

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

In re)
Impeachment of)
Governor ROD R. BLAGOJEVICH)

**HOUSE PROSECUTOR'S
MODIFIED MOTION FOR ADDITIONAL WITNESS TESTIMONY**

House Prosecutor David W. Ellis, pursuant to Senate Impeachment Rule 15(b)(1), moves for the admission of additional witness testimony and, in support thereof, states as follows:

1. On Wednesday, January 21, 2009, the House Prosecutor filed a motion provisionally seeking the testimony of Special Agent Daniel Cain of the Federal Bureau of Investigation. The House Prosecutor noted that, under Senate Impeachment Rule 15(f) as well as federal regulations governing a state proceeding's use of a federal agent for testimonial purposes, the United States Attorney for the Northern District of Illinois had the ultimate authority to grant, deny, or restrict a state tribunal's right to elicit testimony from Mr. Cain.

2. At the time that Provisional Motion was filed, the House Prosecutor had not heard a response from the United States Attorney on whether Mr. Cain would be made available, and under what circumstances.

3. The House Prosecutor indicated in that Provisional Motion that if the United States Attorney granted access to Mr. Cain but with restrictions, the House Prosecutor would make a determination whether to accept those limitations or whether to withdraw the Provisional Motion.

4. By letter yesterday, January 22, 2009, the United States Attorney granted the House Prosecutor the right to elicit certain testimony from Mr. Cain in the Impeachment Trial. The United States Attorney stated that he was balancing his need to protect the integrity of an

ongoing criminal investigation against the interests of the State in these impeachment proceedings and decided that, under certain restrictions, he would permit Mr. Cain's testimony. A copy of his letter is attached to the Modified Motion.

5. As indicated in the attached letter, the United States Attorney has permitted Mr. Cain's testimony before the Impeachment Tribunal only with regard to the following:

- Special Agent Cain's background and responsibilities as an FBI agent;
- Whether the affidavit executed by Special Agent Cain [Exhibit 3] was accurate, to the best of Special Agent Cain's knowledge and belief, in light of the information available to him at the time he executed it;
- Whether the summaries and transcripts of intercepted conversations related in Exhibit 3, including the voice identifications, accurately reflect information available to Special Agent Cain at the time of his execution of the affidavit; and
- The general procedures that Special Agent Cain and other law enforcement agents assisting in the investigation followed in verifying the accuracy of the summaries and transcripts of the intercepted conversations related in Exhibit 3.

6. The United States Attorney, in his letter, cited relevant provisions of Department of Justice regulations that permit the United States Attorney to limit the scope of testimony by a Department employee (such as Mr. Cain) before a state tribunal. The United States Attorney has indicated that it is his intention to have an Assistant United States Attorney accompany Mr. Cain to the witness stand and to object to any questions—and instruct Mr. Cain not to answer questions—that exceed the scope of the areas outlined above.

7. After careful consideration, the House Prosecutor has decided to accept the terms of the United States Attorney's restrictions, because the information Mr. Cain will elicit would, among other things, confirm that the voice of Governor Blagojevich was heard on the intercepted conversations that are relevant to this Impeachment Trial. Thus, the House Prosecutor presents this Modified Motion for Mr. Cain's testimony, subject to the limitations described above.

8. Ultimately, this decision will be made by the Honorable Chief Justice and the Honorable Senate. It is the House Prosecutor's belief that this evidence is highly relevant to the matters at hand, and it is obvious that no other witness could possibly provide this information.

WHEREFORE, the House Prosecutor respectfully moves for the admission of the testimony of Special Agent Daniel Cain at the Impeachment Trial, subject to the limitations outlined by the United States Attorney in the attached letter.

Respectfully submitted,

**DAVID W. ELLIS,
HOUSE PROSECUTOR**



David W. Ellis
House Prosecutor
Illinois House of Representatives
412 State House
Springfield, IL 62706



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January 22, 2009

David Ellis
House Prosecutor and Counsel to the Special Investigative Committee
Illinois House of Representatives
412 State House
Springfield, Illinois 62706

Dear Mr. Ellis:

You have asked that this office authorize Federal Bureau of Investigation (FBI) Special Agent Daniel Cain to testify as a witness at the impending impeachment trial of Governor Rod Blagojevich in the Illinois Senate. We have treated your request as one made pursuant to the Department of Justice regulations governing the testimony of Department employees about matters relating to the performance of their official duties, 28 C.F.R. 16.21 *et seq.*

After carefully considering the needs of both the criminal investigation and the impeachment proceedings, as well as relevant legal restrictions, I have authorized Special Agent Cain, pursuant to 28 C.F.R. 16.21 *et seq.*, to provide testimony at the Senate impeachment trial of Governor Rod Blagojevich, on direct and cross examination, and in response to questions posed by Members of the Senate, limited to the following topics:

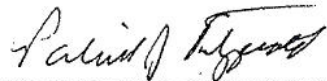
- Special Agent Cain's background and responsibilities as an FBI agent;
- whether the affidavit executed by Special Agent Cain in support of the criminal complaint filed against Rod Blagojevich and John Harris was accurate, to the best of Special Agent Cain's knowledge and belief, in light of the information available to him at the time he executed it;
- whether the summaries and transcripts of intercepted conversations related in the complaint affidavit, including the voice identifications, accurately reflect

information available to Special Agent Cain at the time of his execution of the affidavit; and

- the general procedures that Special Agent Cain and other law enforcement agents assisting in the investigation followed in verifying the accuracy of the summaries and transcripts of the intercepted conversations related in the complaint affidavit.

Because of the ongoing criminal investigation, pending criminal charges, and relevant legal restrictions, I do not authorize Special Agent Cain to testify more broadly about the conduct of the investigation or the facts set forth in the complaint affidavit. If Special Agent Cain is called to testify at the impeachment trial, he will be accompanied by an Assistant United States Attorney and instructed not to answer questions that are beyond the scope of this authorization.

Sincerely,



PATRICK J. FITZGERALD
United States Attorney