

**TESTIMONY OF SCOTT TUROW BEFORE THE JOINT COMMITTEE
ON GOVERNMENT REFORM**

24 February 2009

President Cullerton and Speaker Madigan and other distinguished members of the Joint Committee:

My name is Scott Turow. I am an author and an attorney who is a partner in the Chicago Office of Sonnenschein Nath and Rosenthal. I was also Governor Blagojevich's first appointee to the Executive Ethics Commission, which, as things have worked out, is probably not going to be the first item I list on my Curriculum Vitae in the future.

More seriously, I was honored to serve as the first Chair of the Commission, and I have remained a member of the Commission, which is now chaired by my very able colleague, Father Shawn Denney, the Episcopal Archdeacon of this diocese and a former Senior Counsel in the Attorney General's Office, who is also here today. I am privileged to join Shawn and grateful to the Joint Committee for affording us the opportunity to present our views.

Given recent events, it is inevitable that we must focus on the failings of the ethical culture in our state. But it has not all been sour notes. The new bodies created by the Ethics Act—the five Executive Inspectors General and our Commission have all functioned with dedication, and there have been significant advances. Ethics training is greatly improved, although there must still be better

coordination, and the system for ethics enforcement is now functional, after a faltering start.

Among the responsibilities that the Executive Ethics Commission has assumed is enhancing the ethical climate in our state. Toward that end, the Commission has periodically surveyed employees of our State government. It will probably not come as a surprise to any of you to learn that employees in offices under the former Governor exhibited significant skepticism about the commitment of the former Administration, and their workplace leaders, to maintaining high ethical standards. We cannot expect the 56,000 employees who come to work each day in those agencies, hoping to give the people of the State an honest day's work, to shoulder the burden of ethical behavior on their own. Without a commitment from the leaders of our State government to set and adhere to the highest ethical standards, we are bound to foster cynicism and disappointment among the rank and file that will inevitably lead to ethical lapses and breakdowns.

If we are really going to foster a high ethical climate for everyone who works for our State, the following changes seem to me to be indispensable:

1. **Campaign Finance Reform:** Because the expertise of the Commission and our members is in the Ethics Act [5 ILCS 430/5-1 et seq] under which we operate, I would feel out of place making detailed proposals for reform. But I know that our State will continue to be perceived as an ethical swamp, both in Illinois and outside of it, unless we prohibit unlimited campaign donations. More than thirty years ago, the United States Supreme Court upheld the constitutionality of campaign-contribution limits precisely because of "the actuality and appearance of corruption resulting from large

individual financial contributions.” 424 U.S. at 26. Three decades later our State has found itself doomed to demonstrate the Supreme Court’s wisdom. We simply cannot ask State employees to adhere to a gift ban that prevents them from accepting meals and tickets to ball games in certain circumstances at the same time that political leaders accord themselves the right to receive unlimited amounts of campaign funds. Those who argue that public disclosure of contributions alleviates all problems are simply turning a blind eye to what has transpired here in the last few years. The reelection of Governor Blagojevich was aided immensely by the lack of contribution limits. He was able to steamroller huge donations and questionable fundraising techniques into vast a campaign war-chest that made a never-popular Governor politically unassailable. We have all now paid an awful price.

2. Revolving Door

Assuming that political leaders are willing to limit what they can receive by way of campaign contributions from persons with business with State government, then we can properly ask State employees to live with higher expectations. One of the most disappointing parts of the current Ethics Act has been its Revolving Door provisions (5 ILCS 430/5-45), which supposedly prevent State employees who have had a substantial role in contracting or regulatory decisions within the last year, from accepting employment for a year with the persons or entities affected by those decisions, unless our Commission grants a waiver. In practice, the Commission has often found itself constrained to grant waivers because of the porous terms of the law, even though we have substantial questions about whether the public interest is being served. We expect to join with

Attorney General Lisa Madigan in legislative proposals that will remedy some of the problems, including adding provisions that will allow us to obtain investigative help from the Attorney General's office when indicated, and which will also create a narrow class of high-ranking state officials who will not be eligible for waivers to join the businesses who benefited from their official decisions the year before. This seems to us a necessary ingredient in enhancing public confidence in our State government.

3. Gift Ban

The other area where we believe that higher ethical expectations can be asked from our State employees is in the receipt of gifts from the persons with whom they do business. The current law (5 ILCS 430/10-10) creates a nest of exceptions that too often threaten to engulf the existing rules.

4. Transparency

Father Denney has explained in detail the paradoxical nature of the Ethics Act that authorizes ethics investigations and then shuts the results in absolute secrecy. Our Commission has decried these confidentiality provisions for years now and urged reform. They are not there at the wish of either the Executive Inspectors General or the Executive Ethics Commission, but rather appear to have been created to protect elected officials who wanted an analog to the self-critical privilege by which corporations can police themselves without worrying about disclosure. The problem is that government is not a private enterprise; it operates in the name of the people and not narrow private interests. If there are ethical lapses in State government, if the people's business is not being done in an upright way, it is hard to imagine why it is not the people's business to know

that. No one wants to stigmatize individual State employees for minor deviations. But if an agency of State government has fallen down on the job in a serious way, there should be a mechanism for the public to find out. We are all aware now that these secrecy rules ended up preventing the public from becoming aware of an Executive Inspector General's report that ultimately served as one of the bases of Governor Blagojevich's impeachment. In fact, by now dozens of persons have been dismissed from State employment as the result of EIG investigations without the public learning anything about those cases.

I am grateful for the chance to appear before you this morning and look forward to providing you whatever assistance we can in the future.