



**STATE OF ILLINOIS  
95<sup>TH</sup> GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
SPECIAL INVESTIGATIVE COMMITTEE**

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**Minority Spokesman**

Jim Durkin

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**FINAL REPORT  
OF THE  
SPECIAL INVESTIGATIVE COMMITTEE**

**Issued January 8, 2009**

**REPORT OF THE SPECIAL INVESTIGATIVE COMMITTEE  
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## **I. Introduction**

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

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

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

### **A. The Rules and Procedure.**

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

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

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

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

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

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

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

### **III. Overview of the Impeachment Process**

Article IV, Section 14 of the Illinois Constitution provides:

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

Ill. Const. 1970, Art. IV, § 14.

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

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

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

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

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

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

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

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