs on paid
9 corporate boards, positions on paid corporate
10 boards, also talking about establishing and funding
11 a non-profit political lobbying organization, a
12 501(c)(4) organization.

13 You will see the Governor mull over all of
14 these options and send out feelers over all of
15 these options. And then as time moves on, when it
16 becomes clear to him that the new presidential
17 administration was not going to meet his
18 demands, you will see that the Governor turned to
19 good old-fashioned political contributions and that
20 he tried to extract a sizable political
21 contribution in exchange for appointing someone
22 to the U.S. Senate seat.

23 Throughout this testimony, you will see
24 that the Governor clearly knew that what he was

1 doing was illegal. The words he used to his
2 subordinates, be careful how you say things,
3 assume everybody is listening, don't put anything
4 in writing, don't talk on the phone, I would do it
5 in person, this is the kind of advice the Governor
6 was giving to his subordinates throughout this
7 evidence that we'll talk about.

8 And throughout this evidence, you will
9 hear -- you will read of the Governor's voice and
10 hear sworn testimony from Agent Cain about the
11 Governor's words placing his own interests above
12 all else, above those of the people of the State of
13 Illinois, talking, again, about things being golden
14 and how he's going to get something for it, at one
15 point near the end saying that this decision about
16 who to appoint to the U.S. Senate, like any
17 decision, the Governor's words, like any decision
18 will be based on three criteria, my legal
19 situation, my personal situation, my political
20 situation, legal, personal, political, the words of
21 Governor Blagojevich.

22 We will also talk to you about allegations
23 related to the Tribune Company and the Governor's
24 provision of financial assistance to the Tribune

1 Company through the Illinois Finance Authority to
2 assist the Tribune Company in the sale of the
3 Chicago Cubs baseball team and Wrigley Field. The
4 evidence will show that the Governor attempted to
5 attach a condition to that financial assistance,
6 that condition being that the Tribune Company fire
7 editorial board members of the Chicago Tribune, its
8 newspaper. These are -- this is an editorial board
9 that had said the Governor should be recalled, that
10 impeachment proceedings should go forward, that he --
11 and that criticized him really in any number of ways
12 for a long time.

13 The evidence will show that the Governor
14 dispatched his chief of staff, John Harris, to go
15 send that message to the Tribune Company. You want
16 this financial assistance, fire those editorial
17 board members, and that he repeatedly followed up
18 with John Harris hoping that he could get those
19 individuals fired.

20 And there will be other instances of abuse
21 of power in this vein, instances where the Governor
22 traded official acts for campaign contributions. I
23 talked about one of them to you that we're going to
24 play live dealing with the horse racing bill. There

1 is an instance dealing with the Tollway project,
2 where the Governor announced a new Tollway project
3 and tried to extract campaign contributions from an
4 interested contractor and openly said that he was
5 going to withhold further expansion of that Tollway
6 contract until he saw how much money he got from
7 that contractor in political contributions.

8 We will also talk about pediatric care
9 reimbursements, money that was promised by the
10 Governor, promised by the Governor to Illinois
11 doctors and hospitals, but for which he attempted
12 to extract a \$50,000 campaign contribution from the
13 CEO of Children's Memorial Hospital.

14 Now I want to be clear. The stuff we've
15 talked about so far, these are the issues that were
16 caught on tape. These were the subjects of the
17 intercepted conversations by the FBI, and I want to
18 be very clear about this. We will ask you to
19 convict Governor Blagojevich because of his own
20 words, not those of anybody else, because he
21 treated his official powers as bargaining chips and
22 because he issued directives to other people to
23 act.

24 We will not base it on what other people

1 did or didn't do. We can't know what some of his
2 subordinates did, and we don't know. And that's
3 not our case. Whether these subordinates who were
4 told to carry out these negotiations for him,
5 whether they tried and failed, whether they didn't
6 try at all, whether they were planning to try, but
7 the Governor's arrest interrupted their plans, we
8 don't know, but that's not the point. We are not
9 holding Governor Blagojevich accountable for the
10 things other people did. We're holding him
11 accountable for things that he said and for things
12 that he did.

13 You will also hear evidence in the record
14 relating to the sworn federal court testimony of
15 Ali Ata, the gentleman who used to be the executive
16 director of the Illinois Finance Authority. He
17 will -- he -- you will hear that he testified
18 under oath in federal court that he purchased his
19 position at the IFA for a campaign contribution to
20 the Governor. You will also read about the sworn
21 testimony of Joseph Cari, who will testify that the
22 Governor flat out told him that as Governor, he
23 could extract political contributions from people
24 to whom he awarded contracts, legal contracts,

1 investment banking contracts, consulting contracts
2 and the like, and that was the great thing about
3 being governor.

4 And you will hear about evidence related
5 to the Health Facilities Planning Board, that the
6 Governor not only appointed people to that board,
7 but controlled how they voted, controlled a
8 majority block of voting, and that in at least one
9 instance, that was corroborated by a number of
10 people at the trial of Tony Rezko, that the
11 Governor switched the vote of his block from no to
12 yes on a permit application by a hospital after
13 that hospital agreed to give the Governor a
14 campaign contribution.

15 And this pattern of abuse extended to the
16 Joint Committee on Administrative Rules or JCAR.
17 You will hear evidence that the Governor willfully
18 refused to follow the dictates of JCAR and the
19 Administrative Procedure Act, that when his
20 attempted rules to expand the FamilyCare Program
21 were rejected by JCAR, he violated State law and
22 said, I don't care. I'm going to do it anyways.
23 Without legislative authority and without a funding
24 source, that the Governor here disregarded the

1 legislative prerogative and violated the separation
2 of powers.

3 You will also hear from Auditor General
4 William Holland, who will talk about three
5 different audits, the audit regarding the flu --
6 I'm sorry -- yes, the flu vaccine procurement, the
7 I-SaveRx prescription drug program and the agency
8 efficiency initiative. These audits will show that
9 the Governor liked splashy ideas, big ideas,
10 headlines, but when it came to implementing his
11 policies, he consistently violated State law and
12 federal law often jeopardizing the safety of our
13 citizens in the process.

14 You will hear evidence with regard to the
15 flu vaccine program, for example, that the
16 Governor's office signed a contract for a flu
17 vaccine, \$2.6 million worth of it, after, after
18 knowing that that vaccine could never be delivered
19 to Illinois because it was illegal under federal law
20 and after knowing that it was unnecessary, that
21 Illinois didn't even need the vaccine anymore. That
22 will be just one example I will give of how these
23 audits will show that this is a Governor who believes
24 that his policies should not be hamstrung by

1 the letter of the law. This disrespect for the law
2 is yet another example of his pattern of abuse of
3 power.

4 And, ladies and gentlemen, we will show you
5 all of this under the rules that this Body adopted,
6 rules that are fair, rules that are largely modeled
7 after a presidential impeachment trial that ended in
8 an acquittal. These are rules that apply to both
9 sides, to the Governor's -- to the Governor's counsel
10 and to the House Prosecutor. We live under the
11 same restraints.

12 Are there people connected with the
13 ongoing federal criminal investigation that we
14 would like to call? Sure. Sure. In a perfect
15 world, we would like to call some of those people,
16 too, but I want to say something I've already said
17 once. We are making our case against the Governor
18 based on the things that he said and he did, not on
19 the actions of others.

20 And with regard to what the Governor said
21 and did, we will put forth Dan Cain, whose team
22 listened to every one of those tapes and will
23 identify it as Rod Blagojevich's voice. We will
24 put on direct evidence related to that, regardless

1 of what anybody else may have done with those words.

2 And I would finally add that there is one
3 person who could come in here and could refute any
4 charges that he was capable of refuting, try to
5 explain away the charges, try to deny them,
6 somebody who has absolute personal knowledge of all
7 of the information contained in this complaint.
8 That person is Governor Blagojevich, and the rules
9 clearly permit him to be here and to testify in his
10 own defense.

11 The evidence will show a pattern of
12 abuse of power by this Governor. The Governor has
13 betrayed the public trust. He has violated his
14 constitutional oath. He is no longer fit to
15 govern. He should be removed from office. Thank
16 you.

17 CHIEF JUSTICE FITZGERALD: Is the Governor
18 present? Is counsel present on behalf of the
19 Governor? The record will reflect that the
20 Governor has chosen not to make an opening
21 statement either in person or by counsel.

22 The Senate will stand at ease for a few
23 brief moments to attend to Chamber preparations.
24 Please be at ease.

1 (Whereupon, a short recess
2 was taken.)

3 CHIEF JUSTICE FITZGERALD: The Senate will come
4 to order. We will now proceed to the presentation
5 of live testimony. It is my understanding that the
6 House Prosecutor would like to call one witness
7 today. If the House Prosecutor will please call
8 his witness.

9 HOUSE PROSECUTOR KASPER: Thank you, your
10 Honor, Members of the Senate. The prosecutor would
11 like to call John Scully as our first witness.

12 CHIEF JUSTICE FITZGERALD: The Sergeant-at-Arms
13 will please escort Mr. Scully to the podium.

14 Madam Secretary, please swear in the
15 witness in accordance with Impeachment Rule 22.

16 MADAM SECRETARY: Please raise your right hand
17 and repeat after me and insert your name at the
18 proper place.

19 (Whereupon, the witness was
20 duly sworn.)

21 CHIEF JUSTICE FITZGERALD: Mr. Scully, take
22 your seat. The House Prosecutor may now proceed
23 to examine the witness.

24 HOUSE PROSECUTOR KASPER: Thank you, your

1 Honor, Members of the Senate. Good afternoon, Mr.
2 Scully. My name is Michael Kasper. I'll be asking
3 you a few questions here this afternoon.

4 THE WITNESS: Thank you, Mr. Kasper.

5 JOHN JOSEPH SCULLY,
6 having been first duly sworn, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY HOUSE PROSECUTOR KASPER:

10 Q. Mr. Scully, would you please identify
11 yourself and spell your last name for the court
12 reporter.

13 A. My name is John Joseph Scully,
14 S-c-u-l-l-y.

15 Q. And where are you from, Mr. Scully?

16 A. I grew up on the south side of Chicago.
17 I've been living in Lake County, Illinois for the
18 last 33 years.

19 Q. And Mr. Scully, what are you here to
20 testify about today?

21 A. I'm here to testify about my knowledge and
22 background on the process of obtaining judicial
23 authority in criminal investigations to intercept
24 wire and oral communications.

1 Q. And Mr. Scully, would you please give us a
2 little bit of your educational and professional
3 background?

4 A. Yes. I went to the U.S. Naval Academy,
5 graduated in 1969. And then in 1974, I graduated
6 from the University of San Diego Law School. My
7 military background, I initially was on a Destroyer
8 out of San Diego, had a WestPac cruise where I
9 was off the coast of Vietnam as the communications
10 officer. I spent nine years on active duty. Part
11 of that was in the Judge Advocate General's Corps.
12 In the Reserves, I went into the intelligence
13 field and retired as a captain. In the Reserves,
14 that's equivalent of a colonel in other services.

15 On the civilian side, once I left the
16 military -- active duty military in 1978, I went to
17 work for Illinois Bell in their litigation
18 department for a few years, for three years. Then
19 I went to the Lake County State's Attorney, where I
20 was a felony prosecutor. And then in 1982, I went
21 to work for the Department of Justice.

22 In the Department of Justice, I've worked
23 for them really in two capacities, initially in
24 Chicago as what they call a special attorney. We

1 were a field office, if you would, of the organized
2 crime section back in Washington, D.C. It was
3 called the Chicago Strike Force. Then in 1990, we
4 merged with the U.S. Attorney's Office, and I was
5 with the U.S. Attorney's Office as what they call
6 Assistant U.S. Attorney, had been a special
7 attorney up until that point, and I retired in the
8 year 2007.

9 Most of the time, I was working on
10 organized crime cases. I was in what was called
11 the Organized Crime Section of the U.S. Attorney's
12 Office.

13 Q. Okay. And approximately how many years
14 of service did you have with the Department of
15 Justice?

16 A. I had 25 years.

17 HOUSE PROSECUTOR KASPER: Okay. Thank you.

18 Ladies and gentlemen of the Senate, I believe a
19 packet of information for this witness has been
20 distributed, and a copy of Mr. Scully's curriculum
21 vitae is contained in the packet for your review.

22 BY HOUSE PROSECUTOR KASPER:

23 Q. Mr. Scully, while serving as an Assistant
24 U.S. Attorney, how many trials did you prosecute?

1 A. Approximately 20. Some were as few as two
2 or three days, and the longest was four and a half
3 months.

4 Q. And were you involved in any notable
5 prosecutions that some of the Members of the Senate
6 might be familiar with?

7 A. There were a number -- probably the two
8 most prominent, the initial one I would speak of is
9 the Bill Hanhardt case. He was the former chief of
10 detectives of the Chicago Police Department. The
11 most recent one, just before I retired, was I think
12 called the Chicago -- it involved the Chicago
13 organized crime Chicago Outfit. It was called the
14 Family Secrets case.

15 Q. And what did that trial involve?

16 A. That trial involved racketeering charges
17 and charges including tax fraud, murder, gambling
18 charges, extortion charges and others.

19 Q. And in your experience, did any of the
20 cases you were involved with involve electronic
21 surveillance?

22 A. Many of the cases I had involved
23 electronic surveillance. There were three that I
24 was involved in where it was subject of litigation

1 or at least they were being used in the case.
2 There were nine individual cases where I was
3 personally involved with the entire process
4 and the extensions on the authority, nine
5 specific cases, and some of them had what are
6 called spin-offs. We'd go on to other phones or
7 other locations too.

8 Q. I see. And Mr. Scully, did you have
9 any personal involvement in the investigation
10 of Governor Blagojevich?

11 A. No, I did not.

12 Q. And so what is the purpose of your testimony
13 again here today?

14 A. My testimony today is for the purpose of
15 laying out my knowledge of the procedures of
16 obtaining authority to intercept either oral
17 communications or wire communications, the entire
18 process.

19 Q. Okay. And are you familiar with the
20 different types of recordings used by law
21 enforcement?

22 A. I am very familiar with the types of recordings
23 used by federal law enforcement, most particularly the
24 FBI. That's the agency that I most often worked with.

1 Q. Okay. And could you explain what some of
2 those types of communications and recordings are?

3 A. There are really a number of them. One is
4 the -- under the title -- what's called Title III of
5 the Omnibus Crime Act of 1968, which authorizes
6 judicial authority -- for the government to ask for
7 judicial authority to intercept oral communications
8 or what's better known to the average person to
9 place a bug in a location and also the application
10 for authority to intercept wire communications.
11 It's better known as a wiretap on telephone
12 conversations. And then there's also a thing
13 called consensual - consensual recordings.

14 Q. All right. You mentioned three different
15 types, and I'd like to ask you to explain in a
16 little bit more detail the three. The first was
17 a bug. Could you explain what that is?

18 A. Yes. What a bug is, where you are
19 seeking, under Title III, the authority to intercept
20 in-person conversations between two or more
21 individuals at a particular location. This is where
22 -- oral communications -- this is where a mic is
23 placed in a location and is being intercepted -- the
24 authority is being asked for it to intercept those

1 conversations.

2 Q. And the second one was a wiretap. Could
3 you explain what that is?

4 A. A wiretap is where a, again, judicial
5 authority is sought for the purpose of listening to
6 and recording telephone conversations, so there is
7 a -- there is authority being sought to actually
8 listen to and record those conversations.

9 Q. And the third one you mentioned was called
10 a consensual recording. Could you explain what that
11 is?

12 A. Yes. That's different. That's where
13 judicial authority is not needed. This is where you
14 are -- would be actually recording a conversation
15 between someone that is cooperating with the
16 government, has indicated he or she is willing to
17 tape record the conversation, so there could be a
18 consensual body recorder or maybe a recorder, say,
19 in a briefcase that's being placed at or near the
20 conversation, and one of the parties is consenting
21 to the recording, one of the parties cooperating with
22 the government.

23 Q. And is judicial authority required for a
24 consensual recording?

1 A. No, neither for a body recording or
2 similarly on a telephone. If the person is
3 cooperating with the government, he can say I'm
4 willing to record my conversations with a
5 particular individual and then record those
6 conversations.

7 Q. And with a wiretap or a bug, is judicial
8 authority required?

9 A. With a wiretap or a bug, judicial
10 authority is required.

11 Q. And have you personally gone through the
12 process of obtaining that judicial authority?

13 A. Yes, numerous times.

14 Q. And how many times approximately? Could
15 you estimate for us?

16 A. Well, there were nine separate
17 investigations. Several of those included more
18 than one location or more than one telephone, and
19 most of them included what they call extensions,
20 where we went and asked for additional authority
21 for other periods of time and often for spin-offs
22 for other phones or other locations.

23 Q. All right. Mr. Scully, I'd like to direct
24 your attention to the packet.

1 HOUSE PROSECUTOR KASPER: And the first page
2 that's contained in the packet, ladies and gentlemen
3 of the Senate, which has also been reproduced
4 as a demonstrative exhibit for your review.

5 BY HOUSE PROSECUTOR KASPER:

6 Q. Mr. Scully, are you familiar with
7 this document?

8 A. Yes, I am.

9 Q. And could you tell us what this is?

10 A. This is a schematic, if you would, or a
11 flow chart of the various offices or individuals
12 that could or are most often involved with the
13 processing of a request to go to the Chief Judge to
14 ask for authority, judicial authority, to intercept
15 either oral or written communications.

16 Q. And did you participate in the preparation
17 of this document?

18 A. Yes, I did.

19 Q. And is it an accurate summary of the
20 different steps necessary to obtain court order to
21 intercept communications?

22 A. Yes, it is.

23 Q. Okay. If you wouldn't mind, I'd just like
24 to walk through this chart a little bit for the

1 Members of the Senate. Where does the process begin?

2 A. Process begins with one Assistant or
3 at times more than one Assistant United States
4 Attorney in a district working with one or more
5 agents preparing ultimately the affidavit, the
6 proposed order and a proposed application that
7 would ultimately wind its way through the process
8 and would be presented to the Chief Judge in a
9 particular district.

10 Q. Okay. And is that depicted at the top
11 box on this document?

12 A. Yes, it is.

13 Q. Okay. And can you describe -- you
14 mentioned an affidavit. Can you briefly describe
15 what goes into that affidavit?

16 A. This is an item that's prepared typically
17 with the assistance of the Assistant U.S. Attorney
18 with one or more of the agents. One of the agents
19 is going to be involved as actually being what they
20 call the affiant, actually going in front of the
21 judge ultimately to swear to the truthfulness of
22 the document.

23 There are a number of different things
24 that would go in there. Initially, what would be

1 laid out, it would be some of the types of crimes
2 that the government ultimately believes that would
3 be intercepted if the authority were given.

4 Q. And are all federal crimes covered by the
5 permission to get interceptions?

6 A. No, not all federal crimes. It's mainly
7 just serious federal felonies. And this is the
8 type of thing that's not typically done in a
9 typical federal case. Many federal charges,
10 federal felonies do not involve the use of
11 Title III wiretap or bug authority.

12 Q. And in addition to the crimes alleged to
13 be committed, what else goes into the affidavit?

14 A. In addition to the crimes, then there
15 would be things -- individuals called interceptees.
16 These would be the people that would be established
17 through the affidavit and application as to the
18 individuals that would be anticipated to be talking
19 about those federal felonies at the location or on
20 the telephone.

21 There's also a thing called a violator.
22 These are individuals that are -- probable cause
23 would be in the affidavit to establish that they
24 would be involved with the commission of the crime,

1 but are not anticipated to be actually intercepted
2 on that telephone or in that particular location.

3 Q. And you mentioned the words probable
4 cause. Could you explain that a little bit more?

5 A. Yes. It's a reason to believe, it's a
6 legal concept, reason to believe sufficiently, in
7 the eyes of the judge, that the particular individuals,
8 particular felonies, the particular location or phone
9 are being used for those criminal activities.

10 Q. And how do the agents and the Assistant U.S.
11 Attorneys go about gathering the information that
12 goes into the affidavit?

13 A. It's a factual investigation, if you
14 would. The agents are involved with investigation,
15 so they'd have a number of different sources of
16 information that they can seek.

17 Q. And would you list some of those sources?

18 A. To begin with, you will often see in a
19 wiretap or bug application a person called a
20 confidential informant. They might well be
21 numbered confidential informants 1 through
22 whatever. These are individuals that have
23 information about the crimes and the individuals.
24 They've been found to be reliable by the agency in

1 the past.

2 The source of their information is laid
3 out in the affidavit, but their identity is not.
4 And they're providing information to the agency, in
5 my case, to the FBI, and that would be laid out as
6 to their knowledge of the particular individuals
7 that are sought to be intercepted and the crimes to
8 the extent they know about it as to those
9 individuals.

10 Q. Okay. Are there any other types of people
11 that may be involved in gathering that information?

12 A. There are a number of different types of
13 individuals. One might have an undercover agent,
14 and you could see all of what I'm going to be
15 talking about, all or at least some of them, in
16 various wiretap affidavits or bug affidavits.

17 There's a thing called a cooperating
18 witness. Cooperating witnesses are not identified
19 in the affidavit by name. Often, that's at the
20 discretion of the agent that's working the case.
21 They don't want that person's name to be on a
22 written piece of paper. They might ultimately
23 testify down the road, whereas a confidential
24 informant would not be testifying. These are

1 people that also have information about the
2 particular crimes and/or the individuals, and their
3 information is laid out in the affidavit.

4 You have some other people -- you could
5 have an undercover agent who could have met with
6 some individuals, not necessarily with the targets
7 of the wiretap or bug authority, but with
8 associates of theirs, and they have gathered
9 information and maybe even recorded a conversation.
10 And then finally, the fourth type of person might
11 be a person that's actually named in the affidavit
12 and their knowledge of various aspects.

13 Q. And are there any additional types of
14 information that are included in the affidavit?

15 A. There could be, again, depending on the
16 case. If there have been consensually recorded
17 conversations by some cooperating witness or
18 undercover agent, some conversations might be
19 summarized. You could also have maybe subpoenaed
20 documents that, through a grand jury subpoena,
21 have been obtained and have been referred to in
22 the affidavit.

23 There are things called pen registers. A
24 pen register is a means where, through court order,

1 the government is authorized not to listen to
2 conversations, but to determine through pulsings by
3 the telephone when someone is making a telephone
4 call - there's electrical charge sent through the
5 wires - the conversation is not being recorded, but
6 the numbers that are being called are being recorded
7 just by the -- just the numbers themselves.

8 And then there's a thing called a trap
9 and trace, which is the other way, where if someone
10 is calling from a home phone or a work phone to the
11 target telephone, what they call trap and trace,
12 it will show who's calling - what phone number is
13 calling in to the target phone.

14 Q. Okay. And what is the purpose of gathering
15 all this information?

16 A. The purpose of this is to develop enough
17 information to believe that there's probable cause
18 to believe that federal felonies are being
19 committed, the location or phone are being used,
20 that particular individuals would be intercepted,
21 in essence, discussing something related to those
22 crimes that would relate in addition to the
23 violators that would not necessarily be intercepted
24 or not anticipated to be intercepted. And

1 ultimately, this is all put together to seek
2 judicial authority ultimately to have the authority
3 to intercept the conversations on the phone or
4 the location.

5 Q. And once the affidavit is completed,
6 what is the next step in the process?

7 A. The next step in the process once the
8 Assistant U.S. Attorney has reviewed it, in his or
9 her mind, there's enough there, the agent has
10 reviewed it, it begins basically a dual track.

11 Q. And is -- going back to the top box that
12 we referred to earlier, does the Assistant U.S.
13 Attorney prepare anything in addition to the
14 affidavit?

15 A. Yes. The Assistant U.S. Attorney, in
16 addition to working with the agent on the
17 affidavit, prepares a proposed application to which
18 the affidavit would ultimately be attached to and a
19 proposed order which would ultimately hopefully be
20 entered by the judge authorizing the authority to
21 intercept the communications.

22 Q. And what's contained in the application?

23 A. The application is from the Assistant U.S.
24 Attorney stating that he or she believe there's

1 probable cause to believe that on that phone or at
2 that location that federal felonies are going to be
3 discussed by the particular individuals and that
4 particular violators are also involved and then
5 other statutory requirements are addressed in that
6 application.

7 Q. All right. Thank you. Mr. Scully, you
8 mentioned something that you referred to as a dual
9 track. Is that what's depicted in the chart there, in
10 the two columns that, in the demonstrative exhibit at
11 least, are sort of pink and green?

12 A. Yes, sir.

13 Q. Okay.

14 Could you detail the FBI review process,
15 which is the one on the far left-hand column of the
16 page, as you look at it?

17 A. Yes. Initially, the agent will take his
18 or her affidavit to his or her supervisor. The
19 supervisor, at least on the initial application,
20 not necessarily on any extensions, but at least on
21 the initial application, typically the supervisor
22 will review the affidavit.

23 Q. And what happens after the supervisor reviews
24 the affidavit?

1 A. In each of the offices, particularly in
2 Chicago, you have a full-time agent who is also an
3 attorney. In Chicago, they typically have two or
4 three. Those people review the affidavit for
5 probable cause and also for any of the requirements
6 of federal statutes.

7 Q. And what happens after the local FBI
8 attorneys review it?

9 A. Then it's sent by the local FBI to the
10 headquarters of the FBI in Washington, D.C. There
11 it goes, these days, to the particular section of
12 the FBI that's responsible for the federal felonies
13 that are discussed within the affidavit. So if it
14 had to deal with organized crime matters, it would
15 go to the organized crime section of the FBI.

16 They're not there to determine probable
17 cause or any of that. They're more looking from
18 the resource needs, can they support it, and also
19 does this comport with what they're interested in
20 doing from a national level in terms of enforcing
21 those particular statutes.

22 Q. And is there a unit or division in
23 particular that public corruption cases are
24 referred to?

1 A. There's a public integrity section of the
2 FBI.

3 Q. And turning your attention to the
4 right-hand column regarding the U.S. Attorney's
5 Office, could you review that process?

6 A. Yes. Each Assistant U.S. Attorney has a
7 supervising attorney and often a deputy chief, if
8 you would, of the particular section they're in. And
9 often, both of those, but at least one of them, will
10 review the entirety of the package, the affidavit,
11 the application and the order for legal sufficiency
12 under the federal statutes.

13 Q. And what happens after the supervising
14 attorney reviews the application, affidavit and
15 order?

16 A. At times, they are reviewed, or can be
17 reviewed by either the U.S. Attorney himself or the
18 First Assistant U.S. Attorney or the head over the
19 criminal division. Most often, they are also
20 briefed by the supervising attorney of the
21 Assistant to advise them of what's occurring
22 in the investigation.

23 Q. And typically, are one or more of them
24 involved in the review process?

1 A. Most often, either by personally reviewing
2 the material or at least being advised of the
3 highlights by the supervising attorney of the
4 Assistant.

5 Q. Okay. And what happens after the review
6 by the First Assistant, the head of the division
7 or the U.S. Attorney?

8 A. It then goes from the Assistant U.S.
9 Attorney that's responsible for it, he or she then
10 sends it on to Washington to an office called the
11 Office of Enforcement Operation, also known as OEO.
12 And within that organization, there is a unit called
13 the electronic surveillance unit, and a line assistant
14 is then given the responsibility to review the entire
15 package, order, affidavit and application.

16 Q. And do both the FBI review and the U.S.
17 Attorney review process end up at the OEO?

18 A. Yes.

19 Q. And is that what's depicted in the center
20 of the chart beneath the dual columns, the first
21 full box?

22 A. Yes, it is.

23 Q. And who reviews the affidavit, proposed
24 application and order at the office of the OEO?

1 A. A person that's a line attorney that's been
2 -- that does this for a number of different agencies,
3 a number of different offices of the FBI and the U.S.
4 Attorney's Offices, and they're looking at it for a
5 number of different things, all of the statutory
6 requirements, things for probable cause, who are
7 the violators, who are the interceptees, a concept
8 called necessity, discussion about minimization and
9 a number of things here that we'll be talking about
10 here shortly.

11 Q. All right. You mentioned the word necessity.
12 What do you mean by that?

13 A. It's kind of a term of art. It's one
14 that, based upon the investigation, and as I
15 indicated, the seeking of this authority is not
16 typical in most federal cases. You have to
17 establish to -- up the chain and then ultimately
18 to the judge that there is, quote, necessity. And
19 this is that various other investigative means have
20 been used and have failed or might be too dangerous
21 if attempted or reasonably could not be expected to
22 achieve what you're seeking, and so there is a
23 necessity to use this relatively labor-intensive
24 investigative tool.

1 Q. And are you familiar with the concept of
2 staleness?

3 A. Yes. What staleness is is probable cause
4 can end up being stale, could not be current.
5 There might be all kinds of information that a
6 particular phone would be -- had been used, say,
7 for a discussion of a crime, but if your information,
8 your probable cause, is not current, if it's a
9 month old, it's not even clear they're using the
10 telephone and it's not clear they're using it for
11 criminal conversation, then it's probable that the
12 OEO would say that your information is stale, you
13 would -- either you would not get the authority or
14 have to establish that there's current use of the
15 conversation within the last week or so.

16 Q. And is that within the ambit of the line
17 attorney's duties?

18 A. Yes. So those kind of conversations, the
19 Assistant U.S. Attorney and the line attorney would
20 have. And it gets down to the point at various
21 points that they would suggest you should drop this
22 person because there's not probable cause to
23 believe that this person or that person is going to
24 be intercepted or say a violator should be added or

1 dropped or we need more information about this
2 or that. It even gets down to the point of
3 grammar and commas and punctuation. It's very
4 heavily reviewed.

5 Q. And what happens after the line attorney
6 reviews the application, affidavit and proposed order?

7 A. It then goes to the head of the unit, of
8 the electronic surveillance unit of OEO, and that
9 person then reviews the whole matter in its
10 entirety.

11 Q. Okay. And how about at the Department of
12 Justice? I'm referring you to the sort of side box
13 in the document on the lower right-hand corner.
14 Could you explain what that is?

15 A. Yes. Early on, once the affidavit,
16 application and order get to OEO, the electronic
17 surveillance unit, what they will then do, if there
18 is a statute alleged within it, within the
19 affidavit application that relates to something
20 that another section of the Department of
21 Justice --

22 Q. And I'm sorry to interrupt. When you say
23 when there's a statute, what do you mean by that?

24 A. Federal statute that's being referred to

1 within the affidavit and application and order, the
2 federal felony.

3 Q. I mean, a particular -- a law that's being violated?

4 A. That's believed to be being violated and
5 being discussed at the location or on the phone.

6 Q. Thank you.

7 A. So, say, if it involves things like
8 racketeering, RICO, gambling, interstate
9 transportation in aid of racketeering, then the organized
10 crime and racketeering section of the Department of
11 Justice would also then receive from the Office of
12 Enforcement Operation the affidavit, application
13 and order. If it involved public integrity issues,
14 it would go to the public integrity section. If it
15 involved wire fraud and mail fraud, it would go to
16 the section involving fraud. If it involved asset
17 forfeiture matters, money laundering, those type of
18 things, it would go to the asset forfeiture
19 section.

20 So there could be one or more other
21 sections within the Department of Justice that are
22 reviewing it, the affidavit, order and application.
23 Generally you'll have a line attorney and you might
24 well have a supervising attorney of the line attorney

1 that's in that section also reviewing it, more
2 typically just for their statute, the federal
3 felony they're responsible for, to determine that
4 there's enough probable cause to believe that that
5 federal felony is going to be discussed on that
6 telephone or at that location.

7 Q. And what happens after the Office of
8 Enforcement Operation reviews all the material?

9 A. Once they're convinced all the statutory
10 requirements are met, then it's sent up the chain
11 to the Deputy Assistant Attorney General in the
12 criminal division. Generally, there are four or
13 five of them that have specific authority, written
14 authority from the Attorney General of the United
15 States to issue authority to the Assistant U.S.
16 Attorney that's responsible for the investigation
17 to then go to the Chief Judge of the district to
18 seek authority from that judge to enter an order
19 authorizing the interceptions. So you have the
20 authority in writing from the Attorney General.
21 You also have the authority from the Deputy
22 Assistant Attorney General to the Assistant to go
23 before the Chief Judge.

24 Q. And is that depicted in the third box from

1 the bottom in the exhibit?

2 A. Yes, it is.

3 Q. And the approval from the Deputy Assistant
4 Attorney General has to be in writing; is that
5 correct?

6 A. That's correct.

7 Q. Okay. And following that, is the Deputy
8 Assistant Attorney General the last person at the
9 Department of Justice to sign off on an application
10 and affidavit?

11 A. Yes. Yes, within the Department of
12 Justice back in D.C., it's transmitted by fax to
13 the Assistant U.S. Attorney in the district.

14 Q. And is that the second to bottom box in
15 the exhibit?

16 A. That's correct.

17 Q. And that refers to a local U.S. Attorney.
18 Is that the same local Assistant U.S. Attorney who
19 appears in the top box?

20 A. Yes, it is, unless that person for some
21 reason was not able to be there.

22 Q. Okay. And what happens after that?

23 A. Then shortly there after, the Assistant
24 U.S. Attorney then goes to the Chief Judge with the

1 entire package, the application, the written
2 authority to the Deputy Assistant Attorney General,
3 the written authority to the Assistant U.S.
4 Attorney from that Deputy Assistant Attorney
5 General, the affidavit and the proposed order.

6 Q. But, if I've been counting accurately,
7 before an Assistant U.S. Attorney can make such a
8 presentment to a court, it has to be reviewed by at
9 least three people in the FBI and five supervising
10 attorneys at the Department of Justice?

11 A. That's correct. And could be a lot more.

12 Q. Okay. And after that approval process is
13 finished, what happens then?

14 A. After that process is done and the
15 Assistant has gotten the authority from Washington,
16 the Assistant is going to appear before the Chief
17 Judge, in this case, in most recent years, is Chief
18 Judge James Holderman in Chicago.

19 Q. And is the presentment before the Chief
20 Judge a time-sensitive matter?

21 A. Yes, it is because you have staleness
22 issues. If you waited, again, too long, beyond a
23 few days, you could start getting into staleness
24 issues.

1 Q. And so what is the usual process for
2 avoiding staleness in presenting an application to
3 the Chief Judge?

4 A. The typical process is once one, as the
5 Assistant has worked with the agent, completed the
6 application, affidavit and order, has gotten through
7 the first line of supervision at the U.S. Attorney's
8 Office, then it's going to be sent to the judge
9 and go through the process. Once it gets to the
10 line attorney and the line attorney is at -- in the
11 Office of Enforcement Operation and the changes
12 have been made as requested by that individual and
13 is starting to now go next up the chain to the head of
14 the electronics surveillance unit, my practice, and
15 I believe the practice of many people in the
16 Northern District of Illinois, because it's fairly
17 close to completion of the process, because of the
18 FBI's input, the other sections of the DOJ and
19 the OEO line attorney have completed their review,
20 it's at that point, my practice was to go to the
21 Chief Judge and provide him a draft copy of the
22 order, application and affidavit.

23 Q. And is providing a draft copy to the judge
24 a common practice?

1 A. Yes.

2 Q. And what is the purpose of giving the draft
3 ahead of time?

4 A. That way -- these documents can run
5 100 pages or so just on the affidavit. It's to
6 provide him the information so that he can then --
7 once the authority in fact comes from the Department
8 of Justice, he then could be in a position to address
9 it immediately.

10 Q. And once the Chief Judge is given the
11 draft, how long after formal presentment does it
12 usually take for the judge to act upon the request?

13 A. Generally within a day or so.

14 Q. And do you know what standard a judge
15 follows in making his or her decision to authorize
16 the interception?

17 A. The statutory standard to make sure that
18 all of the requirements of the Omnibus Crime Act
19 and probable cause to believe what's being alleged is
20 there.

21 Q. And have you ever personally appeared
22 before Judge Holderman regarding a Title III
23 interception application?

24 A. Yes, numerous times.

1 Q. Okay. And does your description of the
2 process that you gave out, does it, in your
3 experience, apply to Judge Holderman as well?

4 A. Yes.

5 Q. In your experience as an Assistant U.S.
6 Attorney, did you ever submit an affidavit,
7 application and proposed order that was rejected by
8 the Court?

9 A. I never did. There were two occasions,
10 however, where personally I was working with
11 agents. I felt there was not enough probable cause
12 to believe that a particular location, or at least
13 a location within a particular location, there was
14 enough probable cause to believe that we could
15 establish that there would be conversations within
16 the location, so I chose not to submit them and the
17 process was dropped.

18 I am familiar with one occasion where the
19 Department of Justice, the organized crime section
20 of -- in DOJ in Washington for another office,
21 another state, they rejected an application.

22 Q. And once a judge gives his approval for
23 the interception and he issues an order, what does
24 the order, in particular, say and do?

1 A. Well, the order has typically a number of
2 things. Generally, authority is for 30 days, the
3 authority to intercept particular individuals at
4 that location or on that telephone for the particular
5 crimes. It indicates that if it's a bug, a
6 microphone that's supposed to go into a location,
7 gives the authority to the FBI agents to actually
8 then surreptitiously enter the location to place
9 the bug. They are told then they have to report --
10 the government has to report then back to the judge
11 when that's been accomplished.

12 There's also a requirement once the
13 interception begins. So once a bug is put in a
14 location or the telephone is turned on so that the
15 interception device is turned on the telephone,
16 that once that starts, every 10 days, the Assistant
17 has to report back to the judge as to what's
18 occurring during the interceptions. So summaries
19 of conversations are then being ordered to be
20 provided back to the judge.

21 There's a concept called minimization,
22 where the judge is ordering that conversations that
23 do not relate to the criminal matters or are by
24 people that are not interceptees, that those should

1 be minimized. The conversations -- the mic should
2 be turned off. The telephone recorder should be
3 turned off, and they cannot be listened to. So you
4 have to record -- if you're going to listen, you
5 have to record. You cannot record without
6 listening. And the judge is saying you have
7 to minimize.

8 Q. And you mentioned before a recording device is
9 for a telephone. Is that what you mentioned before
10 as a wiretap?

11 A. Yes.

12 Q. Okay. Thank you.

13 You mentioned that the authority is
14 generally 30 days in length. What happens if the
15 end of 30 days comes and the agents do not feel that
16 they've gathered sufficient information? What do
17 they do?

18 A. Well, often, there's not sufficient
19 information just over one 30-day period, so what
20 then often happens, there is an extension requested.
21 This process that we've just discussed, this
22 schematic, starts again. Typically probably two
23 weeks or so into the first 30 days, the agent and
24 the attorney are again working on a proposed order,

1 affidavit and application. It would be including
2 summaries of conversations that have already been
3 intercepted, might be adding some additional people
4 or might be dropping some people that -- because
5 there are individuals that they thought were going
6 to be intercepted that aren't, might be moving on to
7 other locations, too. But the whole process begins
8 again with the idea once the first 30 days is over,
9 that if the investigative needs have not been met,
10 then there might be a necessity to again get
11 authority for another 30 days.

12 Q. And you said the whole process starts again.
13 Does that mean that the Assistant United States
14 Attorney cannot just go back to the judge and ask
15 for an extension of the authorization?

16 A. That's correct. He has to go through the
17 whole process that's in this schematic.

18 Q. The entirety of the process that you
19 laid out before?

20 A. That's correct.

21 Q. Okay. And getting back to the process,
22 assuming that either at the end of the 30 days or
23 an extension or however many extensions, once the
24 government's determined that they have all the

1 information they need, what happens next?

2 A. Then what happens, the various orders the
3 judge has entered require a sealing within a
4 reasonable amount of time after the completion of
5 the interceptions. What a sealing is is taking the
6 originals of the conversations, the tape
7 recordings, if you would, and the logs - and what a
8 log is is where the agent is -- he or she are
9 listening in real time, they're typing up what
10 they're hearing, if they're minimizing, that's
11 being laid out that they're minimizing - and
12 the logs and the conversations themselves,
13 the tapes, the originals, are then brought in
14 front of the Chief Judge. Chief Judge will then
15 either have them in a box or an envelope, and the
16 Chief Judge would then sign his name on the outside.
17 And these cannot be opened without the specific
18 authority of the Chief Judge to open them.

19 Q. And who retains possession of the tapes
20 and the logs?

21 A. The Chief Judge orders the FBI to keep
22 those in a sealed condition until ordered by the
23 Chief Judge, if at all, to open them later down the
24 road.

1 Q. And what happens after that?

2 A. After that, once all the wiretapping has
3 been done or the bug has been done and the
4 conversations and the logs have been sealed,
5 sometime within 90 days, unless you get the
6 authority of the judge to delay it, there has to be
7 what's called a service of inventory.

8 Q. And could you describe what the service of
9 inventory is a little bit?

10 A. Yes. What this is is the Assistant goes
11 in front of the judge and advises the judge that
12 here are the particular individuals that have been
13 involved with being intercepted or have been named
14 as being violators, who have been named as being the
15 potential interceptees. So many people that have
16 been involved with the conversations, not all, only
17 those who have been involved with criminal
18 conversations or were specifically named in the
19 papers, they're going to be given notice on a one-
20 or two-page document being told that there was this
21 wiretap on a particular phone or a bug in a
22 particular location.

23 Q. And Mr. Scully, what is the purpose of the
24 interception of these communications?

1 A. The purpose is to advance the criminal
2 investigation of the violators and the interceptees
3 that were the targets of the bug or the wiretap.

4 Q. And what are they used for?

5 A. They're used ultimately, most often, in a
6 trial, but it's not the last step. It's often one
7 of the earlier steps. There are subpoenas that can
8 be issued for documents, grand jury subpoenas for
9 individuals, interviews of people that wouldn't be
10 going in front of the grand jury, just further
11 investigation.

12 Q. And are these often used in the indictment
13 of individuals prior to their trials?

14 A. Yes.

15 Q. And is it also subsequently used in the
16 trials if there is one?

17 A. Yes. Not necessarily all of them, maybe
18 just specific ones, but often -- I mean I've had
19 cases where you might well use close to 100 of them.

20 Q. Okay. And in your experience, has the
21 admissibility of these communications been
22 challenged in court?

23 A. Yes. There have been challenges for
24 probable cause, for failure to minimize, for a

1 number of different -- for a number of different
2 areas.

3 Q. And in your experience, have you ever seen the
4 admissibility of previously authorized interceptions
5 denied by a trial judge?

6 A. I have never seen the entirety of the
7 wiretap authority or the bug authority be found to be
8 illegal by a judge. I only know of two areas, and
9 these are not for the entirety, but just for
10 specific conversations. So for example, in a
11 investigation and prosecution called Pendorf, this
12 involved the prosecution of the international head
13 of the Teamsters, a couple of Chicago organized
14 crime figures and some others, there were three
15 conversations that the trial judge found to have
16 been violating the minimization requirements. So
17 those three conversations were found not to be
18 usable, but there were a number of others that
19 were authorized to be used.

20 And just in one other -- one or two
21 other occasions where the sealing of the logs and
22 the conversations, the originals, was not done in a
23 timely manner. Anything as a result of the sealed
24 documents and the sealed tapes, those weren't

1 used. So again, it was a limited amount, and it
2 did not attack -- it did not -- it was not a
3 successful attack on the entirety of the authority.

4 Q. You said that in one instance, there was a
5 failure to adequately minimize. Would you explain
6 that a little bit better?

7 A. Okay. What minimization is is the judge
8 orders the agents to, in essence, turn off the mic
9 and not listen at a point in time where it becomes
10 clear to the agents that either interceptees --
11 authorized interceptees, named interceptees, are
12 not in the conversation and/or the conversation
13 is not criminal. So let's say a particular
14 individual is named and his child is now on the
15 phone, a 16-year-old child is calling a friend.
16 Well, it's clear that's not going to be a criminal
17 conversation or it's not apt to be. So shortly
18 after determining who's on the conversation, the
19 agents would be turning it off, minimizing.

20 Q. And in that instance, the judge found that
21 the agents had failed to do that adequately?

22 A. Yes. In the Pendorf case, the judge found
23 there were two or three conversations that the
24 agents should have minimized and they didn't, and

1 the judge ruled that those conversations evidently,
2 even though they might have contained some criminal
3 conversation, the Court authorized them -- or
4 ordered them not to use them during the trial.

5 Q. Okay. And Mr. Scully, did you testify
6 before the House Investigative Committee?

7 A. Yes, I did.

8 Q. And was the testimony that you gave before
9 the committee substantially similar to that that
10 you've given here today?

11 A. Yes.

12 Q. And Mr. Scully, were the Governor's
13 attorneys present when you testified before the
14 House Committee?

15 A. Yes, both Mr. Genson and Mr. Adams.

16 Q. And did the Governor's attorneys have an
17 opportunity to ask you questions during that
18 testimony?

19 A. Mr. Genson did.

20 Q. And did he, in fact, ask you questions?

21 A. Yes, he did.

22 HOUSE PROSECUTOR KASPER: Okay. Ladies and
23 gentlemen of the Senate, the exchange between Mr.
24 Scully and Mr. Genson, the Governor's attorney, at

1 the House committee is found on Page 583 of the
2 committee transcript.

3 Mr. Scully, thank you for your time. I have
4 no further questions, your Honor.

5 CHIEF JUSTICE FITZGERALD: Thank you,
6 Counselor.

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

15 The Senate will stand at ease to the call
16 of the chair for the purpose of Senators to
17 formulate and submit questions for this witness.
18 We will stand at ease.

19 (Whereupon, a short recess
20 was taken.)

21 CHIEF JUSTICE FITZGERALD: The Senate will come
22 to order.

23 Madam Secretary, have any questions been

1 submitted?

2 MADAM SECRETARY: Yes. A question list has
3 been received from the Republican Caucus.

4 CHIEF JUSTICE FITZGERALD: I will pose these
5 questions of the Senators in the order in which the
6 list was given to me until all questions have been
7 posed.

8 Please be seated, Mr. Scully. Mr. Scully,
9 are you familiar with the process that's going on
10 here now? Unlike many courtrooms you've been in,
11 you're going to get to be questioned by the whole
12 Senate. It's as if the jurors were asking you
13 questions.

14 THE WITNESS: I understand, sir.

15 CHIEF JUSTICE FITZGERALD: But I'm going to
16 pose the questions to you from the Senators.

17 THE WITNESS: Yes, sir.

18 CHIEF JUSTICE FITZGERALD: The first comes from -
19 and these are all from the Republican Caucus -
20 Senator David -- Dave Luechtefeld. You spoke about
21 three types of intercepting devices used for
22 gaining information by intercepting conversations.
23 Were all three of these devices used to record
24 Governor Blagojevich, or were only one or two used?

1 THE WITNESS: Personally, I don't know because
2 I was not involved with the investigation. I left
3 the U.S. Attorney's Office in September of 2007.
4 Just based upon my reading of the affidavit of
5 Agent Cain, all it discusses is Title III
6 authority.

7 CHIEF JUSTICE FITZGERALD: The next question
8 comes from Senator David -- Dale Righter. How much
9 time typically passes between the initiation of a
10 request for permission to intercept wire, oral or
11 electronic communications and review by the Office
12 of Enforcement Operations? Additionally, how long
13 does the review typically take?

14 And a second question is, you said that
15 allowing the interceptions of wire, oral or electronic
16 communications is normally good for 30 days. Have
17 you been involved in and/or are you aware of cases
18 wherein the order of allowing for interceptions of
19 wire, oral or electronic communications was
20 terminated before it expired? If so, under what
21 circumstances might that occur?

22 If you need any question repeated, I'll be
23 glad to do it, sir.

24 THE WITNESS: If I understand, the first

1 question is the length of time once it leaves
2 the office of the U.S. Attorney and it gets to the
3 Office of Enforcement Operation, the electronic
4 surveillance unit, how long -- once it's there, how
5 long does it take? My experience on the initial
6 application, it's probably close to two weeks
7 because often this is a fairly lengthy document.
8 Now, when you're talking about extensions, you're
9 probably talking maybe a week, week and a half, but
10 it's at least a week and sometimes as much as two
11 or three or four weeks.

12 On the second question, normally, the
13 authority is for 30 days. Every one that I had
14 was -- the court authority was for 30 days. There
15 was one occasion I believe we might have stopped
16 earlier than the 30 days. It was because of the
17 targets of the investigation at a particular
18 location, it became very clear that they realized
19 that they were the subject of wiretap or -- excuse
20 me -- of a bug. And I believe it stopped at that
21 point before the 30 days, but that was the only
22 time.

23 CHIEF JUSTICE FITZGERALD: Next question comes
24 from Senator Dale Risinger. Would it be fair to

1 say that the overwhelming majority of judicially
2 authorized federal wiretaps you have been involved
3 with have not been suppressed or barred from
4 evidence? The second question, in fact, in your
5 25 years in the office of the U.S. Attorney, you
6 have never personally been involved in a judicially
7 approved wiretap later being suppressed, have you?

8 THE WITNESS: That's correct. All of the
9 wiretaps that I have known of in the Chicago area
10 and the ones I was involved with, none of the entirety
11 of the authority was found to have been improper for
12 probable cause or anything. The only thing, there
13 was one case I was involved with where the agent
14 inadvertently had not included one of the tapes in
15 the sealing, and those -- that tape and those logs
16 and those conversations were not authorized, but the
17 entirety -- the rest of the entire authority was
18 found to be proper, and the other conversations
19 were used within the context of the trial.

20 CHIEF JUSTICE FITZGERALD: A question from
21 Senator Larry Bomke. Have you followed this case
22 in the newspapers? First question.

23 Do you have any reason to believe that
24 Judge Holderman was derelict in his duties when he

1 approved the wiretap in the first instance?

2 Have you heard or read anything to make
3 you believe that these wiretaps were somehow
4 inappropriately obtained?

5 THE WITNESS: I have followed the case in the
6 newspapers. There is nothing to cause me to
7 believe that the Chief Judge, Judge Holderman, who
8 I appeared in front of numerous times, there is
9 nothing that leads me to believe that he was derelict
10 in his duties, and there's nothing that I've seen or
11 heard in the public record that would cause me to
12 believe there was anything done improper in this case.

13 CHIEF JUSTICE FITZGERALD: The next comes from
14 Senator Kirk Dillard. What is Judge Holderman's
15 record regarding authorizing wiretaps?

16 Do you know how often Judge Holderman
17 denies a wiretap application?

18 What is the general opinion of attorneys
19 at the Department of Justice as to the difficulty
20 of obtaining wiretaps authorized from Judge
21 Holderman?

22 THE WITNESS: What is Judge Holderman's record
23 regarding authorizing wiretaps? Every one I submitted
24 to him he approved, but again, all of them went through

1 the process that we talked about to ensure that
2 everything that was presented to him met the
3 requirements of the law. I'm not there when other
4 assistants or -- and agents are submitting other
5 applications to him, so I don't know how often that,
6 if at all, he's denied any applications.

7 Again, every one that would be submitted
8 to him has to go through the same process I've
9 discussed, and it's all geared for the purpose of
10 ensuring that everything submitted to him
11 is -- meets the requirements of the law. There
12 are -- as I indicated, there are situations where
13 individual offices have had their requests shot down
14 back in D.C. Or in my own case, two never left, even
15 though there was the initial thought that we would
16 be making application, because it just did
17 not meet the requirements of the statute.

18 What is the general opinion of attorneys
19 at the Department of Justice as to the difficulty
20 of obtaining wiretap authorizations from Judge
21 Holderman? I have no reason to believe that they
22 necessarily have an opinion as to him. They're
23 just there for the process of making sure that
24 whatever is submitted across the country meets the

1 requirements of the statute.

2 CHIEF JUSTICE FITZGERALD: Next from Senator
3 Brad Burzynski. You stated that agents requesting
4 authorization for a wiretap submit an affidavit to
5 a judge. Are the affidavits submitted to the
6 judges in order to receive authorization for a
7 wiretap public record or at any point can these
8 affidavits be released by subpoenas to a tribunal
9 such as this one?

10 THE WITNESS: At some point, the conversations
11 that are subject to the wiretap or the bug might
12 well be played in court. Up until that point,
13 they've -- once there is an indictment in a case,
14 the conversations, the logs, the applications, the
15 orders, the affidavits, for whatever extensions, all
16 the documents are provided to defense attorneys in
17 discovery under the federal statute, but they are
18 not -- they are not available to the general public.

19 Generally, about the only time they might
20 well become available to the general public,
21 because they're under seal until that point, is
22 once the case would go up on appeal, they might well
23 -- or at least portions of it might well be made
24 available at that point in the context of the

1 appeal.

2 CHIEF JUSTICE FITZGERALD: Next a question from
3 Senator Dan Rutherford. How are the voices on
4 wiretaps verified? Is there -- if there is a
5 confusion on a recording about who is speaking at
6 any time, how is -- how is the issue resolved?

7 THE WITNESS: The voices are verified by the
8 agent because they might well know someone's voice,
9 or they know someone that knows the voice, or they
10 might have -- have conversations that that person's
11 been involved with, say, publicly where they've been
12 recorded and then they would compare those voices to
13 what -- what they already know.

14 If there is confusion on a recording about
15 who is speaking at any one time, how is that issue
16 resolved? If the transcript is prepared, it's
17 unclear who is speaking, they would just -- they
18 might well say -- well say unknown female, unknown
19 male. They would lay out that they don't know who
20 it is that's speaking. But if they know what is
21 being said, they would put that in as to what's
22 being said but could not identify who the
23 individual is.

24 CHIEF JUSTICE FITZGERALD: Senator

1 Pam Althoff. Can you please provide the Senate
2 with any instances, to your knowledge, where a
3 judge refused to provide investigators with
4 authorization to collect wiretap recordings.

5 THE WITNESS: I personally know of no incident
6 where a Chief Judge has denied that authority. But
7 again, as I've stated, everyone is in the process of
8 ensuring that what is presented to the Chief Judge
9 of any district comports with the law. So to -- in
10 order to get to the point it gets to the judge, it
11 has to meet the requirements of the statutes.

12 CHIEF JUSTICE FITZGERALD: Next from Senator
13 Carole Pankau. What is the procedure used to secure
14 wiretap recordings after they have been collected?

15 Do you know of any instances when a
16 wiretap recording has been leaked or otherwise
17 released to the public the when the recording was
18 supposed to be under seal?

19 Is there a procedure used to protect
20 wiretap recordings from tampering?

21 And is there a procedure used to protect the
22 integrity of wiretap recordings?

23 THE WITNESS: The question do you know of any
24 instance where a wiretap recording has been leaked

1 or otherwise released to the public when the
2 recording was supposed to be under seal,
3 personally, I do not know of any. But I do know
4 of occasions where it comes up in the context of
5 an arrest or an indictment. As to is there a
6 procedure used to protect wiretap recordings
7 from tampering, that's that seal concept that I
8 talk about. The judge orders sealing within a
9 few days of the end of the 30-day period. That's
10 for the specific purpose of ensuring that there is
11 no tampering of -- with the originals. Now, copies
12 have been made typically of the originals, and it's
13 the copies that are used by the agents and the
14 prosecutors.

15 Is there a procedure used to protect the
16 integrity of wiretap recordings? Again, that is
17 the sealing process.

18 CHIEF JUSTICE FITZGERALD: All right. Finally,
19 from Senator Dan Cronin, can you please describe
20 what steps are taken to protect recordings of
21 court-authorized interceptions from editing or
22 alteration?

23 THE WITNESS: Again, it's the sealing process
24 to ensure that the originals are not tampered with

1 or altered. And -- and obviously, you have agents
2 that are -- during the process of monitoring and
3 recording, they're laying out their summaries of at
4 least what they're initially hearing, which goes
5 also to indicate what -- what -- what they're hearing
6 is going down on paper, and copies of that are made
7 available to -- to defense for purposes of a
8 comparison with the copies that they ultimately will
9 receive of the conversations.

10 CHIEF JUSTICE FITZGERALD: And finally, a -- a
11 -- a follow-up question from Senator Dan Rutherford.

12 What does a bug look like, and what size
13 is it? Who places a bug in a location? How is a
14 bug placed in an office?

15 THE WITNESS: Okay. I'm an Assistant U.S.
16 Attorney. I don't get involved with placing bugs.
17 That's what the FBI does. If I knew, I wouldn't
18 tell you, or couldn't tell you.

19 Who places a bug in a location? Under the
20 authority of the federal judge, in this case and in
21 cases in recent years, it's Chief Judge Holderman.
22 He gives the authority to the FBI to make
23 surreptitious entry into the location to place the
24 bug in whatever location they're going to place it

1 that will hopefully pick up the conversations that
2 are going to occur in that location.

3 How is it placed in the -- in the office? I
4 have no idea. And again, if I knew, I wouldn't tell you.

5 CHIEF JUSTICE FITZGERALD: Thank you,
6 Mr. Scully. You are excused.

7 THE WITNESS: Thank you, Judge.

8 (Whereupon, the witness was
9 excused.)

10 HOUSE PROSECUTOR KASPER: Your Honor, as a
11 matter of housekeeping, we have no redirect for
12 this witness.

13 CHIEF JUSTICE FITZGERALD: Thank you.

14 The impeachment trial will stand in recess
15 until the hour of 10:00 o'clock a.m., on Tuesday
16 January 27th, 2009. At that appointed time, I
17 will reconvene the Senate as an impeachment tribunal
18 for further presentation of witnesses by the House
19 Prosecutor. The President wishes to address the
20 assemblage. Please be quiet. We're not quite done.
21 President Cullerton wishes to have the podium.

22 PRESIDENT CULLERTON: Senator Righter, for what
23 purpose do you rise?

24 SENATOR RIGHTER: Thank you, Mr. President.

1 Inquiry of the chair, if I might. I -- I just
2 wondered if the House Prosecutor could please
3 inform the Body of what witnesses he intends to
4 call tomorrow and in what order he intends to call
5 them just for organizational purposes on our side.

6 PRESIDENT CULLERTON: We can do that. I think
7 I've already informed Senator Radogno of that, but
8 we can hear from the House Prosecutor.

9 HOUSE PROSECUTOR ELLIS: Senator, we will begin
10 tomorrow with the testimony of Dan Cain, the special
11 agent. Our best estimate is that he will take us
12 beyond the lunch hour into the early afternoon.
13 Our hope is that we will finish Mr. Cain tomorrow
14 and then have the testimony of Chapin Rose, and that
15 may be all we get to tomorrow. That's -- our best
16 estimate, that will be all we get to tomorrow.

17 PRESIDENT CULLERTON: There being no further
18 business for the Senate, the Senate itself will
19 stand adjourned to the hour of 9:45 on Tuesday,
20 January 27th. The Senate stands adjourned.

21 (Whereupon, the proceedings
22 were continued to January 27,
23 2009 at 10:00 a.m.)

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF K A N E)
4

5 BRENDA S. TANNEHILL, being first duly
6 sworn, on oath says that she is a court reporter
7 doing business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid, and contains all of the proceedings
12 given at said hearing.

13
14 _____
15 Certified Shorthand Reporter
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