

1 BEFORE THE HOUSE OF REPRESENTATIVES
2 IMPEACHMENT COMMITTEE

3

4

5

6

7

8

9

10

11

12 Hearing held on the 29th day of December, 2008,
13 at the hour of 11:00 a.m., in Room 114, State Capitol
14 Building, Springfield, Illinois.

15

16

TRANSCRIPT OF PROCEEDINGS

17

VOLUME V

18

19

20

21

CAPITOL REPORTING SERVICE, INC.
TIMBERBROOK DRIVE
SPRINGFIELD, IL 62702
217-787-6167

22

23

24

1 COMMITTEE MEMBERS:

2 HOUSE MAJORITY LEADER BARBARA FLYNN CURRIE, CHAIRWOMAN

3 REPRESENTATIVE JIM DURKIN, MINORITY SPOKESPERSON

4 REPRESENTATIVE EDWARD J. ACEVEDO

5 REPRESENTATIVE SUZANNE BASSI

6 REPRESENTATIVE PATRICIA R. BELLOCK

7 REPRESENTATIVE DAN BRADY

8 REPRESENTATIVE MIKE BOST

9 REPRESENTATIVE MONIQUE D. DAVIS

10 REPRESENTATIVE ROGER L. EDDY

11 REPRESENTATIVE MARY E. FLOWERS

12 REPRESENTATIVE NAOMI JAKOBSSON

13 REPRESENTATIVE CAREEN GORDON

14 REPRESENTATIVE JULIE HAMOS

15 REPRESENTATIVE GARY HANNIG

16 REPRESENTATIVE CONSTANCE A. HOWARD

17 REPRESENTATIVE LOU LANG

18 REPRESENTATIVE FRANK J. MAUTINO

19 REPRESENTATIVE CHAPIN ROSE

20 REPRESENTATIVE JIM SACIA

21 REPRESENTATIVE JIL TRACY

22 REPRESENTATIVE ARTHUR J. TURNER

23

24

1 CHAIRWOMAN CURRIE: The House Investigative
2 Committee will come to order. The Clerk will call the
3 role. There are three substitutions today.
4 Representative Jakobsson is subbing for Representative
5 Franks, Representative Gordon for Representative
6 Fritchey, and Representative Brady for Representative
7 Black.

8 The Clerk will please call the role.

9 THE CLERK: Currie.

10 CHAIRWOMAN CURRIE: Here.

11 THE CLERK: Durkin.

12 REPRESENTATIVE DURKIN: Here.

13 THE CLERK: Acevedo.

14 REPRESENTATIVE ACEVEDO: Here.

15 THE CLERK: Bassi.

16 REPRESENTATIVE BASSI: Here.

17 THE CLERK: Bellock.

18 REPRESENTATIVE BELLOCK: Here.

19 THE CLERK: Brady.

20 REPRESENTATIVE BRADY: Here.

21 THE CLERK: Bost.

22 REPRESENTATIVE BOST: Here.

23 THE CLERK: Davi s.

24 REPRESENTATIVE DAVIS: Here.

1 THE CLERK: Eddy.
2 REPRESENTATIVE EDDY: Here.
3 THE CLERK: Flowers.
4 REPRESENTATIVE FLOWERS: Here.
5 THE CLERK: Jakobsson.
6 REPRESENTATIVE JAKOBSSON: Here.
7 THE CLERK: Gordon.
8 REPRESENTATIVE GORDON: Yes.
9 THE CLERK: Hamos.
10 REPRESENTATIVE HAMOS: Here.
11 THE CLERK: Hannig.
12 REPRESENTATIVE HANNIG: Here.
13 THE CLERK: Howard.
14 REPRESENTATIVE HOWARD: Here.
15 THE CLERK: Lang.
16 REPRESENTATIVE LANG: Here.
17 THE CLERK: Mautino.
18 REPRESENTATIVE MAUTINO: Here.
19 THE CLERK: Rose.
20 REPRESENTATIVE ROSE: Yes.
21 THE CLERK: Sacia.
22 REPRESENTATIVE SACIA: Here.
23 THE CLERK: Tracy.
24 REPRESENTATIVE TRACY: Here.

1 THE CLERK: Turner.

2 REPRESENTATIVE TURNER: Here.

3 CHAIRWOMAN CURRIE: Thank you, we have a
4 quorum.

5 And may I just start with since last we met we
6 have suffered a very serious loss in the membership of
7 our Illinois House of Representatives family.
8 Wyvetter Younge, the second most senior member, died a
9 couple of days ago, and I would request of the
10 committee a moment of silence in her memory.

11 (A moment of silence.)

12 CHAIRWOMAN CURRIE: Thank you very much.
13 We're going to start by doing some housekeeping, and
14 I'm going to start the housekeeping with some of the
15 old pieces of information that were before us.

16 We have requested as you know from Tamara
17 Hoffman, the chief of staff in the Department of
18 Health Care and Family Services, notes regarding
19 meetings between the Governor's office and other
20 staff, names of people who gave approval to expanding
21 FamilyCare after the JCAR determination that it was
22 not acceptable, names of people from the Governor's
23 office and the department who were involved in the
24 decision to expand FamilyCare, and the FamilyCare

1 program signoffs that were required for changes.

2 I think this has partly to do with the question
3 whether premiums were collected from these people even
4 after the program ended.

5 We have written to Ms. Hoffman, and her legal
6 counsel called our staff this morning to say that all
7 of this material will be available to us before the
8 close of business today.

9 Second, we had requested some material from the
10 Policy Procurement Board, and all that material is in.
11 Staff is now having a look at it.

12 We also have other -- and of course, Mr. Genson,
13 all of these things will become available to you as
14 they become available to us.

15 We also are going to introduce additional
16 exhibits, committee exhibits.

17 Committee Exhibit 20 is a December 23rd letter
18 from Attorney Genson asking for subpoenas for some
19 witnesses to appear today.

20 Committee Exhibit 21 was the December 23rd letter
21 from the committee to Mr. Genson.

22 Exhibit 22 is the letter I just referenced from
23 the committee to Tamara Hoffman asking for the
24 follow-up documents.

1 Exhibit 23 is a letter that we have sent to Chad
2 Fornoff, the Executive Ethics Commission Director,
3 looking for information about a report that was
4 authored by then Inspector General Z. Scott.

5 The Committee Exhibit 24 is a December 26th
6 letter from Patrick Fitzgerald relating to the
7 question from -- about Mr. Genson.

8 And then the Exhibit 25 is the December 27th
9 letter from Mr. Genson to the committee.

10 Exhibit 26 is the report to President-elect Obama
11 from Greg Craig, and I believe that you intend to
12 introduce that, Mr. Genson, is that right?

13 MR. GENSON: Yes, Exhibit 26, I have a copy
14 of it I furnished to the panel and I'm going to refer
15 to it in my argument.

16 CHAIRWOMAN CURRIE: And we are going to
17 accept that and introduce that as Exhibit Number 26.

18 Committee Exhibit Number 27 is some of the
19 statements made by Congressman Jesse Jackson, Jr.
20 during the press conference on December 10th, 2008.
21 This also was a request of Mr. Genson, and we are
22 responding to the request and putting it as part of
23 the record.

24 And then we have the Committee Exhibit 28 is the

1 letter from Chad Fornoff, the Executive Ethics
2 Commission Director to Dave Ellis saying that before
3 giving us the material from Z. Scott he wishes to
4 consult the Attorney General's office to make sure
5 that giving us the information would not violate
6 confidentiality provisions.

7 And then Committee Exhibit 30 is a December 22nd
8 letter from David Glockner, the chief criminal
9 division, U.S. Attorney's Office from the Northern
10 District.

11 And Exhibit 31 is a 12-23 letter from the
12 Treasurer of the state of Illinois, Alexi Giannoulis,
13 in which he details the fiscal implications of the
14 Governor's arrest and the legal problems in terms of
15 our ability to borrow.

16 So with that we then will turn to Mr. Genson to
17 make what arguments you would like to make on behalf
18 of the Governor.

19 Mr. Genson.

20 MR. GENSON: Excuse me, and just two more
21 housekeeping matters. Along with the statement of Mr.
22 Jackson, I have presently in court and I will provide
23 to the committee the news conference in which those
24 remarks were contained. It's a DVD of the news

1 conference. I'd like to add that as an additional
2 exhibit.

3 CHAIRWOMAN CURRIE: Yes, I don't see any
4 problem with that. You had just given us an excerpt
5 earlier, but you want us to have the whole flavor.

6 MR. GENSON: Yes, I have the whole DVD.

7 CHAIRWOMAN CURRIE: Good.

8 MR. GENSON: Lastly or at least again, the
9 other as to housekeeping, I've been furnished with a
10 number of documents today. I have the document from
11 the Procurement Board. I have I think maybe in front
12 of me, it may not, but if I don't have it I'll get it,
13 the letter from Alexi Giannoulis.

14 CHAIRWOMAN CURRIE: Yes.

15 MR. GENSON: What I'd like to do is have an
16 option to respond to those in the event I need to
17 respond, more likely than not by letter or mail,
18 rather than stop and read them today. I'm going to be
19 giving some remarks today and I don't want my absence
20 of comment as to those exhibits to go unanswered.

21 So unless, Chairperson Currie, you have any
22 objection, whatever documents I get today, whatever
23 documents I get in the future pursuant to your
24 request, I'd like an opportunity to respond to more

1 likely than not by memorandum, because this is a long
2 ride to Springfield. So if I could do that I'd very
3 much appreciate it.

4 CHAIRWOMAN CURRIE: And you will be welcome
5 to.

6 MR. GENSON: With regard to --

7 CHAIRWOMAN CURRIE: And we'll consider the
8 DVD as part of Exhibit 27. That formerly was only the
9 short part of the transcript, but now we'll have the
10 whole thing.

11 MR. GENSON: Yes. It took me a while to get
12 that DVD, so I wasn't able to give you a copy. I'll
13 give it to you today.

14 Now, with regard to the submission of witnesses,
15 we had requested subpoenas from the committee for four
16 witnesses, for Valerie Jarrett, Rahm Emanuel,
17 Representative Jackson and a man named Nils Larsen who
18 is an employee of the Tribune.

19 It was my understanding that -- it was my
20 understanding that you were awaiting a reply of Mr.
21 Fitzgerald relative to those witnesses.

22 We would still request that we be issued
23 subpoenas with regard to those, and we stand ready to
24 subpoena them. Basically if -- the letter that we --

1 I think the letter that we submitted to you is in one
2 of the exhibits. Essentially it's our understanding
3 that Valerie Jarrett will testify that she received no
4 requests, nor did she request any quid pro quo
5 relative to her possible appointment as senator.

6 We expect that Rahm Emanuel would say the same
7 thing. As you know, we have submitted and it is part
8 of the record the transition team report on that
9 subject. We would expect that their testimony would
10 conform to that.

11 We expect that with regard to Representative
12 Jackson, he would make a similar statement. And
13 again, we submitted to you a copy of the press
14 conference in which he made that statement and an
15 excerpt from that statement.

16 And lastly, a man named Nils Larsen which we have
17 been led to understand is the gentleman from the
18 Tribune organization that was dealing with in fact the
19 -- I believe the Illinois Finance Authority request
20 relative to the Cubs. And we expect that he will say
21 that he was -- that no request was made of him in
22 exchange for the support of the Governor relative to
23 that legislation.

24 We -- I've talked to Mr. Ellis. Mr. Ellis said

1 that your decision will be based in part on the
2 submission of Mr. Fitzgerald. We saw the submission
3 of Mr. Fitzgerald. Mr. Fitzgerald opposes it.

4 I would only say to you, Chairperson Currie, that
5 in fact they have no right to oppose it. It's within
6 your discretion. They have no right to suggest that
7 people can or can't be subpoenaed.

8 And the fact of the matter is, I don't understand
9 Mr. Fitzgerald's position insofar as if you tell the
10 truth, it doesn't make a difference whether you say it
11 once, twice or three times.

12 So I don't understand their objection, especially
13 in the light of the complaint that he issued in this
14 case and the press conference that he had. And I
15 don't understand him saying that I can't bring in
16 witnesses to show that those things that he said at
17 that press conference just aren't true when witnesses
18 come to testify.

19 So I would renew to you my request for subpoenas
20 for those four people.

21 CHAIRWOMAN CURRIE: I believe, Mr. Genson,
22 you're right, that the decision is entirely within my
23 discretion, and I choose to exercise my discretion in
24 a way that will preserve the United States Attorney's

1 opportunity to pursue the criminal investigation that
2 is underway against your client.

3 I have no desire to put that investigation at
4 risk. Neither does any other member of the committee.
5 When we began our work some days ago, in fact, we
6 addressed that question very specifically, and we said
7 in no way do we want the actions of this committee to
8 undercut the criminal complaint that is the subject of
9 the United States Attorney's activities.

10 We are not a criminal courtroom. We're not a
11 criminal jury. We don't have to find the Governor
12 guilty of a criminal offense in order to decide that
13 he is guilty of something impeachable.

14 But again, I'm denying your request. I agree, I
15 have the discretion, and I think it is appropriate for
16 this committee to exercise the discretion in a way
17 that does not undercut what the United States Attorney
18 is engaged in in the criminal work that he is now
19 undertaking.

20 MR. GENSON: I'm not going to enter into a
21 debate, but I do think that Mr. Fitzgerald's request
22 to the committee not to allow us to call witnesses is
23 inappropriate. And I would again say that these
24 people would and have through these transition reports

1 and through the statement of Mr. Jackson effectively
2 denied one of the major allegations of the complaint
3 and the affidavit that was filed in this case.

4 CHAIRWOMAN CURRIE: Well, with respect
5 perhaps to those people, but there were other people
6 who were engaged in conversations on the same topics.
7 So if the report that you filed with us and Mr. --
8 Congressman Jackson's statements are accurate, what
9 that basically says is well, this time the Governor
10 didn't run a stop sign. But it doesn't say he may not
11 have done so on another day or in another context.

12 But in any case --

13 MR. GENSON: And I would point out --

14 CHAIRWOMAN CURRIE: -- your statement was
15 part of the letter that we've already introduced as an
16 exhibit that is part of this committee record, so
17 shall we move off this point and --

18 MR. GENSON: Briefly, and this is my last
19 response. The complaint that we received didn't give
20 us a name of a single person. It was a complaint
21 filled with initials and letters. So I would suggest
22 that that in and of itself is a reason why we should
23 be able to call these people.

24 I have no further argument. May we proceed?

1 CHAIRWOMAN CURRIE: Proceed.

2 MR. GENSON: We have scheduled to appear a
3 number of witnesses. We needed subpoenas for their
4 appearance. We didn't furnish you the names. We are
5 going to forgo because we don't have those subpoenas
6 any other witnesses, and we're ready to make comment.

7 CHAIRWOMAN CURRIE: Proceed.

8 MR. GENSON: Thank you. On December 8th a
9 complaint was filed in federal court charging Rod
10 Blagojevich with two counts relating to in part
11 wiretap that were on phones in the -- belonging to Rod
12 Blagojevich and hidden microphone in an office that he
13 in fact visited.

14 Accompanying the complaint was an affidavit. The
15 affidavit contained portions of part of these
16 conversations, along with allegations and opinions of
17 the agent that was involved in that case. Rod
18 Blagojevich was arrested, he was brought to the
19 federal building.

20 With regard to that arrest, there was a press
21 conference. The press conference basically
22 highlighted this affidavit, basically highlighted the
23 opinions of the prosecutor, basically highlighted the
24 opinions of the FBI agents in this case, talked about

1 the feelings that the prosecutor had, the feelings
2 that the FBI agent had, the feelings that the
3 listening people -- people that listened to the tape
4 had.

5 In response to the -- the response to the press
6 conference and the arrest was cataclysmic. Everybody
7 in this courtroom knew and saw the publicity that was
8 generated. Everybody in this courtroom knew and saw
9 the ridicule for no other reason that the image of the
10 state of Illinois suffered by virtue of that arrest.

11 Everybody agreed, everybody agreed and there was
12 a formation of a committee that was investigating, in
13 order to investigate the facts behind that case. And
14 there were additional things done at this committee.

15 Now, it is important and we would agree it is
16 important that this committee conduct this
17 investigation. We don't quarrel with the fact that
18 the publicity that is generated and has been generated
19 has to be dealt with.

20 It is important that there be a hearing, and it
21 was important that we be allowed to come here to talk
22 to you about that hearing.

23 But it is important that this hearing be
24 conducted with due process. It does not do the state

1 of Illinois any credit to conduct a hearing that in
2 fact denies due process to Rod Blagojevich, to
3 Governor Blagojevich.

4 The Speaker of the House in his introductory
5 remarks has said one thing that he kept on stressing.
6 And what he kept on stressing is due process. He
7 talked about due process.

8 Members of this committee came up and before this
9 committee started and spoke individually about what
10 they believed this committee was dealing with and what
11 they should do and they spoke about due process.

12 The Constitution specifically says that the House
13 of Representatives has the sole power to conduct a
14 legislative investigation to determine the existence
15 of cause for impeachment.

16 I received notice of this hearing the day the
17 hearing started. Madam Chairperson, you gave me the
18 courtesy of coming in for the second day. But I had
19 little time to prepare.

20 We basically have been told by the members of
21 this panel in response to questions I've asked that
22 there are no rules of evidence.

23 We've been basically told by members of this
24 panel in response to objections that I made that there

1 were no objections because this isn't a courtroom.

2 We were told by members of this panel that
3 there's no cross-examination, only clarification.

4 We have been told by members of this panel that
5 hearsay is admissible. We received uncertified
6 transcripts, unsworn statements and even newspapers
7 articles. And I understand this is not a trial, I
8 understand this is not a courtroom.

9 But the fact of the matter is, due process is due
10 process. No one came in front of this panel, no one
11 came in front of this panel to tell us what the
12 standards of impeachment are. No one came in front of
13 this panel to talk to us about the burden of proof.

14 The committee members -- and some of the
15 committee members made statements which at the very
16 opening suggested that they were not predisposed to
17 rule in favor of Governor Blagojevich. And most
18 respectfully, I haven't heard a single question of a
19 single member of this panel which indicates that there
20 is any support for Governor Blagojevich.

21 Now what I'd like to do are a number of things.
22 I would like to at least with reference to my study of
23 this question suggest what the obligations are in a
24 case where you are determining impeachment in front of

1 this committee, what the standards of impeachment are
2 and what the burden of proof, the burden of proof is.

3 I'd like then to go over the different pieces of
4 evidence as best as I can and try to point out those
5 pieces of evidence that shows that in fact that
6 standard has not been reached, that in fact the burden
7 of proof has not been met.

8 Now, the separation of powers of government is
9 one of the fundamental principles of both the American
10 Constitution, United States Constitution, and the
11 Constitution of the state of Illinois.

12 The power of impeachment is an anomaly in this
13 system, because basically it does not fit within the
14 separation of powers that has been part of our rule of
15 law in the United States for over 200 years.

16 This is not a question of poll. This is not a
17 parliamentary procedure or parliamentary system.
18 People are not impeached because they have
19 disagreements with the other members of government or
20 because they have a low opinion rating.

21 They are impeached if the standards of
22 impeachment are met. They are impeached if the burden
23 of proof to prove those standards of impeachment are
24 met.

1 Now, the federal Constitution uses the phrase
2 high crime and misdemeanors. The original Illinois
3 Constitution set forth a standard and it just used the
4 word misdemeanors.

5 At the 1970 convention, people objected to that
6 because they said that would allow people to be
7 impeached for minor crimes and they didn't want that.
8 And so for a while they were going to put in the word
9 official misconduct, and in fact they removed all
10 reference to it, and that's what we have now.

11 Now, Illinois is not alone as a state that does
12 not give reference to a reason for impeachment. There
13 are, depending upon what study you use and the law
14 books I have available, anywhere between six to nine
15 other states that have that same, that same standard.

16 And so what I would like to do with regard to the
17 standards is to look initially to other law, look to
18 the other states where it says that the standard to be
19 used, that there was a general understanding that the
20 standard to be used was a functional equivalent of
21 high crimes and misdemeanors.

22 That's what standard has been adopted essentially
23 by all the other states that had impeachment
24 proceedings but in which there is in fact -- but in

1 which there was in fact an absence, a specific absence
2 in the Constitution.

3 The only piece of evidence that was offered in
4 this proceeding was the testimony, it was a two-page
5 document by Miss Lucine, I don't know how to pronounce
6 her name, who I understand had worked for the
7 legislature for many, many years in many, many
8 functions and is a constitutional law professor at the
9 university or at John Marshall Law School.

10 And she basically said that the standard that she
11 referred to in this case was abuse of power. But it
12 wasn't an all inclusive analysis. Her analysis was
13 only related to JCAR and what they felt to be -- what
14 she felt to be the possibility that JCAR might allow
15 or not allow in an impeachment proceeding.

16 There have been 15 government -- governors
17 impeached. There have been seven removed. There have
18 been 13 judges impeached. There have been seven
19 convicted removed. There were two impeached. Three
20 impeachments in federal court or in the federal system
21 or at least imminent impeachment. So we do have some
22 guidance there.

23 The only impeachment of a sitting Governor in the
24 last 74 years is Evan Mecham in 1998 who was indicted

1 for criminal wrongdoing, and they did not commence
2 proceeding until there was an indictment. In this
3 case we have no indictment.

4 Since the '30s every impeachment of every federal
5 official has been accompanied by criminal wrongdoing.

6 And then when you look at the history of
7 impeachment, you will see that the majority of
8 impeachments were -- took place right after
9 reconstruction, because of the differences of opinion
10 as to how government should be run and mostly in the
11 south. There were several impeachments in Oklahoma
12 because of differences about the Klu Klux Klan.

13 So the legitimate, I say legitimate, impeachment
14 records that we see are fairly limited.

15 In Alaska where a Governor Sheffield -- they
16 attempted to impeach Governor Sheffield in 1985, they
17 used the standard of clear and convincing.

18 And so there is -- there is a lot of -- there's a
19 lot of analysis that has to be made, but for the most
20 part it's criminal conduct and for almost all entirely
21 criminal conduct is very rare.

22 So I sat there and while I was doing the -- my
23 research I pulled out -- I pulled out excerpts by
24 Alexander Hamilton, excerpts by Lawrence Tribe,

1 excerpts of people who gave speeches at the Clinton
2 impeachment or Nixon, pulled them all.

3 And then I realized that the best, the best
4 document, the best document that there is, the best
5 document that exists that shows what impeachment
6 should be in the state of Illinois is the House of
7 Representatives impeachment opinion of Justice Heiple.

8 The House of Representatives, a committee from
9 this House that in fact looked at the impeachment of
10 Justice Heiple and issued an opinion. And Chairperson
11 Currie, you were on that, you were on that very
12 commission.

13 And one of the things I would like every member
14 of this committee to do is to look at that, is to look
15 at that, the exact legislative finding of the very
16 committee, the very committee that decided that same
17 issue and decided in that case not to impeach Judge
18 Heiple or suggested to the whole House not to do it.

19 I have the report of the proceedings in the
20 court, I have a copy here, and I'm sure since it's
21 your report of proceedings and since I got a copy from
22 the people from this committee, I think it's all -- I
23 think it all should be required reading.

24 And what I would like to do in order to determine

1 what should a person be impeached on, what should a
2 Governor be impeached on to quote from that report.
3 What I'd like to do is to go to the report as to what
4 the standard of impeachment should be and what the
5 burden of proof is.

6 Now, it is a justice of the Supreme Court, it's
7 not a Governor. There have been two justices of the
8 Supreme Court impeached, one in the 1830s and Justice
9 Heiple I believe it was 1998.

10 The fact of the matter is, the standard of
11 impeachment for a Governor should be no less than the
12 standard of impeachment for a chief judge or a judge
13 of the Illinois Supreme Court.

14 So I'm going to quote from this panel and I'm
15 going to quote from the report of the committee in
16 order to explain what our position is as to what this
17 committee should be considering in this case.

18 Now, in that Committee, and it begins in that
19 committee hearing he, Justice Heiple was permitted
20 counsel. He was informed of the allegations being
21 investigated. Now I understand that this committee
22 was put together with dispatch. But the information
23 that I received was mostly on the day I was presented
24 with it.

1 His counsel according to this committee hearing
2 or the committee opinion was allowed to
3 cross-examination witnesses, to cross-examine the
4 witnesses. He was allowed subpoena power in that
5 case, and I quote.

6 24 witnesses were called. There were four days
7 of public hearings. He was permitted counsel. He was
8 informed of all allegations being investigated. He
9 was allowed -- his counsel was allowed to
10 cross-examine and given the subpoena power of the
11 committee.

12 I was not allowed to cross-examine. I was
13 allowed to ask questions. My questions sometimes
14 bordered on cross-examination, except Mr. Durkin
15 stopped me from continuing when it did. And I would
16 point out you have to --

17 CHAIRWOMAN CURRIE: Could I just interrupt
18 for one moment. My recollection is the rules that we
19 are operating under are identical to the rules that
20 prevailed in the Heiple hearing.

21 MR. GENSON: Except the court --

22 CHAIRWOMAN CURRIE: So when you say that they
23 could cross-examine but you are not allowed to, I
24 think the same rule talked about clarification in that

1 case and in this. I just want the record to be clear.

2 MR. GENSON: And you had made that point when
3 we adopted the rules. But whatever it was, the
4 committee said in their opinion he was afforded and
5 allowed to cross-examine. That's all I have. I
6 wasn't able to get anything else.

7 But I go -- and I understand what you're saying,
8 and I understand that that was made before, that was
9 made at the beginning of the hearing. But I'm only
10 going by what the committee wrote. I'm only going by
11 what they said.

12 Now, one of the things that happened at that
13 committee hearing that didn't happen here, and I think
14 it's very important to see this. The hearing began
15 with testimony from constitutional experts from the
16 Illinois bar, the Chicago bar, specifically my late
17 dear friend Donald Hubert, and the Chicago Council of
18 Lawyers.

19 They got up in front of that committee and gave
20 reports as to what the standard should be. They got
21 up in front of that committee and gave reports as to
22 what the burden of proof should be.

23 And the fact of the matter is, they did it based
24 on research. It was all three Bar Associations. They

1 all agree that the separation of powers is a central
2 feature of the Constitution. It's -- by the
3 constitutional democracy created by our Constitution,
4 by the United States Constitution of the state of
5 Illinois. That freedom is threatened when one branch
6 of government is able to control or ignore the
7 independence of another branch.

8 And to paraphrase, the doctrine of separation of
9 powers requires that each branch of government respect
10 and protect the independent function of the other two
11 branches.

12 Another aspect, it goes on to say, to the
13 independence of each of the three branches is that the
14 Governor as is our legislature as is our judiciary,
15 and this I paraphrase, the suitability of their
16 performance is entrusted to the determination of the
17 electorate.

18 Rod Blagojevich was elected by the people of the
19 state of Illinois. Rod Blagojevich was elected to a
20 specific term by the people of the state of Illinois.

21 The Illinois Constitution, it goes on to say, and
22 it does not provide particular guidance as to the
23 grounds for impeachment, but the history, and I quote,
24 of the impeachment proceeding, tells that it was

1 intended for instances of very serious, and they use
2 the word judicial and I put in the word executive,
3 misconduct and there has rarely been a vote.

4 Now, that report I assume is available to the
5 committee. That report I assume is available to the
6 committee and in the file that the committee keeps.

7 Donald Hubert portrayed or pointed out, and it
8 quotes him specifically, that one of the reasons for
9 the lack of guidance in our Constitution was that
10 misdemeanors which were included in the original
11 Illinois Constitution was deleted because it could be
12 interpreted to mean that the impeachment could be
13 sought for minor offenses.

14 The report also says and the committee also
15 adopted the position that the conclusion of the
16 committee must be supported by clear and convincing
17 evidence.

18 Now what is that? This is a standard higher than
19 is demanded in civil cases. This is a standard less
20 than beyond a reasonable doubt but certainly a very
21 substantial standard. And at the beginning of this
22 hearing, one of the committee members said to me that
23 they did not think they were bound by any standard,
24 that they did not think they were bound by the burden

1 of proof.

2 And in fact the report of Don Hubert and the
3 committee that adopted this said in fact that they in
4 fact would allow and this is what was going to be
5 required.

6 They used the term egregious violation as being
7 the standard for impeachment. Now, they also said --
8 that's what the committee said. But the Bar
9 Association report did say three other things. Abuse
10 of power, systematic nonfeasance and wilful
11 nonfeasance.

12 They used those terms, and I don't want to
13 mislead the court, but they only believed that
14 egregious applied to that particular case and I didn't
15 want to deceive the committee.

16 The fact of the matter is, it is the conclusion,
17 and I'm quoting, it is the conclusion of this
18 committee, and that's the committee that preceded you,
19 that's the committee that was picked from the House of
20 Representatives back in 1998, the committee, that
21 legislative impeachment should be limited to
22 extraordinary cases of judicial, and I'll insert the
23 word executive, misconduct involving violation of the
24 law or serious breaches of trust.

1 And I'm not -- I'm going to go into the facts in
2 about two more pages, so I don't want everybody to
3 understand that I'm trying to give you a
4 constitutional lesson, but I think it's important not
5 that you listen to me, but that you, every member of
6 the committee, looks at the Heiple opinion as
7 guidance. Look at the Heiple opinion as guidance as
8 to what impeachment ought to be and what burden of
9 proof ought to be.

10 We haven't heard it here, and I'm sure the
11 Chairperson would have given you a copy of that
12 opinion, but you certainly, although not bound by any
13 precedent, certainly historically should listen to
14 what your fellow members, your fellow members of the
15 House of Representatives back about ten years decided
16 what they would do.

17 The committee recognizes that the standard for
18 determining whether -- and this is that committee, not
19 this one. The committee recognized that the standard
20 for determining whether judicial conduct is
21 impeachable had been historically involving criminal
22 conduct of such gravity as to demonstrate the
23 unfitness of the judge to continue in office. Only
24 then is the legislature entitled to exercise its

1 extraordinary constitutional power.

2 The committee, it goes on to say, is sensitive to
3 the future consequences of its decision today. To
4 impeach on any basis other than the most serious
5 misconduct is to establish a precedent susceptible to
6 future abuse of legislative authority and unwarranted
7 attempts to breach the doctrine of separation of
8 power.

9 The committee concluded that the act, the
10 impeachable act must be based on egregious conduct.
11 It is clear in that case that the conduct did not meet
12 the criminal standards such as treason, bribery and
13 misuse of office.

14 Now, that involved criminal conduct. Because in
15 this case there are two conducts charged. In this
16 case we have heard allegations of criminal misconduct
17 and noncriminal conduct. And this is what the
18 committee said about noncriminal conduct.

19 A justice may be impeached for noncriminal
20 conduct, but that conduct must be of a magnitude of
21 gravity comparable to the criminal standard. A
22 magnitude of gravity comparable to the criminal
23 standard. That is what a legislature and a committee
24 of -- in this legislature concluded.

1 I'm not quoting you from some hearing in
2 Connecticut. And I have their report, too, if anyone
3 wants to read it. I'm not quoting you from some
4 Committee in Alaska, and I have their report available
5 should anyone want to see it.

6 What I am quoting for you is an Illinois
7 committee from the state House of Representatives.
8 Egregious conduct, flagrant, whether criminal conduct,
9 if noncriminal, whether -- if noncriminal must be a
10 magnitude of gravity comparable to the criminal
11 standard.

12 So that's basically what this body concluded.
13 That's -- and there is no reason -- and based on
14 constitutional scholars. With all due respect, and
15 he's been dead for a few years, but Donald Hubert was
16 one of the great lawyers in the history of the state
17 of Illinois. And this is based on his report.

18 A report from the representative of the Illinois
19 Bar Association, a report from the Chicago Council of
20 Lawyers. This is what they concluded.

21 And so what I ask you and beg you to do and most
22 respectfully believe you should do is to follow those
23 guidelines to determine whether in fact there is an
24 impeachable offense here.

1 And that committee's guideline was for this
2 committee that they were talking about. They weren't
3 talking about to the House as a whole, they weren't
4 talking about -- they were not talking about the
5 Senate, they were saying that this committee in order
6 to determine impeachment determines if it's a crime,
7 and beyond that determined whether it reaches a
8 magnitude like a crime. Gravity comparable to the
9 criminal standard. That's what impeachment requires.

10 And how do they prove it? They don't prove it by
11 preponderance of the evidence like in a personal
12 injury lawsuit. They prove it by clear and convincing
13 evidence. And that's what they concluded. They
14 concluded in that case there was no clear and
15 convincing evidence that Justice Heiple in fact
16 committed impeachable acts.

17 Now, let me go to the facts, let me go to the
18 facts of this case.

19 We begin with the allegations of criminal
20 conduct. And those in this case were contained in the
21 criminal complaint that were offered in this case. It
22 was contained in the affidavit that you saw in the
23 criminal complaint which contained allegations. And
24 it was contained in certain documents related to a man

1 by the name of Ali Ata and a man by the name of Cari.

2 This is in a closing argument, and although I
3 have this pension for detail, I'm going to try to bore
4 you as little as I can, so I'm going to skip some
5 things.

6 But you see we are dealing with a lot of very
7 smart people that are sitting up there. We are
8 dealing with very smart people, and I'm only going to
9 go over some of the things I think you ought to
10 consider.

11 But I think that a reading of the opinion and a
12 reading of the record in this case will have you reach
13 the conclusion that I'm reaching today. And if I miss
14 something, I've missed it because I'm testing your
15 patience for as long as I'm talking to you today. I'm
16 here as a guest, and I understand that. So I'm going
17 to go over it probably as fast as I can, probably will
18 miss something.

19 But again, I would expect in order to give this
20 situation the consideration that it deserves, that
21 this panel individually go over that opinion and go
22 over the facts as you heard it before you reach a
23 decision.

24 You have the complaint and you have the

1 affidavit. Now, there is -- and I've made this
2 argument briefly at the beginning, but I want to make
3 it again so that you understand what my position is.

4 We filed a motion before the hearing to preclude
5 introduction of the wiretap. We filed it because most
6 of the allegations in this complaint related to Rod
7 Blagojevich are based on supposed excerpts that they
8 claim were taken from a wiretap.

9 Now, what I'd like to do, and I think it's
10 important really, is to go to a Supreme Court case.
11 The Supreme Court case is Gelbard, and specifically
12 two footnotes in the case, because that makes my whole
13 argument, the whole argument as it exists.

14 The -- in Gelbard what happened was they were
15 trying to do some grand jury testimony, they were
16 trying to find someone in contempt. And this person
17 who they wanted to find in contempt was in fact a
18 subject of a wiretap. And they wanted to use that
19 wiretap in order to cross-examine in front of the
20 grand jury.

21 And the Supreme Court of the United States, and
22 that's '98 Supreme Court 2357, and I think one of the
23 cases is part of this record, I included it,
24 specifically said they couldn't do it.

1 And I want to read this two footnotes which I
2 think the law is applied to what happened here.

3 The first quote's from 2515. And it says the
4 following. Intercepted oral communications or
5 evidence derived therefrom may not be received in
6 evidence in any proceeding before any court, grand
7 jury, department, officer, agency, regulatory body,
8 legislative committee, or other authority of the
9 United States, a state or a political subdivision,
10 where the disclosure of that information would be a
11 violation of the chapter.

12 And what they said here was we weren't -- the
13 defendant was not given an opportunity to object, they
14 weren't given the documents, the Title III documents,
15 just as we haven't been given them. We weren't given
16 copies of the wiretaps to see if they were processed
17 properly. That's just as we weren't given them.

18 And you heard Mr. Scully testify as to the
19 process one uses to get a wiretap. But I wasn't
20 allowed or I was -- an objection was sustained when I
21 asked him about this particular section.

22 Now I think footnote 10 in that opinion is just
23 as important. Congressional concern with the
24 protection of the privacy of communications is evident

1 also in the specification as what is to be protected.
2 As defined in Title III, contents when used with
3 respect to any wire or oral communication includes any
4 information concerning the identity of the parties,
5 any information concerning the identity of the parties
6 to such communication or the existence, substance,
7 purport, or the meaning of that communication.

8 The definition thus includes all aspects
9 including the identity of the parties, the substance
10 of the communication between them, or the fact of the
11 communication itself. It's all excluded. The privacy
12 of the communication to be protected is intended to be
13 compulsive, comprehensive and is in effect until the
14 aggrieved person is allowed and given an opportunity
15 to object.

16 We haven't seen anything, we haven't been given
17 an opportunity to object. There isn't even an
18 indictment in this case. So that it is clear at least
19 from that case, from the Gelbard case and from the
20 statute, that those -- and it is clear also that it
21 applies to a legislative committee. A basic reading
22 shows it.

23 And I have offered 2515 for reading of the
24 committee.

1 But in fact the introduction of those snippets in
2 this hearing is illegal. Now there has been and
3 nobody has determined whether in fact the evidence is
4 -- establishes probable cause in this case. I know
5 I've gone through with two of the people little
6 exchanges, I think Representative Gordon and Lang.

7 But the probable cause hearing has to be done by
8 January 14th or the case is dismissed. The probable
9 cause can be done in front of a grand jury and
10 foreclosed the 14th, and then you have an indictment.
11 You don't have either one them yet.

12 Now, putting that aside, I'd like to look at the
13 complaint in this case. I'd like to look at the
14 complaint and see what it says.

15 First of all, count 1 would not -- count 1 as it
16 is written would not pass muster with a first year law
17 student, because it doesn't say anything. It says in
18 2002 somebody committed mail fraud. It doesn't say
19 what mail fraud, it doesn't say why it's mail fraud,
20 it doesn't say anything.

21 Count 2 goes specifically as to the Tribune. Now
22 I know that again, the complaint's in evidence. You
23 all can read it.

24 But the primary piece of evidence that was

1 admitted in this case and that was read by counsel for
2 the committee, David Ellis, was the affidavit. The
3 committee sent a letter to the prosecutor asking who
4 those people are in the affidavit, asking who A is and
5 B is and Assistant Governor is and Lobbyist is and
6 Advisor is, asked them all this, didn't get an answer.

7 I mean that basically -- to have allegations that
8 are hearsay, I know it's repugnant to a defense
9 lawyer, but it certainly should be repugnant to
10 anybody when we're not told who is doing the talking,
11 other than saying Rod Blagojevich.

12 There's nothing in that complaint that we know
13 that we are able to either refute or establish without
14 knowing names of the people. And even if we know the
15 names of the people that are involved, we are told
16 that we can't subpoena them here in court to see if in
17 fact what those words meant. We can't do it.

18 And these are shadows, these are shadows, and we
19 are -- and we are with regard to that allegation by
20 itself fighting shadows. And that's not right, and
21 that's not clear and convincing evidence.

22 We don't have the original tape or transcript.
23 We don't know if the quotes are accurate. We don't
24 know if they've been cherry picked. We don't know the

1 context in which they were said. We don't know if
2 there are other things in the transcript that we could
3 elicit to show that they were not met.

4 But the fact is nothing happened. There's
5 nothing in that tape or affidavit saying that anybody
6 was propositioned, acknowledging that they were talked
7 to. There's nothing in that tape that shows that
8 people were asked to give money or campaign
9 contributions or anything.

10 It's just talk. That's what it is, unfortunate
11 talk. Talk that was -- shouldn't have been made
12 perhaps, but not -- not actions. And that affidavit
13 in and of itself does not in fact tell you that
14 anything happened.

15 Was there a candidate spoken to? Well, the two
16 candidates that we were able to identify with regard
17 to this tape were Jarrett, Valerie Jarrett, the other
18 candidate was Representative Jackson. I could not get
19 them to come in because I don't have subpoenas.

20 But what I did present to you was the transition
21 team report which said that Valerie Jarrett never
22 engaged in that conversation, no one ever engaged in
23 that conversation with her, and Jesse Jackson said the
24 same thing in a statement that he gave on television

1 that I have the tape for and which I have in fact
2 furnished you with excerpts of.

3 The fact of the matter is, there is no -- and
4 there is no corroboration. The President-elect, Greg
5 Craig, we have an interview of Rahm Emanuel who said
6 it didn't happen. You could read it or I could read
7 it to you. We have an interview of Valerie Jarrett
8 that said it didn't happen.

9 And then we have a quote that I've provided the
10 committee out of the videotape which essentially says
11 I want to make -- I want to make this fact plain. I
12 reject and denounce pay-to-play politics and have no
13 involvement whatsoever in wrongdoing. I did not
14 initiate or authorize anyone at any time to promise
15 anything to Governor Blagojevich on my behalf. I
16 never sent a messenger or an emissary to make an
17 offer, to plead my case, or to propose a deal about a
18 U.S. Senate seat period. That's what he said. That's
19 the quote. That belies the assertion that those
20 people were being sold their seat.

21 I know that Representative Currie said there must
22 be somebody else out there. Well, what kind of
23 proposition is it if a person being propositioned
24 saying he was never propositioned? I don't know the

1 names of the people that they're talking about, but I
2 do -- what I do know is is it a fair -- is it fair to
3 accuse Governor Blagojevich based on an illegal
4 wiretap, based on the words without corroboration,
5 based on the ability -- the inability to call someone
6 in, and when we have -- when we have corroboration, it
7 says they didn't do anything.

8 That was the main allegation in this case. That
9 was the main allegation that was on every program from
10 CNN to MSNBC to all the networks. That was the main
11 allegation. And the two people to whom this was
12 supposed to be happening said it didn't. Is that
13 clear and convincing evidence?

14 The Tribune. There's conversations on the
15 Tribune and conversations back on the Tribune and we
16 determined that the person, the only person from the
17 Tribune that was talking to any Representative of the
18 Governor's office was Nils Larsen, and we expect that
19 he would say that no one ever made a proposition to
20 him. That no one ever suggested that he would get the
21 relief he wanted, the relief he wanted if he does
22 something or removes people from the editorial board.
23 And evidently no one was removed from the editorial
24 board.

1 The fact of the matter is, is that clear and
2 convincing? When I'm not allowed to bring somebody in
3 to deny it because Peter Fitzgerald who in fact wrote
4 that affidavit and wrote up that affidavit says I
5 can't talk to anything -- anybody. There's nothing in
6 that affidavit but talk.

7 The consideration of the hearing, in this hearing
8 is illegal, unless we are allowed to test the
9 wiretaps' validity. There's no evidence that the
10 quotes are accurate.

11 We don't have the tape, we don't have the
12 transcript. We have an unnamed participant who is
13 named unnamed. We have no evidence any offer or
14 requests were made to the two people in question.

15 The question then becomes is it clear and
16 convincing, and that is the question that you have to
17 answer.

18 Now we were questioned or we were given two
19 transcripts and a third name, a third reference. One
20 relates to a fellow by the name of Ali Ata. May I
21 swallow some water? We had read to us an unsigned
22 plea agreement, not -- a signed plea agreement that's
23 not sworn by Ali Ata.

24 And he testifies to one conversation regarding

1 Blagojevich saying we're going to get you a job or
2 something to that effect or you're going to make some
3 -- something to that effect, the single conversation.

4 The fact of the matter is, when you look at the
5 transcript that was served on us, when you look at the
6 transcript of the hearing in the Rezko case, we come
7 up with two things.

8 The first thing we come up with, Ali Ata has been
9 a backer of Rod Blagojevich for maybe ten or 12 years.
10 He was a fundraiser for Richard Mell, his
11 father-in-law. He was a fundraiser for Blagojevich
12 when he ran for the Congress. He was a fundraiser for
13 Blagojevich when he ran for Governor. This is not
14 somebody who walks on the scene. This is someone who
15 has been active politically for years.

16 We know also from the plea agreement that he's a
17 convicted perjurer, that he lied under oath, that he
18 lied not under oath, that he was charged with two
19 counts and he was told he could plead guilty and ask
20 for probation in exchange for his testimony.

21 Now here is a man who has lied under oath and
22 lied under oath multiple times, lied not under oath
23 and lied under oath multiple times, talks about an
24 ambivalent relationship or an ambivalent quote made in

1 the presence of Rod Blagojevich.

2 And the question is is that statement of this
3 confessed perjurer, the one who pled guilty to perjury
4 and who was told that he could ask for probation in
5 exchange for his testimony here, is that clear and
6 convincing?

7 The last issue with regard to criminal conduct
8 was a man named I believe Joe Cari. And Cari again
9 talks of a single conversation with Rod Blagojevich on
10 an airplane. A single conversation.

11 Again Cari is an admitted extortionist. His plea
12 agreement, page 3 says that he went to a business firm
13 and said I want you to pay money to a consultant that
14 I and some guy named Levine is going to make in order
15 for you to get business with the state of Illinois.

16 Read the plea agreement. He pled guilty to the
17 plea agreement. Again, he was told that he could ask
18 for probation at the end, even though he extorted
19 money and in effect cheated the state of Illinois of
20 millions of dollars, and then he makes this statement
21 about the remark on the airplane.

22 This is what Cari did. This is what -- and then
23 it talks about his general knowledge based on the
24 statement of Levine, a guy name Stuart Levine, not

1 that Stuart Levine was involved, but he quotes Levine
2 about the Governor, this one or that one.

3 This is a man who should be under the jail, not
4 to jail. He's gonna get 60 months basically and
5 admitted to saying that he was extorting people, he
6 was extorting a medical school, he was taking money
7 with regard to income tax evasion, paying bribes,
8 election fraud, structuring, defrauding the state of a
9 business association, he was a user of narcotic drug
10 and on and on and on.

11 So not only do we have Cari, we have Levine who
12 supposedly told Cari something.

13 Is that clear and convincing? And it isn't. And
14 those are the criminal cases. Those are the criminal
15 case that we're talking about. Those are the
16 allegations that are set forth in this hearing that
17 are used as a basis for impeachment.

18 The fact of the matter is, in this particular
19 case, in this particular case, we have, and to quote
20 the committee, and Rod Blagojevich have had their
21 hands tied behind their back because they want to
22 continue their investigation. And the fact of the
23 matter is, I agree with this committee that we
24 shouldn't wait. I agree with this committee that we

1 should have this hearing with dispatch, because the
2 state of Illinois is being -- was harmed by this, by
3 these revelations.

4 The fact of the matter is, it's the federal
5 government that wrote up the complaint. The fact of
6 the matter is, it's the federal government that won't
7 give either the committee or ourselves any of the
8 reasons why we should listen to this complaint.

9 Now there are other allegations that we heard,
10 and we heard them here and they were noncriminal
11 allegations. Well, some of the members of this panel
12 would -- would believe they were so serious, but in
13 fact they were noncriminal. We're talking about JCAR,
14 we're talking about procurement, we're talking about
15 being elected, we're talking about at best things that
16 -- we're talking about at best about noncriminal
17 matters.

18 And we are talking about criminal matters that --
19 in fact noncriminal matters that have to according to
20 this commission magnitude -- they must be of a
21 magnitude and gravity comparable to the criminal
22 standard. Now, let's go through these to see if there
23 are magnitude and gravity comparable to a criminal
24 standard.

1 And let's begin with JCAR. Now I know that
2 members of the commission were very passionate about
3 JCAR, and we heard probably more about that and more
4 about that from witnesses than any other thing.
5 We heard from four different sets of witnesses.

6 And it's a question of whether in fact the
7 Department of Human Services expansion of the
8 FamilyCare by administrative -- by their
9 administrative rule which was not approved by JCAR.
10 We saw, heard from two professors, neither with
11 constitutional law expertise, gave us an opinion on
12 how valuable it is.

13 But the fact of the matter is, when I looked at
14 the paperwork that was given by us, been given to us
15 by the pleadings in this case, when I look at that it
16 says nine other states have found such legislation to
17 be unconstitutional.

18 Now I don't pretend to be a constitutional
19 lawyer. I don't pretend even to understand civil law
20 that well. But I can read. And if nine other states
21 found that to be unconstitutional, it seems to me it's
22 a pretty decent argument that the executive had, that
23 the Department of Human Services had that they could
24 do what they could do.

1 One fellow of opinion, one of the professors
2 opined that there was going to be -- that he thinks
3 it's impeachable. And I asked him why. He couldn't
4 tell me. Another one said it was for fraud, but he
5 couldn't tell me what fraud it was.

6 The fact is they weren't constitutional lawyers.
7 They never said they were privy to the litigation in
8 this case or that they even read it.

9 The next group of credit people we had were the
10 fellow McKibbin and some Gregory Baise who is the head
11 of the Illinois Manufacturers Association. Now these
12 were not exactly bleeding hearts, but they were
13 indignant that they might have to pay some more tax
14 dollars because of this program. Indignant. Strutted
15 in, said we should impeach, and strutted out.

16 I mean the fact of the matter is, if you look on
17 the pleadings, one of the people who supported this
18 action was a Sergeant Shriver, National Senate for
19 poverty. Now that's not exactly a minor league
20 player, but they were in support of the action taken
21 by the Department of Human Services. The fact of the
22 matter is, in this particular case they've shown
23 nothing.

24 We heard from the lawyers that were involved in

1 the litigation from the Ungaretti law firm. They said
2 that the courts never ruled as to the validity or
3 invalidity of JCAR. They didn't rule as to
4 constitutionality, they ruled on a minor point.

5 But the fact is all of it was stayed. All of it
6 was stayed. The Appellate Court stayed Judge Epstein.
7 The Supreme Court stayed the Appellate Court. They
8 were all stayed. And I think really the resolution of
9 this issue as to whether in fact this is impeachable,
10 was given by the council's own witness. The council's
11 own witness said that this wasn't impeachable, and I'm
12 reading from it.

13 We were submitted a two-page report by Ann
14 Lucine, she's currently a professor of law at the John
15 Marshall Law School in Chicago. She was a research
16 assistant in the constitutional convention. She was
17 staff assistant from '71 to '75 to the Speaker of the
18 House, Robert Blair. She was a Republican staff for
19 the Special Committee on Constitutional
20 Implementation. She was parliamentarian of the House.

21 She came in and gave a two-page statement. It
22 was offered into evidence. Nobody read it into
23 evidence, it was just offered into evidence and is in
24 evidence in this case.

1 This is what she said. She said in this
2 particular case until the highest court of the state
3 renders a decision on these issues regarding executive
4 powers, I believe it would be premature to claim that
5 Governor has abused his powers as Governor in respect
6 to JCAR. That's what she said.

7 I didn't call the witness because I didn't have
8 to. You --- the -- it was offered to you by the same
9 people that offered all the other evidence.
10 Chairperson, she says, the witness for the committee,
11 from the committee basically said until the highest
12 court of the state --

13 CHAIRWOMAN CURRIE: Excuse me just a minute.
14 She was not a witness for the prosecution. She was a
15 constitutional expert who expected to be in this
16 hearing room and was unavoidably unable to be here in
17 person and we accepted her testimony for the record.
18 And she was not there representing a particular
19 individual or a particular side.

20 MR. GENSON: She wasn't called by Rod
21 Blagojevich.

22 CHAIRWOMAN CURRIE: She is entitled to her
23 own view and that's what we've made part of our
24 record.

1 MR. GENSON: That's right. And I didn't call
2 her. And I wish she had come, because she supports
3 the view of Rod Blagojevich. A witness for the
4 prosecution, that just happens to be a movie I like,
5 but I won't use that phrase again.

6 The fact of the matter is, and she says -- the
7 only constitutional law expert that was offered as a
8 witness in this case -- and offered through her
9 opinion that was accepted and which we agree with,
10 until the highest court of the state renders a
11 decision on these issues regarding executive power, I
12 believe it would be premature to claim that Governor
13 Blagojevich has abused his power as Governor in regard
14 to JCAR.

15 That's what she said. Nobody else was called
16 that had any expertise at all that said anything that
17 was opposite to what she said.

18 And I think that resolves the issue in light of
19 the fact that no one else said that it was, other than
20 Miss Lucine and who said it wasn't.

21 The highest court has not ruled yet. The highest
22 court has not given a decision. The highest court who
23 had the authority not to stay it stayed it. The
24 highest court who doesn't stay it according to the

1 lawyers all the time in fact stayed it.

2 The flu vaccine. Everyone remembers, and I guess
3 we neglected to offer it, but we have -- we have a
4 copy, I don't know if there was a ruling on it,
5 basically that suggested that at the time there was a
6 panic. That in fact the federal government said there
7 wasn't going to be enough flu vaccine.

8 The fact of the matter is we gave them to them --

9 REPRESENTATIVE ROSE: You just referenced
10 giving something to somebody, but we don't know what
11 you gave to who.

12 MR. GENSON: You're absolutely right.

13 MR. ADAM: There should be five articles, one
14 from the United States Department of Health and Human
15 Services, another one from the BBS news outlet,
16 another one from the New York Times, and another one
17 from CNN Money, and the final one being from CNN.com,
18 all that talk about there was a panic and going around
19 the world.

20 We had offered them. I believe that the
21 Chairperson should have a copy of them.

22 CHAIRWOMAN CURRIE: I've not seen these documents.
23 And what are they in pursuit of, what is the point?

24 MR. GENSON: Well, you know, I think the

1 Auditor testified or the Auditor General testified to
2 the substance of them. I asked the Auditor General
3 whether in fact there was essential publicity that
4 there was going to be a lack of flu vaccine, and
5 whether that was a cause celebre at the time, and he
6 said yes, he remembers that.

7 We offered or I guess it was neglected to offer
8 it, but we did serve your representative with those
9 news articles. At this point I would ask that they be
10 considered as evidence by the committee.

11 CHAIRWOMAN CURRIE: You're basically making
12 the point that there was agreement that there was a
13 concern about whether a flu vaccine would be
14 available. That's already part of the record. Even
15 though you didn't give us this supporting evidence
16 earlier, we will be happy to make this part of our
17 record. Again --

18 MR. GENSON: I apologize.

19 CHAIRWOMAN CURRIE: -- I think you already
20 had that from when the Auditor General was on the
21 stand.

22 MR. GENSON: Yes, we did, and the Auditor
23 General made that same comment and he made it. And
24 I'm sorry, Representative Rose, I thought it was

1 offered and evidently it hadn't been, so I apologize.

2 But basically the point I am making was in the
3 testimony. And the point I am making was that there
4 was -- there was substantial controversy at that
5 point. And there was an attempt by someone who worked
6 for the Governor and who was by the Governor or
7 someone who was doing it for the Governor, basically
8 to order some vaccine from out of the country.

9 And there was basically at that time according to
10 the Auditor General who testified a -- although a
11 policy that was ignored regarding accepting drugs or
12 people going to Canada and getting drugs, and as a
13 matter of fact made the point that certain doctors in
14 the United States specifically prescribed drugs in
15 Canada that were not manufactured in the United
16 States.

17 The fact is, it was obviously an error in
18 judgment. The fact is, nobody paid money not knowing
19 that the drugs would not be allowed to come into the
20 United States.

21 The fact of the matter is, this is not comparable
22 to criminal conduct. It's a mistake, it's bad
23 judgment, but certainly not impeachable. Certainly
24 not impeachable.

1 And then there were a lot of other things that
2 were talked about in this case. But one of the -- one
3 of the things that I think is important, one of the
4 facts that's important to consider with regard to all
5 the remaining issues in this case is nobody talks
6 about the Governor.

7 They talk about directors of agencies who didn't
8 tell them enough. They talk about people in
9 procurement that didn't talk about them. But nobody,
10 nobody talks about the Governor.

11 The Auditor General said that he didn't talk
12 directly with the Governor, he talked with people from
13 the different agencies. The people from procurement
14 didn't talk directly to the Governor. And the fact is
15 this is the Governor's impeachment. This is not
16 impeachment of somebody in an agency.

17 And the fact of the matter is, we talk about
18 these different -- these different -- different
19 agencies. You have a man -- they came in from FOIA.
20 And by the way, by the way, by the way, we have
21 somebody who comes in from FOIA who said out of the
22 how many hundreds of thousands of FOIA requests are
23 there, they didn't react to my FOIA request properly.

24 Who is they? Which individual didn't? Was it

1 the Attorney General who said he got tired? Was it
2 someone from an agency that didn't want to be bothered
3 or was just lazy? We don't know.

4 But this is not impeachable. Somebody failing to
5 respond to a FOIA, a FOIA request is not something
6 that you impeach a Governor about. This is not
7 impeachable conduct within the meaning of this very
8 committee.

9 We heard Miss Canary testify about the different
10 contributions. Now there was a Tribune article that
11 was attached that I believe everyone saw. And the
12 Tribune article said that they interviewed the
13 contributors, you assume all the contributors, and the
14 Tribune article says specifically none of them said
15 there was a quid pro quo for their contribution or as
16 everybody likes to say pay-for-play.

17 That's not just innuendo, that's a specific
18 interview of the Tribune. They talked about Myron
19 Cherry who contributes to everyone, as I understand he
20 was Clinton's biggest fundraiser, and it appears that
21 he's a very talented lawyer that was already
22 litigating an issue that the state of Illinois needed
23 to litigate.

24 They talk about Chris Kelly, because his name has

1 been floated around in all this publicity. But
2 there's no evidence that any of the companies he
3 worked for that contributed to the Governor or that he
4 worked with received any contract.

5 There's attached to Canary's -- there's attached
6 to witness Canary's statement page after page of
7 people who contributed large amounts of money from
8 unions, from medical associations, from lawyers, from
9 gaming interests, everybody contributed. There is
10 nobody that they said was given a quid pro quo.

11 And the fact of the matter is, people contribute
12 to people they have an interest in. Legislators get
13 money from people that are interested in the
14 legislation that they're supporting or not supporting.
15 Executives from these various offices get paid money
16 -- get given money because they -- people who give it
17 want to be recognized or want to have access or for
18 whatever the reason.

19 And this is not the state of Illinois. This is
20 every Congressman out there. This is every executive
21 out there. This is President Bush, this is Oba --
22 everybody gives money.

23 The issue is, whether there's a quid pro quo.
24 And the reason people are elected is because the

1 people that elect him trust the integrity of that
2 official, trust the integrity of that official to know
3 that that official would not in fact compromise what
4 he considers his concept of right or wrong based on
5 money given him. And that's what the political system
6 is about.

7 People like Miss Canary might disagree with it.
8 People might say that lobbyists shouldn't exist.
9 People might say that people shouldn't be allowed to
10 give contributions, it all should be public finances,
11 and they might be right. But that's not our system.

12 And unless and until someone suggests that the
13 person who gives money is trying to unduly -- is
14 giving it in exchange for something, until someone
15 suggests that, and other than innuendo, other than the
16 fact that this man collected more money than other
17 people before him, this is not evidence of
18 impeachment. This is not evidence of impeachment.

19 The only person who even suggests that he gave
20 money and he got a job and that there was a reason for
21 that was Ali Ata. Ali Ata had been giving money to
22 Blagojevich for ten or 15 years. And he said he
23 wanted a position in government, not because he wanted
24 to be paid any money, he wanted a position in

1 government he said because September 11th put the fact
2 -- the fact that he was Arab and the fact that he was
3 Muslim, he felt that he was -- he was treated badly.
4 And he wanted a man to get a job that was important.
5 That's why he said it.

6 And you read it. It's in his testimony. I'm not
7 making it up. The fact of the matter is, in this
8 particular case to suggest the 25,000 dollar club is
9 -- which is the title of the article in the Tribune,
10 suggests that he did something wrong, suggests that he
11 did something without a single bit of fact to
12 corroborate it, is not clear and convincing.

13 And every one of these things that were put out,
14 and every one of these things that were put out in
15 evidence in this case, you have to remember what the
16 standard of the committee is. When it's noncriminal,
17 it must be of a magnitude of gravity comparable to the
18 criminal standard. And an article from the Tribune
19 that begins by saying we talked to everybody and no
20 one said that we did anything wrong is not enough to
21 show clear and convincing.

22 The fact that three people come in with FOIA
23 requests that they said was not -- was not looked at
24 the right way out of the thousands that were is not

1 clear and convincing.

2 The fact that the man comes in from procurement,
3 and when he comes in from procurement points out the
4 three pieces of property that he said he caught
5 something wrong on and it was corrected or about to be
6 corrected, is not clear and convincing. Especially
7 when the people he's dealing with wasn't Governor
8 Blagojevich.

9 And Mr. Bedore came up indignant, he quoted
10 something someone said to a newspaper and said you
11 ought to be impeached. And when I asked him what it
12 is that he said, well -- what was the first one, well,
13 the building was too big. Are they trying to get a
14 bigger building, did you get more tenants in the
15 building? Yes, they are. And what was the second
16 one? Well, we owed him three years on a build-out but
17 -- of the next lease but there was seven more years
18 coming. There was seven more years coming and they
19 shouldn't have done it. And did you catch it? Yes.
20 Are they going to redo it? Yes, they are, or they
21 haven't gotten back to us yet. One of them's going --
22 one was going to do 7.5 percent interest and now it's
23 -- instead of ten, that's loan sharking. But he
24 corrected it. That's what procurement was about.

1 And when we asked the gentleman who was the head
2 of procurement, he said they just don't have the
3 resources, that's why it's hard to talk to him. We
4 don't have the manpower, that's why it's hard to talk
5 to him. How is that impeachable conduct? How are any
6 of these civil things impeachable conduct, separate or
7 together?

8 Again, the magnitude of gravity comparable to the
9 criminal standard. That's what the standard that this
10 committee did in the Heiple case, and I would submit
11 to you in this particular case they haven't done it.

12 With regard to all the noncriminal allegations in
13 this case, they have not shown impeachable conduct.
14 They haven't shown it and they certainly have not
15 shown anything beyond a clear and convincing. That is
16 the attitude or that is the -- that's the standard in
17 this case. And so as to all of these things, as to
18 all of these things together, again, this is not a
19 popularity poll.

20 I understand that people are putting -- are
21 talking about how we have to do something or this
22 committee has to do something. But what you have to
23 do is to follow the law, which sometimes is the
24 hardest thing to do in the light of bad publicity.

1 That's what I'm asking you to do.

2 And when I say law, maybe I need to address it.

3 I mean this is the standards that this committee set
4 out ten years ago, and I'm asking you all to follow it
5 today.

6 This is a shadow, we are fighting a shadow. And
7 I know they talked about this in trials, but the fact
8 is we're fighting shadows here. We're fighting
9 unnamed people. We're fighting witnesses that aren't
10 available. We're fighting people that have been
11 indicted. We're fighting preliminary hearings that
12 haven't been. We're fighting parades of allegations
13 that people were dissatisfied with the administration
14 but certainly haven't talked about criminal conduct.
15 We have a mere complaint.

16 Now, we all have -- my representation of Governor
17 Blagojevich is something new. Not just new for me,
18 there's never been anything like that in the state of
19 Illinois, and there's been darn few of these in the
20 United States. But it's new and it's precedent
21 setting.

22 And what I'm asking everybody to do is to give
23 the consideration to this, to these prior hearings, to
24 all the evidence that you heard, to all the things

1 that I was talking about, and try to follow that as
2 standard.

3 There have been legislators that have been
4 indicted. There's none that I see that were kicked
5 out of this legislature while an indictment was
6 pending. And I'm asking that Governor Blagojevich be
7 given the same consideration.

8 At some point we should, and that means the
9 committee and myself, should have access. I think we
10 should have it now, and I understand the deference of
11 the Chairperson to Fitzgerald. I understand not
12 wanting to do the investigation.

13 But it's not fair to write up a complaint and
14 then when we try to attack it say Fitzgerald said we
15 don't want to talk about it. It's just not fair.

16 And it's not fair with regard to these, to gather
17 all sorts of dissatisfaction that individuals have
18 with the administration and how they run things and
19 say that's comparable with criminal conduct, which was
20 the standard that was followed in this case.

21 They have not proven impeachable conduct to a
22 great majority of the things that we heard in this
23 case. They have not proven the ones that are arguably
24 impeachable. They haven't proved it by clear and

1 convincing. And the standard that this committee has
2 followed in the past should be followed with regard to
3 Governor Blagojevich, and I'd ask all of you not to
4 impeach in this case.

5 CHAIRWOMAN CURRIE: Thank you, Mr. Genson.
6 Just a couple of points before -- I know there are
7 many people that have many questions that they want to
8 address to you, but I just have maybe three points.

9 The first is to your point about the shadow
10 quality of the conversations. We did invite the
11 Governor to this hearing. The Governor I think would
12 be able to identify all those folks that were not
13 identified in the United States Attorney's complaint.

14 Second, I saw a report in the press that
15 Congressman Jackson said that early in the first
16 Blagojevich administration his wife was offered the
17 opportunity to direct the State Lottery if the
18 congressman could arrange a 25,000 dollar contribution
19 to one of the Governor's campaign committees.

20 Is that allegation part of the DVD you have given
21 us as part of Committee Exhibit Number 27?

22 MR. GENSON: No, it's not, because he didn't
23 talk about it in the DVD. There was no such
24 reference. As a matter of fact --

1 CHAIRWOMAN CURRIE: Would you like to provide
2 the committee with that conversation in whatever forum
3 he was able to provide it?

4 MR. GENSON: As I understand it, and I'm not
5 the best at reading the papers, he didn't provide it
6 with anybody. It was an unknown associate of him who
7 talked about it. As I understand it, he never said
8 it. And but --

9 CHAIRWOMAN CURRIE: We'll look for that,
10 because it's a slightly different take of some of what
11 you said about the --

12 MR. GENSON: Well, if you --

13 CHAIRWOMAN CURRIE: And finally one other
14 point, and that is the question of the
15 constitutionality of the Joint Committee on
16 Administrative Rules. It was certainly possible for
17 this Governor or any other Governor to go to court to
18 claim that in fact the Joint Committee invades the
19 integrity and the prerogative of the chief executive
20 him or herself.

21 But the Governor didn't do that. In fact the
22 Governor signed legislation that increased the
23 authority of the Joint Committee visa-a-vis his own.

24 So it seems to me that even though in some other

1 states comparable legislative oversight arrangements
2 were held lacking in constitutionality, that isn't the
3 story in Illinois.

4 The Joint Committee on Administrative Rules is
5 constitutional unless and until somebody chose to go
6 to court. So violating the procedures of the Joint
7 Committee it seems to me raises the question of
8 whether the Governor overreached his authority.
9 You don't need to comment, I just wanted to clarify --

10 MR. GENSON: I'd like to clarify.

11 CHAIRWOMAN CURRIE: -- to clarify that. In
12 this state the Joint Committee is presumed
13 constitutional because it had not been challenged at
14 the point at which the Governor skirted the rules of
15 that Joint Committee.

16 MR. GENSON: May I be heard on all three of
17 those points, please?

18 CHAIRWOMAN CURRIE: It depends on -- yes, I
19 mean some of these were just factual.

20 MR. GENSON: The fact of the matter is this
21 is part of the shadow that we have. Part of the
22 shadow that we have is that he is presently charged.
23 And basically what they're saying is is that they
24 won't tell us anything -- I'm sorry, tell me when I

1 can talk.

2 They won't tell us anything, but we are
3 responsible or should I suppose come in and deny it
4 and give them a forecast of what our case is. He has
5 a Fifth Amendment right, he's exercising it. If some
6 of you -- and some have said that they're going to use
7 that against him, again that's not due process.

8 But the fact of the matter is, until the United
9 States government tells us what he's charged with, we
10 don't choose to talk about it. And that's why this
11 committee shouldn't be considering it.

12 Secondly, with regard to your quote of Jackson.
13 As I read it and as I read the papers, he never said
14 it. Your allegation is to when I said the Sun Times,
15 an unnamed source.

16 The fact of the matter is, I don't believe
17 Representative Jackson would have said it. Because if
18 he was made such an offer, he should have gone to the
19 authorities with it. And since he didn't, it seems to
20 me that it never happened.

21 Lastly, with regard to the issue of JCAR, the
22 fact of the matter is in the pleadings filed in the
23 court, in the pleadings filed in the court in front of
24 Judge Epstein, they in JCAR asked that this be ruled

1 unconstitutional just as if -- the fact is they did
2 and it wasn't ruled on.

3 CHAIRWOMAN CURRIE: The action that we were
4 -- we heard about happened before there was a court
5 case, way before.

6 MR. GENSON: There isn't a single person that
7 has come into this case to suggest that he -- that Rod
8 Blagojevich exercising a right that he believed he had
9 is in violation of any sort of criminal law, any sort
10 of civil law, and is even actionable, when you look at
11 the fact that no one, not a single one of the courts
12 that heard this said it was actionable.

13 And for the legislature to take umbrage, to take
14 umbrage because he had the audacity to not agree with
15 it I think is ridiculous.

16 CHAIRWOMAN CURRIE: I feel a little Alice in
17 Wonderland. It seems to me that you're striking it
18 down before there even was a motion to question the
19 legitimacy of the Joint Committee. And the only point
20 that I wanted to make is it is constitutional until
21 such time as a Governor or somebody else challenges
22 it.

23 MR. GENSON: He did challenge it and the
24 court didn't rule.

1 CHAIRWOMAN CURRIE: Representative Durkin.

2 REPRESENTATIVE DURKIN: Thank you, Mr.
3 Genson. If you don't mind I just want to go through
4 -- you gave us a lot of information this morning.

5 MR. GENSON: I knew you would.

6 REPRESENTATIVE DURKIN: I'd like to clarify
7 or however you want to put it some of the --

8 MR. GENSON: I'm not allowed to be
9 cross-examined. That's all you can do is clarify.
10 That's the rules.

11 REPRESENTATIVE DURKIN: I will clarify. I
12 want to talk a little bit about the process -- you
13 made some comments earlier about the denial of due
14 process. I think that you understand that whatever
15 decisions this committee or the House makes, it does
16 not, it will not remove the Governor from office.
17 That will be a matter for the Senate.

18 So I -- as we said earlier in the proceedings,
19 that we're very similar to what the grand jury is,
20 that if we do find that there is reason to send
21 charges to the House and to send over to the Senate,
22 we're not stripping the Governor of power or removing
23 from office.

24 But let me ask you this. In all your years of

1 defending cases, have you been given the opportunity
2 to sit inside a grand jury while your client has been
3 -- where his fate is being decided by a grand jury, at
4 least at that stage?

5 MR. GENSON: I'm sorry, I didn't understand
6 the question.

7 REPRESENTATIVE DURKIN: I said in all your
8 years as a defense attorney, have you ever had the
9 chance to sit inside the grand jury while one of your
10 clients is being investigated?

11 MR. GENSON: Yes, the state court does it by
12 law and I've probably done it 20 or 30 times. There's
13 a specific law in the state of Illinois that allows
14 you to sit in the grand jury with your client.

15 REPRESENTATIVE DURKIN: And you are being
16 also afforded the opportunity to call witnesses. Has
17 that also been afforded to you in those particular
18 proceedings?

19 MR. GENSON: I have offered witnesses to the
20 state's attorney that I felt were important in a
21 number of cases where I felt that their knowledge of
22 the witnesses or their knowledge of the case might
23 affect the grand jury. I have done that. I have not
24 been able to call them, you're correct.

1 REPRESENTATIVE DURKIN: Okay, which we've
2 allowed you to voluntary, even though your request was
3 denied for some individuals, but there were clearly
4 within your right to have individuals voluntarily
5 appear before this committee.

6 MR. GENSON: I have no lack of respect for
7 the committee. I respect the committee. I sometimes
8 have different opinions.

9 REPRESENTATIVE DURKIN: I understand. But
10 I'd like to say that the process is something which
11 has been more than due process. As a matter of fact,
12 based on what we have analyzed and considered our role
13 as, that we've given the Governor due process plus in
14 respect by allowing you to participate and allowing
15 you to call witnesses, call your client as well. And
16 so I just wanted to make that very clear.

17 One thing that I want to just delve into a little
18 bit was the submission that you made to this
19 committee, which is the transition team report. And I
20 had made a comment earlier in these proceedings that I
21 think it's up to assign whatever type of weight we
22 think is appropriate for testimony or documents. And
23 I believe that we'll be making this similar analysis
24 to this submission.

1 Now, when I look at this report, first of all I
2 was trying see who Greg Craig was, and I did my own
3 research. This is a gentleman who did the report, and
4 Mr. Craig, I just did some very quick research on Mr.
5 Craig. Wikipedia's a great thing.

6 But reading it right here, Mr. Craig is a
7 Washington-based lawyer. He has represented numerous
8 high profile clients including John Hinkley, Jr. who
9 was acquitted of the attempted assassination of Ronald
10 Reagan, is assistant to the president and special
11 counsel in the White House to President Bill Clinton.
12 He directed the team defending Clinton against
13 impeachment. He was a foreign policy advisor to
14 Senator Ed Kennedy, Secretary of State Madeleine
15 Albright. And he was a spokesman for the Obama
16 campaign this past summer regarding the FISA
17 controversy which is the Foreign Intelligence
18 Surveillance Act. He is also a bundler for the Obama
19 campaign. I'm not sure what Cindi Canary would think
20 about that.

21 But in any event I want to go through the first
22 paragraph of his statement. At your direction I
23 arranged for transition staff to provide accounts of
24 any contacts that you or they may have had with

1 Governor Blagojevich or his office in which the
2 subject of your successor came up.

3 Now it's unclear by reading that, he said I
4 arranged for transition staff to provide accounts. I
5 have looked through this and there's absolutely no way
6 to determine whether or not Mr. Craig actually
7 interviewed these individuals or if he's basing it
8 based on strictly information that was given to him by
9 the number of individuals who are listed in this
10 count.

11 Secondly, I don't see a signature or anybody
12 signing or initialing after the summary that he's
13 presented of any of these individuals that are listed
14 on here. Mr. Craig himself has not signed or sworn
15 this under oath. I see the last page with respect to
16 Jesse Jackson, Jr. and his comments.

17 Certainly it's not signed, but this was taken
18 from a press conference, and I don't assume that he
19 held his left hand over a Bible and raised his right
20 hand under oath prior to that press conference.

21 So I look at this and I'll assign whatever weight
22 I think is appropriate, and I'll look at the document
23 which we had presented into evidence which is the
24 complaint and also the affidavit.

1 The complaint and the affidavit has been signed
2 and sworn by Special Agent Cain of the FBI. It's been
3 signed by Judge Michael Mason, and information within
4 the document was procured through two separate judges,
5 one Judge Holderman and Judge Kennelly to approve an
6 overhear.

7 So again, I'll make that decision about where I
8 want to assign weight to two documents. One is the
9 affidavit and the complaint which is sworn, very
10 specific about dates, times, and also the submission
11 made today, which is a summary of an individual who
12 was directed to make some type of inquiry, nothing's
13 under oath from any of these individuals, including
14 Congressman Jackson.

15 Lastly, the issue on -- actually two other issues
16 I'd just like to discuss. One of them is we've
17 extended an invitation to your client to come before
18 this committee. And I'm assuming that he will not
19 take us up on that offer.

20 Is that an accurate statement?

21 MR. GENSON: I was trying to figure out
22 whether I had to subpoena him or not or ask you
23 whether he should, but no, he won't take us up on
24 that, he won't take you up on it, no.

1 REPRESENTATIVE DURKIN: Well, I think that as
2 committee members we have a right, since this is not a
3 criminal proceeding, a right to draw a negative
4 inference from his not -- for not participating in
5 this. And Illinois case law is very clear and also
6 United States Supreme Court has been very clear about
7 our use of negative inferences to be drawn from an
8 individual in administrative hearings or in other
9 proceedings where privileges are being denied, and I
10 think that's something that we can take into account.

11 Lastly, the issue regarding using the complaint,
12 the affidavit specifically, I think that we're on good
13 ground to consider that. When I look at the code,
14 specifically Section 2517.1 which states that any
15 investigative or law enforcement officer who by any
16 means authorized by this chapter has obtained
17 knowledge of the contents of any wire, oral or
18 electronic communication or evidence derived therefrom
19 may disclose such contents to another investigative or
20 law enforcement officer to the extent that such
21 disclosure is appropriate to the proper performance of
22 the official duties of that officer in making or
23 receiving disclosure.

24 I firmly believe that the United States

1 Attorney's office was acting within their proper
2 investigative powers to obtain that information, and
3 also that this committee is also a proper
4 investigative committee to achieve, to follow the
5 Constitution and act in its proper performance.

6 And that was basically what the federal court
7 said in the Hastings decision, and when they allowed
8 the transcript in they said that that House committee
9 was a proper investigative committee to consider that
10 type of evidence.

11 Lastly, as we are I said earlier, we are similar
12 to a grand jury in the sense that we -- and I made
13 this comment earlier that we do consider hearsay, and
14 I believe it's appropriate for us to consider hearsay
15 in this body. It is something which is allowed in
16 grand juries.

17 We're not trying the Governor. We, if we decide
18 it's appropriate, will send some type of articles to
19 the full House and let the full House decide if it's
20 appropriate if we get there to the Senate.

21 And I don't know what the rules of the Senate
22 would be, but I believe it's very appropriate for us
23 to take in hearsay evidence which we did talk about
24 earlier in the proceedings. And let me just check.

1 MR. GENSON: May I have --

2 REPRESENTATIVE DURKIN: And I believe -- and
3 I do agree with your earlier -- with your comments
4 that we're really not bound by any precedent, and I
5 don't think we're bound by anything that was done in
6 Heiple. And I appreciate your comments, you're a fine
7 lawyer, and I know that -- I appreciate your patience.

8 MR. GENSON: Members, may I have -- I have
9 five one sentence replies to his five. May I be
10 allowed, Representative Currie?

11 CHAIRWOMAN CURRIE: Please.

12 MR. GENSON: One, this is not a grand jury.
13 The standard of proof if we follow Heiple is not
14 probable cause but clear and convincing.

15 Two. I don't have any crow with your conclusions
16 regarding the transition report. That's why I wanted
17 subpoenas to subpoena the people in and wanted to
18 bring them here as witnesses so that we wouldn't have
19 this problem.

20 Next, negative inference from his not testifying?
21 I would hope you wouldn't, I would hope you would
22 respect his exercise of his constitutional right, but
23 that's up to you.

24 Now with regard to 2517, it says that one officer

1 can talk to another officer. It doesn't say that that
2 officer can come in front of this committee or by any
3 way this committee consider what's in that wiretap.
4 And they did.

5 Lastly, with regard to the Hastings decision,
6 lastly Representative Durkin, and what you're
7 referring to I assume is L.C. Hastings. In L.C.
8 Hastings there were 16 articles of impeachment. In
9 L.C. Hastings 15 of them had to do consensual wiretap,
10 it had nothing to do with Title III.

11 The only Title III reference there was in L.C.
12 Hastings related to I believe the 16th article, and
13 that basically said that when he was chief judge, when
14 he was chief judge he leaked a wire, a wire
15 communication to a mayor of Miami and some hoodlum in
16 Miami and one, that had nothing to do with the
17 contents of the wiretap. And lastly, it was a wiretap
18 that had been used and exercised and ruled on in
19 court.

20 And next to lastly, because I forgot this, the
21 fact of the matter is that the House voted not to
22 impeach him on it. So L.C. Hastings is not nearly in
23 point and I have L.C. Hastings in court, I have those
24 proceedings here if anybody wants to see them.

1 CHAIRWOMAN CURRIE: Thank you, Mr. Genson.
2 The committee should -- as you all know, we had
3 requested information from the United States
4 Attorney's office in Chicago, and many of the people
5 that we requested that we might hear from we were
6 invited not to hear from them.

7 But one of the questions was also whether we
8 might have access to the audio content of the wiretaps
9 themselves. We've just been informed that the United
10 States Attorney's office is going to federal court
11 Monday, the 5th of January, at 2:00 in the afternoon,
12 before Chief Judge Holderman with the request to make
13 some of those tapes available to members of this
14 committee.

15 I have the document. I haven't had a chance to
16 read it to find out which of those audio recordings he
17 is going to ask permission to bring our way, but I
18 wanted the committee to know as soon as I did that
19 that motion is on its way.

20 Representative Durkin, do you have any comment
21 before we move to the other members of the committee?
22 Representative Lang, you're up next.

23 REPRESENTATIVE LANG: Thank you, Madam
24 Chairman.

1 I appreciate Mr. Genson's impassioned comments on
2 behalf of his client. His are exactly the comments
3 and arguments I would make in a criminal courtroom, A,
4 were I representing this defendant, and B, were I a
5 criminal lawyer.

6 MR. GENSON: Yours would be a lot better.

7 REPRESENTATIVE LANG: Well, thank you, sir.
8 I do have some comment to make. I don't think I have
9 any questions, although some may come up as I go
10 through my notes.

11 Let me comment first that Counsel has made an
12 issue over due process in these hearings. I believe,
13 and I dare say the rest of the committee would agree,
14 that Counsel has been given an unprecedented amount of
15 freedom within this committee. He's had a chance to
16 be in the room, to get exhibits, to get notices, to
17 talk to witnesses, to interview witnesses, to be among
18 us.

19 I don't recall in the Clinton impeachment
20 hearings President Clinton having counsel in the room
21 being able to ask questions of witnesses.

22 The fact that Mr. Genson is here being able to
23 make the very long and impassioned argument he just
24 made is a testimony to the fact his client is getting

1 due process.

2 In fact we have offered on at least three
3 occasions to have Mr. Genson's client, the Governor of
4 the state of Illinois, here in the room with us. He
5 has refused to do that.

6 Notwithstanding the fact that Mr. Genson has said
7 more than once that there's no reason we can't
8 subpoena these other witnesses, because if somebody's
9 telling the truth, what's the problem if they tell it
10 twice? I'd be interested in just having the Governor
11 come here and tell the truth once. And so the
12 question is where is the Governor.

13 Next, there's been a lot of talk about the
14 wiretap evidence, whether it's admissible, whether
15 it's not admissible in a federal courtroom. This is
16 not a federal courtroom, and despite the language in
17 the case Mr. Genson has read to us, this language
18 that's in the wiretap evidence is not necessarily
19 being brought before us for whether it's truthful, but
20 more as to the state of mind of the Governor.

21 It's not important what others have said to him.
22 It's only important what the Governor has said to
23 others in furtherance of whatever scheme, if any, he
24 had in these matters. And so the issue there is did

1 the Governor say these things.

2 And I note that in the three weeks since the
3 Governor's been arrested, nobody, not the Governor,
4 not Mr. Genson, not Mr. Adam, not anybody representing
5 the Governor has bothered to say oh, that's not the
6 Governor's voice on those tapes, he never said any of
7 that. Nobody has denied that the Governor has said
8 those things.

9 So the wiretap evidence is valid in this
10 proceeding.

11 Additionally, when Mr. Genson was referring to
12 due process, I note that when he was outside of this
13 room he referred to this as a railroading of the
14 Governor and a witch hunt and any other uses of
15 language that I for one found insulting to this
16 committee, insulting to this committee process, and
17 insulting to the members of this committee who are
18 working very hard to bring evidence out and to give
19 opportunity to both sides to state their case, even
20 though that is not required under the law of the state
21 of Illinois or the Constitution of the state of
22 Illinois.

23 Mr. Genson himself wanted to subpoena 14
24 witnesses whose names he would not give us and today

1 has decided he doesn't want their testimony.

2 Next, the standards provided in the Heiple matter
3 are not the standards of this committee. I don't
4 think those are standards I would have voted for if I
5 was on that committee. And the fact that another
6 committee of the House of Representatives ten years
7 ago approved certain standards in an impeachment
8 process does not in any way bind this committee and
9 does not provide precedent for this committee.

10 And so Mr. Genson's comments that the standard is
11 clear and convincing evidence, no, that's not the
12 standard.

13 The next comment that we need to have probable
14 cause, no, that's not the standard.

15 The only standard that is provided in the law of
16 the state of Illinois, whether it be the statutes or
17 the Constitution, is the word cause. A simple word,
18 cause. Not probable cause, not clear and convincing
19 evidence, cause.

20 And under our Constitution each member of the
21 House of Representatives, and if it gets that far,
22 each member of the Senate, will decide what cause is
23 and what cause means. There is no definition in the
24 law. It will be 118 definitions in the House from

1 each of the 118 members, and 59 definitions in the
2 Senate from each of the 59 Senators, should it get
3 that far.

4 And I note that Mr. Genson in his comments
5 referred to the changes in the Illinois Constitution,
6 tried to compare it to other states. Well, this is
7 one state. This is the state of Illinois. And the
8 fact that the Constitution used to say something else
9 is irrelevant, because as Mr. Genson himself states,
10 the language was purposely changed when we passed the
11 1970 Constitution.

12 The language was purposely changed and the
13 language now says cause. That's what it says. And no
14 commentary about other states, it had no commentary
15 about what Mr. Genson thinks it ought to be, and no
16 commentary about the state of this law of the state of
17 Illinois before 1970 matters a wit. All that matters
18 is what the Constitution says today.

19 Mr. Genson then went on to talk about the
20 separation of powers, which I found a curious
21 argument. He said, "Each branch of government must
22 respect the independence of other branches of
23 government."

24 Well, isn't that what this hearing is all about

1 in the first place? The entire notion of the avoiding
2 of JCAR, the ignoring of the Auditor General, the
3 handling of FOIA requests, the handling of the flu
4 vaccine, the handling of the Procurement Policy Board,
5 all of these things reflect on whether each branch of
6 government respects the independence of other
7 branches.

8 And if in fact this legislature finds that the
9 Governor has attempted to sidestep the legislature or
10 duly appointed branches of the legislative authority,
11 he will have violated his constitutional oath. That's
12 if we find that.

13 So I found it curious that Mr. Genson was talking
14 about the separation of powers at a time where that's
15 really what this committee is all about.

16 Mr. Genson also talked about breaches of trust.
17 And isn't that what this committee is all about? The
18 fact is that the whole discussion of whether a
19 noncriminal allegation needs to rise to the level of a
20 criminal allegation is made up by Mr. Genson. That's
21 in Mr. Genson's head.

22 The truth is, that if the Governor violated the
23 Constitution, if the Governor violated his
24 constitutional oath, it would not matter at all

1 whether it was a violation because he committed a
2 crime, or whether it was because he ignored his
3 constitutional responsibilities vis-a-vis the
4 legislature, vis-a-vis the courts, vis-a-vis the
5 handling of the budget, or any other matter that he's
6 obligated to take care of under the Constitution of
7 the state of Illinois.

8 In my view, and I'm going to guess the view of
9 many sitting with me, a noncriminal violation of the
10 Constitution is still a violation of the Governor's
11 constitutional oath. And therefore, if this committee
12 finds that the Governor has violated his
13 constitutional oath for whatever reason, that would be
14 cause or grounds for possible impeachment.

15 Mr. Genson referred to the fact that what is on
16 the tapes is talk, merely talk, or I heard him talk in
17 the press and refer to it as chatter. At no time I
18 remind the committee has Mr. Genson or anybody said
19 that's not the Governor's voice on the tape.

20 Mr. Genson then says well, there's no evidence
21 that anybody took him up on any of these things or
22 that any criminal activity took place by Miss Jarrett,
23 by Congressman Jackson, by any of these other folks
24 that were mentioned.

1 Well, the fact is that it's a crime in the state
2 of Illinois to offer to do a public act for value.
3 Whether somebody takes you up on that offer is
4 irrelevant. An offer to do a public act for value is
5 a crime in the state of Illinois.

6 Mr. Genson refers to the fact that this has been
7 a list of grievances that this committee and others
8 have had with the Governor of the state of Illinois.
9 And surely we have grievances with the Governor of the
10 state of Illinois relative to the running of this
11 state.

12 But this committee is honor-bound and duty-bound
13 and constitutionally bound to put politics aside, to
14 put our petty grievances with the Governor aside, to
15 put our concern about whether he's a competent manager
16 of state government aside, and just deal with the
17 issues that are before this committee.

18 If we wanted to parade witnesses up at this table
19 for the next six months who have problems with the
20 Governor's running of the state of Illinois, we could
21 do that. We could bring medical providers and day
22 care providers and people that deal with the problems
23 of substance abuse and people that deal with the
24 mentally ill or the developmentally disabled or any

1 number of other groups or organizations that haven't
2 been paid in months and months and months because of
3 mismanagement.

4 But this is not what we're doing, because that is
5 not part of this. And it concerns me that Mr. Genson
6 thinks that that's what we've done. We think we
7 clearly haven't, even though we have the opportunity
8 to do that.

9 And finally, let me go into the area of these
10 noncriminal allegations. Mr. Genson refers to the
11 fact that the validity of JCAR has not been determined
12 by a court. And as the Chairwoman has said, that's
13 right, but it's also right that JCAR is a valid body
14 today in the state of Illinois, an arm of this
15 legislature.

16 And the fact that the Governor is alleged to have
17 sidestepped an arm of this legislature to create a
18 health care plan that did not pass in any way, shape
19 or form, out of the legislature is appalling to many.

20 This is a Governor who signed a bill to expand
21 the powers of JCAR. Let me repeat. This is a
22 Governor who signed a bill to expand the powers of
23 JCAR, and thinks JCAR is a great organization when it
24 agrees with him. But the evidence is that the

1 Governor finds it only to be advisory when it does not
2 agree with him.

3 Now, some might think that's a sidestepping of
4 the legislature's constitutional prerogative. And
5 when you go down this list of other items, the
6 Procurement Policy Board that couldn't get any answers
7 out of the administration, the issue with the flu
8 vaccine, with the Governor's own agency people by the
9 testimony brought here today or the other day said
10 that the Governor knew that we would never take
11 delivery of the flu vaccine.

12 And in fact then the Governor in a grandstanding
13 way had a press conference that decided to send all
14 the flu vaccine somewhere else at a time where he knew
15 it had already been expired. If that isn't something
16 that's worth talking about, I'm not sure what is.

17 The Auditor General sitting before us telling us
18 that the Governor has ignored, the Governor and the
19 Governor's agencies have ignored request after request
20 after request out of the Auditor General's office.

21 The allegations of pay-to-play. The allegations
22 of Ali Ata. And I notice that relative to the
23 allegations of Ali Ata, Mr. Genson at first says the
24 guy's a convicted perjurer, and then he goes on later

1 to quote part of Mr. Ali Ata's affidavit as if it's
2 true. Gotta make up your mind, Mr. Genson.

3 The issue of sale of state jobs is relevant
4 before this committee. And ladies and gentlemen, the
5 general notion of whether the Governor of the state of
6 Illinois has a right to blithely ignore the
7 legislature whenever he darn well feels like it is an
8 important issue for us to discuss.

9 And that alone, ladies and gentlemen, in some
10 minds on this committee could constitute cause
11 sufficient to impeach the Governor of the state of
12 Illinois.

13 I don't know that we're there yet, but I felt it
14 necessary to make these comments to respond to many of
15 the comments of Mr. Genson.

16 And before I relinquish the microphone, Madam
17 Chairman, if I might, a couple of times today the name
18 of Tom Balanoff has arisen and recently the name of
19 Bill Cellini has arisen relative to some fashion or
20 form involving these impeachment proceedings.

21 And I would just simply make a request that you
22 work with legal counsel to determine whether these are
23 folks the committee ought to pursue in our
24 deliberations.

1 I thank you for your indulgence, ladies and
2 gentlemen of the committee.

3 CHAIRWOMAN CURRIE: Thank you,
4 Representative.

5 MR. GENSON: May I respond?

6 CHAIRWOMAN CURRIE: Yeah, you may, but I'd
7 appreciate it if you didn't just repeat your original
8 discussion.

9 MR. GENSON: No, I don't have to. Mr. Lang
10 is very inventive, Representative Lang. All my
11 answers will be brand new.

12 The fact of the matter is, I trust that when Mr.
13 Lang talks about my references to this committee, they
14 also talk about his reference to my ability to make
15 this thing into a circus that I read about in the
16 Tribune this past Saturday.

17 But the fact of the matter is, I -- when I make
18 these references, I'm making these references to what
19 the papers have done, what the editorial writers have
20 done, and a number of other people, and that is the
21 word witch hunt is apropos.

22 Now, with regard to Mr. Lang's opinions as to
23 what ought to be the standards in this case,
24 notwithstanding Lang's rules of order as to what is

1 cause and what isn't cause, if in fact this committee
2 then does in fact decide to ignore precedent, if in
3 fact this committee does decide to put a personal
4 stamp on what every member of the committee does, as
5 opposed to following rules that have been set out by
6 the bar associations, this would be the only committee
7 in this position that has ever done it in the United
8 States of America, given my research.

9 Now, with regard to my not agreeing to put Mr.
10 Blagojevich or Governor Blagojevich in front of this
11 commission or talk about the evidence in this case,
12 I've never talked about evidence in this case and any
13 case in 43 years.

14 The fact of the matter is, until I understand
15 what the case is, until I'm given a list of what the
16 charges are, both this case in front of this
17 committee, I don't feel putting my client in front of
18 the committee to answer those types of things are
19 appropriate and I haven't done it.

20 Now the fact of the matter is, with regard to
21 JCAR, I understand that Mr. or Representative Lang is
22 the head of JCAR in some way, manner or form. The
23 fact of the matter is, with regard to JCAR, this is in
24 court. The fact of the matter is, no court has

1 suggested that he's done anything inappropriate. They
2 didn't agree with the law.

3 Next with regard to the tapes, I have not said
4 that he made an offer that wasn't accepted. He has
5 made no offer to anyone according to that tape. He
6 has made no proposition to anyone, whether it was
7 accepted or not. And with regard to the transition
8 report, the people who were supposed to be the
9 receptors of that information never suggested it.

10 Now, relative to the -- relative to the auditor
11 and relative to the procurement people, relative to
12 all those people, those two people specifically, I
13 have not heard a single word from any of them that
14 they talked to Rod Blagojevich.

15 I have never heard a single word from any of them
16 that they even talked to a member of the executive.
17 As a matter of fact, the Auditor General's comments
18 were specifically directed towards some agencies that
19 he was dealing with. He never said he talked to
20 officers of the Governor. The procurement people
21 never said they talked with the officer for the
22 Governor.

23 To suggest that in regard to this particular case
24 is inappropriate, because that's not the evidence.

1 Then again the evidence is in the transcript and I
2 expect all of you to read that evidence.

3 CHAIRWOMAN CURRIE: Are you finished?

4 MR. GENSON: He shut off my microphone, I
5 guess I am.

6 CHAIRWOMAN CURRIE: Back to Representative
7 Durkin.

8 REPRESENTATIVE DURKIN: Mr. Genson, I just
9 have one question. In light of Representative
10 Currie's announcement about the U.S. Attorney's
11 filing, would you welcome those tapes be used for this
12 committee?

13 MR. GENSON: I wish I could turn myself on
14 and off. If they were legal I will. The fact of the
15 matter is, I expect there to be a determination as to
16 legality and illegality of the tape. If the tapes are
17 illegal, I don't offer them to anyone. If the tapes
18 are legal, then I welcome the committee to look at
19 them.

20 CHAIRWOMAN CURRIE: Well, you have asserted
21 to this committee that the tapes in your mind are
22 illegal. Does that mean you are going to fight the
23 United States attorney's motion?

24 MR. GENSON: I want to see what they're final

1 first, I'm not going to take a position. As soon as I
2 read whatever they file, I'll be glad to tell the
3 committee what my position is. But I think it would
4 be presumptuous of me to respond to something I
5 haven't seen.

6 CHAIRWOMAN CURRIE: Representative Bost.

7 REPRESENTATIVE BOST: Thank you, Madam
8 Chairman.

9 I'm having trouble with my microphone, too. Just
10 if I could, you know, and I don't know what I'd add on
11 to what Representative Lang said. I think he did a
12 wonderful job.

13 Except for the fact that I've been blessed in my
14 life to have several offices, including those put
15 forth whenever I was serving in the Marine Corps that
16 I took an oath of office for.

17 And when I took those oaths I took them very
18 seriously. And when we're talking about noncrimes, I
19 almost believe that if you violate that oath, that
20 that would be -- fall into that area that Mr. Genson
21 described as the noncrimes. But I still think it's a
22 crime.

23 And in those taking of those oaths of office you
24 say I do solemnly swear and affirm I will support the

1 Constitution of the United States and the Constitution
2 of the state of Illinois and that I will faithfully
3 discharge the duties of the office.

4 I think that's one issue that we also need to
5 look at here in the committee and as the standards set
6 forth on whether or not we need to proceed with these
7 hearings. I think that just needed to be added into
8 the record. Thank you, Madam Chairman, and members of
9 the committee.

10 CHAIRWOMAN CURRIE: Thank you.
11 Representative Mautino.

12 MR. GENSON: Nobody asked me if I wanted to
13 answer, but I won't.

14 CHAIRWOMAN CURRIE: Sorry.

15 MR. GENSON: I have nothing to say. I think
16 that was a very good statement.

17 CHAIRWOMAN CURRIE: I didn't mean to tread
18 upon your toes. Sorry, sir.

19 Representative Mautino.

20 REPRESENTATIVE MAUTINO: Thank you, Madam
21 Chairman.

22 And I'll leave the criminal complaints and those
23 discussions to the attorneys. I don't know that a
24 beer distributor's view of criminal law really adds

1 anything in that situation.

2 What I want to talk about is Heiple a little bit.
3 I've been around here a long time. I was here for
4 Heiple. And on the day that the reports came out from
5 the Heiple Commission, he was impeached in one of the
6 reports. There were two reports.

7 Carolyn Krause and Doug Scott, now the director
8 of the EPA, brought out the report based on the
9 political abuse of power against Bonita Welch. And it
10 was a very solemn day around the Capitol here. Both
11 of those reports came out and in this very room they
12 were placed on the table.

13 And the members of the legislature at that time
14 were told that it's the legislative prerogative in the
15 state of Illinois based on our Constitution whether
16 impeachment would go forward. So pick up either
17 report. And there were two. One that impeached for
18 political -- I believe it was denying a promotion or
19 reduction of salary for a completely political act,
20 which was placed forward.

21 And it was impressed upon us that every member,
22 because it's an individual decision, even in Heiple,
23 was eligible to pick up that report which contained
24 articles of impeachment, carry it to the House floor

1 and file it.

2 So that is just my recollection of the process on
3 that day and that there were two reports. One that
4 came out, but both of them were brought forward under
5 the rules of the committee, and an action or a fork in
6 the road was reached on that day.

7 Any actions, any causes would have been the
8 prerogative of the legislature for that day, and
9 that's my recollection within this room and that's
10 kind of how things had happened.

11 So I wanted to bring that to the record to show
12 there's more than one thing out there and it's just a
13 prerogative.

14 MR. GENSON: Representative Mautino, I
15 submitted to the chair both of them. There is a
16 majority which was signed by one, two, three, four,
17 five, six, seven, eight, nine, ten, 11 members. There
18 was a descent, perhaps even two descents by two other
19 members.

20 But the one thing that's common about both
21 reports other than -- outside of the very eloquent
22 Representative Lang said, they both agreed with the
23 rules. They both agreed with what the Bar Association
24 said. It was their assessment of the facts which was

1 the difference of opinion.

2 My point is the second report, and you'll see it,
3 it's right here, it's right up there, basically said
4 that they believed that what they would -- what Heiple
5 did with regard to the secretary, with regard to
6 several other things, in fact was a violation of --
7 was egregious, because in that case that was their
8 standard and it was clear and convincing. So nobody
9 in the second report disagreed with the rules, they
10 just disagreed with the facts.

11 And I'm not suggesting that my assessment of the
12 facts is what you go into. I'm suggesting the rules
13 require you to look at it and consider what everyone
14 has said in making it.

15 But I don't disagree with you and both reports
16 are up there with the Chairperson right now.

17 REPRESENTATIVE MAUTINO: And I read both the
18 reports at that time many years back. And my point is
19 the prerogative is of the individual legislature, you
20 pick up a report, someone could actually file a
21 complaint on the House floor and ask for a bill.

22 MR. GENSON: And if you look at the press,
23 Mr. Heiple's lawyer was Jim Thompson, and he basically
24 said we have the report, we went in front of the

1 committee, but I'm not going to tell you what's going
2 to happen until the House goes out of session. So I
3 understand and I agree with your position,
4 Representative Mautino.

5 REPRESENTATIVE MAUTINO: Okay. And I
6 appreciate you respect that it is the prerogative of
7 the House to do as we will and choose to use that
8 information.

9 MR. GENSON: You will.

10 CHAIRWOMAN CURRIE: Representative Rose.

11 REPRESENTATIVE ROSE: I find it interesting
12 that you've referenced the Heiple report, but you've
13 left out Krause's, Representative Krause's totality of
14 the circumstances approach.

15 And in fact in that she was quoting Judge McGarr
16 who was apparently quoting Justice Heiple himself
17 saying that misconduct might have been warranted,
18 might have warranted only a reprimand or censure, but
19 considered on the whole, however, the judge's
20 misconduct indicates a person who should not occupy
21 the position of judge. And I just want to state that
22 for the record, Mr. Genson.

23 MR. GENSON: I don't ignore it, because as a
24 matter of fact, that is what I said. The fact what I

1 said, Representative Chapin, was you look at them
2 individually and you look at them together, and that
3 is in fact what Krause did in the descent.

4 REPRESENTATIVE ROSE: So you agree that you
5 look at all the evidence that's presented here?

6 MR. GENSON: And to see if all the evidence
7 reaches -- if all the evidence put together,
8 Representative Rose, and put together that goes to
9 criminal culpability, because that's what the language
10 -- that's what the language of the committee of the --

11 REPRESENTATIVE ROSE: No, no, Mr. Genson.
12 Not criminal culpability. We're free as legislators
13 to look at the totality of the circumstances.

14 MR. GENSON: Then we have a different --

15 REPRESENTATIVE ROSE: Of all conduct.

16 MR. GENSON: We have a different --

17 REPRESENTATIVE ROSE: Of all connect.

18 MR. GENSON: Then we have a difference of
19 opinion. No, I agree with you but I disagree with
20 you. There are standards. The standards are --

21 REPRESENTATIVE ROSE: Mr. Genson, you've
22 already stated what your opinions are.

23 MR. GENSON: I did, but you're misstating my
24 opinion and you're misstating what I said.

1 REPRESENTATIVE ROSE: I'm stating my opinion.

2 MR. GENSON: Talking over me doesn't mean
3 you're right.

4 CHAIRWOMAN CURRIE: It's Representative
5 Rose's turn and then it will be Mr. Genson's turn.
6 Representative Rose, it's your turn.

7 REPRESENTATIVE ROSE: Thank you. Mr. Genson,
8 on the summary of JCAR I found it -- (inaudible)
9 particularly with respect once again to your
10 characterization of the witness with respect to
11 welfare fraud, you and I had a colloquy if you will
12 the day in question that he testified here on that.
13 You know that wasn't what he said. You know that
14 wasn't in his written statement, Mr. Genson.

15 MR. GENSON: But he said that.

16 REPRESENTATIVE ROSE: Mr. Genson, he asked,
17 he posited a question, he didn't make a statement.
18 And I made that point to you today in question that
19 you brought up here again.

20 Now, that said, I'm glad you agreed in your
21 earlier comments that we're not bound by precedent. I
22 would simply make a request in your written
23 memorandum, and I know it's not fair today having just
24 received the Treasurer's letter to have it in writing,

1 I would like to see your written response on behalf of
2 the Governor to the fact that the taxpayers have lost
3 millions of dollars at this point due to his
4 predicament.

5 MR. GENSON: If I am allowed, I have not and
6 I would --

7 REPRESENTATIVE ROSE: Because that goes to --

8 MR. GENSON: Let me finish. I don't know
9 whether I'm allowed a response. I thought I was
10 allowed a response of new information. If the
11 Chairperson requires a written response, I'd be glad
12 to give it. I have no problem with that.

13 CHAIRWOMAN CURRIE: I did say that new
14 information was coming to you, you would have an
15 opportunity to respond to it.

16 MR. GENSON: Would I be given a response as
17 to anything other than the new information?

18 CHAIRWOMAN CURRIE: I'm not sure what you
19 mean.

20 MR. GENSON: Well, in Heiple they filed a
21 posthearing brief. Is that going to be allowed in
22 this case or --

23 CHAIRWOMAN CURRIE: It might be possible. At
24 this point -- I don't know when we will finish at a

1 date certain and you'll have a opportunity to respond
2 to something that was new or whether there's some
3 reason to think that this will carry on --

4 MR. GENSON: Will I have the opportunity so
5 that Representative Rose doesn't think we have a
6 different opinion, I don't think we have a different
7 opinion and I don't think I do. I don't agree with
8 him that the totality of the circumstances is
9 different from the standard that I have.

10 But if I could have an opportunity to explain it
11 in the brief, I'd welcome it.

12 CHAIRWOMAN CURRIE: If I were you I would do
13 it in writing and give us a copy.

14 MR. GENSON: I have no problem --

15 CHAIRWOMAN CURRIE: Representative Rose, do
16 you have anything further?

17 Representative Gordon.

18 REPRESENTATIVE GORDON: Thank you, Madam
19 Chairman.

20 Mr. Genson, just very briefly. I guess to just
21 expand one moment on Representative Lang's point on
22 the separation of powers. You had said in your
23 initial argument about you said that impeachment is an
24 anomaly and that there's no parliamentary procedure,

1 and you also brought up the procedures in several
2 other states, and you compared it to that when there
3 is no specific burden, that they said that they put it
4 in the functional equivalent of high crimes and
5 misdemeanors.

6 But perhaps you didn't read our Constitution in
7 it's totality. Because what we do have here in
8 Illinois are three co-equal branches of government.
9 Three co-equal branches of government. That means
10 that our three branches of government all have the
11 same level of powers. Three co-equal branches of
12 government.

13 And so here with this committee you're saying
14 that we're perhaps ignoring another branch. However,
15 there were two specific instances where your client is
16 on record, on record with his own words as saying that
17 he's ignoring the General Assembly.

18 One, specifically there was handed in with a
19 press release where he said it's good to be Governor,
20 you can do these things, when he was talking about
21 expanding FamilyCare without the permission of the
22 General Assembly.

23 And secondly, while the press release wasn't
24 there, although I'm sure that any of us can find it,

1 he was at a press conference at the Decatur airport
2 and his quote was something along the lines of it
3 would be much easier for me to run Illinois if the
4 General Assembly wouldn't get in my way.

5 Also in the Constitution of the state of
6 Illinois, the General Assembly is the only one who is
7 allowed to make appropriations. So when we
8 appropriated money to the Department of Human
9 Services, we appropriated money for certain
10 expenditures. And FamilyCare and his expansion wasn't
11 allowed, we didn't make those appropriations. And he
12 spent those funds in a questionable way.

13 That could be arguably a theft, which I believe
14 is 16-1 in the criminal statutes, if I'm correct.

15 And then you talk about all the different ways
16 that the Constitution works. And you want your client
17 to be able to use his Fifth Amendment rights, you want
18 due process to apply obviously.

19 But if I could say very, very clearly that the
20 Constitution must work for everyone, otherwise it
21 can't work for anyone. The Constitution must work for
22 everyone, otherwise it can't work for anyone.

23 So while your client wants to protect himself
24 with his Fifth Amendment rights and his due process

1 rights, he uses it as a sword. But at the same time
2 we want to shield the people of Illinois from him
3 abusing the powers that are in the Constitution.

4 And that's what this body is attempting to do
5 with him, trying to keep him from misappropriating the
6 funds which are only allowed is what the General
7 Assembly is trying to do.

8 So I would ask that you take very, very seriously
9 what the General Assembly is doing, because it is a
10 co-equal branch of government.

11 So while I will admit to having watched you in
12 court for many, many years and learning things from
13 you for many, many years, I went back and checked any
14 law license, and it says the same thing that yours
15 does.

16 And I thank you for being here, I thank you for
17 your argument. But I think that you may have
18 (inaudible) and chosen a few of the things that you
19 said that our Constitution said today, but perhaps you
20 should look at it in its totality. Because it truly
21 has to work for everyone in the state of Illinois, and
22 that's all 13 million people that the General Assembly
23 represents, not just one executive who may be confused
24 about what that Constitution says.

1 MR. GENSON: Most respectfully, my law
2 license says the exact same thing yours does, only it
3 says it a long longer and it's been in existence a lot
4 longer.

5 And I have no -- I have no quarrel with what
6 everything that you said. The fact is there are three
7 separate and equal branches of government. I said
8 that, that impeachment is an anomaly, and that was
9 said by every legal scholar that I've ever read with
10 regard to this. The fact that he might say, he being
11 Rod Blagojevich, say things that offend people doesn't
12 make them impeachable.

13 I know I've gone over and over JCAR with the
14 people then and with everyone who feels so strong
15 about it now. But simply put, JCAR is in court. JCAR
16 is in court. There's no branch of -- none of the
17 courts, either the Circuit Court, the Appellate Court
18 or so far the Supreme Court have said that he stole
19 money. None of the courts suggested that they were
20 even going to stop it.

21 The fact is, the rulings of Judge Epstein was
22 stayed by a very august panel of the Appellate Court.
23 The ruling of Judge Epstein was stayed and the
24 executive was not told he did anything wrong by virtue

1 of the Supreme Court of Illinois.

2 And I again with respect to the legislature and
3 the judiciary, I will suggest to you and agree with
4 Professor Lucine with regard to that issue vis-a-vis
5 impeachment, that isn't an issue until he violates a
6 court order.

7 And this is -- this again is the only expert that
8 testified in this case. Everybody has feelings with
9 regard to this, and feelings evidently that are
10 opposite the Governor in this case.

11 But this is not a reason for impeachment. This
12 is not a reason for impeachment. It shouldn't be
13 until the court does something or says he did
14 something and that he's got to stop doing it and he
15 doesn't. That's it.

16 CHAIRWOMAN CURRIE: I think we started this
17 with my making the point that at the point at which
18 the Governor decided to skirt the authority of the
19 Joint Committee on Administrative Rules there was
20 nothing for a court to decide. I think it's Alice's
21 tea party. We're kind of moving from spot to spot
22 with a moving target. The Governor I think --

23 MR. GENSON: We disagree as to what Alice
24 said.

1 CHAIRWOMAN CURRIE: -- the committee would
2 say violated his responsibilities with respect to the
3 Joint Committee without any challenge to the
4 constitutionality of that particular arm of the
5 legislature.

6 MR. GENSON: How many years ago was that,
7 Chairperson Currie?

8 CHAIRWOMAN CURRIE: That was a couple of
9 years ago, and it was after the Governor skirted the
10 specific action in the Joint Committee that a lawsuit
11 was filed. After, not before. And it wasn't of
12 course even the Governor who filed it.

13 So anyhow, all right, we still have other people
14 looking for recognition. Representative Eddy.

15 REPRESENTATIVE EDDY: Thank you, Madam Chair.

16 Mr. Genson, I'm not a lawyer, I can't --

17 MR. GENSON: Right now I feel like a moving
18 target, so I'm not sure I want to be one for the next
19 15, 20 minutes.

20 REPRESENTATIVE EDDY: Well, but you made the
21 statement that you can read. I can read. And I have
22 a couple of documents that deal with the Senate
23 appointment.

24 One is the one that Representative Durkin

1 referenced that appears to have been submitted by an
2 individual who did an internal investigation, not an
3 independent authority of any kind whatsoever, that was
4 not sworn under oath.

5 The other document that I have has been sworn and
6 signed and is an affidavit attached to a criminal
7 complaint that I can go to. And as I read from it as
8 Mr. Ellis did, for example when you go to November
9 11th, 2008, Rod Blagojevich talked with John Harris
10 about the Senate seat, this is on page 66. Rod
11 Blagojevich suggested starting a 501(c)(4)
12 organization. And Harris asked "what, for you?" Rod
13 Blagojevich replied, "Yeah." Quotations.

14 Now whenever I read this and I continue to read
15 this, it goes on. Later in the conversation Rod
16 Blagojevich said he knows that the President-elect
17 wants Senate Candidate 1 for the Senate seat. But
18 "they're not willing to give me anything except
19 appreciation. Blank them." Two documents. I could
20 go on.

21 I mean there are quotation marks around
22 conversations that were recorded that are presented as
23 evidence before this committee.

24 And I find the affidavit that is sworn and

1 obtained in a manner that's consistent with I think
2 any person's understanding to be pretty convincing
3 here, that the Governor of the state of Illinois was
4 engaged in behavior in an attempt quit pro quo to
5 trade a U.S. Senate seat for something of value.

6 I don't know about all of the other legal
7 arguments, but I do know that that's pretty clear from
8 one document.

9 And from another document it's nothing more than
10 a bunch of folks who have done a little bit of
11 investigation themselves and said we didn't do
12 anything wrong.

13 You might call that chatter or jabber, but to
14 someone who reads actual words stated by the Governor
15 of the state of Illinois, it's not chatter, it's not
16 jabber. It's far worse than that.

17 MR. GENSON: May I -- are you finished? I
18 respect your reading of it and I've read it and I've
19 gone through this document and I understand what it
20 says.

21 Except the violation of the law has to be what he
22 did. Nobody set up a company, nobody suggested to
23 someone that I would give you or a 502 organization or
24 whatever, no one suggested under that affidavit, which

1 by the way I grant you in my opinion is illegal, but
2 the fact is it's what it says. It isn't what he did.

3 I'm not suggesting that that kind of conversation
4 is appropriate. I understand your views on it, and I
5 understand and won't counter it. The fact is what did
6 he do? Did he tell that to a -- did he just talk to
7 someone like Mr. Harris? Did he tell that to a
8 candidate? Did he tell that to a representative of a
9 candidate? Did he do anything with regard to that?

10 He just talked. And it says what it says, and
11 what it says is unfortunate. But the issue is did he
12 violate the law? And the issue is whether he violated
13 the law and he didn't. It's as simple as that.

14 REPRESENTATIVE EDDY: Mr. Genson, with all
15 due respect, this -- your attempts to turn this into a
16 courtroom have been subtle at times, they've been
17 overt at times, calling it a courtroom, to --

18 MR. GENSON: Thank you.

19 REPRESENTATIVE EDDY: -- referring to the
20 Chairperson as Her Honor. The fact of the matter is,
21 this committee doesn't exist to determine whether or
22 not the criminal complaint is valid. We exist to
23 decide whether or not the person who has made these
24 statements and is clearly identified as being quoted

1 as making those statements is competent and fit to
2 govern the people of the state of Illinois. Those are
3 two totally different things.

4 Despite your continued attempts to confuse the
5 manner between the criminal and the impeachment
6 proceedings, this is an impeachment proceeding, and I
7 think you know that.

8 MR. GENSON: Of course it's an impeachment
9 proceeding. And what I am suggesting to you is one,
10 those statements are illegal and not to be considered
11 by the committee. I've said it, I say that the
12 statute is clear, I think that the Supreme Court is
13 clear. There is absolutely no way to justify their
14 submission to this committee under the United States
15 laws, Title 18, or under Gelbard versus the United
16 States.

17 That's been my contention from the beginning.
18 And this is -- when the statute says legislative
19 committees of the state, the statute isn't ignoring
20 this committee.

21 Now with regard to the contents of what the tapes
22 say, it's your view and it's subject to -- it's
23 subject to your view, and I don't question what you
24 were saying because that's what you think.

1 What I am saying is in this case there's nothing
2 in these tapes that says he did anything. Did he say
3 something that offends you so that you feel that
4 something has to be done? Fine.

5 But the fact of the matter is, under the
6 impeachment, under the impeachment rules that Mr. Lang
7 wants to ignore, under the impeachment rules under
8 Heiple, the fact is a criminal violation is a criminal
9 violation, and a noncriminal violation has to go to
10 the level of a criminal violation.

11 And I don't want to debate it back and forth.
12 We've done enough. The fact of the matter is, he
13 didn't do anything. And whether it's him not doing
14 anything and making those things in your mind he
15 should be impeachable, fine, I can't argue with it.
16 That's what you view.

17 REPRESENTATIVE EDDY: So you disagree with
18 Mr. Lang's contention that offering something of value
19 is not --

20 MR. GENSON: No, no, of course I don't
21 disagree with Mr. Lang's contention, he's a fine
22 lawyer. But where did he offer anybody anything?
23 Show me in there where he offered it to anyone. I
24 want to see. We've all read the affidavit. I've got

1 21 people that probably read better than I do. Show
2 me where he offered anything.

3 REPRESENTATIVE EDDY: Mr. Genson.

4 MR. GENSON: Did he open his mouth? Did he
5 conjure things up in his head? Did he have
6 conversation in the privacy of the room? If that's
7 enough to impeach, I'm not arguing with you. I don't
8 think it is. I don't think under the rules that they
9 have in Heiple that it is.

10 But the fact of the matter is, and I said this to
11 Mr. Lang, offering is a crime, where does it say he
12 offered anything?

13 REPRESENTATIVE EDDY: Mr. Genson, I'm not
14 going to repeat other quoted statements by Rod
15 Blagojevich in this affidavit where it is very clear
16 with my comprehension skills and reading that there
17 was a pretty clear offer for a Senate seat, certain
18 considerations. I just respectfully would suggest
19 that the reading comprehension classes I took are much
20 different than the ones you did. Thank you.

21 CHAIRWOMAN CURRIE: Representative Davis.

22 REPRESENTATIVE DAVIS: Thank you, Madam
23 Chairman.

24 Mr. Genson, I welcome you to this committee

1 today, I think my colleague did already, and to Mr.
2 Sam Adams. I heard your defense, I thought you were
3 -- I was listening very intently, and I didn't hear
4 you mention anything in reference to the charge that
5 the Governor was withholding funds from the Children's
6 Memorial Hospital until he received a substantial
7 campaign contribution.

8 Now as you know, that is certainly a violation of
9 the law and what happened in this instance. I didn't
10 hear you even attempt to address that. Do you have
11 any defense for that?

12 MR. GENSON: Yeah, I don't see where it's
13 saying withhold funds. What he says is -- what he
14 says, and again I'm not allowed to -- that he tried to
15 get someone, he tried to get someone on the phone. He
16 says nobody talked to him or to anyone. What he says
17 is he was never -- there was never any attempt to
18 transmit or that no one was ever spoken to and said
19 that he was going to withhold funds. Nothing
20 happened.

21 Then again, the conversation was unfortunate, but
22 nothing happened.

23 REPRESENTATIVE DAVIS: Are you suggesting
24 that perhaps the U.S. Attorney should have waited

1 until something happened?

2 MR. GENSON: I'm saying because --

3 REPRESENTATIVE DAVIS: Because if he did, Mr.
4 Attorney, you would be suggesting that when we know a
5 murder's going to occur, we wait until it occurs
6 before we stop this person.

7 MR. GENSON: There's something called
8 attempted murder, there's something called a
9 conspiracy. The fact of the matter is in this
10 particular instance, in this particular case with
11 regard to that particular matter, there is absolutely
12 no evidence that he, Rod Blagojevich, or anybody on
13 his behalf communicated anything to the people at the
14 hospital. There's no evidence at all that he did.

15 REPRESENTATIVE DAVIS: So someone made that
16 totally up, Mr. Genson?

17 MR. GENSON: No, it's not in the complaint.

18 REPRESENTATIVE DAVIS: Did someone make that
19 up?

20 MR. GENSON: It's not in the complaint. I
21 can't put things --

22 REPRESENTATIVE DAVIS: It doesn't have to be
23 in the complaint for us to address it.

24 MR. GENSON: There's no evidence that he did.

1 REPRESENTATIVE DAVIS: For us to address it
2 here it does not have to be in that complaint.

3 MR. GENSON: Where does it say in the
4 complaint that he or anybody on his behalf
5 communicated to the people from the hospital that he
6 was going to -- that he was going to cut off the funds
7 in exchange for? It never happened. It's just him
8 talking again. He never did it. There's no evidence
9 in the complaint saying he did it. And unless there
10 is, there's nothing done that's against the law.

11 REPRESENTATIVE DAVIS: Are you saying these
12 were just words, just words?

13 MR. GENSON: He didn't say to cut it off, he
14 didn't communicate it to anyone. He was just
15 jabbering. According to the complaint as I read it,
16 the person who they were supposed to talk to never
17 talked to them on the phone. So unless he said
18 anything to them, how is he communicating any sort of
19 threat to them?

20 REPRESENTATIVE DAVIS: Okay, I appreciate
21 that, because I am looking for a straw to hold on to,
22 I am looking to hear something to hold on to. Thank
23 you.

24 CHAIRWOMAN CURRIE: Representative Bassi.

1 REPRESENTATIVE BASSI: Thank you, Madam
2 Chairman.

3 Mr. Genson, you said that freedom is challenged
4 when one branch of government is able to ignore
5 another. And I think my colleagues and I have all
6 been talking about a totality of circumstances here
7 and we are looking at the idea of cause for
8 impeachment.

9 We are looking at serious issues of misconduct.
10 We're looking at flu vaccine that was ordered, knowing
11 that it couldn't be brought into the country. We're
12 looking at FamilyCare that was expanded without
13 getting legislative approval or budgetary ability to
14 take care of it. We're looking at Procurement Policy
15 Board that's been unable to get information from the
16 Governor's office. We're looking at 33 times that the
17 Governor's office has gone around JCAR.

18 And I know apparently you're an avid reader of
19 the Tribune in which there was an article from one of
20 the folks who was on the Connecticut selected
21 committee of inquiry considering the impeachment of
22 their Governor.

23 And the point, the fact of the matter is that
24 they said when articles of impeachment are considered

1 the fact of the matter is they need not be proven
2 beyond a reasonable doubt. The fact of the matter is
3 that hearsay and conjecture are fair game. The fact
4 of the matter is is that if you feel your state's
5 government is at risk due to the actions of your
6 Governor, you should exercise the extraordinary power
7 your Constitution gives you.

8 Our Constitution gives us the right to remove a
9 Governor for cause. And I think most of us are
10 looking at the totality of circumstances. Thank you.

11 MR. GENSON: May I explain about totality of
12 circumstances with regard to Representative Bassi and
13 Representative Rose. Totality of the standard -- the
14 standard of the -- the standard that we are looking to
15 is the same whether or not -- whether we talk about
16 one, two, three or four. The burden of proof is the
17 same. No one's suggesting that the minority report in
18 Heiple is any different or that my position's any
19 different.

20 What they're saying is if you put them all
21 together and use that same standard for impeachment
22 and use that same burden, that you are in fact
23 following what the law says.

24 Now I read that article in the Tribune, but I

1 also read the impeachment proceedings from
2 Connecticut. And I read the report that was filed in
3 that case. And I read the report of the legislature.
4 And the legislature in the Connecticut case said clear
5 and convincing. The legislature in the Connecticut
6 case basically said though Connecticut didn't have a
7 standard in the Constitution, they equated it to high
8 courts of misdemeanor.

9 The fact that that representative I believe is
10 Loller didn't follow what it said is totally
11 different. But I've read the Connecticut case. They
12 apply the standards, and as a matter of fact the
13 Governor Roland resigned in that case.

14 So I'm aware of what you're saying.

15 REPRESENTATIVE BASSI: That was fortunate for
16 Connecticut.

17 MR. GENSON: It was very fortunate for
18 Connecticut I think. I didn't read what he did. I am
19 saying that Representative Loller did not follow the
20 rules as set out by his own committee. I'm not
21 suggesting and telling anybody what to do and what
22 rules to follow or not, other than the rules that have
23 been followed.

24 I'm suggesting the rules that were followed in

1 Heiple were valid rules. I'm suggesting they follow
2 those rules. And if when you follow the rules in
3 Heiple you decide you want to impeach, that's your
4 authority. But I am suggesting that Representative
5 Loller in the Connecticut case didn't follow the rules
6 of his own committee.

7 REPRESENTATIVE BASSI: Are you suggesting
8 we're not following the rules of our own committee? I
9 think Representative --

10 MR. GENSON: No, I said --

11 REPRESENTATIVE BASSI: Let me finish, please,
12 I think Representative Currie suggested that we are
13 using the same rules or very similar rules that we
14 used with Heiple or that were used. I was not here
15 with Heiple, but did I not hear Representative Currie
16 say that?

17 MR. GENSON: No, of course you did. But I
18 heard Representative Lang say you don't have to follow
19 the rules. That's what I just heard, and I'm
20 discussing that.

21 REPRESENTATIVE BASSI: I did not hear
22 Representative Lang say that. Perhaps we have
23 different sets of ears.

24 MR. GENSON: Perhaps you do. But I think the

1 transcript's fairly clear as to what Representative
2 Lang said. Representative Lang said we're not bound
3 by Heiple. Representative Lang said that each
4 individual should do what they think they should do.
5 I'm saying we're bound by that.

6 CHAIRWOMAN CURRIE: Representative Hamos.

7 REPRESENTATIVE HAMOS: Thank you. Mr.
8 Genson, today you developed an analysis that divided
9 our -- the facts before us between allegations of
10 criminal conduct and what you considered allegations
11 of noncriminal conduct. And I wanted to ask you
12 whether when you talked about the criminal conduct you
13 also made the statement that we do not -- we currently
14 have a criminal complaint before us and not even an
15 indictment.

16 MR. GENSON: No, I said we have a complaint
17 but not an indictment, yes.

18 REPRESENTATIVE HAMOS: But I wanted to ask
19 you whether you believe -- would your position change
20 as to whether we have met the standard for impeachment
21 if there was an indictment or a probable cause by the
22 court?

23 MR. GENSON: If there was an indictment,
24 there is authority which you -- which would allow you

1 to consider the fact of indictment as a grounds for or
2 as part of the grounds for impeachment. There is
3 authority that there has to be proof. But there would
4 be more thought and certainly there would be a
5 different standard in this case if in fact there was
6 an indictment in this case.

7 Whether in fact that I would argue that that
8 indictment was insufficient, well, you know I would.
9 But the fact of the matter is, I think the position
10 for impeachment would be stronger if an indictment
11 exists, yes, Representative Hamos.

12 REPRESENTATIVE HAMOS: And would that happen
13 by January 14th?

14 MR. GENSON: I don't know what their plan is.

15 REPRESENTATIVE HAMOS: Well, will either an
16 indictment or a probable cause hearing?

17 MR. GENSON: It should. It should happen by
18 January 14th. I mean there are things that can happen
19 between now and January 14th where they ask for an
20 extension. They -- the government is entitled to ask
21 for an extension of 90 days to get an indictment. If
22 they ask it, ask it and if they get it, there would
23 not be an indictment nor would there be a finding of
24 probable cause.

1 REPRESENTATIVE HAMOS: And is there another
2 option for the Governor to waive a preliminary
3 hearing?

4 MR. GENSON: There is an option to waive
5 preliminary hearing, and we have not waived
6 preliminary hearing.

7 REPRESENTATIVE HAMOS: But that is an option
8 that the government has until January 14th?

9 MR. GENSON: That is an option the Governor
10 has.

11 REPRESENTATIVE HAMOS: So at that point if
12 that were the case, then we would not have either a
13 probable cause or an indictment by January 14th?

14 MR. GENSON: If that were -- well, if that --
15 if they didn't -- he can waive preliminary hearing,
16 but they can still get an indictment. One has nothing
17 to do with the other.

18 My point is what generally happens and would
19 happen in practice between now and January 14th would
20 be -- well, a number of things. But primarily there
21 would be a hearing on the 14th or they would get an
22 indictment before the 14th. That's generally what
23 occurs.

24 It is possible that you could ask for an

1 extension. They could ask for an extension for 90
2 days. It is also possible there would be a waiver of
3 preliminary hearing, and that would put it on hold.

4 But the fact of the matter is, generally what
5 happens is there is either a preliminary hearing or an
6 indictment.

7 REPRESENTATIVE HAMOS: I guess I'm trying to
8 understand though your position as to, you know, you
9 were saying that with an indictment there would be a
10 stronger case for impeachment, stronger -- the
11 standard would have been --

12 MR. GENSON: What I'm saying is the authority
13 says, I'm trying to talk, I made a thorough analysis
14 of the different states and the different impeachment
15 proceedings, looking at the precedent which I've been
16 informed by at least one member of this panel we don't
17 have to follow, there would be a stronger case for
18 impeachment if there was an indictment.

19 Would it be sufficient? I would argue no. But
20 would there be a stronger case? Yes, based on the
21 precedent that I've read, there would be a stronger
22 case.

23 And as a matter of fact, with regard to the
24 precedent that I have read, in almost all these cases

1 there is an indictment before there is impeachment.

2 REPRESENTATIVE HAMOS: Was that the case with
3 Governor Roland?

4 MR. GENSON: With Governor Roland, yes, there
5 was an indictment.

6 REPRESENTATIVE HAMOS: Thank you.

7 CHAIRWOMAN CURRIE: Representative Bellock.

8 REPRESENTATIVE BELLOCK: Thank you very much,
9 Madam Chairman.

10 Regarding that issue of the indictment, I think
11 for the last couple of years in Illinois, a lot of
12 people would agree that taxpayers -- that there has
13 been a crisis of confidence in this administration,
14 and they feel that their trust has been eroded also,
15 especially regarding some of the issues that we've
16 talked over and over and over again.

17 But that we talked a week or two weeks ago and
18 you said today that we never strongly talked about the
19 Governor regarding those programs of FamilyCare and
20 the I-SaveRX, because we felt when we discussed this
21 that the I-SaveRX program that led into the flu
22 vaccine was a program specifically developed by the
23 Governor, he created the Web site, it never went by
24 the legislature, he created that program alone.

1 To a lot of us who were dismayed by the program,
2 a lot of legislators felt that program was illegal.
3 The importation of drugs from Canada is acknowledged
4 by the federal government as illegal, and a lot of us
5 felt that we could not carry any of the information
6 regarding that program in our own offices due to the
7 fact that it was an illegal program by the federal
8 government.

9 So even though a lot of the goals of the Governor
10 to provide health care for everyone, to provide low
11 cost drugs for everyone are extremely laudable and we
12 would like to do that also, the fiscal responsibility
13 of being a legislator and representing the taxpayers
14 of Illinois comes into play when you have to pay the
15 bills for those programs.

16 So even though they went forward, and especially
17 in the press conference, and we talked about this
18 specifically two weeks ago when I think this was in
19 November of '07 it said lawmakers insisted he doesn't
20 have the authority to spend money on programs and
21 services not appropriated by the legislature, but
22 Blagojevich disagrees. He cut 480 million from the
23 budget that they approved, that they sent him this
24 summer to free up the cash for health care. It gives

1 me all kinds of flexibility to move it around as we
2 have been doing, Blagojevich said. We want to
3 stockpile some of that money for what I think are more
4 important priorities.

5 And I think that his thoughts of priorities were
6 laudable ones, but they were not what the legislature
7 wanted. The legislature voted overwhelmingly no on
8 the gross receipts tax which was to fund the health
9 care program because we didn't want to hurt every
10 single business in Illinois, even though we knew
11 providing health care for people was extremely
12 important.

13 So then when that program, which we've discussed
14 in depth, went to the Appellate Court, even the
15 Appellate Court said that they were not provided any
16 kind of accurate information on the programs, the
17 FamilyCare program as to how many people were in the
18 program, how much the program cost.

19 This is the point here of what you discussed
20 before. The separate branches of government and the
21 responsibility of the legislature to the people of
22 Illinois for fiscal responsibility and providing
23 services.

24 CHAIRWOMAN CURRIE: Representative Brady.

1 MR. GENSON: Let me just briefly -- I have no
2 difference of opinion in any of what you said, because
3 I can't. I'm not a member of the legislature. That
4 all I can talk to is what the courts said and what's
5 an impeachable act, and that's all I'm talking to.

6 I'm certainly not suggesting that the policies
7 that you've talked about and your views of what
8 occurred is inappropriate, wrong, or that
9 Representative -- or that Governor Blagojevich is
10 right.

11 But what I am saying is that what he did in this
12 case didn't -- in the case of JCAR because of the
13 ruling of the court, and because of the ruling of the
14 -- the statement of the constitutional expert did not
15 go to the issue or is not and shouldn't be considered
16 for impeachment. It should be considered for all
17 sorts of things.

18 But I'm not talking in terms of policy and I'm
19 not suggesting that what you're saying is wrong,
20 inappropriate, or not accurate. I'm only talking to
21 -- I'm only talking to one issue here.

22 CHAIRWOMAN CURRIE: Representative Brady.

23 REPRESENTATIVE BRADY: Thank you, Madam
24 Chair.

1 Mr. Genson, I noticed earlier in the gallery area
2 there was a group of Boy Scouts here, and I'm sure
3 that it was very interesting for them as we debate
4 what's good government and what's legal, what's
5 illegal. I don't know if they were here for their
6 good government badge, but it would be very
7 interesting I'm sure for those young men, what they
8 thought about today's hearings.

9 I'd like to ask you, Mr. Genson, if you agree
10 with the following statement. That this committee is
11 neither a civil or a criminal trial procedure, rather
12 an inquiry into the cause for impeachment, is that a
13 fair statement in your --

14 MR. GENSON: I think it's a fair statement.
15 Just as Judge Heiple's committee was a fair statement.
16 I'm not suggesting it's a criminal case. As a matter
17 of fact, I'm suggesting that the burden of proof is
18 less than what there would be in a criminal case.

19 I'm not suggesting that it's a civil case,
20 because the burden of proof is more than what there
21 would be in a civil case. But I would agree with you,
22 Representative Brady.

23 REPRESENTATIVE BRADY: So you agree that it's
24 not a civil or a criminal procedure?

1 MR. GENSON: That's correct. But we do agree
2 that the burden of proof, clear and convincing is the
3 burden of proof that was set by Heiple, and it is my
4 suggestion that the burden of proof that was set by
5 Heiple is the burden of proof that you should
6 seriously consider.

7 REPRESENTATIVE BRADY: Well, with that then
8 being I guess, your client, Governor Blagojevich that
9 has been invited to testify in this committee and be
10 at this committee in his own defense, has chosen not
11 to, as well as others that will not be subpoenaed, but
12 what is your suggestion then of all the allegations to
13 this committee and members of this committee if the
14 Governor won't appear to answer the accusations
15 against him, what's this committee left to do?

16 MR. GENSON: I'm suggesting that this
17 committee ought to follow the rules in Heiple, and
18 under the rules of Heiple they have not proven a clear
19 and convincing evidence that he in fact committed
20 impeachable conduct, and if that's the case you vote
21 against impeachment.

22 REPRESENTATIVE BRADY: Thank you, Madam
23 Chairman.

24 CHAIRWOMAN CURRIE: Representative Lang.

1 MR. GENSON: Didn't you have your turn
2 already?

3 REPRESENTATIVE LANG: Sorry, Mr. Genson.
4 Thank you, Madam Chairman.

5 First, again on these, what Mr. Genson refers to
6 as the Heiple standard, let me just state my view that
7 the rules that were adopted then were inappropriate,
8 in fact unconstitutional, because the Constitution
9 refers to cause and only cause. It doesn't say clear
10 and convincing, it doesn't say probable cause, it just
11 says cause.

12 Secondly, I would say on that, Mr. Genson, that
13 the United States Supreme Court, the Illinois Supreme
14 Court, and all other high courts from time to time
15 overrule themselves and overrule lower courts.
16 There's no reason a legislature can't change its mind.

17 Next, I have a question for you, sir, referring
18 to the wiretaps. If that were the Governor's voice on
19 the tapes, and if as you say nothing was offered by
20 the Governor in violation of the law, and if as you
21 say nothing was accepted by any of the people on the
22 other side of those calls in violation of the law,
23 then why spend so much time trying to convince us not
24 to hear the tapes or that the tapes are not something

1 that we ought to take into evidence? If the tapes
2 display that your client has done nothing wrong,
3 what's the big deal, sir?

4 MR. GENSON: The big deal is that there are
5 laws and the laws have to be followed. And if there
6 is a specific federal law that says it can't be
7 considered, I think it's incumbent upon me to remind
8 the committee that you're considering tapes illegally.

9 REPRESENTATIVE LANG: So I presume that that
10 comment regarding following the law applies to the
11 Governor as well, is that correct?

12 MR. GENSON: I certainly suggest that the
13 Governor should follow the law.

14 REPRESENTATIVE LANG: And the Constitution as
15 well?

16 MR. GENSON: Except we're not going to get
17 back to JCAR again, are we?

18 REPRESENTATIVE LANG: No, except that --
19 well, you don't like that particular area.

20 MR. GENSON: I don't dislike it, I'm just
21 tired of it.

22 REPRESENTATIVE LANG: So, Madam Chairman, you
23 have copies of articles that I wish to place into
24 evidence. An editorial from the Chicago Tribune dated

1 October 20th, 2007, entitled Who Needs A Legislature.
2 And just -- they're referring to the JCAR situation,
3 and let me just quote part of it.

4 Blagojevich has decided to merely ignore them
5 all, referring to the members of JCAR. The vote by
6 the review panel, purely advisory his spokesperson
7 said.

8 Also giving you an article from the Rockford
9 Register Star dated November 17th, '07, referring to
10 the Governor's spokeswoman during the JCAR issue in
11 question. We're proceeding under the emergency rules,
12 she said. JCAR does not have the authority to suspend
13 emergency rules expanding FamilyCare. JCAR's role is
14 merely advisory. It does not have the constitutional
15 authority to suspend the regulation.

16 Another article by the State Journal-Register
17 November 20th, '07, referring to this. Blagojevich on
18 Monday said the rules committee, referring to JCAR
19 which comprises six Democrats and six Republicans,
20 does not have constitutional power over his office.
21 Let me quote this. "Where is it written that a
22 handful of legislators, 12 of them, can tell the
23 executive branch what it's going to do when it comes
24 to administering the executive branch," the Governor

1 said.

2 And there's another article here from the Chicago
3 Tribune with some of the similar quotes. I just want
4 to make these part of our record, Madam Chairman. I
5 think they're appropriate.

6 CHAIRWOMAN CURRIE: It will be Committee
7 Exhibit Number 32.

8 MR. GENSON: Can I make a brief comment?
9 This is what I began my statement to do. If we're
10 going to -- if we are going to determine impeachment
11 based on polls or editorials, we are not doing what we
12 are supposed to do. The fact is low poll numbers,
13 differences of editorials in 2007 --

14 CHAIRWOMAN CURRIE: Mr. Genson, if the Chair
15 could just intervene for a moment. I believe that
16 Representative Lang was introducing those statements
17 on the question who makes decisions around here. You
18 have said oh, the health care decision came from some
19 agency. He is making it clear.

20 MR. GENSON: No, what I said was other than
21 JCAR.

22 CHAIRWOMAN CURRIE: He is making it clear
23 that information is not about polls and editorials, it
24 is factual information about the Governor's response

1 to his authority to make certain decisions. And I
2 think --

3 MR. GENSON: And two of those editorials have
4 already been admitted. What I am saying is -- what I
5 said specifically was with regard to procurement, with
6 regard to Auditor General, both people, and with
7 regard to FOIA, both -- all three of them said they
8 did not speak with anyone directly or to the Governor
9 directly.

10 I never said that or made that assessment with
11 regard to JCAR, because we had two other editorials
12 that were admitted where he made those statements. So
13 I've never argued that.

14 CHAIRWOMAN CURRIE: Well, one could make the
15 argument that all of these people who report to the
16 Governor are in fact by extension the Governor him or
17 herself.

18 MR. GENSON: And if they're going to --

19 CHAIRWOMAN CURRIE: I think that would be a
20 reasonable proposition if one is looking at separation
21 of powers.

22 MR. GENSON: I don't think it's all that
23 reasonable, that if a number of subalterns do things
24 that the Governor has to be impeached because of it,

1 no.

2 CHAIRWOMAN CURRIE: I would agree with the
3 statement if the Governor immediately came back and
4 said oh, my heavens, they're overreaching their
5 authority, make them stop. Instead we have statements
6 from the Governor saying go for it.

7 MR. GENSON: Is anyone here going to stick up
8 for the Governor or do we have these people who have
9 to -- or is it one after another? I mean this is the
10 impartial panel that we all swore to --

11 CHAIRWOMAN CURRIE: We would be happy to have
12 the Governor stand up for himself, come to this
13 committee and explain who those shadows were.

14 Representative Lang, had you finished with your
15 statement?

16 REPRESENTATIVE LANG: Yes, thank you.

17 CHAIRWOMAN CURRIE: Thank you.

18 Is there any further questions or comments from
19 members of the committee?

20 Representative Durkin. Yes, we should put as
21 Committee Exhibit Number 33 the motion from the United
22 States Attorney's office. And again, the committee
23 would welcome hearing from Mr. Genson as soon as he's
24 able whether he plans to appeal that motion.

1 MR. GENSON: Well, it's not an appeal.

2 CHAIRWOMAN CURRIE: Or object to it.

3 MR. GENSON: When I read it I will file an
4 answer. When I file the answer I will give a copy to
5 the Chairperson and to the committee.

6 CHAIRWOMAN CURRIE: And you also were going
7 to do a written statement with respect to I think it
8 was a question from Representative Rose, and we'd
9 really appreciate it if we could have that by sometime
10 tomorrow.

11 MR. GENSON: I will not be able to get it
12 sometime tomorrow. I still have four hours to drive
13 back. I think -- unless we're going to have another
14 session. But I need a few days to respond to that.
15 More than tomorrow, it is New Year's Eve and I have
16 people --

17 CHAIRWOMAN CURRIE: Tomorrow is not, tomorrow
18 is the 30th. It's the eve of New Year's Eve.

19 MR. GENSON: I can't answer it until a day or
20 two after New Year's Eve.

21 CHAIRWOMAN CURRIE: Well, as quickly as you
22 can we would appreciate it. Again, We are expecting
23 more information from Tamara Hoffman. We do have
24 information from the Policy Procurement Board,

1 Procurement Policy Board, excuse me, and at this point
2 there may be other items that will come before the
3 committee. We don't know what the outcome of the
4 United States Attorney's request to Judge Holderman
5 will be.

6 So it would be the intention of the Committee
7 Chair to ask that the committee stand in recess to the
8 call of the Chair. We'll give everybody as much
9 notice as we can when they call us.

10 MR. GENSON: I'm supposed to answer this by
11 January 5th, you'll have my answer as soon as I answer
12 it. This is --

13 CHAIRWOMAN CURRIE: Are you suggesting we
14 will not have it until January 5th?

15 MR. GENSON: Well, I've got to read it first.

16 CHAIRWOMAN CURRIE: We appreciate that, sure.
17 I just --

18 MR. GENSON: I would expect I'll file it
19 before. So that you -- I will not file my answer to
20 this until the 5th, so you'll have it by the 5th.

21 CHAIRWOMAN CURRIE: All right. Thank you.

22

23

24

