

Questions in the affair of Illinois Governor Blagojevich

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Two top aides to Illinois Governor Rod Blagojevich resigned this week in the wake of the launching of criminal proceedings against the governor, and there was mounting pressure from state and national Democratic Party leaders for the governor himself to step down.

Deputy Governor Bob Greenlee resigned Wednesday and Chief of Staff John Harris stepped down Friday, deepening the governor's isolation. Harris was arraigned with Blagojevich on Tuesday on charges of influence-peddling, including an effort to sell the appointment to the US Senate seat vacated by President-elect Barack Obama.

Both Greenlee and Harris were rumored to be cooperating with the federal prosecutor, US Attorney Patrick Fitzgerald, who announced the charges against the governor at a Tuesday press conference.

Blagojevich met for four hours Saturday with a top criminal lawyer in Chicago, and there were widespread media reports—denied by a Blagojevich spokesman—that he planned to resign as governor on Monday.

While it has long been public knowledge that the US Attorney's office in Chicago was investigating the Blagojevich administration for a series of "pay to play" arrangements in which construction firms and other companies gave campaign contributions to the governor in return for state contracts, the rapid-fire events since Tuesday raise many questions.

Fitzgerald's decision to file a complaint and have the governor and his chief of staff arraigned, rather than seeking an indictment from a grand jury are highly unusual, as were his remarks at the Tuesday press conference.

In op-ed columns in *Yankee* and the *Times*, *Wall Street Journal*, former federal prosecutors sharply criticized Fitzgerald's conduct, noting that his much publicized comments at the press conference—declaring that the governor was engaged in "a political corruption crime spree" that "would make Lincoln roll over in his grave"—were highly prejudicial and improper.

Both columns noted that Fitzgerald was violating ethics guidelines. The Justice Department requires that prior to a trial a "prosecutor shall refrain from making extrajudicial comments that pose a serious and imminent threat of heightening public condemnation of the accused." The US district court for northern Illinois mandates that a "lawyer shall not make an extrajudicial statement the lawyer knows or reasonably should know is likely to be disseminated by public media and, if so disseminated, would pose a serious and imminent threat to the fairness of an adjudicative proceeding."

These guidelines are routinely ignored when the accused are poor, working-class or minority individuals, particularly those purportedly involved in terrorism. But it is relatively rare for a member of the political establishment, in this case a two-term sitting governor, to be treated in this fashion.

The frenzy to remove Blagojevich from office as soon as possible is also remarkable. Illinois Attorney General Lisa Madigan filed a motion with the state Supreme Court Friday seeking to have Blagojevich declared "incapable" of performing his office and have Lt. Gov. Pat Quinn installed as acting governor.

In her motion, Madigan argued that, "The pervasive nature and severity of these pending charges disable Mr. Blagojevich from making effective decisions on critical

time-sensitive issues.” She sought to invoke a provision in the state constitution allowing for the replacement of a governor on the grounds of “disability,” although the constitutional history suggests that this term was meant to apply to a physical or mental breakdown, not a prosecution.

The traditional constitutional separation of powers would seem to bar the courts from intervening in such a fashion against the executive branch. Madigan conceded that her motion has no legal precedent, remarking at a news conference, “I recognize that this is an extraordinary request, but these are extraordinary circumstances.”

Madigan’s father, Michael Madigan, the Democratic leader in the state House of Representatives, said he would move for impeachment of the governor at a special session of the legislature called for Monday in Springfield if Blagojevich did not resign or was not removed by the court. Impeachment, the traditional constitutional procedure for removal of a chief executive, would take considerably longer, since it would require a trial before the state Senate and conviction.

Neither of the Madigans, nor Lt. Gov. Quinn, nor Republican state legislative leaders who have given their enthusiastic support, explained why it was necessary to remove Blagojevich from office so precipitously, before any trial or even evidentiary hearing on the criminal charges brought against him by the US Attorney.

It is a peculiar fact that Blagojevich, were he to be forced out of office now, would be the fourth Democratic governor of a major state forced to leave office in the past five years, following the recall of Gray Davis in California in 2003, the resignation of New Jersey’s James McGreevey in 2004 and the resignation of Elliott Spitzer of New York earlier this year.

If there is a political motivation in the charges against Blagojevich, however, this could well involve a desire to protect a more important Democrat—President-elect Barack Obama. At least one top Obama aide, Congressman Rahm Emanuel of Chicago, Obama’s choice for White House chief of staff, was in contact with Blagojevich about the selection of Obama’s successor in the Senate.

While the Obama transition office refused to release any

information on such contacts for several days after the Blagojevich scandal become public, on Friday it confirmed that Emanuel had delivered a list to Blagojevich of a half-dozen prominent Democrats whom Obama could support as his replacement. Any telephone conversations on this topic between Emanuel and Blagojevich or Harris would likely have been tape-recorded by the FBI, which wiretapped the governor’s calls for nearly two months, beginning in mid-October.

The timing of Fitzgerald’s decision to bring charges against Blagojevich suggests that he may have wanted to act before anyone in the Obama camp could respond favorably to the governor’s shakedown effort. This fact is underscored by a report in the *Washington Post* Saturday noting that “debate raged within the legal community about whether US Attorney Patrick J. Fitzgerald moved prematurely to bring bribery and conspiracy charges before the consummation of an illegal act.”

In plain language, Blagojevich was arrested before he could make any deal for the delivery of the Senate appointment in return for political and/or financial favors. While he may well be guilty of a series of other corrupt practices, among them selling state contracts for campaign contributions, extortion against the owner of the *Chicago Tribune* and a Chicago-area children’s hospital, on the most sensational charge, the sale of Obama’s seat in the US Senate, he seems to have engaged only in thinking and talking, with no apparent overt action.

Fitzgerald not only preempted any possible deal between Blagojevich and Obama, he included exculpatory information about Obama in the 76-page document charging Blagojevich, including several quotes of telephone conversations in which the governor cursed the president-elect for failing to offer a quid-pro-quo for the Senate selection. The US attorney—whose job depends on re-nomination by the incoming president—also went out of his way to declare that he was making no suggestion that Obama or anyone in his transition team had acted improperly.



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