

1                   BEFORE THE ILLINOIS HOUSE OF REPRESENTATIVES  
2   IMPEACHMENT COMMITTEE  
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12           Hearing held on the 18th day of December, 2008, at  
13 the hour of 10:00 a.m., in Room 114, Illinois State  
14 Capitol, Springfield, Illinois.  
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18   TRANSCRIPT OF PROCEEDINGS

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## 1 COMMITTEE MEMBERS:

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4 REPRESENTATIVE EDWARD J. ACEVEDO

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19 REPRESENTATIVE CHAPIN ROSE

20 REPRESENTATIVE JIM SACIA

21 REPRESENTATIVE JIL TRACY

22 REPRESENTATIVE ARTHUR J. TURNER

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1           CHAIRWOMAN CURRIE: The special Investigative  
2 Committee will come to order. Apologies for our  
3 delayed start, but, Clerk, please call the roll.

4           CLERK: Currie?

5           CHAIRWOMAN CURRIE: Here.

6           CLERK: Durkin?

7           REPRESENTATIVE DURKIN: Here.

8           CLERK: Acevedo.

9           REPRESENTATIVE ACEVEDO: Here.

10          CLERK: Bassi.

11          REPRESENTATIVE BASSI: Here.

12          CLERK: Bellock.

13          REPRESENTATIVE BELLOCK: Here.

14          CLERK: Black.

15          REPRESENTATIVE BLACK: Here.

16          CLERK: Bost.

17          REPRESENTATIVE BOST: Here.

18          CLERK: Davis.

19          REPRESENTATIVE DAVIS: Here.

20          CLERK: Eddy.

21          REPRESENTATIVE EDDY: Here.

22          CLERK: Flowers.

23                    (No response.)

24          CLERK: Franks.

1 REPRESENTATIVE FRANKS: Here.

2 CLERK: Fritchey.

3 REPRESENTATIVE FRITCHEY: Here.

4 CLERK: Hamos.

5 (No response.)

6 CLERK: Hannig.

7 UNIDENTIFIED: Hannig's here.

8 CLERK: Howard.

9 REPRESENTATIVE HOWARD: Here.

10 CLERK: Lang.

11 REPRESENTATIVE LANG: Here.

12 CLERK: Mautino.

13 REPRESENTATIVE MAUTINO: Here.

14 CLERK: Rose.

15 REPRESENTATIVE ROSE: Yes. Thank you.

16 CLERK: Sacia.

17 REPRESENTATIVE SACIA: Here.

18 CLERK: Tracy.

19 (No response)

20 CLERK: Turner.

21 REPRESENTATIVE TURNER: Here.

22 CHAIRWOMAN CURRIE: We have a quorum, and  
23 it's our intention this morning to talk about issues  
24 involving the Governor's relationship with the Joint

1 Committee on Administrative Rules, the Governor's  
2 response to requests for information under the Freedom  
3 of Information Act, and to discuss with the Auditor  
4 General several audits run with respect to the flu  
5 vaccine buy, and the other -- the other audit was --  
6 had to do with efficiency standards.

7 Before we begin that, Representative Durkin, did  
8 you have a comment?

9 REPRESENTATIVE DURKIN: I just want to  
10 introduce -- joining us today is Special Counsel to  
11 the House Minority Leader is Bill Roberts, who will be  
12 joining from now on through the proceedings as far as  
13 they go.

14 CHAIRWOMAN CURRIE: Welcome, Mr. Roberts.  
15 Before we begin with this, Mr. Genson, if you have  
16 anything you'd like to tell us about, to say to us, we  
17 would be happy to hear it.

18 MR. GENSON: Thank you. I would like to make  
19 a correction. I quoted a statute yesterday, and I'd  
20 like to change the citation and briefly read the  
21 statute. It's regarding -- and I have no argument  
22 to make. I just want to read it into the record.  
23 That -- I figure that gets me in easier. Might I do  
24 that, Your Honor?

1           CHAIRWOMAN CURRIE: You may absolutely do  
2 that.

3           MR. GENSON: I'd like to call to the  
4 attention of the committee Title 18, Part 1, Chapter  
5 119, 2515. Prohibition of use as evidence of  
6 intercepted wire or oral communications. Quote,  
7 whenever any wire or oral communication has been  
8 intercepted, no part of the contents of such  
9 communication and no evidence derived therefrom may be  
10 received in evidence in any trial, hearing, or other  
11 proceedings in or before any court, grand jury,  
12 department, officer, agency, regulatory body,  
13 legislative committee, or other authority of the  
14 United States, a state, or a political subdivision  
15 thereof if the disclosure of that information would be  
16 in violation of this chapter.

17           It follows with certain rules that have to be  
18 followed before, in fact, these things are done, and  
19 none of them were, to my knowledge, done in this case.  
20 This is not an argument. I just am trying to inform  
21 the panel as to the nature of the statute that's  
22 applicable.

23           CHAIRWOMAN CURRIE: Yeah. And could we have  
24 a copy of that citation?

1 MR. GENSON: Yes, you can.

2 CHAIRWOMAN CURRIE: Tell us again -- tell us  
3 again the cite so that we can --

4 MR. GENSON: Title 18.

5 CHAIRWOMAN CURRIE: And this is where?

6 MR. GENSON: The United States Code.

7 CHAIRWOMAN CURRIE: Okay.

8 MR. GENSON: Title 18, Part 1, Chapter  
9 119, Section 2, 22, 15, and the follow -- and the  
10 following --

11 CHAIRWOMAN Currie: All right. Thank you  
12 very much.

13 MR. GENSON: -- and the following  
14 subsections. I'd rather not -- I don't want to  
15 belabor you with all of that but --

16 CHAIRWOMAN CURRIE: And if you have a copy  
17 we'd be happy just to --

18 MR. GENSON: I do. If they could make a copy  
19 for me, I'd give it to Mr. Ellis. Thank you.

20 CHAIRWOMAN CURRIE: Okay. That's great.  
21 Thank you very much. We'll then go to the first order  
22 which is the consideration of issues in respect to the  
23 Joint Committee on Administrative Rules, and the first  
24 witnesses are Robert Rich and Andy Morriss, both on

1 the faculty of the University of Illinois.

2 And I'm going to ask -- I'm going to swear  
3 each of you in. So, first of all, if you would just  
4 raise your right hand, you can do it together.

5 (Mr. Rich and Mr. Morriss  
6 were duly sworn.)

7 CHAIRWOMAN CURRIE: Good. And now if you'd  
8 be kind enough to state your name and your occupation.  
9 If you would spell your name for purposes of the court  
10 reporter, that would be particularly useful.

11 MR. MORRISS: My name is Andrew Morriss,  
12 M-o-r-r-i-s-s. I'm an H. Ross and Helen Workman  
13 professor of law and professor of business and a  
14 professor at the Institute and Government and Public  
15 Affairs at the University of Illinois, Urbana-  
16 Champaign.

17 MR. RICH: My name is Robert Rich, R-i-c-h.  
18 I'm director of the University of Illinois Institute  
19 of Government and Public Affairs and professor of law,  
20 political science, and medicine.

21 CHAIRWOMAN CURRIE: Thank you very much. And  
22 now if you'd proceed with your testimony.

23 MR. MORRISS: Thank you for the opportunity  
24 to address the committee. I'm a law professor at the

1 University of Illinois where I teach administrative  
2 law. In addition, much of my research concerns  
3 administrative law topics.

4 Administrative rulemaking is a key part of state  
5 government in Illinois and in every state of the  
6 union. Properly done, administrative rulemaking  
7 enables governments to function by allowing the  
8 legislature to delegate to executive branch agencies  
9 the task of creating detailed procedures and rules  
10 that implement the policies embodied in legislation.  
11 If legislators had to consider every detail of the  
12 rules necessary to put policies into effect before  
13 passing legislation, it would be virtually impossible  
14 for the state to act. To give you a sense of the  
15 volume of rulemaking in Illinois, the legislature's  
16 Joint Committee on Administrative Rulemaking or JCAR  
17 reports that it reviews approximately 20,000 pages of  
18 rules each year.

19 Rulemaking generally operates by an agency  
20 proposing a rule, implementing legislation, an  
21 opportunity for public comment, agency review of the  
22 public comment, and final determination of the content  
23 of the rule. Agencies can also issue emergency rules  
24 which take effect immediately.

1           In Illinois, since 1977, proposed agency  
2 rules or adopted emergency rules are submitted to the  
3 Joint Committee on Administrative Rules. As you know,  
4 JCAR has 12 members divided equally among the two  
5 parties and the two houses. JCAR review also includes  
6 opportunities for additional public input as well as  
7 for JCAR and the agency to agree to changes in the  
8 proposed rules. In some cases, JCAR issues  
9 recommendations to agencies, suggesting changes to  
10 proposed rules. JCAR can also issue a formal  
11 objection to a rule, and agencies must respond to such  
12 objections but are not required to change the rule in  
13 response to the objection.

14           Finally, JCAR has the authority to review rules  
15 issued by agencies to determine whether the rules are  
16 a threat to the public interest, safety, or welfare.  
17 If eight of the 12 members vote to reject the rule on  
18 these grounds, the proposed rule may not be made  
19 effective and an emergency rule is repealed.

20           Governor Blagojevich challenged the  
21 constitutionality of JCAR in November 2007 when he  
22 refused to accept JCAR's veto of proposed rules  
23 extending the FamilyCare program to additional  
24 individuals without seeking a change in the underlying

1 statute. My colleague, Bob Rich, will discuss this in  
2 detail.

3 For the delegations of power from the  
4 legislature to executive branch agencies necessary to  
5 allow the gover -- state government to function to  
6 have democratic legitimacy, the legislature must have  
7 powers of review of the details implemented to  
8 rulemaking. Without such oversight, the executive  
9 branch would be able to exercise legislative powers it  
10 is forbidden to exercise by the principles of  
11 separation of powers embodied in every state's  
12 constitution, which Florida State University of Law  
13 Professor Jim Rossi termed a bedrock principle in all  
14 50 state constitutions.

15 Moreover, administrative agencies not subject  
16 to legislative review are not readily accountable to  
17 the public for their actions. Individual agencies may  
18 also suffer from tunnel vision, focusing on their  
19 particular missions at the expense of broader state  
20 policy. Legislative review of agency rulemaking can  
21 ensure both that executive branch officials are  
22 accountable to the public and that an appropriate  
23 balance is struck among the many policy priorities of  
24 the state government. Most importantly, legislative

1 review of agency rulemaking ensures that the  
2 fundamental policy choices are made by elected  
3 representatives of the people, not unelected officials  
4 serving at the pleasure of the governor.

5           Thirty-eight states, including Illinois, have  
6 official mechanisms for legislative review of  
7 administrative rules created by the executive branch.  
8 Twenty-two states, including Illinois, have  
9 legislative rule review committees, and 18 states,  
10 including Illinois, allow the legislature to veto a  
11 rule by resolution or one of both houses. Such  
12 mechanisms have a long historical pedigree dating back  
13 to at least 1939 when Kansas adopted the first state  
14 legislative review mechanism. Illinois' practice is  
15 also consistent with British practice under which  
16 rules are laid before Parliament and subject to its  
17 veto. Federal efforts, however, to provide  
18 legislative veto provisions for Congress have been  
19 held unconstitutional by the Supreme Court under the  
20 federal Constitution as violating the Presentment and  
21 Bicameralism Clauses of the Constitution. That  
22 decision has been heavily criticized as excessively  
23 formalistic and has not been followed by states.

24           while there have been legitimate questions

1 raised about the constitutionality of the JCAR process  
2 under the Illinois Constitution, those questions  
3 should be resolved through the courts. Moreover, JCAR  
4 is an important and integral part of the Illinois  
5 Administrative Procedure Act, and it is unlikely that  
6 it could be readily severed from the rest of the Act.  
7 Thus if JCAR is unconstitutional, it likely means the  
8 entire rulemaking process would need to be rewritten.  
9 Governor Blagojevich's actions in 2007 in unilaterally  
10 rejecting the JCAR process alone attempted to sever  
11 one check from the set of checks and balances embodied  
12 in the state administrative process, shifting a  
13 significant degree of power from the legislature to  
14 the executive branch.

15 CHAIRWOMAN CURRIE: Thank you very much.  
16 Mr. Morriss. I think we'll hear from Professor Rich  
17 and then have questions for both of you. But if your  
18 testimony is written, we'd appreciate a copy. Thank  
19 you.

20 MR. RICH: Thank you for the opportunity to  
21 present testimony before you today. I've been asked  
22 to comment on the rulemaking authority of the Chief  
23 Executive in Illinois and about rulemaking in the area  
24 of healthcare programs and policies which have been

1 promoted by the Governor. I will focus on the case of  
2 the attempt to expand FamilyCare -- the FamilyCare  
3 program through adminis -- emergency -- so-called  
4 emergency rulemaking.

5 In 1975, the Illinois General Assembly  
6 enacted the Illinois Administrative Procedures Code,  
7 IAPA, to create a procedure through which  
8 administrative agencies would exercise the authority  
9 delegated to them by the legislature to create  
10 administrative law through the adoption of agency  
11 regulations. In 1977 the IAPA was amended to add a  
12 process by which the General Assembly would oversee  
13 the exercise of this delegated authority to the Joint  
14 Committee on Administrative Rules, JCAR, a service  
15 agency of the General Assembly. Rules of  
16 administrative agencies are valid and enforceable only  
17 after they've been through the rulemaking process  
18 prescribed by IAPA. Rules are for the purpose of --  
19 rules are for the purpose of interpreting or  
20 implementing provisions of a statute and should not  
21 actually expand or limit the scope of the statute.  
22 The premise underlying the Administrative Procedures  
23 Act and JCAR reflects the fundamental division of  
24 governmental power of the federal and state levels

1 into three branches -- a separation that is designed  
2 to provide an effective check and balance against  
3 excesses by any single branch.

4 Most Illinois residents don't pay much  
5 attention to JCAR and its functions, but this panel  
6 came into specific spotlight when Governor Blagojevich  
7 in November of 19 -- November of 2007 unilaterally  
8 attempted to expand eligibility for state-subsidized  
9 health insurance, which represented a first step in  
10 his goal of providing universal healthcare in  
11 Illinois. JCAR decided to block this attempt. As  
12 already alluded to, the Governor sought an emergency  
13 change in the eligibility rules for his FamilyCare  
14 program so that people earning as much as 400 percent  
15 of the federal poverty level, \$92,600 for a family of  
16 four, would be eligible for the program.

17 Currently, the eligibility standard is 185 percent  
18 of poverty or \$32,803 for a family of four. This  
19 represents a component of the \$2.1 billion healthcare  
20 program envisioned by the Governor which was not  
21 passed by the legislature.

22 It was in November of 2007, as Andy already  
23 alluded to, that the Governor filed an emerg -- quote,  
24 emergency order, end quote, that would have allowed

1 147,000 parents and other caretakers to buy discounted  
2 insurance through the state's FamilyCare program. The  
3 order said that the move qualified as a, quote,  
4 crisis, end quote, because these individuals lacked,  
5 quote, access to affordable health insurance.

6 As you know, JCAR voted nine to two to reject this  
7 change, stating this was not an emergency. And as  
8 Professor Morriss already indicated, the threshold is  
9 eight votes. It would only be under an, quote,  
10 emergency, end quote, the Governor would be able to  
11 unilaterally introduce such a change, which is why the  
12 Governor then ordered the Department of Health and  
13 Family Services to start enrolling people at the  
14 higher income level despite JCAR's decision.

15 As we think about this case, let's remind  
16 ourselves what the role of JCAR is. The panel's job  
17 is to review all rules the state agencies want to  
18 adopt to make sure that every proposal accurately  
19 carries out what the legislature intended when it  
20 creates a program.

21 JCAR is the watchdog for the General Assembly  
22 charged with overseeing the implementation of the laws  
23 made by the legislative branch. If JCAR prohibits a  
24 rule, as it did with Governor Blagojevich's health

1 proposal, the state agency in question may not enforce  
2 the rule. Hence the Governor's order to Health and  
3 Family Services intake workers is highly problematic  
4 because the ban is permanent until the agency revises  
5 the proposed rule to JCAR's satisfaction, which did  
6 not occur in this case.

7         Given the Governor's stance in this important  
8 healthcare case, there are a set of reviewing  
9 questions that should be posed. First, would a family  
10 care intake worker by committing -- would a family  
11 intake worker be committing welfare fraud in enrolling  
12 someone for state-subsidized health insurance which  
13 income exceeds the legal limit established by the rule  
14 the Governor sought to change?

15         Two, if a doctor treated that person and then  
16 billed the state, would he or she be party to welfare  
17 fraud? would the bill even be paid?

18         Third, if the state refused to pay a medical bill,  
19 would the patient then face an unexpected medical cost  
20 potentially leading to action by a collection agency  
21 and unfavorable credit rating?

22         And, fourth, if the state were to decide to cover  
23 the medical bills projected to be more than \$200  
24 million, where would the money come from?

1           Ultimately, in my judgment, what was done here  
2 represents a real problem. The Governor was trying to  
3 dramatically increase eligibility without legislation  
4 or spending authority. This leads one to the  
5 inevitable conclusion that the Governor was either  
6 going to try to force the legislature into passing  
7 more funding or simply fund program changes without  
8 appropriations, claiming that he has the authority to  
9 do so.

10           Either one of these interpretations raises serious  
11 questions about the Chief Executive's exercise of  
12 appropriate authority. In my judgment, these actions  
13 are irresponsible, not consistent with appropriate  
14 constitutionally-provided checks and balances, and  
15 they are very problematic.

16           Our Constitution in Illinois provides that  
17 spending can only occur on programs designated by the  
18 General Assembly or through delegated power by the  
19 executive. That delegated authority is relatively  
20 small and primarily allows for a program to be  
21 supported if it ends up costing more than expected,  
22 not simply because the Governor does not agree or  
23 because he has different priorities from the General  
24 Assembly.

1           Let me conclude by saying the Governor's  
2 healthcare goals are laudatory. They're designed to  
3 address critical access and affordability problems  
4 facing Illinois and the nation.

5           However, the way in which he exercised rulemaking  
6 authority in this case far exceeded his authority and  
7 actions and represent a problematic action.

8           CHAIRWOMAN CURRIE: Thank you very much,  
9 Professor. I know we have copies of your written  
10 testimony.

11          MR. RICH: We do.

12          CHAIRWOMAN CURRIE: And it's up to the panel.  
13 Do you want to wait till we hear other people on this  
14 topic and then do questions, or would you like to do  
15 questions as we go? well, why don't we just ask you  
16 to wait, and then we'll hear from the other people who  
17 have testimony to offer us on issues of the Joint  
18 Committee on Administrative Rules, but just stay --  
19 stay close by.

20          And then the next person would be Vicki Thomas,  
21 who is the executive director of the Joint Committee  
22 on Administrative Rules. And, Vicki, if you would  
23 raise your right hand.

24                           (Ms. Thomas was duly sworn.)

1 CHAIRWOMAN CURRIE: Thank you very much.

2 And could you introduce the woman who is with you.  
3 If she's going to give testimony, we'd like her to  
4 swear to that as well.

5 MS. THOMAS: This is Clare Eberle, she's my  
6 deputy director, and Ed Stasiewicz on our staff, who  
7 specializes in human services. They're here to  
8 support me if you ask factual questions with which I  
9 need --

10 CHAIRWOMAN CURRIE: So do we anticipate that  
11 they will be answering questions themselves?

12 MS. THOMAS: Probably not directly.

13 CHAIRWOMAN CURRIE: Pardon me?

14 MS. THOMAS: Probably not directly unless you  
15 request it.

16 CHAIRWOMAN CURRIE: Okay. All right. Well,  
17 if they do, remind me to swear them in so -- and then  
18 if you would just give your name, Vicki, and spelling  
19 and the exact title to the court reporter.

20 MS. THOMAS: My name is Vicki Thomas,  
21 v-i-c-k-i T-h-o-m-a-s. I'm the executive director of  
22 the Joint Committee on Administrative Rules. I've  
23 held that position since 1991. Prior to that, I spent  
24 18 years on state Senate staff. So I've basically

1 been involved in state government and the legislative  
2 process now for 35 years.

3           What I've heard so far from the people from  
4 U of I has been right on target. Unfortunately, I'm  
5 going to be a little repetitive of that because I  
6 wasn't sure where they were going this morning. I'm  
7 going to start out by -- where they've described to  
8 you the sausage that is the administrative rule  
9 process, I will take you a little bit more into the  
10 sausage factory, into what we do on a daily basis  
11 where we get our job done.

12           I'll start out by really explaining the game  
13 rules, the foundation on which we work, which is the  
14 Illinois Administrative Procedures Act. I hope it's  
15 not too dry for you. Some of you in this room are as  
16 knowledgeable about these elements as I am. Some of  
17 you don't deal with it. So I think if we have that  
18 foundation, it will help when we have just dialogue  
19 together a little bit later. Okay?

20           All right. JCAR is part of Illinois' checks  
21 and balances system. The General Assembly created  
22 JCAR in 1977 and delegated to it the responsibility of  
23 the legislative branch to ensure that the statutory  
24 laws it enacts are properly implemented through

1 administrative law.

2 The important point there is that we are simply a  
3 part of the General Assembly. Any power, any  
4 authority that JCAR exercises is the authority of the  
5 General Assembly. There's nothing that we can do that  
6 the General Assembly cannot override. So, ultimately,  
7 the responsibility is all of yours.

8 Okay. The committee is comprised of 12  
9 legislators, three from each caucus. It's currently  
10 served by a staff of 16 that includes six professional  
11 rules analysts.

12 When the General Assembly enacts statutory law, it  
13 frequently leaves to administrative agencies the  
14 responsibility of filling in the details required to  
15 fully implement those statutes. The agency does this  
16 through administrative laws called rules or  
17 regulations.

18 It is therefore incumbent on the legislature to  
19 monitor the agencies' handlings of the  
20 responsibilities delegated to it. Ultimately, the  
21 legislative branch is the law making branch. It  
22 can't, without oversight, pass that authority on to  
23 anyone else.

24 In Illinois, that function of the General Assembly

1 is exercised through JCAR's administrative rules  
2 process. The statute governing JCAR's conduct and the  
3 conduct of state agencies in adopting amendments,  
4 adopting and amending their rules is the Illinois  
5 Administrative Procedure Act or the IAPA. It is and  
6 always has been one of the strongest administrative  
7 review laws in the country.

8 In the 1980s, the procedure was further  
9 strengthened by two supreme court decisions: Senn  
10 Park Nursing Center versus Miller, who was then the  
11 director of the Department of Public Aid, and Kaufman  
12 Grain Company versus the Illinois Department of  
13 Agriculture. In short, those decisions validated the  
14 IAPA provision that state agency policy that affects  
15 anyone outside of the state agency can only be  
16 expressed through rules adopted under the IAPA. Even  
17 one agency cannot tell another agency what to do  
18 without doing it through rules.

19 Just as an example, when the new fingerprint  
20 system was put into place that is now just throughout  
21 all kinds of governmental programs, the Department of  
22 State Police couldn't just send a memo to other  
23 agencies saying you now have to use our fingerprint  
24 system. They had to develop a rule telling other

1 agencies that that's what they had to do. It's the  
2 only way they can officially order anyone outside of  
3 their agency to do something.

4 Prior to enactment of the IAPA, a state agency was  
5 allowed to file its rules with the Secretary of State  
6 for public access, if it chose to do so. For that  
7 reason, we have some rules on the books whose  
8 initiation dates back to at least the 1930s. Those  
9 are ones that I've just particularly noticed.

10 Nothing, however, required an agency to officially  
11 file its rules. Those rules could simply be a pile of  
12 policy statements housed in an agency director's desk  
13 drawer. They could be amended on a whim with no  
14 required public notice. Yet the public affected by  
15 those rules and regulations could be held in  
16 compliance with them.

17 The basic tenets of the IAPA are that no  
18 agency policy can be enforced without first being  
19 adopted as a rule, with some clearly stated  
20 exceptions. The agency's intent to adopt, amend, or  
21 repeal a rule must be publicly announced, with anyone  
22 being entitled to offer comment to the agency on its  
23 proposal. The agency's proposal is then -- again,  
24 with some exceptions that are stated in the IAPA --

1 reviewed by JCAR, with a further opportunity for the  
2 public to comment to JCAR before it takes up its  
3 official deliberations on the rule.

4 And, finally, upon adoption of those rules,  
5 they become part of the compilation of all of the  
6 rules of the state which is called the Illinois  
7 Administrative Code. The code is officially on file  
8 in the index department at the Secretary of State's  
9 office, and an unofficial version maintained and,  
10 sometimes to my chagrin, updated weekly by JCAR is on  
11 the General Assembly's website.

12 In essence, the IAPA brought daylight to the  
13 process of creating administrative law in Illinois.  
14 It's something that I don't think we want to lose.

15 Just as a little follow-up to one of the  
16 comments the professors made when they said that  
17 people of the State of Illinois rarely know that JCAR  
18 exists. I was in a court in northern Illinois a few  
19 years ago on an issue where the judge from the bench  
20 made an unofficial comment. He said, "I didn't know  
21 JCAR existed, but I'll tell you I'll sleep better now,  
22 now that I know they're there." If more people really  
23 followed our process, I think they'd probably share  
24 that sentiment.

1           The JCAR membership meets at least once each month  
2 to consider an agenda that has recently ranged from 30  
3 to 60 state agency rulemakings. Prior to this  
4 administration, many of our agendas would house up to  
5 a hundred rulemakings, and I will tell you a little  
6 bit later why the hundred rulemakings a month was  
7 preferable to the 30 to 60.

8           JCAR can expect to review in a year's time about  
9 20,000 pages of information. And, remember, I'm doing  
10 this with six staff analysts. I'll get in my little  
11 plug while I'm here.

12           The IAPA dictates that the committee's analysis of  
13 rulemakings be based on such concerns as statutory  
14 authority and legislative intent, necessity for the  
15 regulation, economic impact on state government and  
16 the affected public, completeness and appropriateness  
17 of the standards to be relied upon when an agency  
18 exercises discretion, effect on local government and  
19 small business, adherence to the statutory rulemaking  
20 requirements, and others.

21           In rules -- this rules review responsibilities  
22 inherently create an adversarial relationship between  
23 JCAR and the state agencies, and by adversarial I  
24 don't necessarily mean argumentative. You know, we

1 deal with these people daily, and a lot of the  
2 relationships are very professional and cordial. I  
3 simply mean they have a position they have to espouse,  
4 and we have laws we have to protect. Those can  
5 sometimes be adversarial positions. On a daily basis,  
6 the relationship can be a lot less adversarial than  
7 one might expect.

8 JCAR's ultimate goal is that Illinois government  
9 produce the most legally-grounded, least onerous,  
10 least costly, and most efficient and effective body of  
11 administrative law possible. Most state agencies  
12 share that goal. The types of criticism JCAR might  
13 offer on a rulemaking range from simply pointing out  
14 that a sentence is missing a verb -- hence makes no  
15 sense -- to claiming that the agency is blatantly  
16 violating statute. We run the gamut. We look at  
17 everything. We look at indentation. We look at  
18 consistency in the style of the administrative code,  
19 and we look at is what they're doing legal, funded,  
20 constitutional. So we're looking at it all.

21 JCAR offers what we call the cold read.  
22 We're not the specialists that are dealing with these  
23 programs, we're the generalists. So we can step back,  
24 and we can look at the broad picture where frequently

1 the agency program people can't. We look at it the  
2 way -- what we try to do is look at it the way that  
3 the filling station owner, the plumber, the doctor,  
4 whoever has to live under that rule would look at it.  
5 If they can't -- if we can't read it and understand  
6 it, then most of those people don't have a prayer. So  
7 we're the funnel through which it all flows, and we  
8 work on a lot of angles to try to make it at least  
9 decipherable.

10 Looking at the rulemakings JCAR has considered  
11 over the past four years illustrates the point I was  
12 making about how most rules are really not bad rules.  
13 Of roughly 1800 rulemakings we've looked at over the  
14 last four years, 90 percent met with no negative JCAR  
15 action. 90 percent of them.

16 Okay. That means that the people out there  
17 administering the programs were doing exactly what  
18 they were supposed to do; or that, after JCAR reviewed  
19 it and in negotiation with JCAR, they got to the point  
20 where they were doing exactly what they were supposed  
21 to be doing. I'm not saying they came in perfect.  
22 I'm saying, by the time they got to a JCAR meeting,  
23 they were something that we felt could be lived with.  
24 You can't always achieve perfection, but you're always

1 trying to achieve as close to perfection in a rule as  
2 you can get. So on 90 percent of the issues, we've  
3 gotten to what we consider to be a comfort level. We  
4 could get behind that agency and pretty much say we  
5 can share their responsibility for that rule, we don't  
6 have any doubts about it. The other 10 percent can be  
7 very controversial.

8 But when I say that we take action, we can take  
9 action anywhere from a simple recommendation all the  
10 way through a filing prohibition. So we have -- even  
11 amongst those 10 percent, not all of those were  
12 particularly egregious issues.

13 When JCAR considers a rulemaking, it has a variety  
14 of options available under the IAPA. If it finds that  
15 a rulemaking is within its statute authority and that  
16 no other major problems exist, it issues a certificate  
17 of no objection. With that certificate, the agency  
18 can proceed to adopt its rule.

19 When JCAR has outstanding issues with a rulemaking  
20 but doesn't categorize those deficiencies as serious,  
21 it issues a recommendation. It may be a situation of  
22 JCAR saying we understand how you have to interpret  
23 the statute the way you're interpreting it, but we  
24 believe the statute could be clearer; so we recommend

1 that you go back to the legislature next session and  
2 try to get the legislature to clarify it even more for  
3 you.

4 It might -- we might say, well, we understand you  
5 have to do what you have to do right now, but we want  
6 you to take a little more long-range view. We'd like  
7 you to look at this particular element for six months,  
8 and then come back and tell us where you stand on it  
9 in that period of time.

10 We can recommend that they add a comma. Can be  
11 any variety of things. Again, they don't always have  
12 to be earth-shakingly serious. If it believes the  
13 issues are serious, it votes an objection. With  
14 either a recommendation or an objection, the agency  
15 can respond to the JCAR action by further modifying  
16 the rulemaking to abate JCAR's concerns.

17 It can then abandon the rulemaking, or it can  
18 adopt the rulemaking with no changes. They don't have  
19 to respond by making any modifications. At that point  
20 the issue is totally in the hands of the agency; it's  
21 their decision. Up to this point in the process, JCAR  
22 has done nothing to tell an agency absolutely no.

23 In instances in which the committee finds the  
24 problems with the rulemaking to be most egregious, it

1 can prohibit filing of a proposed rule or, with  
2 respect to an emergency or preemptory rule, which are  
3 already adopted prior to JCAR review, the committee  
4 can suspend the filed rule. Those terms are basically  
5 the same. One just applies to a proposal that's not  
6 yet been adopted. The other applies to an emergency  
7 rule that has been adopted.

8 JCAR has habitually used the strongest of its  
9 actions when it believes the agency's action is in  
10 serious violation of statutory law or legislative  
11 intent. Frequently, by the way, that legislative  
12 intent is determined by what you did with the budget.  
13 Sometimes things are not always spelled out in  
14 statutory language. Sometimes we have to go back and  
15 look at the money flow to determine what the  
16 legislator's intent is.

17 But, as an aside to that, by the way, what JCAR  
18 does on a rule as it goes through is one of the  
19 easiest things for a court to look at when it's  
20 determining legislative intent. Courts have found  
21 that the words of a sponsor in a record are simply the  
22 statements of a single legislator. Because of its  
23 delegated authority, when JCAR takes an action, that's  
24 about the strongest indication of legislative intent

1 that a court can look at.

2 For an 180-day period after JCAR issues a  
3 filing prohibition or a suspension, further  
4 discussions and negotiation with the agency can result  
5 in JCAR withdrawing its action and allowing the  
6 rulemaking to proceed, usually with modifications.  
7 Sometimes it's simply because they come in with better  
8 information than they gave us the first time.

9 Also during that time period the General Assembly  
10 as a whole can override the JCAR action through  
11 passage of a joint resolution. If neither of these  
12 actions occurs within the 180 days, a suspended rule  
13 by action of law by the IAPA is automatically  
14 repealed. A prohibited rulemaking is prohib --  
15 permanently barred from being filed.

16 In its entire 31-year history, JCAR has issued a  
17 filing prohibition or suspension only 69 times.  
18 Thirty-three of the 69 instances, almost half, have  
19 occurred during the six years of the current  
20 administration. The filing prohibition/suspension  
21 process has worked effectively as a mechanism for  
22 encouraging further negotiation and conflict  
23 resolution. In only nine instances of the 69 has an  
24 issue remained unresolved after the 180-day

1 negotiation period. All but two of those unresolved  
2 situations have occurred under the current  
3 administration.

4 I'd like to finish this little presentation on  
5 Rulemaking 101 with one further comment. There's a  
6 general tendency by the public and sometimes by the  
7 legislature to regard rules and rulemaking as a bad  
8 thing. How often have you ever heard someone -- one  
9 of your constituents, probably -- say it wasn't the  
10 statute that hurt me, it was the rules that came  
11 later.

12 In my tenure at JCAR, I've come to a little bit  
13 different conclusion on that. Yes, rules place  
14 restrictions on how people conduct their lives and  
15 their business, but so do statutes.

16 More importantly, rules place restrictions on the  
17 bureaucracy. No one would be more in favor of having  
18 fewer rules than the people who administer state  
19 government. Rules create parameters within which  
20 agencies must exercise their authority and their  
21 discretion. They help guarantee that all citizens  
22 have equal access to state programs and services.

23 At JCAR we have to guard as much against an  
24 agency's failure to adopt necessary rules as we

1 monitor the rules they do adopt. The rules are  
2 sometimes the public's best protection against a  
3 bureaucracy that has its own agenda.

4 As you can tell from my description of JCAR  
5 functions, we're a legislative agency that works very  
6 closely with the executive branch of government. It's  
7 what we do every single working day. I personally  
8 have served in this position under the past three  
9 governors. For that reason, I believe I'm in a  
10 position to offer to this committee some observations  
11 on the operations of the current administration.

12 When I came to JCAR in 1991, I had to  
13 seriously interact with state government bureaucracy  
14 for the first time. As a Senate member, I called  
15 them, I got my answers. They didn't buck me. Excuse  
16 me. As a Senate staff member. Let me clarify. When  
17 I had to deal with them a lot more, I have to admit I  
18 was surprised. I did not realize it was like that for  
19 most people but -- yeah.

20 I found, when I got to JCAR and had to deal with  
21 them seriously, that often their priorities weren't  
22 the same as those I had observed in the legislative  
23 branch. While most state employees understand that  
24 ultimately their job exists in some way to serve the

1 citizens of Illinois, I encountered some who seemed to  
2 put a lot of energy into avoiding the public and its  
3 needs. For some, responsibility for state function  
4 appeared to be viewed as a personal power or  
5 authority.

6 One of the first lessons I learned was that the  
7 Governor's office can be a great ally in dealing with  
8 the problems caused by bureaucratic attitudes.  
9 Governors, like legislators, are generally sensitive  
10 to and responsive to the needs of the public because  
11 they have to account for their actions every time they  
12 go to an election.

13 Not so for the mid-level bureaucrat. Numerous  
14 times during the prior two administrations I contacted  
15 staff in the Governor's office and a problem of agency  
16 intransigence would quickly be resolved. We could be  
17 partners in making state government better.

18 Based on that experience, I contacted the  
19 Governor's office multiple times early in this  
20 administration and suggested that it assign someone as  
21 liaison to JCAR. I am still waiting for a response to  
22 those requests.

23 Instead, a policy was reportedly established --  
24 and I'm saying reportedly because I don't have access

1 to dictums that flow between the Governor's office and  
2 his agencies. We're simply going with conversation  
3 that we have then with the agency employees as they do  
4 their jobs.

5 So a policy was reportedly established that  
6 virtually all agency rulemaking proposals had to be  
7 reviewed by the Governor's office of management and  
8 budget. This has virtually put a stranglehold on  
9 rulemaking activity.

10 JCAR has issued many procedural objections and  
11 recommendations over the past few years based on  
12 agencies missing statutorily-mandated deadlines for  
13 program implementation, or for tardy rulemaking, which  
14 put the agency in a position of enforcing policy not  
15 in rule which is in blatant violation of the IAPA and  
16 its supporting court decisions.

17 The only reason agency personnel could offer for  
18 their tardiness was that their rulemaking proposals  
19 had gotten held up in GOMB. State employees have  
20 occasionally made statements to us in an attempt --  
21 that, in an attempt to comply with state and federal  
22 law, they felt they were putting their jobs on the  
23 line by proceeding with rulemaking without waiting for  
24 GOMB approval.

1           while slowing down on rulemakings might sound  
2 like a good thing, in many cases state activity  
3 doesn't --

4           CHAIRWOMAN CURRIE: I wonder if you could  
5 really talk more about the particular issue having to  
6 do with the Governor's decision to go around JCAR. I  
7 mean, what you're telling us may be useful  
8 information, but I'm not sure it's relevant to this  
9 hearing.

10          You know, if you think the Governor should do  
11 rulemaking more quickly, well, I'm not sure that's  
12 something that is part of this particular inquiry.

13          MS. THOMAS: Okay. My point there was not  
14 doing timely rulemaking results in policy not in rules  
15 which is blatantly illegal. So that was my point.

16          I also was led to believe that you were interested  
17 in how -- my experiences under this administration  
18 opposed to prior administrations I'd worked under.  
19 What would you like me to skip directly to?

20          CHAIRWOMAN CURRIE: Well, again, the fact  
21 that he didn't appoint a legislative liaison, I don't  
22 think that's something that's particularly relevant to  
23 this inquiry. And whether they are slower or faster  
24 than other administrations in promulgating rules, I'm

1 not sure that's directly relevant to our inquiry  
2 either.

3 MS. THOMAS: I understand your point.

4 CHAIRWOMAN CURRIE: If there's anything that  
5 you haven't already said that you feel you would want  
6 to tell us, that would be good.

7 MS. THOMAS: My next paragraph gets into  
8 what --

9 CHAIRWOMAN CURRIE: Pardon me?

10 MS. THOMAS: My next paragraph gets into what  
11 is tied to that thought, which is flow of information.  
12 Okay. Another point of comparison between the current  
13 administration and the others with which I have worked  
14 involves the flow of information.

15 The state agencies house the experts that make  
16 state programs function. JCAR has a staff of eight  
17 generalists, including myself, who must evaluate the  
18 implementation of statutory law. We rely on agency  
19 staff to explain their policies, their procedures, and  
20 their rulemakings to us and to back up their points  
21 with documentation when necessary.

22 While rules are viewed as inherently an  
23 adversarial process, it has classically had game  
24 rules. If my staff asks the right questions, then

1 state employees in the other branch of government were  
2 expected to answer truthfully and to provide the  
3 materials we needed. Both sides could understand the  
4 other side's position and understand it might not be  
5 the same as theirs, but they could not withhold  
6 factual information. That has never been part of the  
7 scenario.

8 while still observed by many agencies, these game  
9 rules seem to have been set aside by others. In some  
10 agencies, even the simplest request for purely factual  
11 information that JCAR needs with respect to  
12 noncontroversial rulemakings must be cleared by an  
13 agency's chief legal counsel. Rules liaisons are  
14 virtually not allowed to respond to JCAR without  
15 permission when interaction with JCAR is at the heart  
16 of their job.

17 For example, it can take weeks to get information  
18 from the Department of Public Health even when JCAR's  
19 facing a meeting deadline. It's because everything  
20 there has to go through the chief legal counsel. This  
21 situation is new with the administration -- with this  
22 administration.

23 In the past, if a chief legal counsel got involved  
24 in a JCAR issue, it was because the substantive issues

1 there were prime, they were important to the front  
2 office of that agency, or there was some serious  
3 conflict and the legal counsel was there to help  
4 resolve it.

5 Under this administration, the Governor's office  
6 has exercised more direct control over legal counsels;  
7 so you'll find that in the average state agency more  
8 flows through the chief legal counsel than it ever  
9 has.

10 A prime example of restricted information flow is  
11 the Department of Healthcare and Family Services,  
12 where, again, factual answers can be held up for weeks  
13 or sometimes permanently.

14 CHAIRWOMAN CURRIE: Are you coming to a  
15 close?

16 MS. THOMAS: I was coming to Department of  
17 Healthcare and Family Services. I'd be glad to skip  
18 that part, if you'd like.

19 CHAIRWOMAN CURRIE: Well, I guess -- I  
20 thought we were going to get more pointed testimony,  
21 and I think one of the points really wasn't -- some of  
22 the stuff about legislative liaisons or control over  
23 agencies, but let me just -- some of your members are  
24 here. Representative Lang.

1           REPRESENTATIVE LANG: Madam Chairman, the  
2 testimony by Ms. Thomas as to the Department of  
3 Healthcare and Family Services I believe will be  
4 critical to --

5           CHAIRWOMAN CURRIE: And that was -- I thought  
6 that I was suggesting that she get to that when we  
7 last had an interchange. So why don't you carry on  
8 with that, please.

9           MS. THOMAS: I would be happy.

10          CHAIRWOMAN CURRIE: And we first would like  
11 written copies of your testimony.

12          MS. THOMAS: I -- like I say, I was asked to  
13 put this in a framework of past experience to lead  
14 into Department of Healthcare and Family Services. I  
15 was also asked to look more broadly than Healthcare  
16 and Family Services. I do have a paragraph on other  
17 agencies if your interested. Otherwise, I can go  
18 right to HFS.

19          CHAIRWOMAN CURRIE: I would go right to that.

20          MS. THOMAS: Okay. FamilyCare is the program  
21 that provides medical assistance to responsible adult  
22 relatives of children in the KidCare program whose  
23 family incomes are above 133 percent FPL. Under 133  
24 percent they are entitled to straight medical

1 assistance so that's why that's the base level.

2 KidCare is the program created under the federal  
3 State Children's Health Insurance Program or SCHIP and  
4 state statute. States whose programs are approved by  
5 the federal government get a 65/35 federal match on  
6 their expenditures.

7 While designed to provide medical care to  
8 children, in 2002 state statute and a federal Medicaid  
9 waiver allowed adults responsible for participating  
10 children whose family incomes exceeded the Medicaid  
11 cap of 133 percent but were under 185 percent to also  
12 receive healthcare coverage under KidCare. HFS has  
13 now endowed that adult coverage with the name  
14 FamilyCare.

15 The problem began in late 2007 when the five-year  
16 federal waiver expired. The state statutory  
17 authorization was tied to the federal waiver so it  
18 also expired. HFS had a reported 15 to 20,000  
19 FamilyCare participants who would lose state  
20 healthcare coverage unless the state decided to pick  
21 up that cost. HFS decided to do so, but additionally  
22 opted to increase the 185 percent FPL cap that existed  
23 under the federal waiver to 400 percent. The state  
24 would not only assume the cost of the former SCHIP

1 adults but a major portion of the cost for thousands  
2 of additional adults as well.

3 HFS voiced this policy in an emergency rule that  
4 was considered at JCAR's November 2007 meeting. While  
5 JCAR had some questions for the agency about the  
6 rulemaking statute authority and its costs, it  
7 addressed its actions to the department's use of  
8 emergency rulemaking.

9 It is normal for JCAR to do that. The emergency  
10 rulemaking process allows something to go into place  
11 immediately with no JCAR review, no public review.  
12 It's an agency saying as of today this is our new  
13 policy. For that reason, JCAR watches emergency  
14 rulemaking very carefully and makes sure that it's  
15 only used in a true emergency.

16 While the pickup of SCHIP adults were about  
17 to -- who were about to lose their existing coverage  
18 could reasonably be characterized as an emergency  
19 situation, the department was not able to successfully  
20 justify the expansion of FamilyCare to those with up  
21 to 400 percent FPL as being emergency. JCAR voted an  
22 objection and suspension based on the use of emergency  
23 rulemaking and further recommended that HFS split the  
24 two policies and adopt another emergency rule

1 affecting just the SCHIP pickup.

2 HFS chose not to split the two issues and, by it's  
3 own admission, proceeded to sign up over 3,000  
4 FamilyCare participants under the new 400 percent cap.  
5 It did so without first adopting a rule, in violation  
6 of the IAPA and the Supreme Court findings in Senn  
7 Park and Kaufman Grain. This blatant lake of  
8 adherence to law is virtually unheard of in my  
9 experience.

10 In February 2008 the proposed -- the  
11 permanent version of the same rulemaking proposal came  
12 before JCAR. With the question of the use of  
13 emergency rulemaking off the table, the committee now  
14 focused more substantively on the rulemaking. It  
15 extensively questioned the department on its statutory  
16 authority for and the cost of the expansion.

17 The department's response, offered repetitively,  
18 was simply that it had -- it believed it had both the  
19 authority and the money. It continued to claim that  
20 the funds were available, in spite of recent  
21 statements from the Comptroller about current medical  
22 assistance backlogs.

23 Instead of explaining what cost savings -- or  
24 other services it planned to cut -- were going to free

1 up the money to pay for the expansion, department  
2 personnel refused to say more than the department  
3 believed it had both the authority and the money.

4 JCAR issued an objection and filing prohibition to  
5 the proposed rule to the extent that it expanded  
6 medical assistance to persons other than those affect  
7 by the lapsed SCHIP waiver. You'll notice JCAR  
8 bifurcated its action. It agreed that doing something  
9 for those families that the state had already accepted  
10 responsibility for was a legitimate issue. It was the  
11 expansion that JCAR could not agree with.

12 The committee found that the budgetary impact on  
13 the state was likely to be significant. It believed  
14 that an expansion of this magnitude should not be  
15 initiated without a specific legislative determination  
16 that adequate financial resources are and will  
17 continue to be available. The General Assembly did  
18 not include expanded FamilyCare during its formulation  
19 of the FY08 budget. Further, the General Assembly did  
20 not pass any substantive statutory authority for such  
21 an expansion.

22 HFS again refused to separate the issue of the  
23 SCHIP pickup and the FamilyCare expansion. In  
24 response to the JCAR action and again in violation of

1 the IAPA, HFS continued to take new applicants into  
2 the expedited Fam -- or the expanded FamilyCare.

3 Following the emergency rule, a citizen by the  
4 name of Richard Caro, joined by Ronald Gidwitz and  
5 Gregory Baise, filed suit against the FamilyCare  
6 expansion. The circuit court issued a temporary  
7 restraining order against HFS' implementation of the  
8 expansion. HFS filed a preemptory rule to tie the  
9 FamilyCare to some requirements of the TANF law  
10 because the court had criticized it for not having  
11 done so.

12 Preemptory rule is another type of rulemaking that  
13 goes into effect immediately without prior JCAR review  
14 and without public scrutiny. For that reason JCAR  
15 watches preemptory rulemaking very carefully.

16 Preemptory rulemaking can be used to implement a court  
17 order in which the agency has no discretion in the  
18 language of the rule. The court has dictated the  
19 language; the agency has no option.

20 In this case, that didn't occur. Judge Epstein's  
21 order did nothing to dictate that the agency adopt  
22 rules or that it -- and it did not direct what  
23 language the agency should adopt. For that reason,  
24 JCAR found -- filed an objection and a suspension

1 against that preemptory rule. The appellate court  
2 then upheld the circuit court.

3 Again, HFS filed a preemptory rule maintaining it  
4 was implementing a court order. The court ordered  
5 nothing about them doing further rulemaking. It  
6 simply, in its background information, mentioned the  
7 TANF deficiency; so they tried to come through with  
8 another preemptory rule which JCAR again objected to  
9 and suspended because it was not a legally-constituted  
10 preemptory rule.

11 In the discussions on that, one of my members put  
12 the question to HFS staff, "Do you people not read the  
13 IAPA?" And the response was, "Oh, yes, I read it."  
14 which would imply they've read it and it had  
15 absolutely no impact on them.

16 The Supreme Court, based largely on HFS' claim  
17 that the TRO could be interpreted to threaten Medicaid  
18 payments to half a million people, stayed the TRO  
19 pending its consideration of the appeal of the  
20 administration.

21 Okay. This concludes my remarks on some of JCAR's  
22 experiences with the current administration. I hope  
23 what I've done is lay background for any dialogue you  
24 chose to have later. I assume we'll get into more

1 specifics through that.

2 CHAIRWOMAN CURRIE: Thank you very much,  
3 Director. And, again, if you could give us a copy of  
4 your written testimony, we'd appreciate it.

5 MS. THOMAS: Certainly.

6 CHAIRWOMAN CURRIE: We're going to hear from  
7 the other witnesses before we do -- but you will stay  
8 available to us for questions, I hope.

9 The next witness is Claudette Miller from the law  
10 firm of Ungaretti and Harris.

11 MR. HECHT: Madam Chairman, my name is Tom  
12 Hecht.

13 CHAIRWOMAN CURRIE: Hi, Tom.

14 MR. HECHT: It seemed to us to make the most  
15 sense for us collectively to appear before you.  
16 Ms. Miller and I are counsel to Mr. Gidwitz and  
17 Mr. Baise.

18 CHAIRWOMAN CURRIE: Yeah, if you -- Tom, if  
19 you could speak into the mic. In fact, you know what?  
20 We're just going to go swear you in, and then you're  
21 going to say what you just said but it will be on the  
22 mic. So if each of you could stand and hold up your  
23 right hand.

24 (Mr. Hecht, Mr. Gidwitz, Ms. Miller

1 and Mr. Baise were duly sworn.)

2 CHAIRWOMAN CURRIE: Thank you very much. And  
3 then if you please each tell your name and tell your  
4 job title for the -- and spell your name, if you  
5 would, for the court reporter.

6 MS. MILLER: Madam Chairman and members of  
7 the committee, my name is Claudette Miller. Claudette  
8 is C-l-a-u-d-e-t-t-e. Last name is Miller. I'm an  
9 attorney at Ungaretti and Harris, and one of the  
10 counsel working on a lawsuit called Caro versus  
11 Blagojevich, which you've heard mentioned here  
12 previously today.

13 CHAIRWOMAN CURRIE: Great. And, Tom.

14 MR. HECHT: My name is Thomas Hecht. Along  
15 with Ms. Miller, I'm counsel to Mr. Gidwitz and  
16 Mr. Baise in the lawsuit which has been mentioned a  
17 number of times here this morning already.

18 MR. BAISE: Greg Baise, president of the  
19 Illinois Manufacturers Association and a party to the  
20 lawsuit as a taxpayer of Illinois.

21 MR. GIDWITZ: Madam Chairman, I'm Ron  
22 Gidwitz. I am chairman of the Illinois Jobs Coalition  
23 as well a party to the litigation that we'll talk  
24 about this morning.

1 CHAIRWOMAN CURRIE: Thank you very much.

2 Mr. Hecht.

3 MR. HECHT: I think what our sort of  
4 preferred way of proceeding, subject to your approval,  
5 Madam Chairman, is that Mr. Gidwitz will make a brief  
6 statement, and in the interest of moving things along  
7 a bit, neither Ms. Miller nor I will give any  
8 statement to you, but we're certainly prepared to  
9 answer any questions relating to the lawsuit,  
10 including its current status or any of the particulars  
11 that interest any of the members.

12 CHAIRWOMAN CURRIE: Thank you very much. I  
13 think that would fine. Let me just mention that we  
14 have a large amount of material that you have supplied  
15 to us in written form and that will certainly be part  
16 of the record. Now, Director Thomas did describe to  
17 some extent what happened in court; so I appreciate  
18 the brevity of the remarks that will follow.

19 Mr. Gidwitz.

20 MR. GIDWITZ: Madam Chairman, I'll try and be  
21 as brief as possible, but I think it's appropriate to  
22 at least put some of the conversation in context if I  
23 might.

24 Let me just say on all of our behalf it's a

1 pleasure to be here, although the circumstances very  
2 clearly are regrettable.

3 About a year ago, as was said a moment ago, Mr.  
4 Richard Caro agreed to let Greg Baise and me join as  
5 taxpayers in the lawsuit challenging the legal  
6 authority of Mr. Blagojevich and his administration to  
7 initiate a healthcare program without legislative  
8 authority.

9 We did not and do not question the authority of  
10 the General Assembly to enact a law for such a  
11 program. That's clearly a policy matter within the  
12 legislative competence. In fact, that is the  
13 fundamental point of our lawsuit -- that only the  
14 General Assembly may appropriate taxpayers' dollars,  
15 only the General Assembly may authorize purposes for  
16 expenditure, only the General Assembly may authorize  
17 the raising of revenue.

18 Each of these things is spelled out in the  
19 Illinois Constitution in Articles XIII and IX, the  
20 finance and revenue articles of our Constitution.  
21 Mr. Blagojevich, however, has chosen to ignore the  
22 Constitution and initiate this program, in his words,  
23 unilaterally because of legislative opposition.

24 Most of you, particularly those of you who serve

1 on JCAR, know that a little over a year ago in  
2 November of 19 -- of 2007, DHFS filed with JCAR an  
3 emergency rule, along with an identical permanent  
4 rule, that purported to create a brand new taxpayer-  
5 funded healthcare program for adults to be grafted on  
6 to Medicaid. This was done despite the fact that the  
7 General Assembly had not passed a law to authorize the  
8 new program and, in fact, had rejected unanimously the  
9 Governor's gross receipts tax which was to supply the  
10 funding for this new program. The General Assembly  
11 had never approved a law authorizing the collection of  
12 premiums under Medicaid and the General Assembly had  
13 not appropriated for the new program. The Governor  
14 simply announced that, since the General Assembly had  
15 refused to approve his program, he would create a new  
16 one unilaterally; hence the emergency rule.

17 On November 13, 2007, JCAR voted, as you heard,  
18 nine to two to reject the emergency rule and made a  
19 finding that it was a threat to the public interest.  
20 As a result, by operation of the law, the emergency  
21 rule and the program it sought to authorize was  
22 suspended and invalidated. The Governor and DHFS  
23 decided that they would simply ignore JCAR at that  
24 point. DHFS started enrolling people in the new

1 program anyway.

2 Now, bear in mind that the Governor himself had  
3 signed the public act pertaining to JCAR's powers with  
4 respect to prohibitions and suspensions of the rules.  
5 Yet he ignored the law.

6 Even at this time, as the Auditor General and the  
7 Comptroller would issue audits and reports finding  
8 DHFS was in a state of total disarray, lacking even  
9 the most basic accounting controls, and the state  
10 could not afford to pay its existing Medicaid bills,  
11 hospitals, pharmacists, providers, and vendors of all  
12 types were suffering.

13 In December, on behalf of the Illinois taxpayers,  
14 Mr. Baise and I became plaintiffs in a lawsuit seeking  
15 the injunction to stop this unlawful and  
16 unconstitutional program and its unlawful waste of  
17 taxpayer funds. That was the beginning of a long hard  
18 fought court battle. A battle where the Governor's  
19 first tactic was to deny that Illinois taxpayers had  
20 the authority to challenge the waste of taxpayers'  
21 money. Imagine.

22 In February of 2008, while the case was pending,  
23 JCAR found that the permanent rule was contrary to the  
24 public interest. This again, by operation of law, the

1 program was prohibited by law. Yet DHFS continued to  
2 enroll participants.

3 On April 15, 2008, after a full hearing on an  
4 extensive stipulated record, Judge James Epstein  
5 granted our motion for a preliminary injunction and  
6 enjoined the program. DHFS and the Governor appealed  
7 both the circuit court and the -- the appellate court  
8 rejected their motions to stay the injunction.

9 Incredibly, they claimed that Judge Epstein's  
10 injunction applied only to the program as operated  
11 under the emergency rule. They continued to operate  
12 the program and enroll participants. They also  
13 continued to refuse to furnish even the most basic  
14 information about the program like how many people  
15 were enrolled and what was being done with the  
16 premiums. Apparently, they refused to answer the  
17 Associated Press FOIAs about the program as well. So  
18 we filed a motion asking the circuit court to enter a  
19 second injunction.

20 On September 26, 2008, the appellate court  
21 affirmed the circuit court's first April 15 injunction  
22 and made it clear that the program had been enjoined  
23 regardless of how it had been operated.

24 On October 15, the circuit court entered a second

1 preliminary injunction enjoining the program again.  
2 These court orders got a lot of attention in the  
3 press. Editorials highly critical of the Governor ran  
4 in the Chicago Tribune and other papers. As I am sure  
5 you are all aware, there's been a lot of discussion in  
6 the papers this week about those editorials and their  
7 effects.

8 The Governor and DHFS appealed the second  
9 injunction too. Again, they sought and were denied  
10 stays by the circuit court and the appellate court.  
11 They succeeded, however, in obtaining a stay from the  
12 Illinois State Supreme Court, pending the disposition  
13 of their petition for leave to appeal the circuit  
14 court's April 15 order.

15 This situation should sicken anyone who believes  
16 in a representative democracy. The Governor and his  
17 agencies believe and have stated in pleadings that  
18 they have the inherent power to make law and raise  
19 revenue. Apparently, they believe they are free  
20 simply to disregard the General Assembly and JCAR and  
21 the courts.

22 The most fundamental elements of American  
23 government, the rule of law and the separation of  
24 powers, are belittled by the Governor's conduct.

1 while claiming he wanted to get more people  
2 healthcare, the Governor instead has jeopardized not  
3 just the healthcare benefits of existing lawful  
4 Medicaid recipients in this state but the financial  
5 viability of the healthcare providers themselves.

6 This committee should act to reclaim the rule of  
7 law in Illinois. Only then weigh the confidence of  
8 Illinois working -- only then will the confidence of  
9 Illinois working people and businesses in their  
10 government be restored. Only then will Mr.  
11 Blagojevich's crimes against the Constitution be  
12 punished as required by the Constitution.

13 Madam Chairman, members, it's my sincere hope that  
14 should you move to impeach the Governor that never  
15 again -- never again will an Illinois Governor permit  
16 his lawyer to file a document in court claiming that  
17 an agency reporting to him, quote, has the inherent  
18 authority to charge premiums, close quote, or, for  
19 that matter, fees, taxes, or other charges. Only you,  
20 the elected General Assembly, have the constitutional  
21 authority to raise revenue. Asserting executive  
22 branch inherent authority over a matter so sacred as  
23 the very concept of free government is, in my view, an  
24 ultimate constitutional crime.

1 Thank you, Madam Chairman.

2 CHAIRWOMAN CURRIE: Thank you very much for  
3 your testimony. I see you do have voluminous records  
4 that you're bringing to us to make part of our record,  
5 but perhaps you could give us a copy of your short  
6 remarks for the record as well.

7 Ms. Miller

8 MS. MILLER: Madam Chair and members of the  
9 committee, I think you received this morning a bound  
10 document. What I did there was -- there's a lot of  
11 events here and there's been a lot of lawsuits; so  
12 it's a chronology of events and there's a number of  
13 attachments. I believe everything in this chronology  
14 is either a stipulated fact or a matter of public  
15 record. So it's a chronology of all the various  
16 events, and attached to it are the actual published  
17 versions of the JCAR actions you've heard described  
18 here today; the three court orders in question, the  
19 two circuit court orders enjoining the program and the  
20 appellate court order; and the last thing attached,  
21 which is the fattest exhibit, is, I believe, the most  
22 current brief on file.

23 We filed an opposition to the defendant's petition  
24 for leave to appeal with the Supreme Court, and that

1 has a number of exhibits attached to it, which include  
2 the stipulations of fact and the stipulations as to  
3 the admissability of exhibits that the parties jointly  
4 entered into and filed in the courts. So that's a  
5 little shorter stack of paper.

6 This was just, if the committee wants it, it can  
7 put in your record. I have given you a copy of  
8 everybody's pleadings -- my pleadings, Mr. Blust's,  
9 and the other attorneys for the Governor's pleadings.  
10 There's a set of pleadings back from the circuit court  
11 action. There's a set for the first appeal. There's  
12 a set for the second appeal, and there's a third -- or  
13 one volume so far for the supreme court matter. So  
14 that's in two of these boxes.

15 The other box contains materials that I believe  
16 were actually prepared and put together by the  
17 Governor's attorneys. It's all the exhibits that were  
18 attached to the stipulations, and some of those are  
19 relevant or -- that's for you to discern or have but  
20 you have -- it's only one set because I had sort of  
21 killed rain forests already making this; so you have  
22 them. If you would like to look up any actual  
23 documents that are mentioned anywhere, you should have  
24 a complete set.

1           CHAIRWOMAN CURRIE: Thank you very much. We  
2 appreciate that, and if you could be available for  
3 questions.

4           We have one more panel to present on this topic,  
5 and that would be the director of the Department of  
6 Healthcare and Family Services. Barry Maram is joined  
7 by Tammy Hoffman and I think Larry Blust. So if you  
8 would come forward.

9           So if the three of you would kindly stand and  
10 raise your right hand.

11                           (Mr. Maram, Ms. Hoffman, and  
12                           Mr. Blust were duly sworn.)

13           CHAIRWOMAN CURRIE: Thank you very much. And  
14 then if could you just give your names and your titles  
15 and if you would spell any complicated names for  
16 purposes of the court reporter

17           MR. MARAM: My name is Barry Maram. I'm  
18 director of the Illinois Department of Healthcare and  
19 Family Services. My name is a palindrome. M-a-r-a-m  
20 backwards and forwards.

21           MS. HOFFMAN: My name is Tamara Tanzillo  
22 Hoffman. T-a-n-z-i-l-l-o. I'm chief of staff of the  
23 Department of Healthcare and Family Services.

24           MR. BLUST: My name is Larry Blust. I'm the

1 counsel for the department in regard to this matter.

2 I just want to make it clear to the committee and  
3 the chairman that I am not appearing here testifying.  
4 Our firm does not believe that it would be ethical to  
5 testify without subpoena when we're representing a  
6 client in a case. I am here for Mr. Maram to ask  
7 questions of or tell him that there's attorney-client  
8 privilege or whatever else may evolve, but I'm not  
9 here testifying.

10 Thank you.

11 CHAIRWOMAN CURRIE: Director, do you have a  
12 statement you'd like to share with us?

13 MR. MARAM: Yes. Thank you for the  
14 opportunity -- working now.

15 As you probably know, only -- I think we got  
16 formal notice yesterday. I think there was a phone  
17 call to Tammy. This is very short notice, but we're  
18 here voluntarily because we're pleased to be here  
19 because we would like to share with you what are  
20 simply facts that we feel very comfortable with  
21 throughout.

22 My name is Barry Maram. I am director of the  
23 Illinois Department of Healthcare and Family Services.  
24 I'm happy to respond to a letter received from the

1 House Majority Leader requesting my appearance and  
2 have voluntarily appeared to testify in regard to the  
3 FamilyCare program expansions.

4 The matter is the subject of litigation in circuit  
5 court of Cook County and Illinois Supreme Court under  
6 the caption of Richard Caro, et al. versus Honorable  
7 Rod Blagojevich, et al. I'm represented here by Larry  
8 Blust, one of the special assistant attorney generals  
9 appointed to represent the department in Caro.

10 In light of the pending litigation, I think you  
11 all understand the department is not waiving its  
12 attorney-client privilege in regard to the matter.  
13 Thus -- and I cannot respond to any questions  
14 regarding privileged communications with the various  
15 attorneys representing the department in this matter  
16 and may consult the department's attorneys before  
17 responding to any questions asked here.

18 Much of the information -- and, truly, much of the  
19 information regarding this expansion is available to  
20 the committee as public documents filed in the Caro  
21 litigation. For a fuller explanation of the expansion  
22 and the issues in regard thereto and the documents  
23 establishing what happened, I certainly would  
24 encourage and invite you to examine the record in the

1 Caro case.

2 But I would like to give you a brief background  
3 regarding the FamilyCare program. Illinois has  
4 participated in a federal government State Children's  
5 Health Insurance Program commonly called SCHIP, as you  
6 know, since its enactment in 1997.

7 In 2001 in a federal government -- the federal  
8 government encouraged states to submit waivers to  
9 obtain federal funds for healthcare coverage for  
10 parents and caretakers of children enrolled in the  
11 SCHIP program.

12 In 2002 the General Assembly added section 40(c)  
13 to the state statute authorizing the state to  
14 participate in the waiver program, and HFS submitted a  
15 waiver to provide for the coverage for the eligible  
16 adults. section 4(c) (sic) originally directed HFS to  
17 set the income eligibility level at no more than 65  
18 percent of the federal poverty level.

19 In 2003 the legislature amended 40(c) both to  
20 allow HFS to establish the maximum eligibility level  
21 and to require a minimum level of 90 percent of the  
22 federal poverty level; thus removing the 65 percent  
23 cap.

24 At the time the waiver program was instituted, the

1 general medical assistance statute under the Illinois  
2 Department of Public Aid Code authorized the  
3 department to disregard federal income eligibility  
4 levels for cash assistance grants and attach --  
5 establish such levels for medical assistance by  
6 regulation. At the time adults with incomes up to 35  
7 to 38 percent of the federal poverty level, depending  
8 on family size, were covered under the medical  
9 assistance, and the state claimed federal matching  
10 dollars for them under Medicaid.

11 Because the state received a larger reimbursement  
12 under the SCHIP waiver program, which I know many of  
13 you know is 65 percent, than Medicaid, which is only  
14 50 percent for the match, the department elected to  
15 claim those adults with income above the existing  
16 medical assistance standard under the SCHIP program  
17 rather than Medicaid.

18 The SCHIP program, as you know, has been called  
19 FamilyCare by the department. HFS initially set the  
20 FamilyCare maximum level income at 49 percent of the  
21 federal poverty level by regulation. To comply with  
22 the minimum eligibility level set by the legislature  
23 in 2003, the department amended this to 90 percent of  
24 the federal poverty level.

1           Thereafter, HFS has increased income eligibility  
2 levels by regulation as funds became available by  
3 raising the income level to 133 of FPL in 2004 and to  
4 185 of FPL in 2006. None of these increases or HFS --  
5 none of these increases or HFS authority to set the  
6 income standard were ever challenged. These weren't  
7 programs that were specifically funded in budgets on  
8 specific lines. To the best of my knowledge, these  
9 were dollars that all of us knew that as the years  
10 went on we were able to take this program and help  
11 needy adults, parents who were working but not able to  
12 obtain health insurance, to get cost effective  
13 insurance. There was no objections to this. This was  
14 part and parcel of the program.

15           In the fall of 2007 the scope of SCHIP and the  
16 waiver became uncertain as Congress and President Bush  
17 disagreed on the breadth of funding and thus the  
18 breadth of coverage under state waivers. SCHIP and  
19 the corresponding waiver for adults were set to expire  
20 in September of 2007. SCHIP was subsequently extended  
21 to December 31, 2007.

22           In August and November of 2007, Congress passed  
23 two separate bills to reauthorize SCHIP and expand its  
24 funding which would enable states to set higher income

1 eligibility levels for the waiver. Congress decided  
2 to expand funding to permit coverage of families of  
3 four earning almost 80,000, 400 percent of the FPL.  
4 President Bush vetoed these bills and the vetoes were  
5 not overwritten.

6 The outcome of the SCHIP reauthorization fight was  
7 crucial to Illinois because it would lose the extra 15  
8 percent of federal match from SCHIP versus Medicaid if  
9 the waiver was not reauthorized. Thus HFS waited to  
10 see whether an expansion of the waiver would occur.  
11 When the battle between the President and Congress was  
12 lost and HFS could not wait any longer, it  
13 promulgated, on November 7, 2007, the emergency rule  
14 at issue in the Caro case.

15 CHAIRWOMAN CURRIE: Director, if I could just  
16 interrupt a minute. Representative Fritchey wants to  
17 make a clarification.

18 REPRESENTATIVE FRITCHEY: Thank you.

19 Director -- and I apologize for interrupting you,  
20 but I want to interject at this one point. You're  
21 talking about the SCHIP and the actions of the federal  
22 government and the fact that the federal government  
23 actions were -- had the impact of leaving a number of  
24 Illinoisans without coverage who previously had

1 coverage; correct?

2 MR. MARAM: Correct.

3 REPRESENTATIVE FRITCHEY: My memory doesn't  
4 serve me whether you were at -- in JCAR that day.  
5 Ms. Hoffman, you were.

6 There was a specific dialogue brought by a number  
7 of us -- well, let me get to the point. You could  
8 have brought rules just to bring coverage for the  
9 people kicked off the SCHIP federal program before  
10 JCAR. And, in fact, not only could you have brought  
11 those rules, you were urged, almost implored by JCAR  
12 to say modify what you're doing. Instead of trying to  
13 bootstrap the Governor's healthcare plan onto the  
14 backs of these people that are going to lose  
15 insurance, let's focus just on the SCHIP people. And  
16 a decision was made not to do that; is that correct?

17 MR. MARAM: I think we want to address that  
18 and we're prepared to address that. In fact, I can  
19 turn it to Tammy right now, but we had very -- we  
20 believe very sound reason for presenting it as it is,  
21 and perhaps -- would you like to -- can we respond to  
22 that?

23 REPRESENTATIVE FRITCHEY: Well, if I could  
24 just get -- Director, you and I have known each other

1 a long time and there's -- neither one of us want to  
2 make this adversarial.

3 MR. MARAM: I understand that you --

4 REPRESENTATIVE FRITCHEY: The people that  
5 were basically kicked off the insurance rolls by the  
6 federal government could have been put back on by  
7 themselves without trying to use this as an  
8 opportunity to also enact the Governor's entire  
9 program; correct?

10 MR. MARAM: I would like to be able to  
11 respond to that.

12 REPRESENTATIVE FRITCHEY: Please. Go ahead.

13 MR. MARAM: Tammy. Who was with you at JCAR.

14 MS. HOFFMAN: At that time, Representative,  
15 it was still uncertain how the federal government was  
16 going to act, and we determined -- and I said on the  
17 record at JCAR -- that we were not going to wait until  
18 federal action because we considered this an  
19 emergency. Part of that -- there were other states  
20 that had submitted waivers that were up to 400  
21 percent. We were hopeful that the federal government  
22 would be going in that direction, and we wanted to  
23 best protect the people of Illinois by going to that  
24 level.

1           REPRESENTATIVE FRITCHEY: Fine and dandy.  
2 Not the point. The people that were kicked off by the  
3 federal government could have been reinstated through  
4 Illinois coverage on just that category; correct?

5           MS. HOFFMAN: There would have been a variety  
6 of ways to do it.

7           REPRESENTATIVE FRITCHEY: But one of the ways  
8 to do it would have been to simply reinstate the  
9 people that were kicked off by the federal actions.

10          MS. HOFFMAN: That could have been one of the  
11 ways, Representative, yes.

12          REPRESENTATIVE FRITCHEY: Yeah, that was one  
13 of the ways. Not could have been, it was one of the  
14 ways. You acknowledged that at the time.

15          MS. HOFFMAN: Yes.

16          REPRESENTATIVE FRITCHEY: There was a  
17 decision made by the department, however, to say we  
18 want all or nothing; we want to implement this full  
19 program or nothing, even if it meant jeopardizing the  
20 people that had gotten kicked off.

21          MR. MARAM: In no way would we ever attempt  
22 to jeopardize people --

23          CHAIRWOMAN CURRIE: I think his point is you  
24 did.

1           MR. MARAM: -- being kicked off because we  
2 really believed there was a sound approach here.

3           REPRESENTATIVE FRITCHEY: I know your sincere  
4 intention -- I believe them to be sincere intentions.  
5 The SCHIP issue -- was there -- here, let me put it to  
6 you this way: Was there ever a discussion that the  
7 SCHIP window provided a wind -- that the SCHIP issue  
8 provided a window for you to come in with rules to  
9 implement the entire program by the Governor? Was  
10 there ever discussion with anybody in the  
11 administration about that?

12           CHAIRWOMAN CURRIE: I think it's a yes or no  
13 answer.

14           MS. HOFFMAN: I don't -- I don't recall right  
15 now. We just got notice of this hearing yesterday,  
16 and we've really been trying to go over documents to  
17 give you the best information possible. I just don't  
18 recall, Representative.

19           REPRESENTATIVE FRITCHEY: Let me see if I can  
20 come at this another way. Who made the determination  
21 rather than go for just the SCHIP reinstatement to  
22 package it with the Governor's -- the Governor's full  
23 FamilyCare -- or full attempt to expand coverage? You  
24 follow the question?

1           CHAIRWOMAN CURRIE: Was it you, the director,  
2 or was it somebody in the Governor's office?

3           MS. HOFFMAN: We worked with counsel --  
4 outside counsel, counsel in the Governor's office, our  
5 own counsel -- and determined that that was the best  
6 way to --

7           REPRESENTATIVE FRITCHEY: Do you have any  
8 recollection of who initiated the idea that the  
9 Governor's program would be piggybacked onto the SCHIP  
10 issue?

11          MS. HOFFMAN: I do not, Representative.

12          REPRESENTATIVE FRITCHEY: Who -- you say you  
13 worked with the Governor's counsel. Who was that?

14          MR. BLUST: I don't believe that we're  
15 prepared to testify as to conversations between --

16          REPRESENTATIVE FRITCHEY: I didn't ask for --  
17 I didn't ask for the substance of the conversation,  
18 Counsel. What I asked was -- there was just a comment  
19 made to this committee that there were conversations  
20 with counsel for the Governor. Obviously, the  
21 identity of that counsel wouldn't be privileged in any  
22 event.

23          MS. HOFFMAN: Representative, I really  
24 don't -- I'm a lawyer. I don't -- I don't know the

1 rules about privilege and what is and what isn't. My  
2 parents worked most of their lives two -- you know,  
3 two jobs for me to have my law license, and I don't  
4 know the parameters of what the code presents. That  
5 being said, I want to help you. Can I look into my  
6 notes and provide you with that information? Because  
7 I really don't remember specifically, sir.

8 REPRESENTATIVE FRITCHEY: Okay. Here's --  
9 and that's -- I am not trying to walk you down a  
10 road here.

11 MS. HOFFMAN: I know.

12 REPRESENTATIVE FRITCHEY: As you sit here  
13 today, do you recall who in the Governor's office you  
14 had conversations with regarding how to proceed?

15 MS. HOFFMAN: With regard to one specific  
16 issue or another specific issue?

17 REPRESENTATIVE FRITCHEY: With regard to the  
18 issue of implementing rules for FamilyCare and with  
19 regard to the issue of not just implementing rules  
20 with respect to SCHIP, but the overall -- you obvious  
21 -- here. There were conversations between the  
22 department and the administration; correct?

23 MS. HOFFMAN: Yes, sir.

24 REPRESENTATIVE FRITCHEY: Do you recall any

1 of the individuals in the administration with whom you  
2 had those conversations?

3 MS. HOFFMAN: With a variety of issues, not  
4 this one specifically?

5 REPRESENTATIVE FRITCHEY: With the issue of  
6 FamilyCare expansion and the SCHIP --

7 MS. HOFFMAN: Generally? With regard to that  
8 specific issue, Representative, I truly at this time  
9 do not recall. That doesn't mean that I won't go look  
10 at my notes and be able to give you that information,  
11 and if I can do that, I am certainly more than willing  
12 to do that. I just -- there were a lot of  
13 conversations on a lot of issues, and I really do not  
14 recall specific --

15 REPRESENTATIVE FRITCHEY: Was there a  
16 primary -- was there a primary person from the  
17 administration that you interfaced with with  
18 discussion to the Governor's healthcare policy?

19 MS. HOFFMAN: With legal counsel, and they  
20 were dealing with outside legal counsel. I -- some of  
21 the people that I dealt with and I -- I'm not saying  
22 with respect to this issue specifically --

23 REPRESENTATIVE FRITCHEY: With -- here.

24 MS. HOFFMAN: -- but with generally.

1           REPRESENTATIVE FRITCHEY: I'm trying to make  
2 this easier for you, not harder. With respect to the  
3 issue of SCHIP and with respect to the issue -- let me  
4 finish before you tell me you don't know.

5           MS. HOFFMAN: Okay.

6           REPRESENTATIVE HOFFMAN: With respect to the  
7 issue of SCHIP and with respect to the issue of  
8 FamilyCare expansion, you dealt both with counsel for  
9 the Governor as well as policy people for the  
10 Governor? Did you deal with anybody outside the  
11 Governor's legal counsel?

12          MS. HOFFMAN: On a regular basis but I do  
13 not --

14          REPRESENTATIVE FRITCHEY: On this issue, to  
15 the best of your recollection.

16          MS. HOFFMAN: I would love to go look at my  
17 notes, and I would be happy to respond to you.

18          REPRESENTATIVE FRITCHEY: Okay. Ms. --

19          MS. HOFFMAN: I don't want to misspeak,  
20 Representative.

21          REPRESENTATIVE FRITCHEY: And I appreciate  
22 that, and, as I said, I don't want you to be on record  
23 saying something that's inaccurate.

24          Mr. Director, as the director, who is it that --

1 who was your counterpart that you would deal with from  
2 the administration in formulating and helping  
3 implement the policies of the administration?

4 MR. MARAM: I think it varies from time to  
5 time, and I could say that while I may not have  
6 initiated this process in terms of what the -- the  
7 pursuant of the rule, which I believe is sound and a  
8 fair rule -- by the way, I think courts are made for  
9 deciding people of goodwill who may take differing  
10 opinions and that's -- and this is in court, and it's  
11 actually in a stay in the Supreme Court, which isn't  
12 necessarily an easy thing to happen; there usually is  
13 some merit. So I think people of goodwill may differ,  
14 and that's what litigation is sometimes about.

15 With this said, that -- I believe that it --  
16 while it wasn't initiated with me, eventually was sat  
17 down -- I think I sat down with legal counsel, outside  
18 counsel, and that's where I believe the privilege  
19 issue would require us not to go into detail about  
20 what -- any discussion.

21 REPRESENTATIVE FRITCHEY: But again -- and I  
22 respect that, and I don't want to go beyond the  
23 parameters that the chairman gave me, but I also say  
24 that I'm not asking for the content right now. I'm

1 asking for who you spoke with. I think your counsel  
2 here would agree that under no construction is that  
3 disclosure going to be privileged.

4 MR. MARAM: I honestly don't remember exactly  
5 who was the initial conversation --

6 CHAIRWOMAN CURRIE: Both of you will check  
7 your notes and get back to us?

8 MR. MARAM: Certainly.

9 REPRESENTATIVE FRITCHEY: I won't belabor it.

10 MR. MARAM: Certainly.

11 REPRESENTATIVE FRITCHEY: Thank you,  
12 Chairman.

13 CHAIRWOMAN CURRIE: Representative Bost.

14 MS. HOFFMAN: No problem at all.

15 CHAIRWOMAN CURRIE: Representative Bost.

16 REPRESENTATIVE BOST: Thank you. And I'd  
17 just like to expand on that, and I want to make it  
18 real simple.

19 Do you feel in your mind that someone from the  
20 administration said go ahead and let's move forward  
21 with this, period? Yes. No. Do you feel like that  
22 we -- that you -- you received information that you  
23 should move forward --

24 MR. MARAM: Clearly --

1           REPRESENTATIVE BOST:  -- with implementing  
2 this plan?

3           MR. MARAM:  Clearly --

4           REPRESENTATIVE BOST:  Somebody -- somebody  
5 had to make a --

6           MR. MARAM:  Clearly --

7           REPRESENTATIVE BOST:  -- decision to say hey,  
8 let's override the legislature and move on.

9           MR. MARAM:  From time to time people sit  
10 down, make decisions.  In fact, when we got the  
11 hospital assessment last week bringing \$3.7 billion to  
12 Illinois for the last five years --

13          CHAIRWOMAN CURRIE:  And we are thrilled about  
14 that.

15          REPRESENTATIVE BOST:  -- that was something  
16 -- that was something that --

17          CHAIRWOMAN CURRIE:  That's not relevant.

18          MR. MARAM:  -- people sat down and worked  
19 through.

20          REPRESENTATIVE BOST:  That's not -- that's  
21 not what I'm asking.

22          MR. MARAM:  But I'm -- as in this one, when  
23 probably -- I didn't initiate with anyone who sat  
24 down -- I believe there was a legal counsel.  I don't

1 remember who was there. People sat down and looked at  
2 the foundations and went -- decided to go forward. I  
3 think even there's a statute that requires the  
4 Governor to agree to it. I think that it's part of  
5 the statute.

6 MS. HOFFMAN: And that's on the record in the  
7 Caro case, by the way.

8 REPRESENTATIVE BOST: I just -- someone  
9 somewhere had to say let's go ahead and let's decide  
10 that JCAR rules really don't matter, that let's move  
11 ahead and let's just go ahead and implement what we  
12 want and bypass the legislature, and that's -- that's  
13 the problem here.

14 MR. MARAM: Well, you know, I'm here  
15 voluntarily to talk to the facts. I certainly don't  
16 listen to around -- any discussion where somebody says  
17 let's bypass this for the sake of bypassing. I think  
18 the decision was being made that this is a valid  
19 approach.

20 I'd like to continue with my statement, as other  
21 people have had the opportunity to make statements  
22 because I think it can reflect on some of this.

23 CHAIRWOMAN CURRIE: You may.

24 MR. MARAM: Thank you.

1           CHAIRWOMAN CURRIE: As long as it's brief.

2           MR. MARAM: Well -- the outcome of the SCHIP  
3 reauthorization fight was crucial to Illinois because  
4 we'd lose the extra 15 percent of the federal match  
5 from SCHIP versus Medicaid if the waiver wasn't  
6 reauthorized.

7           When the battle between the President and Congress  
8 was lost, HFS could wait no longer. It promulgated on  
9 November 7th the emergency rule at issue. SCHIP was  
10 ultimately reauthorized without any authority for  
11 funding the waiver program.

12           The FamilyCare rules did two things: First, they  
13 moved the adults in the expiring SCHIP --

14           CHAIRWOMAN CURRIE: I think we're familiar  
15 with what the rules did. I think the question was  
16 whether some portion of your rule exceeded your  
17 authority.

18           MR. MARAM: Well, we believed we had the  
19 authority and we had the funding, and as I want to  
20 state -- I want to state that there are -- the middle  
21 class -- and I think given the opportunity to be here,  
22 what was going on here -- the middle class, those  
23 people making often over 40,000, over 20 percent of  
24 people today do not get healthcare coverage from their

1 employer.

2 CHAIRWOMAN CURRIE: Director -- Director  
3 Maram, we know that, and the issue before us is not is  
4 it a good thing to make healthcare available to more  
5 Illinoisans or not. That's not the question at all.  
6 The question is the Governor's authority to enact a  
7 rule that substantially expands upon the authority he  
8 was given by the legislature. So I don't think you  
9 need to convince people on this panel that it's a good  
10 thing --

11 MR. MARAM: Can I finish my state -- can I  
12 finish my statement?

13 CHAIRWOMAN CURRIE: If you're on our topic,  
14 you may.

15 MR. MARAM: Well, I believe this is on topic  
16 because I think it would help -- I'm not here to argue  
17 with you. I'm here to give you facts.

18 People of goodwill can --

19 CHAIRWOMAN CURRIE: But the facts --

20 MR. MARAM: People of goodwill can disagree.  
21 Obviously, there are court -- a supreme court stay,  
22 and no one has even gotten to the point of whether  
23 JCAR -- so we're talking about a case --

24 Do you want to say something?

1           CHAIRWOMAN CURRIE: I thought, Director, you  
2 wanted to finish your statement, and you may do that  
3 as long as you're talking about the topic. Okay. All  
4 right then. Are you finishing your statement?

5           MR. MARAM: Yes. As you know, the FamilyCare  
6 did two things: First, they moved the adults in the  
7 expiring SCHIP program. Approximately 150,000 adults  
8 between 35 and 185 to general medical assistance.

9           Second, the department, pursuant to regulatory  
10 authority, incrementally expanded the income  
11 eligibility for the FamilyCare program, similar to  
12 what we did in 2003, '04, and '06, from 185 to 400  
13 percent. The expansion of the program to 400 percent  
14 FPL, which we had done previous expansions, matched  
15 the level approved by Congress and recommended by  
16 Illinois' bipartisan Illinois healthcare task force.

17           CHAIRWOMAN CURRIE: But it was rejected by  
18 JCAR, and I think that's the issue before us. So if  
19 you'd like to address yourself to that.

20           MR. MARAM: Both regulatory changes were  
21 promulgated pursuant to the statutory authority and  
22 delegating to the department the setting of maximum  
23 levels for medical assistance, subject to the general  
24 standard limiting such assistance who do not have

1 sufficient income and resources to meet the costs of  
2 medical care. Statute requires that the Governor  
3 approve the expansion eligibility, which he did.

4 The department, exercising its statutory delegated  
5 authority to set the maximum income level for medical  
6 assistance consistent with need, not only relied on  
7 the level approved by Congress and recommended by the  
8 task force but put safeguards on the regulations  
9 requiring that individuals in the expansion must  
10 generally have -- be without health insurance for 12  
11 months and must pay substantial fees to participate so  
12 that participants would not select state assistance if  
13 affordable private coverage were available.

14 The expansion was described in the media and  
15 referred to the plaintiffs in the Caro case as a huge  
16 expansion. In fact, in the five months before  
17 enrollment, over 133 percent was suspended by the  
18 department in response to litigation. Less than 5,000  
19 participants over 185 have enrolled in the program.  
20 This is not surprising since the prior expansion in  
21 2006 from 133 to 185 had only added approximately  
22 20,000. The incurred costs of the expansion from 185  
23 to 400 percent from November 7th through November 8th  
24 has not exceeded 6.3 million. These costs have been

1 partially offset by premiums collected from  
2 participants.

3 To the department's surprise, JCAR objected to  
4 expansion from 185 to 400 as not authorized by the  
5 legislature, although it stated it did not have a  
6 problem with the movements from the participants from  
7 the SCHIP program to general medical assistance.

8 Mr. Caro, Mr. Gidwitz, Mr Baise sued the  
9 department and the Governor, alleging defects in  
10 regulations promulgated by the department, including  
11 that the department lacked statutory authority to  
12 promulgate the regulations, the regulations were  
13 authorized, the statute so authorizing them was  
14 unconstitutional, and the regulations were invalid.  
15 These were some of the grounds.

16 The court has never held that the department  
17 lacked authority to set the maximum income level for  
18 the program consistent with the general need of the  
19 statute. Instead, the trial court has held in rulings  
20 on preliminary injunction requests that the general  
21 medical assistance statute requires that all  
22 eligibility standards for cash welfare grants must be  
23 imposed on those by the statute. This ruling was  
24 affirmed by appellate court.

1           Despite the plaintiffs' statement that they're  
2 only challenging less than 5,000 participants in the  
3 expansion population, this statute interpretation, if  
4 ultimately held to be correct, would mean the  
5 department would cover participants at any income  
6 level meeting the needs standards, including 400  
7 percent, only if they met the cash welfare grant  
8 standards as to employment, job seeking, et cetera.  
9 Thus this requirement, if ultimately sustained, would  
10 potentially affect all the approximately 400 -- could  
11 affect all the approximately 400,000 adults receiving  
12 medical assistance except the approximately 11,200  
13 adults receiving cash grants.

14           If the department imposed these requirements,  
15 ironically and tragically, the participants least  
16 likely to meet them would be those with the least --  
17 lowest income.

18           The department has never imposed these  
19 requirements for medical assistance because the  
20 federal welfare program legislation passed in the  
21 Clinton administration forbids such rules from  
22 Medicaid plan participants. Eligibility for TANF and  
23 Medicaid must be delinked, as Congress intended for  
24 the TANF program to shrink over time while Medicaid

1 was continued to support working families.

2 Moreover, as evidenced by the change in the state  
3 AFDC program to TANF, temporary assistance for needy  
4 families, at the time of the Clinton administration  
5 welfare reform and JCAR's failure to object to the  
6 transfer to the -- of the FamilyCare recipients above  
7 35 to 38 percent through 133 to the general medical  
8 assistance category, the General Assembly has never  
9 interpreted -- never interpreted these requirements as  
10 applicable to medical assistance participants not  
11 receiving cash grants either.

12 This is why the department asked for and received  
13 a stay of the trial court's orders from the Illinois  
14 Supreme Court. In addition, approval by the federal  
15 government of the department's pending Medicaid state  
16 plan amendment filed in 2007 to cover FamilyCare's  
17 participants effective October 1, 2007, which will  
18 permit the state to claim the 50 percent match from  
19 the FamilyCare participants, has been held up pending  
20 resolution.

21 The two orders entered by the trial court have  
22 been obeyed by the department from the day they were  
23 entered until the Supreme Court stay was granted. The  
24 first order on April 15 provides merely the department

1 and myself as director -- and I quote -- preliminarily  
2 enjoined from enforcing the emergency rule or  
3 expending any public funds related to the FamilyCare  
4 program created by the emergency rule.

5 Since that order was entered, the department has  
6 not knowingly presented the Comptroller for payment  
7 invoices for services provided during the period of  
8 the emergency rule, which was replaced by the  
9 permanent rule on March 10, 2008.

10 Some schedules with a few claims subject to the  
11 order had already been processed, delivered to the  
12 Comptroller's office, but not paid at the time the  
13 order was issued. In order to pay these schedules,  
14 which overwhelmingly contained claims not subject to  
15 the order, the department posted adjustments in the  
16 amount of FamilyCare claims to be immediately recouped  
17 from future payments.

18 In addition to not processing payments to  
19 providers who provided care under the emergency rule  
20 as required by the order, the department, on April 15,  
21 2008, ceased enrolling participants with incomes  
22 greater than 133 in the FamilyCare program, even  
23 though not required to do so by order, to attempt to  
24 prevent stranded providers and disruption to eligible

1 participants.

2 I'm about to wrap up, and I'm glad to answer  
3 questions.

4 On October 15, 2008, the trial court entered an  
5 order providing the department and myself as director  
6 are preliminarily enjoined from expending any public  
7 funds for the purpose of providing medical assistance  
8 pursuant to statute to any individuals who fail to  
9 meet all the eligibility requirements under Article IV  
10 of the Illinois Public Aid Code. The department  
11 followed this order until the Supreme Court entered a  
12 stay.

13 It is my belief that the department had the  
14 authority to authorize the expansion of the FamilyCare  
15 program. Whether the department or the plaintiffs are  
16 correct in this regard is a matter yet to be decided  
17 in the courts. There's actually been a stay in the  
18 Supreme Court. Despite the department's belief that  
19 the trial court and appellate court were incorrect in  
20 imposing all cash welfare grant requirements on the  
21 general medical assistance program, something I think  
22 there's clear indication is inconsistent in a number  
23 of ways, the department has, to my knowledge, complied  
24 with all unstayed court orders in the Caro case.

1           This department -- myself and my colleagues I work  
2 with -- have spent years providing healthcare  
3 effectively, legally, in partnership with you. Just  
4 last week we passed a bill where this department  
5 worked hand in hand with the House providing  
6 healthcare to safety-net hospitals. We work  
7 aggressively hand in hand with you. This matter may  
8 have a matter of dispute to some degree as to certain  
9 items which are in the court, but I will stand here  
10 and point out that over five-and-a-half years we have  
11 been extremely ethical, efficient, and partners with  
12 you in getting -- making Illinois one of the great  
13 states in Illinois -- in nation's healthcare.

14           Thank you.

15           CHAIRWOMAN CURRIE: Thank you, Director.

16           And I think what we'll do is we'll start with  
17 these people because they're right now on the hot  
18 seat, and I've had people ask to raise questions.

19           First would be Representative Lang. The others, I  
20 think, we'll just go through the rest -- we'll start  
21 with this panel and then we'll see if there are  
22 questions for the other panels. Representative Lang  
23 is up.

24           REPRESENTATIVE LANG: Thank you, Madam

1 Chairman. Did I understand you to just say that  
2 you're going to take questions for this panel and then  
3 move on --

4 CHAIRWOMAN CURRIE: Yes.

5 REPRESENTATIVE LANG: -- backwards to the  
6 others?

7 CHAIRWOMAN CURRIE: Yes.

8 REPRESENTATIVE LANG: So you want me to limit  
9 this question to this panel at this time.

10 CHAIRWOMAN CURRIE: Yes. Please.

11 REPRESENTATIVE LANG: Thank you. Good  
12 morning. I listened very intently to the comments of  
13 both Ms. Hoffman and Director Maram, and I'm troubled  
14 by much of it.

15 As you both well know, I sit on JCAR, and I've  
16 intimately been involved in this -- the rulemaking on  
17 this issue, the lawsuits on this issue, the resolution  
18 of this issue. And so I have a number of questions I  
19 need to ask you, and I warn you in advance I'm not  
20 going to take answers that don't answer my question.  
21 I'll just interrupt you and we'll start over. Is that  
22 clear?

23 MR. MARAM: It's clear, and I will do the  
24 best I can.

1           REPRESENTATIVE LANG: So let me just start  
2 with this simple question: How many people were added  
3 to this program when it was expanded?

4           MS. HOFFMAN: At one point there were about  
5 5,000 and I believe now it's under 4,000.

6           REPRESENTATIVE LANG: Well, let me ask the  
7 question again. How many people were added to this  
8 program when it was expanded when you went around JCAR  
9 and implemented the program without JCAR's authority?

10          MR. MARAM: I think you answered.

11          MS. HOFFMAN: I answered the question about  
12 the program, Representative, not necessarily based on  
13 your characterization, and I believe that part of that  
14 is part of the litigation, but I believe I answered  
15 the question in a very straightforward manner.

16          REPRESENTATIVE LANG: All right. So I will  
17 ask this question a hundred times in a row if I need  
18 to, and I don't think anyone behind me will stop me.

19          You came to JCAR with a rule. JCAR prohibited the  
20 rule. You went ahead and expanded the program anyway.  
21 This is true; correct?

22          CHAIRWOMAN CURRIE: Should I answer for you,  
23 or do you want to take a stab at it?

24          MS. HOFFMAN: No, I -- I'm really just trying

1 to be cautious so that I don't misspeak. I don't want  
2 to get --

3 REPRESENTATIVE LANG: In your own testimony  
4 from both of you, you ignored JCAR's prohibition and  
5 implemented your program, and now you say it's the  
6 subject of litigation. I understand that. But you  
7 implemented a program after JCAR prohibited the rule.

8 So let me ask the question again. After JCAR  
9 prohibited the rule, how many people did you add to  
10 the program?

11 MR. MARAM: I don't know if we could split  
12 how many were exactly, but I think at some point there  
13 was approximately 4,000 from the 185 to 400 percent  
14 level. Was the --

15 MS. HOFFMAN: No. I just want to say,  
16 Representative --

17 REPRESENTATIVE LANG: Are you just going to  
18 continue --

19 MS. HOFFMAN: No. Representative.

20 REPRESENTATIVE LANG: -- to grab the  
21 microphone away from the director while he's answering  
22 my question?

23 MS. HOFFMAN: No, sir. I have the answer to  
24 the question, I believe.

1           REPRESENTATIVE LANG: All right. So if you  
2 have the answer to the question, then kindly tell the  
3 director because he doesn't seem to have it.

4           MR. MARAM: Well, I do have -- I've just  
5 given you an answer. We've given you an answer a  
6 number of times. I could -- we could banter, and I  
7 respect you, but we're telling you that at some point  
8 after -- through the process there was approximately  
9 4,800.

10          MS. HOFFMAN: Correct, but we do not have  
11 that number --

12          MR. MARAM: We don't have --

13          MS. HOFFMAN: -- the date and time of that  
14 prohibition, and we can find out that.

15          MR. MARAM: Right. And then it's probably  
16 gone down to about 3900, but we can get you the  
17 number.

18          REPRESENTATIVE LANG: So that was the number  
19 that was on the program at the time the rule  
20 was prohibited.

21          MR. MARAM: No, that's not correct. We'd  
22 have to see time and place what -- when -- when that  
23 number was exactly there.

24          REPRESENTATIVE LANG: All right. So by the

1 end of the day today you will provide this committee  
2 with all of the details about who -- the numbers of  
3 people that were on --

4 MR. MARAM: We can tell you right now. Right  
5 now there's 3900 people.

6 REPRESENTATIVE LANG: I'm going to finish my  
7 sentence no matter how long it takes, Mr. Director.  
8 Is it my turn now?

9 MR. MARAM: It's certainly your turn --

10 REPRESENTATIVE LANG: Thank you. By the end  
11 of the day today you will provide this committee with  
12 the number of people who are on the program the day  
13 the rule was prohibited and all the way up on a  
14 monthly basis through today's date.

15 MS. HOFFMAN: Yes.

16 REPRESENTATIVE LANG: Won't you do that for  
17 us, sir?

18 MS. HOFFMAN: Yes, sir.

19 MR. MARAM: We will do it.

20 REPRESENTATIVE LANG: Thank you. You will  
21 also provide to us by the end of the day today the  
22 additional cost of this program during that period of  
23 time and the exact cost for anyone you added to the  
24 program after the rule was prohibited. Will you not

1 do that for us, sir?

2 MR. MARAM: Correct. And I do want to say I  
3 think we put forth that cost, but we'll put it in  
4 writing to you.

5 MS. HOFFMAN: Yes, sir.

6 REPRESENTATIVE LANG: That was a better  
7 answer. The "yes, sir" was a much better answer than  
8 what you just said. Just yes would be good. You'll  
9 provide it.

10 MR. MARAM: Yes. And we have also stated it  
11 to you today, but we're glad to put it in writing.

12 REPRESENTATIVE LANG: My understanding is  
13 there's been an ongoing FOIA request for all this  
14 information for a good deal of time and it has not  
15 been responded to. Can you tell us why? One or the  
16 other of you, not both.

17 MS. HOFFMAN: I would be happy to answer.

18 I know that there was a FOIA request with regard  
19 to the ongoing litigation. There has been a response.  
20 I was not personally involved in that. I was given  
21 advice by our legal counsel's office on how to  
22 respond. I reviewed the letter. I recommended for  
23 the director to sign it. I can again find more --  
24 other than the letter -- and we can give you a copy of

1 the letter.

2 I am more than happy to learn more about that  
3 issue and discuss the basis at length. I just do not  
4 have the ability to do that right now. I can give you  
5 the letter that was respon -- it was responded to.

6 REPRESENTATIVE LANG: So, in other words,  
7 neither of you can tell me why the FOIA request was  
8 ignored.

9 MS. HOFFMAN: It's my understanding that the  
10 information that was requested was requested in  
11 context of the litigation. That is my current  
12 understanding. I would like to have the opportunity  
13 to go back and have conversations with the actual  
14 attorney that reviewed it to make sure that that's  
15 accurate and I'm not misspeaking.

16 REPRESENTATIVE LANG: Is not public record  
17 public record whether there's a lawsuit filed or not?

18 MS. HOFFMAN: I have a letter here for you if  
19 you'd like it.

20 REPRESENTATIVE LANG: All right. So you did  
21 not respond to the FOIA request. Is that a fair  
22 statement?

23 MS. HOFFMAN: We did respond to the FOIA  
24 request, but in the FOIA request we denied the

1 information that was requested so -- at least in this  
2 context of the letter that I reviewed, and it's the  
3 only one that I know of. You're not specifically  
4 identifying a FOIA request. I'm guessing which one  
5 you're talking about and I just -- I'm guessing which  
6 one you're talking about. I would like --

7 REPRESENTATIVE LANG: Let me move on.

8 Mr. Maram, you indicated that your department  
9 complied with each and every order of every court.  
10 But wasn't the essence of your argument before Judge  
11 Epstein that you couldn't comply with the order of the  
12 circuit court because you couldn't differentiate  
13 between the different participants in the program?

14 MR. MARAM: well, first, I would have to --  
15 this would be dealt with by attorneys.

16 REPRESENTATIVE LANG: Mr. Maram --

17 MR. MARAM: And --

18 REPRESENTATIVE LANG: Mr. Maram.

19 MR. MARAM: -- privileged. Yes.

20 REPRESENTATIVE LANG: Mr. Maram.

21 MR. MARAM: Yes.

22 REPRESENTATIVE LANG: This is not privileged.  
23 I asked you if this is what your department said to  
24 Judge Epstein.

1 MS. HOFFMAN: Representative, in this  
2 instance -- and I was told this. I was not present  
3 when the judge reviewed the information, but it's my  
4 understanding that the basis of those comments were  
5 that they -- that the court required the information  
6 presented to them in a very specific manner and that  
7 we did not have the ability to present it in that  
8 manner at that time. Subsequently, we were able to  
9 distinguish in the format that the court requested and  
10 were able to do so.

11 REPRESENTATIVE LANG: Is it your view,  
12 Mr. Maram, that every -- every program the state  
13 undertakes you have an appropriation to pay for it?

14 MR. MARAM: I believe there should be  
15 responsible funding of programs as --

16 CHAIRWOMAN CURRIE: I think it's a yes or no.

17 MR. MARAM: Yes, that they -- there should be  
18 funding.

19 REPRESENTATIVE LANG: How were you going to  
20 fund this program?

21 MR. MARAM: We were more than prepared to  
22 fund this program. As you know --

23 REPRESENTATIVE LANG: Mr. Maram. Mr. Maram.

24 MR. MARAM: Yes.

1           REPRESENTATIVE LANG: How were you going to  
2 fund this program?

3           MR. MARAM: With available funds that had  
4 been --

5           REPRESENTATIVE LANG: Mr. Maram.

6           MR. MARAM: Yes. Available funds.

7           REPRESENTATIVE LANG: How were you going to  
8 fund this program?

9           MR. MARAM: With available funds from our  
10 budget.

11          REPRESENTATIVE LANG: What available funds  
12 from what line item, sir?

13          MR. MARAM: Our budget is done by services,  
14 not programs, and within medical and related programs,  
15 through efficiencies, we were able to fund what turned  
16 out to be approximately a \$6.8 million program.

17          REPRESENTATIVE LANG: So when you took that  
18 approximately \$6.8 million out of that services line  
19 item, that big pot of money, who wasn't getting  
20 service?

21          MR. MARAM: There were no services not being  
22 given.

23          REPRESENTATIVE LANG: So are you --

24          MR. MARAM: We budget well as we've come to

1 you each year completely -- almost yearly on budget in  
2 our department.

3 REPRESENTATIVE LANG: And you're therefore  
4 suggesting that had you not done this program you  
5 would have a \$6.8 million surplus at the end of the  
6 fiscal year?

7 MR. MARAM: What -- I can't -- I can't  
8 indicate that. What I can say to you is that we had  
9 this budgeted through efficiencies. It did not cost  
10 any other program.

11 REPRESENTATIVE LANG: Returning back to the  
12 FOIA question, did anyone from the Governor's office  
13 or anyone representing the Governor talk to you about  
14 the FOIA request?

15 MS. HOFFMAN: I have no personal knowledge of  
16 that. I can again talk to the attorney and find out.

17 REPRESENTATIVE LANG: It seems that you guys  
18 don't have a lot of information about who tells you to  
19 do what. I assume that your department takes  
20 direction from the Office of the Governor; is that  
21 correct?

22 MR. MARAM: I think, Representative, if you  
23 don't -- you know, I'll just say it myself. I think  
24 most of you in this room know that we've made very

1 strong solid decisions through the years. We make  
2 responsible decisions.

3 REPRESENTATIVE LANG: Mr. Maram. Mr. Maram.

4 MR. MARAM: They're not always -- the  
5 Governor's office may be in contact with us at times,  
6 but this department makes a lot of decisions within  
7 the department that effectuate healthcare.

8 REPRESENTATIVE LANG: Is it your position  
9 that you fly on your own without the Governor creating  
10 policy in the State of Illinois?

11 MR. MARAM: No, there might be times, but I  
12 think I look around the room and, respectfully, a  
13 number of you have come to me around -- about your  
14 constituents that I've worked effectively for  
15 throughout -- and I look around the room, and it's out  
16 of respect. But it's out of respect that I don't --

17 REPRESENTATIVE LANG: Let me -- let me move  
18 on, Mr. Maram. I think the people behind me  
19 understand your answer.

20 CHAIRWOMAN CURRIE: Yeah, could we have a  
21 little order here.

22 MR. MARAM: But it's out of respect. We can  
23 do things unilaterally through the department, and we  
24 get things done.

1           REPRESENTATIVE LANG: Was the FamilyCare  
2 program your idea, sir?

3           MR. MARAM: It -- it -- well, the FamilyCare  
4 program in general --

5           REPRESENTATIVE LANG: Let me rephrase the  
6 question. Was the expansion of the FamilyCare program  
7 that was denied by JCAR your idea?

8           MR. MARAM: It wasn't initiated by me, but as  
9 I looked into it and saw what it was doing, I had  
10 comfort levels.

11          REPRESENTATIVE LANG: Who initiated the  
12 program?

13          MR. MARAM: I do not have the exact knowledge  
14 of that. I think parties, including probably legal  
15 counsel and --

16          REPRESENTATIVE LANG: Legal counsel initiated  
17 a healthcare program for the State of Illinois?

18          MR. MARAM: No, no. What I'm saying is that  
19 parties came together probably with counsel, and  
20 therefore it would be privileged, but I was not at the  
21 initiation --

22          REPRESENTATIVE LANG: Wait. Wait. Time-out.  
23 Time-out. A discussion with legal counsel regarding  
24 the healthcare needs of Illinois is privileged, sir?

1 MR. MARAM: No. No. I'm not saying that.  
2 what I'm saying is that eventually when I sat down --  
3 and I don't remember exact parties, but it was talked  
4 about. It was talked about that it was legal. It was  
5 talked about. So it wasn't necessarily initiated by  
6 any of those parties.

7 MS. HOFFMAN: May I, Representative?

8 REPRESENTATIVE LANG: Of course.

9 MS. HOFFMAN: The conver -- I was involved in  
10 conversations regarding the expansion, and one of the  
11 things that we were called upon was to make  
12 recommendations on what were lawful and appropriate  
13 ways to go forward with this initiative. I don't  
14 think that it's any surprise that healthcare is and  
15 has been at the forefront of the Governor's mission,  
16 and so clearly, to the greatest extent possible, that  
17 was always a part of the package. I don't know who  
18 specifically made that decision.

19 REPRESENTATIVE LANG: Well, let me read  
20 something to you. A November 19, 2007 article by Ryan  
21 Keith in The Associated Press.

22 "Governor Blagojevich is moving ahead with a  
23 multimillion-dollar healthcare program even after  
24 lawmakers refused to approve the money and the rules

1 for its operation. Blagojevich said Monday he's going  
2 ahead with plans to add about 147,000 parents and  
3 caretakers to the FamilyCare insurance program despite  
4 lawmakers' objections. 'I'm going to continue to do  
5 what I think is right, and that's one of the good  
6 things about being governor,' Blagojevich said at a  
7 news conference where he announced another special  
8 legislative session for next week on mass transit  
9 issues." And then, "You can do things like this."

10 So is it your testimony that you don't know  
11 anything about the Governor's comments or the  
12 Governor's feelings about FamilyCare? You had no  
13 meetings with him at all? Neither of you remember any  
14 meeting with anybody regarding FamilyCare? This all  
15 came out of your office?

16 MS. HOFFMAN: Representative, I can tell you  
17 right now that I was involved in meetings, and one of  
18 the things that I did in those meetings --

19 REPRESENTATIVE LANG: Who was at those  
20 meetings?

21 MR. HOFFMAN: Lawyers and staff from the  
22 Governor's office, and I also have been at meetings  
23 that the Governor has been at.

24 REPRESENTATIVE LANG: Wait. Let me -- I'll

1 get to that in second.

2 Do you have notes from those meetings regarding  
3 FamilyCare?

4 MS. HOFFMAN: I don't recall. I will look.  
5 If I have them, I will be happy to turn them over.

6 REPRESENTATIVE LANG: By the end of the day?

7 MS. HOFFMAN: I have an office in Chicago as  
8 well. I will have people look.

9 REPRESENTATIVE LANG: Fax machines, e-mail.

10 MS. HOFFMAN: I will -- no. I don't know  
11 where they are.

12 REPRESENTATIVE LANG: This is the electronic  
13 age. By the end of the day you'll provide them to us.

14 Tell me about your meetings with the Governor's  
15 office.

16 MS. HOFFMAN: Representative, you should see  
17 my desk. I promise I will do my best.

18 REPRESENTATIVE LANG: Tell me -- tell me  
19 about -- why? You didn't think these notes are right  
20 on your desk?

21 MS. HOFFMAN: No. But, I mean, or -- I don't  
22 know where they are. I will do my best.

23 REPRESENTATIVE LANG: Tell me about your  
24 meetings in the Governor's office, Ms. Hoffman.

1 MS. HOFFMAN: Just that -- I can't -- I can't  
2 quote specifically. I just have general recollection  
3 that FamilyCare was very important.

4 REPRESENTATIVE LANG: To who? To who? Who  
5 was in the room?

6 MS. HOFFMAN: To the State of Illinois, to  
7 the --

8 REPRESENTATIVE LANG: No. No. No. Stop.

9 MS. HOFFMAN: I don't recall specifically.

10 REPRESENTATIVE LANG: Stop. Stop. Stop. My  
11 colleagues behind me, who normally get very nervous  
12 when I keep talking, seem not to be too nervous now.  
13 They're going to let me get these answers from you.

14 MS. HOFFMAN: Yes, sir.

15 REPRESENTATIVE LANG: So you might as well  
16 prepare to answer them.

17 MS. HOFFMAN: Yes, sir.

18 REPRESENTATIVE LANG: You said -- you may not  
19 have wanted to say it --

20 MS. HOFFMAN: No, I just --

21 REPRESENTATIVE LANG: -- but you said you  
22 were in meetings in the Governor's office regarding  
23 FamilyCare.

24 MS. HOFFMAN: Yes, sir.

1           REPRESENTATIVE LANG:  When were those  
2 meetings?

3           MS. HOFFMAN:  Two summers ago.

4           REPRESENTATIVE LANG:  Who was in the room?

5           MS. HOFFMAN:  There were several meetings on  
6 several occasions.  I can't say off the top of my  
7 head.  I can tell you some of the folks that were  
8 there.

9           REPRESENTATIVE LANG:  Good.  Tell me those  
10 names.

11          MS. HOFFMAN:  Attorneys from the Governor's  
12 office, myself.

13          REPRESENTATIVE LANG:  You said you could give  
14 me names.

15          MS. HOFFMAN:  Bill Quinlan, Bob Greenlee,  
16 myself, Christa Donahue, Mike McGrath, Director  
17 McGrath, Sheila Nix.  At some of those meetings I  
18 recall in that --

19          REPRESENTATIVE LANG:  Was Sheila Nix Deputy  
20 Governor at the time?

21          MS. HOFFMAN:  Yes, sir, I believe -- I  
22 believe so.

23          REPRESENTATIVE LANG:  Who else?

24          MS. HOFFMAN:  Off the top of my head, that

1 truly is all that I can recall. There were a variety  
2 of meetings, and the Governor was not at all of the  
3 meetings and --

4 REPRESENTATIVE LANG: Oh, wait. See -- you  
5 see, you left that name out. Now you said the  
6 Governor was not all of those meetings. Was the  
7 Governor at some of those meetings?

8 MS. HOFFMAN: Yes, sir. Clearly.

9 REPRESENTATIVE LANG: So, you see, you left  
10 that name out. So the Governor was in the meetings --

11 MS. HOFFMAN: Not intending to.

12 REPRESENTATIVE LANG: The Governor was in the  
13 meetings with you when you talked about FamilyCare?

14 MS. HOFFMAN: Yes, sir.

15 REPRESENTATIVE LANG: And what did the  
16 Governor say about the FamilyCare program?

17 MS. HOFFMAN: The Governor was looking for  
18 ways to appropriately expand the FamilyCare program.

19 REPRESENTATIVE LANG: And was the rule that  
20 JCAR rejected ever discussed with the Governor?

21 MS. HOFFMAN: Not specifically and not  
22 after -- rulemaking generally was. I was only present  
23 at conversations where rulemaking generally.

24 REPRESENTATIVE LANG: And what was the

1 Governor's charge to you regarding the expansion of  
2 FamilyCare?

3 MS. HOFFMAN: Well, my -- the only -- if  
4 you're speaking about these meetings specifically, and  
5 I am trying to make sure that I don't state something  
6 incorrect by mistake. I was asked what are -- what  
7 precedent we had in going forward with rules, and I  
8 was able to, over a period of time, put together  
9 information which I have here which under similar  
10 authority the Public Aid Code, which is passed by the  
11 legislature, we engaged in expansions, and I also put  
12 together this list with the names of the --

13 REPRESENTATIVE LANG: Can I interrupt you?

14 MS. HOFFMAN: -- your fellow legislators that  
15 were present.

16 REPRESENTATIVE LANG: Can I interrupt you?  
17 Can I interrupt you?

18 MS. HOFFMAN: Yes, sir.

19 REPRESENTATIVE LANG: I asked you what  
20 conversations you had with the Governor regarding the  
21 expansion of FamilyCare.

22 MS. HOFFMAN: My -- the only conversation  
23 directed to me personally and -- was that what are our  
24 options regarding rulemaking.

1           REPRESENTATIVE LANG: You had a discussion  
2 with the Governor regarding rulemaking and FamilyCare?

3           MS. HOFFMAN: Prior to the filing of any  
4 rules, he was -- I believe he was trying to explore  
5 any and all ways to lawfully go forward.

6           REPRESENTATIVE LANG: So would it be your  
7 testimony that the Governor knows and knew about the  
8 rule that JCAR prohibited?

9           MS. HOFFMAN: I don't know that, sir.

10          REPRESENTATIVE LANG: Well, you said -- let's  
11 go back. You said -- I can have the court reporter  
12 read it back if you need it. You said that whenever  
13 there was a rule that was going to go forth regarding  
14 any issue the Governor would talk to you about that.

15          MS. HOFFMAN: That's incorrect. That is not  
16 what I said, sir.

17          REPRESENTATIVE LANG: So why don't you  
18 restate it.

19          MS. HOFFMAN: What I said is in a  
20 conversation -- you asked specifically about the  
21 expansion of FamilyCare and the conversations of two  
22 summers ago. I recall very specifically that the  
23 Governor was in a room at a meeting, along with a  
24 variety of other people. I can't remember exactly

1 who, when, or the issues. But I was asked about  
2 rulemaking with regard to expansion specifically, and  
3 I was able to put together information that  
4 demonstrated based on precedent we did this. As to  
5 the specifics, I never had any other conversations.

6 REPRESENTATIVE LANG: And so when you finally  
7 came up with the rule you wanted to propose, who did  
8 you report it to?

9 MS. HOFFMAN: It's probably on my e-mail  
10 where I forwarded it to the Governor's office at some  
11 point, and I can find that. I'd be happy --

12 REPRESENTATIVE LANG: Who in the  
13 Governor's -- I'm sorry. I interrupted.

14 MS. HOFFMAN: I don't recall, Representative,  
15 but I'll go -- I'll find it this afternoon if you want  
16 me to send it to you.

17 REPRESENTATIVE LANG: Did you ever interface  
18 directly with the Governor on rulemaking?

19 MS. HOFFMAN: Not on -- not on specific  
20 rulemaking, no.

21 REPRESENTATIVE LANG: would you have  
22 interfaced with Sheila Nix?

23 MS. HOFFMAN: Not on specific rulemaking.

24 After -- and I just want to add because I'm not

1 trying to be evasive and I want to be clear. I was  
2 involved in conversations with legal counsel after  
3 litigation had been filed, and I do believe that  
4 that's privileged.

5 REPRESENTATIVE LANG: Yes, it is. So let me  
6 go on.

7 Can you tell me if John Harris was in on any of  
8 those meetings?

9 MS. HOFFMAN: Prior to or after the  
10 litigation, I really don't recall.

11 REPRESENTATIVE LANG: So you don't recall if  
12 you had any conversation with John Harris regarding  
13 rulemaking?

14 MS. HOFFMAN: No, sir.

15 REPRESENTATIVE LANG: So let me move on to  
16 actually the issue regarding JCAR.

17 You heard Vicki Thomas talk about your use of  
18 emergency rules. Do you have any comments regarding  
19 her view that the administration has abused their  
20 emergency rulemaking power?

21 MS. HOFFMAN: I don't -- I don't believe so,  
22 but I don't know to what extent that is part of the  
23 litigation. I just don't know.

24 REPRESENTATIVE LANG: I'm asking you in

1 general. I'm not asking about the litigation.

2 MR. BLUST: With all due respect, it's not  
3 the function of the department to do those kind of  
4 things. Okay? So --

5 REPRESENTATIVE LANG: I don't understand what  
6 you mean, sir.

7 MS. HOFFMAN: I disagree. I do believe that  
8 it is the responsibility of the department to  
9 determine when an emergency situation exists, and I do  
10 believe in this instance we had determined that an  
11 emergency situation existed. I had testified --

12 REPRESENTATIVE LANG: Well, let me go back.  
13 I didn't get to FamilyCare yet. I will.

14 I asked you about the characterization by Vicki  
15 Thomas. She didn't use the word "abuse," and I don't  
16 want to put that into her mouth, but the  
17 characterization by Vicki Thomas that the department  
18 has cavalierly dealt with the emergency rulemaking  
19 power.

20 MS. HOFFMAN: I disagree, respectfully.

21 REPRESENTATIVE LANG: I didn't ask you if you  
22 disagreed. I asked you to respond to her comments.

23 MS. HOFFMAN: I believe that the department  
24 has always acted appropriately with regard to its

1 emergency rulemaking authority, which actually in the  
2 past has been different than some other agencies have  
3 been granted.

4 REPRESENTATIVE LANG: Ms. Hoffman, it's true  
5 that you're the chief of staff to this department;  
6 correct?

7 MS. HOFFMAN: Yes, sir.

8 REPRESENTATIVE LANG: And it's also true that  
9 you have a significant amount of authority relative to  
10 this department given to you by the director and,  
11 therefore, given to you by the Governor of the State  
12 of Illinois; is that correct?

13 MS. HOFFMAN: That would be the chain of  
14 command.

15 REPRESENTATIVE LANG: I beg your pardon?

16 MS. HOFFMAN: That is -- that is -- I mean, I  
17 have authority to --

18 REPRESENTATIVE LANG: Given to you by your  
19 director.

20 MS. HOFFMAN: Yes. Correct.

21 REPRESENTATIVE LANG: Who was appointed by  
22 the Governor of the State of Illinois; correct?

23 MS. HOFFMAN: Correct.

24 REPRESENTATIVE LANG: This is one of his

1 state agencies; correct?

2 MS. HOFFMAN: Correct.

3 REPRESENTATIVE LANG: All right. So do you  
4 recall the debate you and I had at JCAR one day where  
5 you suggested to me that JCAR was merely advisory?  
6 That was the word you used. That the administration  
7 believes that JCAR is merely advisory and that we  
8 really have no power to do anything at all within the  
9 rulemaking authority. Didn't you say that to me?

10 MS. HOFFMAN: I recall the conversation.

11 REPRESENTATIVE LANG: Did you -- so you  
12 recall saying that to me; correct?

13 MS. HOFFMAN: Yes.

14 REPRESENTATIVE LANG: Do you still believe  
15 that? Do you still believe JCAR is advisory?

16 MS. HOFFMAN: I don't think that it's  
17 important what I believe. I think what is important  
18 with regard to that statement right now, though, is  
19 that is subject to the litigation.

20 REPRESENTATIVE LANG: That's fine. I asked  
21 you --

22 MS. HOFFMAN: I would not testify any  
23 differently.

24 REPRESENTATIVE LANG: So you believe that

1 JCAR is advisory. So let me ask you a question. Let  
2 me ask this question to the director, if I might.

3 Mr. Director, if your department, on behalf of the  
4 Governor of the State of Illinois, believes that JCAR  
5 is simply advisory, why come to us at all ever?

6 MR. MARAM: I think we've been very  
7 cooperative with JCAR putting forth --

8 REPRESENTATIVE LANG: Mr. Director.

9 MR. MARAM: And I think this specific issue  
10 is subject to litigation in that regard.

11 REPRESENTATIVE LANG: Mr. Director, that was  
12 not the question I asked you. I'm not delving into  
13 the litigation. I asked you a question. The answer  
14 to the question will tell me what I need to know.

15 The question -- I'll repeat it for you -- is, if  
16 you believe your department and, therefore, the  
17 Governor of the State of Illinois believes that JCAR  
18 is advisory, then why come to us at all? Why clutter  
19 our rooms with rules and paper and meetings? Why not  
20 -- why come at all? Why does Department of Veterans  
21 Affairs come? Why does the Department of Children and  
22 Family Services come? Why does anybody come to JCAR  
23 if we can be ignored anytime you feel like it?

24 MR. MARAM: We appreciate the interaction.

1 We appreciate putting forth what's going on. We  
2 appreciate your responses.

3 Tammy.

4 MS. HOFFMAN: I've also, as part of that same  
5 testimony, Representative, which is on the record and  
6 has been in the newspaper and everything else. One of  
7 the things I said is it's an open forum. We're able  
8 to respond and discuss comments and concerns. All of  
9 the general public were able to work with other groups  
10 and with legislators and we welcome that process.

11 REPRESENTATIVE LANG: Will one of you tell me  
12 what the lower court said regarding the issues  
13 regarding whether JCAR is advisory?

14 MS. HOFFMAN: That's clearly privileged.

15 REPRESENTATIVE LANG: Well, that's not  
16 privileged. I asked you what the lower court said. I  
17 don't want to hear from the attorney. What did the  
18 lower court say regarding whether JCAR is advisory?

19 MR. MARAM: I don't have that in front of me.

20 REPRESENTATIVE LANG: You don't know? Why  
21 are you in litigation then? Why are you in the  
22 Illinois Supreme Court?

23 MR. MARAM: Representative Lang, be fair. I  
24 said to you I didn't have it in front of me. We're

1 both attorneys. I don't have any court pleadings in  
2 front of me.

3 REPRESENTATIVE LANG: Then speak informally.  
4 Did the lower court hold -- did the lower court hold  
5 that JCAR is advisory? Or did the lower court hold  
6 that JCAR had a point, and that we had a right to  
7 prohibit the rule? Which of those did they rule?

8 MS. HOFFMAN: Representative, I do not know  
9 the language specifically and how you're  
10 characterizing or if you're quoting. I would be happy  
11 to take a look at it and get it to you this afternoon.

12 REPRESENTATIVE LANG: All right. Let me ask  
13 this question then: Why did the lower court rule  
14 against you? Why are you in the Supreme Court today?

15 MR. MARAM: I think that I'm not going to go  
16 into great detail on the law with the lawyers here. A  
17 lot of it was also based on this Public Aid Code,  
18 which may be inconsistent with a number of things that  
19 are going on. It would apply a Public Aid Code that  
20 we believe is not applicable based on federal and  
21 state's application.

22 However, obviously, this is -- I don't think there  
23 was ever a ruling, to the best of my knowledge, on the  
24 merits of JCAR. Obviously, the Supreme Court has set

1 a stay in this. We're only looking to be appropriate  
2 here. We'll be glad to go by whatever the law ends up  
3 to be.

4 REPRESENTATIVE LANG: There's one other area  
5 I want to delve into with you, and I'll try to do it  
6 quickly. The area of this emergency rule. And so you  
7 recall the debate we had. You may have both been  
8 there that day. You recall the debate where you came  
9 forth with this emergency rule, and there's a lot of  
10 record --

11 And to the members of the committee, in the packet  
12 you received today, there is -- the minutes of the  
13 JCAR meeting that day will reflect this particular  
14 debate that we had, this particular conversation.

15 And I asked more than once what made this an  
16 emergency, and you talked in general terms about  
17 there's hundreds of thousands of people in Illinois  
18 without healthcare, and we all agree with that and  
19 we'd all like to take care of that problem, but I  
20 asked what made it an emergency today. And you said,  
21 well, because the federal government bounced the SCHIP  
22 program. And I said on behalf of the committee, and  
23 they all agreed with me, well, then that's the  
24 emergency. We'd be happy to help you with the SCHIP

1 program, but you insisted on piggybacking them  
2 together and not separating them out.

3 I'll ask you a question today you would not answer  
4 for me then. Why would you not separate them out?

5 MS. HOFFMAN: Because we believed that it was  
6 an emergency and that there was at least a chance that  
7 the federal government would include up to 400  
8 percent. Other states had submitted waivers up to 400  
9 percent, and we did not want to limit the State of  
10 Illinois.

11 REPRESENTATIVE LANG: But that issue -- that  
12 issue had been going on for years. These people  
13 without health insurance had been going on for years.  
14 What made it an emergency that day, that week, that  
15 month that wasn't emergent a week ago? A month ago?  
16 A year ago? Five years ago? What made it an  
17 emergency that you couldn't wait for regular  
18 rulemaking and tried to piggyback the SCHIP program  
19 onto the FamilyCare expansion?

20 MS. HOFFMAN: Representative Lang, I don't  
21 recall my testimony, specifically. I've had lots of  
22 conversations about this subsequently, and I don't  
23 recall the reason precisely that we used in the rule  
24 where we actually justified the emergency. I would be

1 happy to get you that information today.

2 REPRESENTATIVE LANG: Does JCAR think you  
3 were justified?

4 MS. HOFFMAN: No.

5 MR. MARAM: Apparently not.

6 REPRESENTATIVE LANG: JCAR prohibited the  
7 rule nine to two, did they not?

8 MR. MARAM: They did. I think there was  
9 significant -- some discussion both ways.

10 REPRESENTATIVE LANG: JCAR prohibited the  
11 rule nine to two, did they not?

12 MS. HOFFMAN: Yes.

13 MR. MARAM: Apparently, yes.

14 REPRESENTATIVE LANG: And the very next day  
15 you implemented the program, did you not?

16 MS. HOFFMAN: The program was in place. The  
17 program was in place.

18 REPRESENTATIVE LANG: The program was in  
19 place. And the very next day you proceeded with the  
20 program. In fact, the very next day you added people  
21 to the program, didn't you? Simple question.

22 MS. HOFFMAN: I don't know the answer to the  
23 question.

24 REPRESENTATIVE LANG: All right. The very

1 next week? The very next month? You added people to  
2 the program after the rule was prohibited by JCAR; is  
3 that correct? Yes or no? Yes or no.

4 MS. HOFFMAN: I don't know when we stopped.  
5 I -- well, yeah, we would have.

6 REPRESENTATIVE LANG: Of course, you did. Of  
7 course, you did.

8 MR. MARAM: And with due respect, obviously,  
9 it was the subject of litigation of people having  
10 to -- we weren't the ones getting sued --

11 REPRESENTATIVE LANG: Has there been any  
12 court yet -- has any court or any competent authority  
13 said JCAR doesn't know what they're talking about;  
14 JCAR was wrong under the law; the arm of the  
15 legislature that approves rulemaking was wrong? Has  
16 anybody said that?

17 MS. HOFFMAN: May I, please?

18 MR. MARAM: Yes.

19 REPRESENTATIVE LANG: Yes or no is the only  
20 answer I'll take.

21 MS. HOFFMAN: No.

22 REPRESENTATIVE LANG: No one has said that.  
23 And so all this talk --

24 MS. HOFFMAN: It is part of the litigation.

1           REPRESENTATIVE LANG: So it is true then that  
2 all this talk about litigation is you trying now to do  
3 what you couldn't do in the lower court and at JCAR --  
4 get a program approved that wasn't approved.

5           One more question. The Governor had a program to  
6 do all this by statute. It was called Senate Bill 5.  
7 Senate Bill 5 failed, did it not?

8           MR. MARAM: It wasn't passed.

9           REPRESENTATIVE LANG: Senate Bill 5 failed,  
10 did it not?

11          MS. HOFFMAN: Yes.

12          MR. MARAM: Yes.

13          REPRESENTATIVE LANG: And the Governor had a  
14 plan to fund Senate Bill 5 with the gross receipts  
15 tax, did he not?

16          MR. MARAM: At one point.

17          REPRESENTATIVE LANG: And the gross receipts  
18 tax failed 107 to nothing; is that correct? Is that  
19 correct?

20          MR. MARAM: I believe so.

21          REPRESENTATIVE LANG: All right. So the  
22 gross receipts tax which was supposed to fund  
23 FamilyCare failed. The FamilyCare program that you  
24 tried to do legislatively failed. You went to JCAR at

1 the Governor's request and insistence, and the plan  
2 failed. And the next day the Governor says, well,  
3 we're forging ahead because as Tammy Hoffman says that  
4 JCAR is just simply advisory. Isn't that all correct?

5 MR. MARAM: I'd like to respond --

6 CHAIRWOMAN CURRIE: Can you please speak into  
7 the microphone.

8 MR. MARAM: I'd like to respond. I've  
9 certainly been listening and appreciate -- obviously,  
10 this is a matter on the expansion 185 and above and  
11 perhaps other issues that's in litigation. We believe  
12 there's thousands of people out there -- tens of  
13 thousands probably -- who aren't getting healthcare in  
14 Illinois, and this was a vehicle we believe is  
15 appropriate to help the middle class.

16 REPRESENTATIVE LANG: It's a smoke screen,  
17 Mr. Maram. We're all for healthcare. All God's  
18 children are for healthcare. We would like you to  
19 follow the law. And the truth is that this committee  
20 will have to determine whether the Governor's office  
21 failure to follow the law on this issue is an issue we  
22 want to bring forward. The Governor's office did not  
23 follow the law. You are now trying to get the law  
24 overturned, but the law as it existed at the time the

1 rule was prohibited by JCAR was the law. You did not  
2 follow the law.

3 Thank you, Madam Chairman.

4 CHAIRWOMAN CURRIE: Thank you,  
5 Representative.

6 MS. HOFFMAN: May I please -- may I please  
7 make a comment?

8 CHAIRWOMAN CURRIE: I don't think that  
9 required a response.

10 Representative Bellock was next.

11 REPRESENTATIVE BELLOCK: Thank you.

12 My point was regarding the same. Nobody is  
13 questioning the laudability of the healthcare programs  
14 in the State of Illinois. The question is what  
15 Representative Lang just said is whether it followed  
16 the law.

17 In that same press conference that was on November  
18 19th in 2007, one of the other statements that was  
19 made was the administration wants to expand the  
20 program income eligibility from 38,000 to almost  
21 83,000 for a family of four. Blagojevich responded by  
22 saying, "JCAR doesn't have the constitutional  
23 authority to block the rule so it's moving ahead with  
24 signing of families and at an expected cost of 43

1 million this year."

2           So the Governor was at the press conference saying  
3 he did not feel that JCAR was constitutional and that  
4 he was moving ahead. So that's the bottom line is the  
5 Governor felt that he had the authority to move ahead,  
6 and that's what we're discussing here is the  
7 constitution and the three branches of government and  
8 who is doing what. Is this something that the  
9 legislature has to approve, or can we just go around  
10 the legislature, go around a JCAR ruling, and just do  
11 what we want to do just because we think it's a good  
12 thing to do, but it isn't following the law of the  
13 constitution of Illinois.

14           MS. HOFFMAN: May I, Representative?

15           REPRESENTATIVE BELLOCK: Sure.

16           MS. HOFFMAN: I understand what you're  
17 saying, and while the courts currently have not ruled  
18 substantively on JCAR, I believe that that is still  
19 part of the lawsuit. They ruled on some smaller  
20 technical areas.

21           When we went forward -- and I never heard the  
22 Governor say the next day we'll just keep going  
23 forward. I trust what you're saying.

24           REPRESENTATIVE BELLOCK: This is out of a

1 press conference.

2 MS. HOFFMAN: I don't know what day it was,  
3 but I have no personal knowledge of that. I just  
4 wanted to comment on that.

5 And, again, when I prepared and told staff and  
6 attorneys that we could, the Public Aid Code clearly  
7 gives the agency the authority to do that and that is  
8 what we used as authority, as we had in separate  
9 instances that were certified by JCAR without  
10 exception, and I have that information here available  
11 too.

12 CHAIRWOMAN CURRIE: Thank you. Are you  
13 finished, Representative?

14 Representative Rose.

15 REPRESENTATIVE ROSE: Thank you.

16 First on that point, whatever you were just  
17 referencing, would you submit that for the record?

18 MS. HOFFMAN: Yes, sir.

19 REPRESENTATIVE ROSE: Okay. Thank you.

20 Mr. Maram, I heard you say you're an attorney; is  
21 that correct?

22 Okay. All right. I want to just review to make  
23 sure I understand this. So for the record I'm  
24 referencing the timeline that was put together in the

1 document handed to us by Ungaretti and Harris earlier  
2 today called Before the Special Investigative  
3 Committee, Materials in Response to Request to Appear.  
4 Let me know where you dispute this timeline. Okay?

5 MR. ADAM: Excuse me, Representative. Can we  
6 have a page number so we know what you're referencing,  
7 sir?

8 REPRESENTATIVE ROSE: The very -- there's no  
9 page. It's literal page two, although there's not a  
10 number on it.

11 MR. ADAM: Thank you.

12 REPRESENTATIVE ROSE: Sure. April 15, 2008,  
13 circuit court enters first preliminary injunction  
14 enjoining the program. Did they enjoin your  
15 program -- the circuit clerk -- the circuit court?

16 MR. MARAM: I think there was an injunction  
17 as to certain factors.

18 MS. HOFFMAN: Not the program with regard to  
19 paying.

20 MR. MARAM: On the emergency room (sic) and  
21 I -- we'd have to go to the court documents. I would  
22 have -- one would have to go to the court documents to  
23 see what the --

24 REPRESENTATIVE ROSE: Was it -- was a first

1 preliminary injunction in it?

2 MR. MARAM: There was a preliminary  
3 injunction, I think, on the emergency room -- on the  
4 emergency rule.

5 REPRESENTATIVE ROSE: Okay.

6 MR. MARAM: From expending funds.

7 REPRESENTATIVE ROSE: The director, in fact,  
8 quoted that order in his prepared statement.

9 CHAIRWOMAN CURRIE: Yeah, could you use the  
10 microphone? Could you speak into the microphone?  
11 Thank you.

12 REPRESENTATIVE ROSE: The director quoted  
13 that order in his prepared statement.

14 MR. MARAM: Okay.

15 REPRESENTATIVE ROSE: Okay.

16 MR. MARAM: That's fine. And you have the  
17 order?

18 REPRESENTATIVE ROSE: I don't -- to be honest  
19 with you, I just got this. So I don't know if I've  
20 got it or not. I'm going off of a timeline here.

21 April 23, '08, circuit court denies defendants'  
22 request to stay first injunction.

23 May 1, 2008, plaintiffs file second motion for  
24 preliminary injunction.

1           May 14th, appellate court denies defendants'  
2 motion to stay first injunction.

3           September 26, '08, appellate court affirms first  
4 preliminary injunction.

5           October 15, '08, circuit court enters second  
6 preliminary injunction order.

7           On -- that was then denied, request to stay by the  
8 appellate court.

9           And then, apparently, for the first time in all  
10 this, on November 12, 2008, the Supreme Court entered  
11 an order staying the October 15, 2008 order.

12           And I want to be clear. That's what you were  
13 talking about earlier when you said it was stayed?

14           MR. MARAM: I believe so.

15           REPRESENTATIVE ROSE: Okay. Now, you tell me  
16 if you dispute this, because what it says here is that  
17 was stayed purely for the purpose of pending  
18 disposition of the defendants' petition for leave to  
19 appeal. Wasn't stayed on the subject matter. It was  
20 stayed on the procedural matter of your pending  
21 petition for leave to appeal. Now, I -- and I'm  
22 asking you a question. If that's not correct, tell me  
23 now.

24           MR. MARAM: I don't think I'm prepared to go

1 into detail on what the stay was based on here. I  
2 don't think the attorneys on the stay are here. I  
3 believe that there are questions that are subject that  
4 haven't been resolved.

5 REPRESENTATIVE ROSE: So you don't dispute  
6 what was said there?

7 MR. MARAM: I don't dispute. I believe the  
8 timeline you described with the emergency rule was, I  
9 think, describing what's part of the stay right now.  
10 I would defer to attorneys and the attorney-client  
11 privilege for handling the matter.

12 REPRESENTATIVE ROSE: You throw up a point  
13 because you've been saying all morning long that you  
14 won a stay. And the way I --

15 MR. MARAM: There is a stay and the --

16 REPRESENTATIVE ROSE: And the way I read  
17 this is a stay for procedural issue, not subject.

18 MR. MARAM: I think they're a stay for a  
19 number of issues still to be resolved.

20 REPRESENTATIVE ROSE: Mr. Maram, and I think  
21 this gets back to the issue, and Ms. Thomas in her  
22 previous testimony mentioned something about a  
23 preemptory rulemaking authority. And I have not heard  
24 you address that, and I'm concerned, because from what

1 she said in her testimony that the preemptory  
2 rulemaking authority is only valid to essentially  
3 enforce a valid order of an Illinois court. What she  
4 said in her testimony, as I understand it, was the  
5 rules that you filed were outside the scope of the  
6 court's order.

7 MR. MARAM: I think Tammy, who has worked  
8 with the rules, wants to --

9 MS. HOFFMAN: It's my understanding that  
10 that's their position, and I understand that, but I  
11 believe that it is something that is in dispute and  
12 could go to the litigation. I don't know,  
13 Representative.

14 REPRESENTATIVE ROSE: Were the rules denied?

15 MS. HOFFMAN: Yes.

16 REPRESENTATIVE ROSE: And then did you  
17 continue on after the rules were denied?

18 MS. HOFFMAN: To the extent as required by --  
19 we complied with the outstanding orders.

20 REPRESENTATIVE ROSE: But you're talking  
21 about the orders of the court. I'm talking about the  
22 orders of JCAR. I mean, that's what we're here today  
23 on, and I respect everything that everyone said before  
24 to this point in time, but we're here today to find

1 out whether or not the department deliberately evaded  
2 the wishes of JCAR as a service agency of the Illinois  
3 legislature.

4 MR. MARAM: The department believes it has  
5 acted legally and throughout this -- and appropriately  
6 throughout this process. There's obviously  
7 litigation. We will abide by the law as we always  
8 will.

9 REPRESENTATIVE ROSE: Let me ask you  
10 something because I would assume -- and I'm just a  
11 country lawyer from Champaign County. But I would  
12 assume that if JCAR told me not to do something, I  
13 might want to think twice before I did it.

14 So after JCAR told you the first time not to do  
15 it, who made the decision to go ahead and do it  
16 anyway? And we asked a lot of these questions. We  
17 heard references about some people in a room, but who  
18 made the ultimate decision to go ahead and do it?

19 MS. HOFFMAN: As I responded before in regard  
20 to a similar question, I don't recall specifically.  
21 I'm more -- I put stuff in e-mail. I'll be happy to  
22 look. I will be happy to forward it to this  
23 committee.

24 REPRESENTATIVE ROSE: Mr. Maram, your chief

1 of staff is your chief of staff. You're the director  
2 of the department.

3 MR. MARAM: I wasn't -- I did not initiate  
4 this. I do believe it's founded in authority.

5 REPRESENTATIVE ROSE: Who did initiate it?

6 MR. MARAM: I don't know who initiated it. I  
7 know when -- I -- it was -- I -- it was discussed.  
8 And might I say, as a matter of public record, that  
9 people of goodwill could disagree. There are a number  
10 of jurisdictions where -- if I may respond.

11 REPRESENTATIVE ROSE: I'm not talking about  
12 --

13 MR. MARAM: There's a number of  
14 jurisdictions --

15 REPRESENTATIVE ROSE: -- the civil  
16 litigation. I'm talking about who made the decision.

17 MR. MARAM: There's a number of jurisdictions  
18 where similar committees of JCAR have certain  
19 authority and don't. This is one people are just  
20 trying to work through, and there are many  
21 jurisdictions where it's found they didn't have that  
22 authority. We want to be cooperative. We just  
23 want --

24 REPRESENTATIVE ROSE: Mr. Maram, the only

1 jurisdiction that applies is Illinois. I don't care  
2 your citing case law in some other state. That's  
3 completely and utterly immaterial so --

4 MR. MARAM: And we've worked with JCAR  
5 numerous times and continue to. We continue to and we  
6 continue to be in front of you.

7 REPRESENTATIVE ROSE: In this specific  
8 instance, I'm asking whose decision was it to go ahead  
9 and do it anyway?

10 MR. MARAM: Well, first of all, I think I've  
11 answered you a number of times. I didn't -- I was not  
12 present --

13 REPRESENTATIVE ROSE: Do your recall --

14 MR. MARA: -- during all the meetings, but  
15 when it was brought up and looked at, I believe there  
16 was solid authority and funding to do it. So I do not  
17 know who --

18 REPRESENTATIVE ROSE: Well, we'll come to the  
19 funding in a minute.

20 MR. MARAM: I do not -- to answer your  
21 question, I do not know who initiated the initial  
22 initiation.

23 REPRESENTATIVE ROSE: You don't know who  
24 initiated the initial initiation.

1 MR. MARAM: But I do know when it was  
2 discussed with me -- when it was discussed with me --

3 REPRESENTATIVE ROSE: You're the director of  
4 the department and this just suddenly materialized in  
5 you're department?

6 MR. MARAM: No. You know, if we can answer.  
7 This is no surprise. For four years, we, as partners,  
8 have lead the nation in providing cost effective  
9 healthcare to all kids. If I may answer.

10 REPRESENTATIVE ROSE: Madam Chairman,  
11 pursuant to Rule 9 I'm going to ask you to direct the  
12 witness to answer the question.

13 MR. MARAM: So the fact that this comes up as  
14 a discussion is not a surprise.

15 CHAIRWOMAN CURRIE: But I think he did have a  
16 specific question, and if you can answer specifically,  
17 that would be helpful.

18 MR. MARAM: I think I did, Representative. I  
19 believe -- I don't know who initiated, but it was not  
20 a surprise that a policy like this to look to expand  
21 healthcare was being thought about.

22 REPRESENTATIVE ROSE: No. No. No. I'm  
23 asking who decided to go ahead after JCAR said no.

24 MR. MARAM: I think it was discussed, and we,

1 as a department, and working with parties and  
2 outside counsel --

3 REPRESENTATIVE ROSE: What parties?

4 MR. MARAM: We had been in discussions, as  
5 we've said, with people -- whether it be from the  
6 Governor's office, Governor's legal counsel, outside  
7 counsel, and we wouldn't go into details --

8 REPRESENTATIVE ROSE: From the Governor's  
9 office. Thank you.

10 MR. MARAM: -- privilege.

11 REPRESENTATIVE ROSE: Now, on the issue --

12 MR. BLUST: I'm going to object to all of  
13 this because all decisions made during the litigation,  
14 I'm sure, were with counsel.

15 REPRESENTATIVE ROSE: I'm not talking about  
16 the litigation. I'm talking about the very basic idea  
17 that JCAR said no and you did it anyway. That's not  
18 subject to litigation. Now --

19 MR. BLUST: In fact, it is the subject of  
20 litigation.

21 REPRESENTATIVE ROSE: So, Mr. Blust, by your  
22 theory, then, you could sue to prevent and obfuscate  
23 the will of the General Assembly on any issue and just  
24 hide behind litigation?

1 MR. BLUST: All of the department's positions  
2 in regard to JCAR are in the public record. You can  
3 read them. All I was saying to you is this whole line  
4 of questioning gets into attorney-client privilege  
5 simply because decisions made in litigation -- and the  
6 litigation was already pending during most of the  
7 things that you're talking about. Decisions made in  
8 litigation are made with the litigation counsel that's  
9 conducting the litigation.

10 REPRESENTATIVE ROSE: Mr. Blust, we'll  
11 continue here because, obviously, we're not going to  
12 get an answer no matter what happens. I think it's  
13 clear from my questioning and the last questions --  
14 Mr. -- Representative Lang's question.

15 Mr. Maram, I want to understand something. You  
16 said that this was going to be paid for by  
17 efficiencies. What efficiencies?

18 MR. MARAM: The department has a number of  
19 efficiencies, cost-saving measures: how we utilize  
20 our healthcare system using disease management, using  
21 primary care case management, working with savings on  
22 pharmaceutical drugs. Every year that we've come in  
23 front of you I believe we've been right on target with  
24 our budget because we apply those skills and work

1 effectively.

2 So through the years we've been able to work with  
3 our budgets. We manage by priorities. The programs  
4 are -- it is not --

5 REPRESENTATIVE ROSE: By "priorities," does  
6 that mean that -- and I want to go back to something  
7 you said earlier which I thought was very interesting  
8 how you phrased it. You said that no services were  
9 not -- did not go unfulfilled.

10 MR. MARAM: No, sir. As we didn't take from  
11 another -- not that no service --

12 REPRESENTATIVE ROSE: But does that mean --

13 MR. MARAM: We did not take from any program  
14 or service because of this.

15 REPRESENTATIVE ROSE: But does that mean that  
16 that provider didn't get paid for their services in a  
17 timely fashion?

18 MR. MARAM: We --

19 REPRESENTATIVE ROSE: Does that mean that  
20 that added to our state's unpaid backlog of bills?

21 MR. MARAM: There are many competing  
22 interests, whether it be hospitals, nursing homes,  
23 pharmacy, revenues, and how many revenues -- our  
24 own -- the budget that we received was short on

1 revenues.

2 REPRESENTATIVE ROSE: Mr. Maram, I understand  
3 what you said about the services and the priorities.  
4 But, basically, if I hear what you're saying, is  
5 you're saying that that was just another thing that  
6 got added to the list of priorities, which means at  
7 some point in time that bill's got to be paid which  
8 is -- which --

9 MR. MARAM: We were appropriately paying  
10 bills, and I think, if you look at that, even when --

11 REPRESENTATIVE ROSE: Appropriately paying  
12 those.

13 MR. MARAM: -- even when we had less revenues  
14 given to us than expenses at times, we managed --  
15 we've tried hard to manage that budget, and we've done  
16 it effectively. We've stood in front of you year  
17 after year while bringing in hospital assessment of  
18 \$3.8 billion last week, of holding down costs.

19 REPRESENTATIVE ROSE: Mr. Maram, I'm --

20 MR. MARAM: But, I mean, that's how we do it.  
21 We work with a number of variables.

22 REPRESENTATIVE ROSE: We're here on this.  
23 We're here on this.

24 MR. MARAM: Okay. But you did ask me how --

1           REPRESENTATIVE ROSE: And, as a general  
2 proposition, if you add new services, the bill has to  
3 be paid.

4           MR. MARAM: We -- the bills were paid  
5 appropriately, not taking from other programs, through  
6 efficiencies in the department.

7           REPRESENTATIVE ROSE: Not taking from other  
8 programs. But, again, that's my point. It also means  
9 that it adds to the delayed payment cycle of the  
10 state.

11          MR. MARAM: No, you would find that the  
12 payment cycle was pretty much on target, and we were  
13 paying pretty much on target on what budgeted us.

14          REPRESENTATIVE ROSE: That's very  
15 inconsistent from what I hear from my constituents who  
16 are providers, Mr. Maram.

17          I'm finished. Thank you.

18          MR. MARAM: Through that period of time.

19          CHAIRWOMAN CURRIE: Thank you very much,  
20 Representative.

21          Let me just say we've got at least four more  
22 people who've already indicated they wanted to  
23 question this panel. We have a variety of other  
24 panels that we're going to invite back. I would

1 encourage my colleagues that brevity is a good idea  
2 and that repetition is really not a good idea.

3 So could we now go to Representative Franks.

4 REPRESENTATIVE FRANKS: I'll be brief.

5 There's none of us in this room that don't want to see  
6 healthcare for all. You know, we talked about what's  
7 happening in this country. I think that's one of the  
8 reasons why Barack Obama was named president -- was  
9 elected president because he wants to give healthcare  
10 to the 47 million people that don't have healthcare in  
11 this country. But that's not the subject of what we  
12 want to talk about.

13 what we want to talk about is process and what we  
14 heard -- and I was wanting to follow up on what  
15 Mr. Lang was saying. And, Ms. Hoffman, you had  
16 indicated that you were in meetings with the Governor  
17 approximately two years ago. And at that time you  
18 talked about the expansion of healthcare. Would that  
19 be a fair statement?

20 MS. HOFFMAN: Yes, sir.

21 REPRESENTATIVE FRANKS: Okay. Besides the  
22 Governor, do you recall who else was driving that  
23 policy to expand healthcare in the State of Illinois?  
24 which we all agree is a laudable goal, but I'm trying

1 to figure out who were the decision makers at that  
2 time.

3 MS. HOFFMAN: Understood. And I was never  
4 present at a meeting where there were less than ten  
5 people. So I could not necessarily discern who was  
6 make -- who was driving that. I have no personal  
7 knowledge.

8 REPRESENTATIVE FRANKS: Okay. But the  
9 Governor -- certainly was one of his priorities  
10 because he kept us here for multiple special sessions  
11 to deal with that issue. Do you recall?

12 MS. HOFFMAN: Yes, sir.

13 REPRESENTATIVE FRANKS: Okay. So you also  
14 said Mr. Harris attended some of these meetings.

15 MS. HOFFMAN: I don't -- I said I didn't know  
16 that for sure on these issues. I truly don't.

17 REPRESENTATIVE FRANKS: Okay. But Sheila Nix  
18 in the Governor's office, a Deputy Governor, was  
19 involved as well.

20 MS. HOFFMAN: At times.

21 REPRESENTATIVE FRANKS: Mr. Quinlan, the  
22 Governor's attorney, was also involved at times;  
23 correct?

24 MS. HOFFMAN: Yes, sir. Along with all of

1 our staff.

2 CHAIRWOMAN CURRIE: I think we already have  
3 some of those answers, Representative --

4 REPRESENTATIVE FRANKS: Okay.

5 CHAIRWOMAN CURRIE: -- in response to  
6 questions from Mr. Lang.

7 MS. HOFFMAN: Lots of our staff were also  
8 involved and outside counsel.

9 REPRESENTATIVE FRANKS: All right. Well,  
10 here's what I'm trying to get at. A couple years ago  
11 we understand that was the biggest issue that the  
12 Governor had. He wanted to expand healthcare.  
13 Mr. Lang had talked about by instituting a gross  
14 receipts tax and that failed. At one time he also  
15 wanted to expand healthcare by selling or leasing the  
16 lottery. Do you recall that?

17 MS. HOFFMAN: I recall hearing about it, sir.

18 REPRESENTATIVE FRANKS: Yes. I believe --  
19 actually, someone from -- might have testified on that  
20 when we were dealing with that issue in the General  
21 Assembly.

22 My point is Mr. Lang had talked about Senate Bill  
23 No. 5, and at that point that was what the Governor  
24 tried to do was to expand healthcare through Senate

1 Bill 5 and that failed. And then Mr. Lang and others  
2 who are on JCAR -- and I'm not -- I'm told that this  
3 failed in JCAR.

4 So I'm wondering, if this is the Governor's big  
5 issue, do you consider yourself rogue employees, or  
6 were you taking direction directly from the Governor's  
7 office? And that's what we need to get at. Were you  
8 taking direction from the Governor's office to expand  
9 this?

10 MS. HOFFMAN: Clearly, the conversations that  
11 I was involved in -- specifically, the ones when the  
12 Governor was there -- he always looking for  
13 appropriate ways to do this through available  
14 channels. I did provide some information --

15 REPRESENTATIVE FRANKS: What did he say? Did  
16 he say find a way to get it done?

17 MS. HOFFMAN: No. I never heard him say  
18 those words.

19 MR. MARAM: And I'd like to add that through  
20 the years (inaudible) wanted to expand healthcare  
21 effectively and cost effectively. Allkids. I've  
22 always been a --

23 REPRESENTATIVE FRANKS: Mr. Maram. Mr.  
24 Maram. That's not the question. The question is the

1 fact that he thought it was important enough to get  
2 this passed, and he brought a bill that failed. He  
3 thought it was important enough that he brought it to  
4 JCAR and asked them to implement rules, and he was  
5 turned down.

6 Then I want to know who made the decision to do it  
7 anyway after it was turned down by the legislature and  
8 also turned down by JCAR? Who made that decision and  
9 when was it made?

10 MR. MARAM: The parties probably thought  
11 about it together.

12 REPRESENTATIVE FRANKS: Who made the decision  
13 and when it was made?

14 MS. HOFFMAN: May I?

15 MR. MARAM: Yes.

16 MS. HOFFMAN: I don't want to speculate. I  
17 have given this committee assurances that I will go  
18 and look at whatever records that I have, and I will  
19 be happy to share them with this committee.

20 REPRESENTATIVE FRANKS: No further questions.

21 CHAIRWOMAN CURRIE: Thank you,  
22 Representative.

23 Representative Fritchey.

24 REPRESENTATIVE FRITCHEY: Thank you,

1 Chairman. Thank you. I'll be brief.

2 Director, pursuant to the FamilyCare programs  
3 implemented by the Governor, there's essentially a  
4 sliding scale for premiums for participants in the  
5 program based upon their income, et cetera; is that  
6 correct?

7 MS. HOFFMAN: Yes.

8 MR. MARAM: Yes.

9 CHAIRWOMAN CURRIE: Yeah, speak into the  
10 microphone.

11 REPRESENTATIVE FRITCHEY: Do you know the  
12 amount of premiums that have been collected pursuant  
13 to the program?

14 MS. HOFFMAN: We can get you that today.

15 MR. MARAM: We can get that to you very  
16 quickly. We can get that to you very quickly. I'm  
17 trying to think exactly the amount. We can get that  
18 to you very quickly.

19 REPRESENTATIVE FRITCHEY: Well, I would  
20 imagine that's something that could be readily  
21 provided.

22 MR. MARAM: Certainly. Check our records.

23 MS. HOFFMAN: Absolutely.

24 MR. MARAM: Yes. Yes, sir.

1           REPRESENTATIVE FRITCHEY: Okay. And do you  
2 know, as we sit here today, whether those premiums are  
3 continuing to be collected today?

4           MS. HOFFMAN: I don't have that information  
5 off the top of my head.

6           REPRESENTATIVE FRITCHEY: Well, then --

7           MR. MARAM: In following court orders and  
8 various -- and doing it appropriately, we'll check to  
9 see what -- what amounts, if any, are being collected.

10          MS. HOFFMAN: We'll get you that information.

11          REPRESENTATIVE FRITCHEY: So they are -- hold  
12 on. I can take one answer at a time. But do we know  
13 are they still being collected today?

14          MR. MARAM: We will check to see what, if  
15 any, amounts are being collected based on the court  
16 orders and the stay.

17          REPRESENTATIVE FRITCHEY: The premiums that  
18 had been collected and may be still being collected,  
19 where are those being deposited at?

20          MR. MARAM: I think general revenue funds.  
21 General revenue funds.

22          REPRESENTATIVE FRITCHEY: Can you,  
23 Ms. Hoffman or Director, just confirm that for me at  
24 some point?

1 MR. MARAM: That is correct.

2 MS. HOFFMAN: That's correct.

3 REPRESENTATIVE FRITCHEY: No. But, I mean,  
4 but you -- that is correct?

5 MS. HOFFMAN: Yes, it is correct, and we will  
6 get you the amounts and when and if we are still  
7 collecting. We'll get you all that information.

8 REPRESENTATIVE FRITCHEY: Okay. Thank you.  
9 I won't belabor this anymore. Mr. Genson? If I can  
10 digress for a second.

11 MR. GENSON: I have my microphone on and I'm  
12 ready.

13 REPRESENTATIVE FRITCHEY: Whether your  
14 microphone's on or not, I knew you'd be ready.

15 My question for you -- my question for you is  
16 this: At the beginning of the proceedings today you  
17 made a statement which got my attention and I think  
18 that of a number of my colleagues. And that was --  
19 well, here, let me preface this.

20 As you've seen, we are given wide latitude in the  
21 nature of these proceedings, et cetera. That  
22 notwithstanding, we obviously want to make sure that  
23 we proceed in as appropriate a manner as possible.  
24 You had cited 18 USC Section 2515. This is why I tend

1 to keep my laptop handy.

2 MR. GENSON: Yes. Yes.

3 REPRESENTATIVE FRITCHEY: which says -- and  
4 I'll -- it's short. I'll repeat it again. "Whenever  
5 a wire or oral communication has been intercepted, no  
6 part of the contents of such communication and no  
7 evidence derived therefrom may be received in evidence  
8 in a trial, hearing, other proceeding, entered before  
9 any court, grand jury, department, officer, agency,  
10 regulatory body, legislative committee, or other  
11 authority of the United States, a state, political  
12 subdivision thereof if the disclosure of that  
13 information will be in violation of this chapter."  
14 Correct?

15 MR. GENSON: Yes, Your Honor. Your Honor.  
16 See.

17 REPRESENTATIVE FRITCHEY: I've been called  
18 worse. I've been called worse, I assure you. Let me  
19 focus on the last part of that because what I'm trying  
20 to make sure is that we are not doing something  
21 unwittingly improperly.

22 The last provision of Section 2515 states that  
23 "...if the disclosure of that information will be in  
24 violation of this chapter." I went through the rest

1 of the chapter. And I won't belabor the committee  
2 with this, but to cut to the chase, it essentially  
3 says that it's inadmissible if the intercept was  
4 illegally obtained.

5 MR. GENSON: That's correct, Your Honor.

6 REPRESENTATIVE FRITCHEY: Is it your position  
7 then that these intercepts were illegally obtained?

8 MR. GENSON: That is my position. I've  
9 seen -- I've seen -- I've seen Title IIIs -- related  
10 Title IIIs in other matters. We believe that there  
11 are very, very real difficulties with those Title  
12 IIIs. We believe that there are very really -- real  
13 difficulties in this Title III. It says here that --  
14 it says "a violation of this chapter." There has to  
15 be a series of requirements that must be complied with  
16 before wiretap evidence can be admitted.

17 We have no proof or indication that this wiretap  
18 complied with Title III. Wiretap evidence should not  
19 be received without receiving copies of the Title III  
20 application. Wiretap evidence should not be received  
21 without being able to contest that application.  
22 Wiretap evidence should not be received without  
23 listening to the tapes to see if there's proper  
24 minimization.

1 I know that Representative Lang talked to the  
2 issue of probable cause, but that was only probable  
3 cause to get the wiretap. That doesn't mean -- and  
4 that someone ruled it. That doesn't relate to what  
5 was taken from the wiretap.

6 And so I'm suggesting to you that without our --  
7 without giving us an opportunity to contest it, that  
8 an admission of any of these things are violation of  
9 the chapter.

10 And so it's my position and I argued it, I did a  
11 pretrial -- I did a pretrial -- or pretrial --  
12 prehearing submission. I'm not -- I don't think -- I  
13 don't think it's appropriate to belabor it. The Chair  
14 ruled. I think that the use here is illegal, and I'm  
15 going to maintain it's illegal, and if I have to go to  
16 court -- not that you can go to court on any of these  
17 things. I'm not sure one way or another, because no  
18 one knows what you can do, but I think you're using  
19 evidence that was illegally obtained.

20 REPRESENTATIVE FRITCHEY: Ultimately, the  
21 propriety -- the propriety of the intercept,  
22 obviously, will be something you'll take up in the  
23 pending criminal matter.

24 MR. GENSON: And that's true, but the fact is

1 until I'm allowed to take that up -- I mean, I have  
2 cases here that I won't belabor you with where people  
3 have tried to talk about these things in front of  
4 grand juries, and they said they couldn't do it.

5       Until we get a chance to contest it, until we get  
6 the underlying documents, the use of this is illegal  
7 and I'm -- and the use of the excerpts that were in  
8 the complaint that was read by Mr. Ellis to this  
9 committee should not have been read to this committee  
10 and cannot be considered by this committee, it is our  
11 position. I don't want to ask anybody to re -- to  
12 resteer it.

13               REPRESENTATIVE FRITCHEY: We don't need to  
14 litigate this issue now. Let me -- let me just, I  
15 guess, make a statement and then clarify something.

16       The intercepts were authorized on, I believe,  
17 October 21st was the date that's specified in the  
18 criminal complaint. Here. Judge Holderman authorized  
19 on October 21st the intercept for a 30-day period in  
20 two rooms in the principal Blagojevich office, and  
21 then there was a subsequent authorization for  
22 intercepts for a second 30-day period. It's my  
23 opinion -- I'm not going to speak on behalf of the  
24 committee. It's my opinion that the authorization was

1 proper.

2 MR. GENSON: Your opinion is wrong, with all  
3 due respect, though, Representative.

4 REPRESENTATIVE FRITCHEY: Again, you've been  
5 doing this much longer than I have. Should the  
6 intercepts be found to be proper, that would change  
7 your opinion, no?

8 MR. GENSON: Of course.

9 REPRESENTATIVE FRITCHEY: Okay. Thank you.  
10 I appreciate it. I was just trying to get  
11 clarification for this body. Thank you.

12 MR. GENSON: Thank you.

13 CHAIRWOMAN CURRIE: I'm sorry.

14 Representative Black.

15 REPRESENTATIVE BLACK: Thank you very much,  
16 Madam Chair. I can't recall what question I was going  
17 to ask. Let me consult my notes. My desk is such a  
18 mess here. I can't -- oh, here, it is. Okay.

19 By the way, Director, I visited my pharmacist  
20 yesterday and he wants to congratulate you on the  
21 efficiencies of the Medicaid system before he files  
22 bankruptcy next month.

23 MR. MARAM: We're working with -- we're  
24 working with a budget that we were shorted \$600

1 million and trying still to do what we do.

2 REPRESENTATIVE BLACK: I understand. And all  
3 of the efficiencies that we've created are -- we're  
4 certainly paying bills on time, but that's another  
5 point.

6 Let me follow up on what Representative Fritchey  
7 was asking about premiums. I find this whole issue of  
8 collecting premiums very interesting, and I won't get  
9 into points of law on that, but who collected these  
10 premiums?

11 MR. MARAM: The agency.

12 MS. HOFFMAN: Our agency representative.

13 REPRESENTATIVE BLACK: You did?

14 MS. HOFFMAN: Yes, sir.

15 REPRESENTATIVE BLACK: You collected the  
16 premiums?

17 MS. HOFFMAN: Not me personally.

18 MR. MARAM: The agency.

19 MS. HOFFMAN: The agency.

20 REPRESENTATIVE BLACK: The agency.

21 CHAIRWOMAN CURRIE: Could you speak right  
22 into the microphone.

23 MS. HOFFMAN: Excuse me. To the best of my  
24 knowledge, I -- I -- they were put into general

1 revenue, I know, but I don't know the mechanism.

2 REPRESENTATIVE BLACK: well, I'll get to  
3 that. But the agency collected the premiums. So --

4 MS. HOFFMAN: I don't know the mechanism  
5 specifically. I can find out the mechanism for you,  
6 sir.

7 REPRESENTATIVE BLACK: I would appreciate  
8 that. Obviously, then, somebody had to design and  
9 approve a form -- a billing form and send it out;  
10 correct?

11 MR. MARAM: Correct. There has to be  
12 process.

13 REPRESENTATIVE BLACK: Okay.

14 MR. MARAM: we'll get back to you on the  
15 process.

16 REPRESENTATIVE BLACK: Okay. I would  
17 appreciate that. Maybe a copy of one of the actual  
18 forms that you sent out.

19 Can you give me the specific account in which that  
20 premium income was deposited -- the account number?

21 MS. HOFFMAN: General revenue.

22 MR. MARAM: It was general revenue funds.

23 REPRESENTATIVE BLACK: Can you give me the  
24 actual account number, though, so we could perhaps

1 track it?

2 MR. MARAM: We can come back to you and --

3 MS. HOFFMAN: If it's available.

4 REPRESENTATIVE BLACK: That's fine.

5 MR. MARAM: -- give you whatever's available.

6 REPRESENTATIVE BLACK: That's fine. I  
7 appreciate that. Do you also have a paper trail of  
8 disbursements made from that account? What I'm at --  
9 I'm trying to track premium, income, and how the  
10 premium dollars were spent.

11 MR. MARAM: If we can, it went through  
12 general revenue funds, and, with due respect, we just  
13 heard about this. We're here voluntarily. We didn't  
14 come with that type of information.

15 REPRESENTATIVE BLACK: Okay. No, that's  
16 fine. You can get back to me on that.

17 And then the only other question I'd like -- or  
18 the other issue I'd like for you to provide is can you  
19 give us a specific amount of premium dollars collected  
20 as of today?

21 MR. MARAM: We can do that almost  
22 immediately. In fact, I had the number at my  
23 fingertips, and I think it's --

24 MS. HOFFMAN: 1.7.

1 MR. MARAM: I think it's 1.7.

2 REPRESENTATIVE BLACK: All right. Thank you  
3 very much.

4 And at the appropriate time, Madam Chair, I would  
5 like to approach the Chair with a point. I'll wait  
6 until -- are we going to break for lunch, by the way?  
7 Not that I'm hungry.

8 CHAIRWOMAN CURRIE: I hadn't planned to.

9 REPRESENTATIVE BLACK: Oh.

10 CHAIRWOMAN CURRIE: Representative -- are you  
11 finished then, Representative Black?

12 REPRESENTATIVE BLACK: Yes.

13 CHAIRWOMAN CURRIE: Representative Mautino.

14 REPRESENTATIVE MAUTINO: Thank you.

15 Director, I have a few questions going to the next  
16 step or a little bit further down the line because  
17 of -- because of the actions which will be decided,  
18 and I consider everything that's being brought in more  
19 information than evidence. I'm not an attorney. But  
20 I'll make a decision on how things are running  
21 throughout the state based on everything that I'll  
22 sift through and decide what's correct and what isn't.

23 And so in that -- if we go to the next level, once  
24 the program was initiated, providers began receiving

1 bills, receiving -- treating patients. After the  
2 order stopping, did you send a letter or a notice to  
3 the providers regarding their payment?

4 MR. MARAM: I am not sure what, if any,  
5 documentation was sent. We will -- can get back to  
6 you quickly on that.

7 REPRESENTATIVE MAUTINO: And the answer is  
8 yes?

9 MS. HOFFMAN: Some -- I know that some  
10 document went out. I don't know to what providers or  
11 all providers or because we had sent payment and -- I  
12 can find out what it was.

13 REPRESENTATIVE MAUTINO: Reclaiming  
14 payments --

15 MS. HOFFMAN: Yeah, and I'm not sure what --

16 REPRESENTATIVE MAUTINO: -- that could not be  
17 made?

18 MS. HOFFMAN: -- that was exactly. I recall  
19 something about it.

20 REPRESENTATIVE MAUTINO: Okay. I need a copy  
21 of that letter because the providers received those.  
22 I need to know how you determined who was going to  
23 receive those letters providerwise because,  
24 essentially, the copies of the letters that were

1 called in from some of my providers who take care of  
2 the people who are on FamilyCare, KidCare, and those  
3 programs stated that they -- there were going to be  
4 some items they would not be paid for as a direct  
5 result of this action.

6 So I'd like to know, one, how you determined which  
7 providers were going to be receiving those letters, or  
8 did they go out as a blanket? Has there been a  
9 secondary response telling them the status of their  
10 payment? And first and foremost, are we going to pay  
11 them?

12 So let's go -- Director, are we going to pay those  
13 providers that the letter that said they may not be  
14 eligible, what happens to them? Who pays this bill?

15 MR. MARAM: At this point, pending  
16 litigation, I cannot give an answer to that.

17 MS. HOFFMAN: We're hopeful that they'll be  
18 paid.

19 REPRESENTATIVE MAUTINO: And so are they.

20 MR. MARAM: And we've worked closely with  
21 providers for years, and so, you know, there's pending  
22 litigation. We can't give an answer -- a direct  
23 answer to that. It's unresolved right now. We're  
24 not --

1           REPRESENTATIVE MAUTINO:  What's the dollar  
2 amounts?  Can we give that?

3           MR. MARAM:  Yes.

4           MS. HOFFMAN:  We can get you that number as  
5 well.

6           REPRESENTATIVE MAUTINO:  Okay.  Because  
7 that's the real effect, also, of many of the things  
8 that we're looking at in the course of these hearings,  
9 so --

10           You know that I serve on the CHIP board.  
11 Been there forever.  Been there 17 years.  Whenever we  
12 make change to the CHIP program -- which I'm very  
13 proud of.  It's one of the best in the country.  
14 Whenever we make a change to it, we all receive a form  
15 change, and we go through and we sign off on that, and  
16 it's auditable.  So there should be an audit document.  
17 When you make a change to the FamilyCare form, do you  
18 have the same process?

19           MR. MARAM:  I'd have to go into detail with  
20 people processing reimbursement as opposed to forms.

21           REPRESENTATIVE MAUTINO:  But someone has a  
22 final sign off on that, whether it be you.  In our  
23 case, it would be the director of the CHIP board.

24           MR. MARAM:  well, when there's a change in

1 notice, it goes through myself, through the medical  
2 programs, and we go through the regular process when  
3 we make changes.

4 REPRESENTATIVE MAUTINO: When we then approve  
5 the form, we then take an official action to authorize  
6 our people who enroll to begin accepting enrollments.

7 MR. MARAM: Obviously, it's a different  
8 program, but we do everything as we do by taking  
9 actions. We go through our internal processes, and I  
10 can get back to you.

11 REPRESENTATIVE MAUTINO: So these are  
12 auditable?

13 MR. MARAM: These are internal processes --

14 REPRESENTATIVE MAUTINO: Correct.

15 MR. MARAM: -- that we work through our  
16 programs, our medical programs, to make changes, to  
17 notice people. Yes, we do.

18 REPRESENTATIVE MAUTINO: And so when the  
19 Auditor General comes in and says I'd like to see the  
20 documentation of the FamilyCare expansion and all  
21 sign-off sheets involved, you would have those?

22 MR. MARAM: Each pro -- each department, each  
23 agency will be different, but we have our processes,  
24 and we went through regular process in doing this.

1           REPRESENTATIVE MAUTINO: Can I have the  
2 sign-off sheets?

3           MR. MARAM: I don't know that they would be  
4 sign-off sheets as much as they'd be notices. I could  
5 work with our medical programs to see what process we  
6 went through, but we certainly went through a very  
7 official process within the department to do that.

8           REPRESENTATIVE MAUTINO: I mean, I generally  
9 know who's signing off on all of ours on a program I'm  
10 involved in. My assumption is you would know that as  
11 well. So --

12          MR. MARAM: Obviously, you know, I made a  
13 decision as a department that we're going to keep  
14 going forward and going forward with this. The  
15 program people worked within that.

16          REPRESENTATIVE MAUTINO: And so the memos and  
17 everything going forward would be under your  
18 signature.

19          MR. MARAM: Not necessarily. There's  
20 delegation of authority, but what we're doing is we  
21 work efficiently in our programs to have internal  
22 checks with each other. We work very hard with that,  
23 and we'll give you -- we'll go --

24          REPRESENTATIVE MAUTINO: The internal checks,

1 I guess, for today's purposes.

2 MR. MARAM: We'll go -- I'll give you that  
3 process.

4 REPRESENTATIVE MAUTINO: Thank you.

5 CHAIRWOMAN CURRIE: Are you done,  
6 Representative?

7 REPRESENTATIVE MAUTINO: Yeah.

8 CHAIRWOMAN CURRIE: Representative Hamos.

9 REPRESENTATIVE HAMOS: Thank you.

10 I wanted to just -- have one line of questioning  
11 here. Mr. Blust is appointed Special Assistant  
12 Attorney General for this case or for other matters as  
13 well?

14 MR. MARAM: I know for this case.

15 MR. BLUST: For this case.

16 REPRESENTATIVE HAMOS: For this case? And  
17 that's since the lawsuit has been filed since last  
18 November -- the Caro lawsuit?

19 MR. BLUST: Correct. We were appointed at  
20 the time --

21 CHAIRWOMAN CURRIE: Could you use the  
22 microphone, please.

23 MR. BLUST: We were appointed by the Attorney  
24 General at the time the lawsuit was filed. There's a

1 procedure that the agencies have to go through in  
2 regard to that.

3 REPRESENTATIVE HAMOS: And what is your  
4 hourly fee?

5 MR. BLUST: Our hourly free in regard to this  
6 is \$200. That's what the Attorney General requires.

7 REPRESENTATIVE HAMOS: And so you -- when you  
8 submit your fees, does the department have to sign off  
9 before it's submitted over to the Attorney General?

10 MR. BLUST: It's, first of all, not submitted  
11 to the Attorney General because the Attorney General  
12 also happens to be on the other side of this case.

13 REPRESENTATIVE HAMOS: Okay.

14 MR. BLUST: So the letter authorizing this  
15 expressly provides that our fee statements will not be  
16 submitted to the Attorney General. I don't know how  
17 the process goes for approval of our fees.

18 REPRESENTATIVE HAMOS: Okay. And how much --

19 MR. BLUST: Other than slow.

20 REPRESENTATIVE HAMOS: How much has been  
21 submitted as fees -- fee invoices to date?

22 MR. BLUST: I don't know.

23 REPRESENTATIVE HAMOS: Can you get that for  
24 us, please?

1 MR. BLUST: Probably. I'd have to talk to  
2 the -- you know, the people involved, but I should be  
3 able to get a total for you.

4 REPRESENTATIVE HAMOS: Well, the department  
5 can. Tammy -- Tammy was shaking her head she could.

6 MR. BLUST: Yeah. Yeah. Sure.

7 REPRESENTATIVE HAMOS: Do you know how much  
8 has been spent to date? I mean, there's a lot of  
9 litigation in the last year.

10 MS. HOFFMAN: Sure.

11 REPRESENTATIVE HAMOS: We saw box loads  
12 previously.

13 MS. HOFFMAN: Sure. Representative, I don't  
14 know the amount that has been spent or what was  
15 submitted. What I can tell you that I do know is  
16 there are intergovernmental agreements in place that  
17 specifically deal with legal services, and those have  
18 amounts obligated, and I work with those and we  
19 require detailed invoices before payment, and I will  
20 get you any information that I have.

21 CHAIRWOMAN CURRIE: Have that by the end of  
22 the day?

23 REPRESENTATIVE HAMOS: As to the total spent;  
24 correct?

1 MS. HOFFMAN: I'm trying by the end of the  
2 day to get whatever I can.

3 REPRESENTATIVE HAMOS: Thank you.

4 CHAIRWOMAN CURRIE: Representative Flowers.

5 REPRESENTATIVE FLOWERS: Thank you, Madam  
6 Chairman.

7 Tammy, my question to you, you had mentioned and  
8 you held up a sheet of paper in regards to Public Aid.  
9 So were these people that were signed up -- were they  
10 eligible for Public Aid? You said something about the  
11 Public Aid Code is what gave you --

12 MS. HOFFMAN: The authority, correct.

13 REPRESENTATIVE FLOWERS: -- the authority to  
14 do what you did.

15 MS. HOFFMAN: Correct.

16 REPRESENTATIVE FLOWERS: So my question to  
17 you is did the people that signed up for this new  
18 extended program -- were they eligible for Public Aid?  
19 Is that the reason why you followed the code?

20 MS. HOFFMAN: That is what gives us the  
21 authority to make expansion changes.

22 REPRESENTATIVE FLOWERS: Were they eligible?

23 MS. HOFFMAN: I don't know that specifically,  
24 Representative.

1           REPRESENTATIVE FLOWERS: So, therefore,  
2 there's a possibility, if they were not eligible for  
3 Public Aid, those were the people that should have  
4 qualified for this particular program, but yet that  
5 was the code that you used to justify signing these  
6 people up.

7           MS. HOFFMAN: As we have done in the past,  
8 and I have examples of when we have.

9           REPRESENTATIVE FLOWERS: That's not the  
10 question that I asked. I'm asking you, Tammy --

11          MS. HOFFMAN: Uh-huh. Uh-huh.

12          REPRESENTATIVE FLOWERS: -- were these people  
13 that you signed up -- were they eligible? Because I'm  
14 going to assume -- I'm going to assume that the other  
15 people and the other programs that you're relating to,  
16 those people were qualified to do so by the rules and  
17 the law that was set forth by the State of Illinois as  
18 well as Congress that would allow them to get the  
19 matching funds.

20          MS. HOFFMAN: Well, and that's the  
21 distinction, Representative, is there are people that  
22 are eligible under our programs that are --

23          REPRESENTATIVE FLOWERS: And that's the  
24 distinction --

1 MS. HOFFMAN: -- eligible under Medicaid.

2 REPRESENTATIVE FLOWERS: And that is the --

3 MS. HOFFMAN: But the Public Aid Code is --  
4 we have other individuals, I believe, that are  
5 covered. I can't speak lawfully, specifically. I can  
6 check.

7 REPRESENTATIVE FLOWERS: well, because, see,  
8 I'm kind of confused here, because there's lots of  
9 people out there who would not have been able to fit  
10 into this middle class, would be qualified for Public  
11 Aid, but yet there's other people out there who would  
12 not have had as much money, and they would not have  
13 qualified for Public Aid, but nor would they have  
14 qualified to be on this program as well.

15 And so I'm talking about the Public Aid Code in  
16 which you, Tammy, enunciated and you said that that  
17 was the prerequisite that you use to sign people up.

18 MS. HOFFMAN: well, that is part of our  
19 authority that we cite in changing the rule.

20 REPRESENTATIVE FLOWERS: Were they qualified  
21 for Public Aid?

22 MR. MARAM: I think it would be consistent  
23 and it was consistent with the Public Aid Code. I  
24 think one of the issues is the court applied what

1 really is delinking the Public Aid Code imposing  
2 certain employments, wages, on things that were  
3 delinked years ago. We don't believe that really does  
4 apply, and we think it would affect, unfortunately  
5 ironically, the people who most need to get the  
6 coverage not to get it.

7 But I think there was some, if I might say,  
8 different -- differencing of opinion on what was  
9 applied in the court opinion on regarding the Public  
10 Aid Code.

11 REPRESENTATIVE FLOWERS: I guess my  
12 question -- and I want an answer. I want to know if  
13 middle class people qualified for Public Aid  
14 assistance and poor people who made a dollar more than  
15 would be eligible did not qualify for healthcare  
16 because they're not eligible because of their Public  
17 Aid status. They made too much that particular month.

18 MR. MARAM: Many of the people that we've  
19 been giving healthcare to through FamilyCare for years  
20 probably haven't been on Temporary Assistance to Needy  
21 Family, but they still qualified for Medicaid and  
22 that's still the case.

23 REPRESENTATIVE FLOWERS: I doubt that  
24 seriously, but we'll discuss that one later.

1           In regards to the injunction that was put in  
2 place, after the injunction was put in place, did you  
3 continue to sign people up after the injunction?

4           MR. MARAM: I don't believe we did.

5           MS. HOFFMAN: We did not and we all -- we --  
6 and the -- we also believe that the order didn't  
7 specifically ask us to do that, but we did not.

8           REPRESENTATIVE FLOWERS: You did not continue  
9 to sign people up --

10          MR. MARAM: Within those expansion --

11          REPRESENTATIVE FLOWERS: -- after the court  
12 stayed the injunction and nor did --

13          MS. HOFFMAN: With regard to the expansion,  
14 to the best of my knowledge. To the -- to the best of  
15 my knowledge to what's in question here.

16          REPRESENTATIVE FLOWERS: I'm sorry. Did you  
17 continue to sign people up after the court injunction?  
18 Yes or no?

19          MS. HOFFMAN: People who were eligible.  
20 Generally.

21          REPRESENTATIVE FLOWERS: After the --

22          MS. HOFFMAN: Yeah, we didn't shut down the  
23 program.

24          REPRESENTATIVE FLOWERS: The expanded -- the

1 expanded program. I know about the people that was  
2 eligible. I'm talking about the expanded program that  
3 the court ruled --

4 MS. HOFFMAN: We did not.

5 REPRESENTATIVE FLOWERS: And nor did you  
6 collect premiums.

7 MS. HOFFMAN: I have to verify that, as I  
8 said to Representative Fritchey. I just don't know  
9 the answer to the question.

10 REPRESENTATIVE FLOWERS: So you do not know  
11 the answer to the question if you continued to sign  
12 ineligible people up and collect ineligible --

13 MR. MARAM: No. No.

14 MS. HOFFMAN: I know we're not -- I know that  
15 we are not signing up people currently pursuant -- or  
16 since --

17 REPRESENTATIVE FLOWERS: Not currently. I'm  
18 talking about --

19 MS. HOFFMAN: Since the court order --

20 REPRESENTATIVE FLOWERS: -- immediately after  
21 the injunction.

22 MS. HOFFMAN: Since the court order?

23 Correct.

24 REPRESENTATIVE FLOWERS: Correct on what?

1 MS. HOFFMAN: That we are not signing people  
2 up pursuant to the expansion that's in question in  
3 here.

4 REPRESENTATIVE FLOWERS: And you're not --  
5 and you were not collecting premiums.

6 MR. MARAM: To new people.

7 CHAIRWOMAN CURRIE: You said you didn't know  
8 and that you were going to get back to us with that  
9 information.

10 MS. HOFFMAN: Thank you.

11 REPRESENTATIVE FLOWERS: And one other  
12 question. In regards to the people that are eligible  
13 versus the ones that were ineligible, were there two  
14 separate funds that you were putting those monies in?  
15 Does all the FamilyCare or KidCare or AllKids do --  
16 does all those funds go into the general revenue fund?

17 MS. HOFFMAN: I don't know how that's  
18 allocated. We can get that information to you today.

19 REPRESENTATIVE FLOWERS: Well, I want to know  
20 because if we expanded --

21 MS. HOFFMAN: Absolutely.

22 REPRESENTATIVE FLOWERS: -- the program to  
23 include these other families, I'm wondering why is it  
24 that all the dollars are not going to the same fund.

1 MS. HOFFMAN: And they may, and I will get  
2 you that information.

3 REPRESENTATIVE FLOWERS: Thank you.

4 CHAIRWOMAN CURRIE: Thank you,  
5 Representative.

6 Ms. Hoffman, you have said that you'll get a lot  
7 of information back to us before the end of the day.

8 MS. HOFFMAN: I am going to --

9 CHAIRWOMAN CURRIE: And I'm hopeful, first of  
10 all, that you were taking careful notes, because I'm  
11 sure that the people who asked for information will  
12 have made notes themselves, and we appreciate your  
13 patience, and maybe we should send you off real  
14 quickly so that you can get that work done before the  
15 committee finishes this afternoon.

16 MR. ADAM: Excuse me, Madam Chair. May we  
17 have a question or two for the good people here?

18 CHAIRWOMAN CURRIE: Yeah. Okay. Go ahead.

19 MR. ADAM: Thank you. Again --

20 CHAIRWOMAN CURRIE: If it's within our  
21 purview.

22 MR. ADAM: It will be very brief, if I may,  
23 Madam Chair.

24 CHAIRWOMAN CURRIE: Good.

1 MR. ADAM: Again, my name is attorney Sam  
2 Adam, Jr.

3 I wanted to first tell the Chair and the committee  
4 thank you for allowing us the opportunity to be here  
5 on behalf of Governor Blagojevich.

6 I just have one question, if I may. Director  
7 Maram, the committee here has asked you a number of  
8 questions regarding what took place after JCARE came  
9 down with these prohibitions -- what has gone on, what  
10 happened, how many people were signed up, and things  
11 of that nature.

12 My sole question to you is, as a direct result of  
13 Governor Blagojevich and any policies that came down  
14 after JCARE, how many brother and sister Illinois  
15 citizens' lives were saved as a result from that  
16 moment on? How many lives were saved because of his  
17 policy to go forward and give healthcare? That's the  
18 only question that we have for you.

19 REPRESENTATIVE LANG: Madam Chairman.

20 CHAIRWOMAN CURRIE: Yeah, this is not part of  
21 our --

22 REPRESENTATIVE LANG: I have to object to  
23 this question.

24 CHAIRWOMAN CURRIE: we had earlier we're

1 not -- healthcare is good. A lot of us are totally in  
2 favor, but that's not the subject of this inquiry.

3 Thank you very much. And --

4 MR. ADAM: With all due respect, Madam Chair,  
5 if I just may say, one of the direct quotes that came  
6 from one of the chair -- or chairpeople or committee  
7 members here said we need to know what a direct result  
8 was of the policy. And I think it is certainly --

9 CHAIRWOMAN CURRIE: No, we do not. I'm  
10 sorry. We do not.

11 MR. ADAM: -- it is certainly important to  
12 know if lives were saved as a direct result.

13 CHAIRWOMAN CURRIE: The question -- the  
14 question before this committee are were proper  
15 procedures followed. That's the question, not is it a  
16 good thing or a bad thing. Did they go through the  
17 rules and regulations; did they do what they were  
18 supposed to do.

19 And, if I might, Ms. Hoffman, we would hope that  
20 you would make that information available to the  
21 committee, not just to the individual who asked a  
22 particular question.

23 MS. HOFFMAN: Absolutely, Madam Chair.

24 CHAIRWOMAN CURRIE: Okay. The committee --

1 but thank you all very much for being here, and we're  
2 looking forward to the information.

3 Now, we had other panels, and I know some members  
4 of the committee were interested in asking questions  
5 of the other panels. It is, I would point out, past  
6 one o'clock, but we're ready just to be here as long  
7 as it takes.

8 The first panel were our Professors Morriss and  
9 Rich. Does anybody have a question for them?

10 Representative Lang and Representative Howard.

11 So do you want to come forward? I know one of you  
12 has a class to teach this afternoon, so we'll try to  
13 move you quickly.

14 Representative Lang, Howard, and Rose.

15 REPRESENTATIVE LANG: Thank you, Madam  
16 Chairman.

17 Gentlemen, thank you for returning to the table  
18 and for staying here.

19 CHAIRWOMAN CURRIE: And Representative Turner  
20 in the chair.

21 REPRESENTATIVE LANG: You heard a lot of  
22 testimony from the department about JCAR, the use of  
23 administrative -- emergency rules, et cetera. Do you  
24 have an opinion, first, regarding the inherent

1 authority of state agencies to make rules?

2 MR. MORRISS: State agencies have no inherent  
3 authority to make rules. Their authority is delegated  
4 from the legislature through the organic statute that  
5 provides them with the authority to operate.

6 REPRESENTATIVE LANG: And here in Illinois we  
7 have something called the IAPA which controls all of  
8 that; is that correct?

9 MR. MORRISS: It controls the process of  
10 making rules. It does not give them additional  
11 authority.

12 REPRESENTATIVE LANG: All right. And do you  
13 have an opinion as to how the doctrine of the  
14 separation of powers fits into this process?

15 MR. MORRISS: Yes, sir.

16 REPRESENTATIVE LANG: Please proceed and tell  
17 us.

18 MR. MORRISS: Separation of power is one of  
19 the most fundamental principles of American  
20 government, and the provision of checks on executive  
21 authority by the legislature is vital to that.

22 I have to say that, having listened to the  
23 description today, I am -- you know, Bismarck's quote  
24 is you shouldn't watch sausages get made or laws, and

1 when we were told we were going to hear about sausage  
2 making, why, I've lost my appetite.

3 If the Governor was not the person who made the  
4 decision to viol -- to attempt to overturn a  
5 long-standing statutory provision in JCAR, if he was  
6 not, he should be impeached for dereliction of duty.

7 REPRESENTATIVE LANG: Well. All right. So I  
8 didn't ask you for that.

9 MR. MORRISS: I'm sorry. I --

10 REPRESENTATIVE LANG: But that's okay. But  
11 it would be your position that if he did order it --

12 MR. MORRISS: If he did order it --

13 REPRESENTATIVE LANG: -- he'd be violating  
14 the law?

15 MR. MORRISS: Exactly.

16 REPRESENTATIVE LANG: And if he didn't order  
17 it, he should have known about it.

18 MR. MORRISS: Exactly.

19 REPRESENTATIVE LANG: All right. The only  
20 other question I have for either of you is you've  
21 heard extensive conversation between Ms. Hoffman and I  
22 and a little bit with Director Maram regarding the  
23 viewpoint of the department, an agency of the state  
24 government, that JCAR is advisory only, and they can

1 listen to us or not listen to us, and they basically  
2 came by to just check with JCAR about these ideas,  
3 whether it be FamilyCare or others, but they don't  
4 have any responsibility to do what we say or listen to  
5 what we do. Do you have an opinion as to whether JCAR  
6 is advisory?

7 MR. RICH: Absolutely not. The statutes are  
8 clear here. JCAR is not advisory. It's a -- it's  
9 authority specified by the General Assembly, it's an  
10 arm of the General Assembly, and it's absolutely not  
11 advisory.

12 REPRESENTATIVE LANG: And --

13 MR. MORRISS: I agree completely. It's  
14 absolutely not advisory.

15 REPRESENTATIVE LANG: And while it is clear  
16 that the department is now trying to get into the  
17 Supreme Court to declare JCAR basically advisory,  
18 there is no court anywhere in Illinois that has ever  
19 said that JCAR is advisory.

20 MR. RICH: Correct.

21 REPRESENTATIVE LANG: And there is no court  
22 anywhere that has ruled that JCAR's decisions are  
23 invalid.

24 MR. RICH: Correct.

1           REPRESENTATIVE LANG: And it would be the  
2 opinion of both of you, I presume, then, that if the  
3 Governor's office actually felt that JCAR was  
4 advisory, they should have done this before all of  
5 this and just declared JCAR null and void. But once  
6 going to JCAR and submitting themselves to the  
7 jurisdiction of JCAR, since you would view them --  
8 JCAR as not advisory, you would view that what they're  
9 doing now is not really relevant to the issue of  
10 whether they followed the law in the first place.

11           MR. RICH: Yes, that's correct. I mean, I --  
12 and I think the FamilyCare example is an Exhibit A, so  
13 to speak, of the fact that a procedure went to JCAR,  
14 JCAR voted. It was up to the Governor's office to  
15 obey the ruling of JCAR.

16           REPRESENTATIVE LANG: One last ques -- go  
17 ahead. I'm sorry.

18           MR. MORRISS: Exactly. Until a court had  
19 ruled JCAR not to be a valid process, there was excuse  
20 for not complying with the process as it exists.

21           REPRESENTATIVE LANG: Do either of you have a  
22 characterization that you would make about this state  
23 agency that went forward and implemented this program  
24 after JCAR prohibited the rule?

1 MR. RICH: Characterization? Not in  
2 compliance with the law as the -- as the statutes  
3 provide.

4 REPRESENTATIVE LANG: Agreed?

5 MR. MORRISS: Agreed.

6 REPRESENTATIVE LANG: Thank you, Madam  
7 Chairman.

8 CHAIRMAN TURNER: Representative Turner in  
9 the chair.

10 REPRESENTATIVE LANG: Sorry. Sorry,  
11 Representative Turner.

12 CHAIRMAN TURNER: That's fine.

13 REPRESENTATIVE LANG: Now I will never get  
14 recognized again, I know, while you're in that chair.  
15 I had forgotten that Representative Currie had left  
16 us. Please excuse me, sir.

17 CHAIRMAN TURNER: That's fine.

18 REPRESENTATIVE LANG: Okay.

19 CHAIRMAN TURNER: Mr. Genson. Mr. Genson,  
20 let's --

21 MR. GENSON: Yes. I will -- I'll be brief.

22 CHAIRMAN TURNER: Let the other committee  
23 members ask their questions.

24 MR. GENSON: Oh, there are others. I'm



1 happened, who would be responsible for the legal  
2 defense of that worker?

3 MR. RICH: I would assume the department  
4 would be responsible for it.

5 REPRESENTATIVE HOWARD: So that's an expense.  
6 And so each of these other questions that you raise,  
7 if a doctor treated that person and then we failed to  
8 pay, then would that be considered to be welfare  
9 fraud? Are you asking if the doctor would be subject  
10 to welfare fraud?

11 MR. RICH: I'm saying that the doctor could  
12 be, yes.

13 REPRESENTATIVE HOWARD: Okay.

14 MR. RICH: Again, it's theoretically  
15 possible.

16 REPRESENTATIVE HOWARD: Do you have any idea  
17 how much money -- well, let me say this: It sounds --  
18 it sounded to me as if we were being told that yes,  
19 the money was available, and they therefore made a  
20 decision to proceed despite the possibility that they  
21 were wrong. They decided to proceed because they felt  
22 it was the best thing to do. If we don't cover these  
23 bills, do you have any idea how much or what the level  
24 of negative impact could be? Could we be, you know,

1 hundreds of thousands or maybe millions of dollars in  
2 the red?

3 MR. RICH: I think we could be millions of  
4 dollars in the red, but I can't give an exact figure.  
5 I don't have an exact figure for you.

6 REPRESENTATIVE HOWARD: So what do you --  
7 what do you think -- what do you think we -- are we  
8 doing the right thing here by bringing this to the --  
9 into the light of the public?

10 MR. RICH: I think absolutely, yes.

11 REPRESENTATIVE HOWARD: Was there anything  
12 else we could have done other than this?

13 MR. RICH: I don't think so.

14 REPRESENTATIVE HOWARD: I appreciate. Thank  
15 you.

16 CHAIRMAN TURNER: Representative Rose.

17 REPRESENTATIVE ROSE: Mr. Rich, Bob, how many  
18 years have you been around Illinois politics?

19 MR. RICH: I was born and raised in Illinois,  
20 so all but -- all but 12 years of my life; so about 48  
21 years.

22 REPRESENTATIVE ROSE: And how long have you  
23 been at the U of I as a professor?

24 MR. RICH: Since 1986.

1           REPRESENTATIVE ROSE:  And how long have you  
2           been director of the institute?

3           MR. RICH:  Fifteen years.

4           REPRESENTATIVE ROSE:  Fifteen years.  So I  
5           wanted to lay that groundwork and foundation for your  
6           concluding statement here that the -- and I want you  
7           to walk into this a little bit with me.  "The way in  
8           which" -- you say here in your statement "The way in  
9           which" -- it's missing a "he," but I presume it would  
10          be the Governor.

11          MR. RICH:  Yes.

12          REPRESENTATIVE ROSE:  -- "exercised  
13          rulemaking far exceeding his authority," and that's  
14          the gist of what you just said here, that the Governor  
15          exceeded his authority.

16          Can you talk a little bit about the background of  
17          this JCAR, how it got here, the IAPA, if you would,  
18          and I know that this is sort of your -- maybe  
19          healthcare is more your topic area, but, you know,  
20          talk a little bit about the area, and I like what  
21          Mr. Morriss said a minute ago about it being the  
22          foundation of separation of powers and democracy.  
23          But, Bob, tell me a little bit about how you came to  
24          that conclusion.

1           MR. RICH: I came to the conclusion because I  
2 think the law here, the statutes, are very clear as to  
3 what the General Assembly's role, what the role of  
4 implementation is, and what the Governor's role is.  
5 And the Governor's role is, in this case, was not to  
6 disregard the ruling of JCAR, which was an absolutely  
7 clear ruling. And it was because of the -- I came to  
8 the conclusion I came to in my testimony because of  
9 the -- of the fact that the Governor chose to bypass  
10 the ruling of JCAR and proceed with the -- instructing  
11 the Department of Health and Family Services to  
12 continue to enroll people in a -- in -- at the 400  
13 percent poverty level.

14           REPRESENTATIVE ROSE: And in that -- and,  
15 Mr. Morriss, this is to you. You said a minute ago  
16 that that is where the conversation should have ended  
17 at that point. I don't want to put words in your  
18 mouth, but I think that's you what said, essentially.  
19 A fair characterization?

20           MR. MORRISS: Yes, sir.

21           REPRESENTATIVE ROSE: Okay.

22           MR. GENSON: Just a little louder, maybe.

23           REPRESENTATIVE ROSE: Sure. No problem, Mr.  
24 Genson.

1           So, Mr. Morriss, you essentially said that that's  
2 where it should have ended at that point in time. I  
3 find it interesting that presumably the department  
4 could have gone to court proactively, if they believed  
5 this rule to be issued ineffectively or not  
6 accurately. I don't know how you would phrase it.  
7 But they could go to court to try to do what they did  
8 if they thought that somehow they were being not  
9 treated fairly by JCAR. I mean, in other words,  
10 rather than go ahead and do this and get sued, they  
11 could have gone and sought clarification on the front  
12 end, couldn't they have?

13           MR. MORRISS: Yes, sir.

14           REPRESENTATIVE ROSE: So rather than get that  
15 clarification, they went ahead and did this anyway.  
16 And that's a statement on my part, I guess, rather  
17 than a question. So I'll -- I'm done.

18           Thank you, Mr. Chairman.

19           CHAIRMAN TURNER: And now, Mr. Genson.

20           MR. GENSON: Yes. You both, I assume or it  
21 appears to me, are constitutional scholars, are you?

22           MR. MORRISS: I'm an administrative law  
23 scholar.

24           MR. RICH: I'm a health law scholar.

1 MR. GENSON: Oh, I see. So but you certainly  
2 do know constitutional law, I would guess.

3 REPRESENTATIVE DURKIN: Objection. I mean,  
4 Counsel, it's clarification. That's your -- the  
5 limited --

6 MR. GENSON: I'm not allowed to object. Why  
7 are you objecting?

8 (Speaking all at once.)

9 REPRESENTATIVE DURKIN: You know, we've  
10 asked -- you're going astray.

11 MR. GENSON: I've only asked two questions,  
12 and I didn't object to a single thing you asked.

13 REPRESENTATIVE DURKIN: Clarification is the  
14 standard -- clarification is the standard. This is  
15 not clarification.

16 MR. GENSON: Okay. I'll learn that now when  
17 you guys ask questions.

18 But the point of the matter is you are a law  
19 school professor, are you?

20 MR. MORRISS: Yes, sir.

21 MR. GENSON: And you did speak -- you spoke  
22 about separation of powers, did you?

23 MR. MORRISS: Yes, sir.

24 MR. GENSON: When you spoke about separation

1 of powers, you weren't saying that the executive of  
2 the primary -- is the primary of the three, did you?

3 MR. MORRISS: No, sir.

4 MR. GENSON: You certainly weren't saying the  
5 legislature is the primary of the three, were you?

6 MR. MORRISS: No, sir.

7 MR. GENSON: And what you were saying was  
8 that there are three separate branches. We have the  
9 legislative, judicial, and the executive; is that  
10 right?

11 MR. MORRISS: Yes, sir.

12 MR. GENSON: And what we're talking about is  
13 some organization called -- and I'm sure it's a very  
14 fine organization -- called JCAR; is that right? An  
15 agency or whatever; am I right?

16 MR. MORRISS: Yes.

17 MR. GENSON: And this agency has certain  
18 obligations and has certain powers; isn't that right,  
19 sir?

20 MR. MORRISS: Yes, sir.

21 MR. GENSON: And there's a question -- at  
22 least a question that you spoke to as to whether, in  
23 fact, the executive in this particular case overrode  
24 their responsibility and ignored JCAR; is that right?

1 MR. MORRISS: Yes, sir.

2 MR. GENSON: You even suggested that if  
3 someone did that they ought to be impeached. Is  
4 that --

5 REPRESENTATIVE DURKIN: I'm going to object  
6 again. Counsel, we're getting into cross-examination.

7 MR. GENSON: That's what his --

8 REPRESENTATIVE DURKIN: This is not  
9 clarification that the rules state. It's  
10 clarification of testimony. This is cross-examination  
11 which is not contemplated by these rules.

12 MR. GENSON: I don't know why you're so  
13 protective.

14 REPRESENTATIVE DURKIN: I would ask that the  
15 Chairman of the committee --

16 MR. GENSON: I've been listening --

17 REPRESENTATIVE DURKIN: -- admonish  
18 counsel --

19 MR. GENSON: I've been listening for hours.  
20 I want to ask some questions.

21 REPRESENTATIVE DURKIN: -- that the point of  
22 questioning IS clarification, not cross-examination.

23 MR. GENSON: All right. Well, then, I'll  
24 clarify, Representative Durkin, and then, hopefully,

1 I'll clarify some of yours too -- your questions too.

2 But the point I am making is in this particular  
3 case, as you understand it, somebody went to court; is  
4 that right? They went to court to stop the process  
5 that the executive was following; isn't that right?  
6 There was court hearing; is that right?

7 MR. MORRISS: There are court hearings  
8 involved in this process, yes.

9 MR. GENSON: There was a court hearing in  
10 this case where, in fact, there was -- the -- the --

11 CHAIRMAN TURNER: Mr. Genson.

12 MR. GENSON: I'm sorry?

13 CHAIRMAN TURNER: Mr. Genson, that question  
14 should probably be best asked of the plaintiffs'  
15 attorney.

16 MR. GENSON: The point of the matter is, is  
17 real simple. As far as you can determine -- as far as  
18 you can determine, the case went to the Supreme Court  
19 eventually; is that right?

20 MR. MORRISS: Yes.

21 MR. GENSON: And it was stayed. All the  
22 proceedings were stayed; is that right?

23 MR. MORRISS: Yes.

24 MR. GENSON: And, in fact, the Supreme

1 Court -- it is now pending before the Supreme Court;  
2 is that right?

3 MR. MORRISS: Yes.

4 MR. GENSON: As far as you know, no court in  
5 this particular case imposed any sanctions on the  
6 executive for what they did here.

7 CHAIRMAN TURNER: Mr. Genson.

8 MR. GENSON: Is that right?

9 CHAIRMAN TURNER: Mr. Genson, that question  
10 is out of order, and it would be best answered by the  
11 plaintiffs' attorney, and they'll be the next group  
12 coming up.

13 MR. GENSON: What I'm trying to get at, most  
14 respectfully, Chair -- to the Chair, he went out and  
15 volunteered and said he should be impeached because he  
16 said he -- he should be impeached because he ignored  
17 JCAR. The fact of the matter is there are court  
18 proceedings that stayed it, and I think -- I think  
19 that his statement should be clarified in the light of  
20 what we understand the facts are.

21 CHAIRMAN TURNER: Mr. Genson, that was his  
22 opinion, and that does not deal with the lawsuit and,  
23 that was strictly his opinion. He's entitled to give  
24 that opinion.

1 MR. GENSON: And I'm suggesting --

2 CHAIRMAN TURNER: Perhaps we would address  
3 that question for the plaintiffs -- to the attorneys  
4 of the plaintiffs. They are the next group up.

5 MR. GENSON: Do you believe that going to  
6 court to contest something impinges someone on --  
7 impinges the separation of powers, sir?

8 REPRESENTATIVE DURKIN: Objection. This is  
9 -- we're asking an opinion. This is not  
10 clarification, and I would ask --- gentlemen, you  
11 don't have to respond to that question. And I would  
12 ask counsel make -- take it to the next panel.

13 MR. GENSON: No, I can take it with this  
14 panel because I have other questions. May I ask other  
15 questions --

16 REPRESENTATIVE DURKIN: No. You're asking  
17 for an opinion, counsel. You're asking for an  
18 opinion. This is -- it's well beyond what we had  
19 intended and the process which we afforded you.

20 MR. GENSON: I've been sitting here for  
21 over an -- for hours listening to that, and I ask six  
22 questions, and I had four objected to. The fact is --

23 Gentleman, I forget your name, sir. Gentleman --  
24 your name, sir.

1 MR. RICH: Rich.

2 MR. GENSON: Rich. You responded to a  
3 question of Representative Howard regarding welfare  
4 fraud. Do you have any idea of what the welfare fraud  
5 was in this state? Or is that what you do? Is that  
6 what do you, sir? You're not an expert in welfare  
7 fraud.

8 CHAIRMAN TURNER: Mr. Genson, that was not  
9 the subject of discussion.

10 MR. GENSON: He asked the question. I'm  
11 not -- he first -- he said in response to the  
12 Honorable Representative Howard that he thought that  
13 this might be welfare fraud. I'd like to know  
14 what's -- how this is welfare fraud. I mean, he asked  
15 a ques -- she asked a question. He gave the answer,  
16 and I'm not allowed to ask a clarification as to what  
17 he's talking about?

18 REPRESENTATIVE ROSE: His letter is  
19 referencing a question that should be asked, Mr.  
20 Chairman. Not making a conclusion as to what the  
21 outcome of that question is.

22 MR. GENSON: He asked -- was asked a question  
23 that it was welfare fraud. I'm just going to ask him  
24 what statute is he talking about, or if he doesn't --

1 if he knows. If he doesn't and if you don't want me  
2 to ask the question, I have most -- a lot of respect  
3 for you.

4 CHAIRMAN TURNER: If you want to ask him to  
5 clarify his statement on welfare fraud.

6 MR. GENSON: I want to understand what  
7 statute you're talking about, if you know.

8 MR. RICH: I was talking about -- I was  
9 saying that, if you look at the Governor's actions  
10 here and the going beyond the JCAR regulations at the  
11 point of implementation of this, that the welfare  
12 fraud could be trying to pay for a service beyond the  
13 statutory level.

14 MR. GENSON: Tell me what statute you're  
15 talking about, if you know.

16 MR. RICH: I don't have a specific statute in  
17 mind.

18 REPRESENTATIVE ROSE: Mr. Chair, this is  
19 irrelevant because the --

20 MR. GENSON: I don't -- I have no -- that's  
21 all I want to know.

22 REPRESENTATIVE ROSE: The witness phrased it  
23 in his written testimony --

24 MR. GENSON: Well, see, I don't get -- I

1 don't get his --

2 REPRESENTATIVE ROSE: -- to proceed.

3 MR. GENSON: I don't get his written  
4 testimony. I only got it about two seconds -- about  
5 two minutes before he testified. As a matter of fact,  
6 two minutes before he testified --

7 REPRESENTATIVE LANG: At any rate, Mr.  
8 Chairman, Mr. Genson said he was finished with this  
9 witness, so let's move on.

10 MR. GENSON: Can't I answer a question that's  
11 asked? Golly, you ask these questions and then you  
12 make fun of me when I answer.

13 CHAIRMAN TURNER: No further questions of  
14 this panel.

15 would the middle panel please come forward and  
16 we'll be able to address questions of the middle  
17 panel. Are there any --

18 Representative Currie back in chair.

19 CHAIRWOMAN CURRIE: If you want to come  
20 forward, we'll have the time-out while you're --

21 THE REPORTER: I need a break.

22 CHAIRWOMAN CURRIE: Okay. Ten minutes.  
23 Ten-minute break but literally ten, not a minute  
24 longer. So just after 1:30 we're back at work. And

1 we'll have the business lawsuit people will be at the  
2 table. I know at least Representative Lang has a  
3 question for them. I don't know who else will.

4 (Short recess.)

5 CHAIRWOMAN CURRIE: I think we're ready to go  
6 back to work if members would take their chairs.

7 And just let me announce that Representative  
8 Mendoza will be sitting in the rest of the day for  
9 Representative Fritchey.

10 So had we our -- Mr. Gidwitz, Mr. Baise,  
11 Ms. Miller, and Mr. Hecht, you're up, and I know that  
12 Representative Lang had a question for you. I don't  
13 think anybody else does.

14 And Mr. Adam is nearby? We don't want to start  
15 without him if he's -- we can start without him?  
16 Okay. Great. But we need Mr. Lang because he had  
17 questions.

18 Anybody else on the committee have questions for  
19 this panel? I know Mr. Lang raised his hand so --

20 MR. GENSON: I might have one or two, Your  
21 Honor.

22 CHAIRWOMAN CURRIE: Mr. Hecht.

23 MR. HECHT: I didn't want to interrupt Mr.  
24 Genson.

1           MR. GENSON: No. I might have one or two  
2 questions. I'm sorry. I didn't know you heard.

3           CHAIRWOMAN CURRIE: Okay.

4           MR. HECHT: I just wanted to clarify, if I  
5 could, our role because I think it's useful to --

6           CHAIRWOMAN CURRIE: Could you speak right  
7 into the microphone. I'm sorry.

8           MR. HECHT: It's my fault. Sorry. You know,  
9 at the request of the committee we have appeared,  
10 Ms. Miller and myself in particular, to be a resource  
11 and to respond to questions about the status of the  
12 case. It's not our intention to argue the case with  
13 anyone here or not here.

14          CHAIRWOMAN CURRIE: We appreciate that.

15          MR. HECHT: It's just to really give you a  
16 sense of, from our view, where the case is and to try  
17 and be as clinical about all of that as we can.

18          CHAIRWOMAN CURRIE: Good. We appreciate  
19 that.

20          Representative Lang, I know you had some questions  
21 of this panel.

22          REPRESENTATIVE LANG: Thank you very much,  
23 and I appreciate your returning and staying. I just  
24 have actually a couple of questions.

1 First, you have been involved intimately in the --  
2 let's called it JCAR lawsuit. And you heard me ask  
3 the last panel, and since you're the lawyers involved  
4 here, I just want to ask you this question to make  
5 sure it's on the record clearly. Throughout this  
6 process, as far as you know, the Governor's office did  
7 not ever object to the work of JCAR publicly before  
8 this case went to court; is that correct?

9 MR. HECHT: I don't have any knowledge about  
10 that one way or the other, Representative.

11 REPRESENTATIVE LANG: All right. Then let me  
12 ask this question a different way. Has any court, to  
13 your knowledge, ruled that the authority of JCAR is  
14 invalid?

15 MR. HECHT: Not to my knowledge.

16 REPRESENTATIVE LANG: All right. In fact, in  
17 this case and series of cases relative to the JCAR  
18 ruling on FamilyCare, the fact is that the only court  
19 that has ruled has ruled that JCAR's decision is  
20 valid; is that correct?

21 MR. HECHT: I think that that's -- that's  
22 correct, but I think it would be an overstatement to  
23 say that that would be a holding of the case. Both  
24 the cases in the circuit court -- both of the

1 injunctions in the circuit court as well as the  
2 decision in the appellate court were relatively  
3 narrowly drafted. The appellate court certainly  
4 suggested that the JCAR proceedings were appropriate.  
5 It referenced them, but the specific holding of the  
6 case really didn't go to JCAR.

7 REPRESENTATIVE LANG: But it is true, is it  
8 not, if the -- if the circuit court had believed that  
9 JCAR's ruling was invalid, they could have said so at  
10 that time and the matter would have ended there; is  
11 that correct?

12 MR. HECHT: Well, I don't know if the matter  
13 would have ended there, and the court was certainly --  
14 could have certainly made whatever comments or rulings  
15 it wished, but Judge Epstein was very clear that he  
16 didn't want -- he wanted to avoid, if at all possible,  
17 constitutional adjudications and draw his decision on  
18 as narrow grounds as he could, and he believed that  
19 that was his responsibility as a circuit court judge.

20 REPRESENTATIVE LANG: So one additional area.  
21 Mr. Gidwitz and -- your comments and anyone can  
22 answer. You indicated that the administration said  
23 somewhere in these lawsuits that they had used the  
24 words "inherent authority" to charge premiums and to

1 pursue this FamilyCare expansion. Is there any  
2 specific language in any of their briefs that --

3 MR. GENSON: Excuse me. I was not allowed to  
4 talk to a nonlawyer about what the lawyers were doing.  
5 I was specifically precluded from doing it by the  
6 prior Chair. Mr. Gidwitz is not a lawyer on the case.

7 REPRESENTATIVE LANG: I don't understand.

8 CHAIRWOMAN CURRIE: But he's a plaintiff, and  
9 I think he -- I will go with his judgment about the  
10 appropriateness in answering.

11 REPRESENTATIVE LANG: My question is  
12 referring to Mr. Gidwitz' comments, and anyone can  
13 answer, regardless of what Mr. Genson said.

14 The question is, is there anywhere in one of the  
15 briefs filed by the administration that says  
16 specifically we have the inherent authority to do  
17 ABC?

18 MR. HECHT: I believe that there is, and we  
19 can get that citation for you. I don't have it off  
20 the top of my head. I believe it arose specifically  
21 with regard to the question of premiums.

22 REPRESENTATIVE LANG: And it's, of course,  
23 your view that they do not have the inherent  
24 authority; correct?

1 MR. HECHT: That's correct.

2 REPRESENTATIVE LANG: How would they get that  
3 authority?

4 MR. HECHT: How would they get --

5 REPRESENTATIVE LANG: Or how -- let me --  
6 that was a clumsy way to ask the question.

7 How would -- if the administration doesn't have  
8 the inherent authority to do it, how would it happen?  
9 It could happen by legislation, I presume?

10 MR. HECHT: Yes. It would have to come from  
11 the General Assembly.

12 REPRESENTATIVE LANG: It would come from the  
13 General Assembly. Could it --

14 MR. HECHT: Illinois law is really quite --  
15 quite strong in that regard, and I think that that's  
16 the source of that kind -- certainly of that kind of  
17 law as well as --

18 REPRESENTATIVE LANG: All right. And if you  
19 would give us that citation as well, I would be  
20 grateful.

21 MR. HECHT: Yes, of course.

22 REPRESENTATIVE LANG: Thank you very much.

23 CHAIRWOMAN CURRIE: Mr. Genson or Mr. Adam,  
24 you had questions?

1 MR. GENSON: The ruling of Judge Epstein did  
2 not rule to the invalid -- did not rule to the  
3 validity or invalidity of JCAR.

4 MR. HECHT: That's correct.

5 MR. GENSON: And the appellate court  
6 basically sustained his ruling; is that correct?

7 MR. HECHT: That is correct.

8 MR. GENSON: Again, on point, it did not rule  
9 as to the validity or invalidity of JCAR; is that  
10 correct?

11 MR. HECHT: That's correct. It did discuss  
12 JCAR, but that is not the bases of the holding.

13 MR. GENSON: And with regard to the Supreme  
14 Court stay, there is a stay in the Supreme Court; is  
15 that correct?

16 MR. HECHT: That is correct. There is a stay  
17 pending the adjudication of the petition for leave to  
18 appeal.

19 MR. GENSON: And the Supreme Court does not  
20 always issue a stay pending adjudication; isn't that  
21 correct?

22 MR. HECHT: That's correct.

23 MR. GENSON: It was within their discretion  
24 to issue the stay or not.

1 MR. HECHT: Yes, that's correct.

2 MR. GENSON: I have no further questions.

3 Thank you.

4 CHAIRWOMAN CURRIE: Thank you.

5 Any other questions from members of the panel?

6 Thank you very much for your insight and your  
7 help.

8 MR. HECHT: Thank you very much, Madam Chair.

9 CHAIRWOMAN CURRIE: We appreciate it.

10 Does anybody have any questions for the JCAR  
11 director, Vicki Thomas?

12 Okay. So do you want to come forward, please?

13 And let me, for the record, say that  
14 Representative Gordon is substituting for  
15 Representative Acevedo.

16 So tell me -- raise your hands again those who --  
17 Bassi, Bost, Eddy. Okay. Lang. Okay.

18 Representative Bassi, you're up.

19 REPRESENTATIVE BASSI: Thank you, Madam  
20 Chairman.

21 Vicki, I just wanted a couple clarifications. You  
22 had made the comment, I think, that you can determine  
23 legislative intent by looking at the budget?

24 MS. THOMAS: We sometimes have to do that.

1 It just happens in the General Assembly that sometimes  
2 what you do is fund something.

3 REPRESENTATIVE BASSI: Uh-huh.

4 MS. THOMAS: You might say, for instance,  
5 you're putting in extra money for a special rate  
6 increase for some entity the state pays. Sometimes  
7 you go into the substantive statute, but sometimes the  
8 substantive statute doesn't really discuss rates. So  
9 the only place where you ever make a change is in the  
10 amount of the appropriation. Now, if there's clear  
11 statutory language, we absolutely go to that first.  
12 Sometimes we fall back on the appropriations.

13 REPRESENTATIVE BASSI: But sometimes you fall  
14 back. That's interesting. Okay.

15 The other question I had I was just -- I missed  
16 what you were saying. You were giving the number of  
17 problems that had occurred with JCAR, and half of  
18 those had occurred with this administration. Would  
19 you run that by me one more time, please.

20 MS. THOMAS: Okay. The strongest action JCAR  
21 can take is a filing prohibition or a suspension.

22 REPRESENTATIVE BASSI: I'm sorry. One more  
23 -- that --

24 MS. THOMAS: Filing prohibition or

1 suspension.

2 REPRESENTATIVE BASSI: Okay.

3 MS. THOMAS: That's the strongest action we  
4 can take. In the course of JCAR's history since 1977,  
5 it's happened 69 times. Under this single  
6 administration, the six years of this administration,  
7 it's happened 33 times, which is almost half of all of  
8 them that have ever been issued.

9 REPRESENTATIVE BASSI: Okay. You called it  
10 filing prohibition or --

11 MS. THOMAS: Suspension.

12 REPRESENTATIVE BASSI: Suspension.

13 MS. THOMAS: If it's a permanent rule,  
14 then -- that's being proposed, then we prohibit them  
15 from filing. If it's an emergency that's already been  
16 adopted, then we suspend what has been adopted.

17 REPRESENTATIVE BASSI: Okay.

18 MS. THOMAS: Same action; different vehicle.

19 REPRESENTATIVE BASSI: Okay. And with this  
20 administration you've had to have 33 filings of  
21 prohibition or suspension.

22 Thank you very much.

23 MS. THOMAS: Okay.

24 CHAIRWOMAN CURRIE: Thank you.

1           Representative Bost.

2           REPRESENTATIVE BOST: Vicki, I have a couple  
3 questions just quickly, and then we talk about -- one  
4 thing you did mention was with this administration the  
5 slowing down of the process per se, and that's not  
6 anything that we can actually -- other than the fact  
7 that, okay, you can be frustrated with it but it's not  
8 any --

9           MS. THOMAS: No, that's -- the frustration's  
10 not the point. It's the fact that, because they're  
11 not getting rules in place in a timely manner but  
12 they're going ahead and doing what they think they  
13 have to do to administer their program, it's putting  
14 them in the area of administering policy without  
15 rules, which, according to the Supreme Court  
16 decisions, is not legal. So that's -- that's the  
17 bottom line.

18           Now, does it ever really count for anything? It  
19 would if they got sued because they would be found to  
20 be running a program without having adopted rules.  
21 But, you know, it takes somebody to care enough to  
22 file suit.

23           REPRESENTATIVE BOST: All right. The other  
24 question that I have and then I'll turn it over to

1 somebody else.

2           During the time of the -- the time that the new  
3 healthcare program was basically voted down through  
4 JCAR, at any time did someone from the administration  
5 or from Department of Human Services basically tell  
6 you we're going around this?

7           MS. THOMAS: I would say that kind of  
8 off-the-record comments there were never really any.  
9 There were statements, like, sorry about this, we're  
10 doing what we have to do. Little statements like  
11 that. On the record is where, as my members attempted  
12 to tie them down as to what they would do, they got --  
13 they gave exactly the same answers they gave you  
14 today. We will take it under consideration. We don't  
15 know what we'll do. Repetitively, we got those kind  
16 of answers over and over again.

17           So they never -- they were asked will you respect  
18 this action of JCAR. There was a bunch of mumbling, a  
19 bunch of the little comments you were hearing today.  
20 Never any statement one way or the other that I  
21 recall, and I just reread the minutes.

22           REPRESENTATIVE BOST: Okay. At that time are  
23 we talking about Department of Human Services, or are  
24 we talking about representatives from the actual

1 Governor's office at that time?

2 MS. THOMAS: No. The only people who ever  
3 testified on this issue were HFS staff, including  
4 Director Maram.

5 REPRESENTATIVE BOST: Okay. That's what I  
6 need to know. Thank you.

7 CHAIRWOMAN CURRIE: Representative Eddy.

8 REPRESENTATIVE EDDY: Thank you, Madam Chair.

9 I just have a couple questions quickly on a  
10 follow-up on Representative Bost's question to which  
11 you responded off-the-record statements indicated  
12 certain, I guess, directions or feelings that they  
13 had. Did those off-the-record statements indicate  
14 that even those folks felt that perhaps the Governor  
15 or the administration was pushing beyond what they  
16 knew to be the scope of their authority?

17 MS. THOMAS: I feel very uncomfortable here  
18 because I cannot give you any direct quotes. This is  
19 not the kind of thing I rush back to my desk and write  
20 down notes on.

21 what happens at a JCAR meeting is just like your  
22 meetings. As people leave the room, they talk to each  
23 other. These are people we work with every month. We  
24 know them.

1           Early on in the process, I can tell you that one  
2 of the spokespeople for HFS said to me, "Oh, I want  
3 you to know that I know better, but, you know, we were  
4 told we have to do what we have to do." You know, and  
5 her point was I hope you understand I know the rules,  
6 I'm just ignoring them. I can't attribute that -- I  
7 have nothing to prove it other than a casual  
8 statement.

9           REPRESENTATIVE EDDY: Can I ask you to  
10 indicate who the HFS person was that made that  
11 statement?

12           MS. THOMAS: Tammy Hoffman. In fact, she  
13 made statements, I think you could say, fairly -- she  
14 made statements similar to that early in these  
15 discussions before the committee. Later on she took a  
16 different track in her conversation and the things she  
17 was saying, and she would repetitively say, "I am  
18 taking responsibility. I am taking responsibility."  
19 That's not the way that she presented it the first few  
20 conversations we had.

21           REPRESENTATIVE EDDY: I guess, then, just in  
22 your -- how many years have you done this?

23           MS. THOMAS: I've been at JCAR since '91.

24           REPRESENTATIVE EDDY: Since '91. And I

1 appreciated the statistics earlier because I think  
2 those tell us a story also. But in your capacity as  
3 executive director through all those administrations  
4 and dealing with issues and the process with this  
5 administration, based on your experience, do you feel  
6 that Governor Blagojevich or this administration has  
7 abused their power regarding this process?

8 MS. THOMAS: I can honestly say I have never  
9 seen any agency in this process go so far as to  
10 blatantly ignore a JCAR action. Never has filing  
11 prohibition or a suspension not worked the way it was  
12 supposed to until this incident.

13 REPRESENTATIVE EDDY: Do you consider that --  
14 I'm taking that as a yes, that --

15 MS. THOMAS: Absolutely, yes.

16 REPRESENTATIVE EDDY: -- you see this as an  
17 abuse.

18 MS. THOMAS: I've had -- I've had some of my  
19 own members say to me, "Have you ever seen an  
20 administration function like this?" And I tell them  
21 no. And then I tell them, "And it worries me."

22 REPRESENTATIVE EDDY: Did you feel like --

23 MS. THOMAS: A lot.

24 REPRESENTATIVE EDDY: -- on those -- in the

1 conversations either on or off the record that the  
2 direction for this circumventing of JCAR was coming  
3 directly from the Governor's office?

4 MS. THOMAS: That was never stated. One  
5 thing you'll notice, when you hear testimony on this,  
6 is you will hear people say we talked to legal  
7 counsel, and, as you all know, when legal counsels in  
8 the agencies are assigned and managed has changed  
9 somewhat. So to -- to a lot of administrative  
10 employees, when they speak to their own legal counsel  
11 these days, they sometimes believe they're talking to  
12 the Governor's office more than they're talking to  
13 their director. It's -- so, I mean, those are soft --  
14 soft perceptions, but sometimes you'll hear legal  
15 counsel used when that means more than the term would  
16 normally mean to.

17 REPRESENTATIVE EDDY: Okay. Thank you.

18 CHAIRWOMAN CURRIE: Representative Lang.

19 REPRESENTATIVE LANG: Thank you, Madam  
20 Chairman.

21 Thank you for staying with us for so long.

22 MS. THOMAS: Sure.

23 REPRESENTATIVE LANG: Aside from the  
24 discussion of FamilyCare today and the specific

1 ignoring of this -- of the JCAR prohibition, can you  
2 characterize for us the administration's activity  
3 relative to JCAR, the level of cooperation out of  
4 state agencies? We've been privy to this many  
5 times -- this has come up many times in our meetings  
6 at JCAR. We'd like to hear you tell the committee  
7 about whether they're forthright in bringing  
8 documents, answering questions, keeping deadlines, et  
9 cetera.

10 MS. THOMAS: The conversation you had with  
11 Ms. Hoffman today about presenting materials to you by  
12 the end of the day? We've had those same  
13 conversations with her numerous times. We've -- on  
14 two of our meeting minutes from, I believe, spring and  
15 fall, she specifically said things will get better.  
16 We will work with your staff. We will get them the  
17 documentation they need.

18 Couple months later it was pointed out to her that  
19 she had said this but nothing had changed. Fine, she  
20 said, everything would change. It would be better.

21 At our meeting last week, she said that we would  
22 have material by the end of the day. Four o'clock in  
23 the afternoon we're on the phone saying, "Tammy, where  
24 is it?" She made it by 4:30, but nip and tuck.

1           So good luck is all --

2           CHAIRWOMAN CURRIE: I'm not sure how helpful  
3 it is to go into specific individuals. I think you've  
4 made generally the point that you have found this  
5 administration a good deal less responsive than  
6 previous administrations, and you have had problems  
7 with their responsiveness to your rulings a good deal  
8 more frequently than you found with any other  
9 administration. So I think --

10           MS. THOMAS: Absolutely. I can mention a  
11 couple of other agencies --

12           CHAIRWOMAN CURRIE: I think she's basically  
13 answered your question, Representative.

14           MS. THOMAS: -- if you're looking for  
15 something broader, so --

16           REPRESENTATIVE LANG: Well, let me just ask  
17 this -- I think Representative Currie is correct, but  
18 let me just ask this: Do you find this to be  
19 pervasive in most state agencies today?

20           MS. THOMAS: I'm sorry. I missed --

21           REPRESENTATIVE LANG: Do you find this  
22 pervasive in most state agencies today where you're  
23 not getting all the information you need when you need  
24 it?

1 MS. THOMAS: It varies. I would say what  
2 comes to mind is two agencies right now that we're  
3 having this problem with. There are others where  
4 there will be delays because they have to send  
5 everything through their legal counsels, but the  
6 predominant problems have been with Public Health and  
7 Public Aid. Or, excuse me, HFS.

8 REPRESENTATIVE LANG: One more question, and  
9 I thank you, Madam Chairman.

10 As the person who's responsible for JCAR and has  
11 been for 17 years, what is your view of how this  
12 process would work -- how the rulemaking process would  
13 work if we just turned JCAR into a voluntary activity,  
14 an advisory panel? What would happen to the  
15 rulemaking process in Illinois?

16 MS. THOMAS: It would fall apart. In my  
17 opinion, what would have to happen is the General  
18 Assembly would have to change the way it works. It  
19 would no longer be able to say here's the broad  
20 program outline, department, please go ahead and fill  
21 in the blanks. The General Assembly would have to  
22 write statutory law that would fill in every major  
23 principle that they want followed with that rule.  
24 They would have to tighten up their appropriation

1 process. They wouldn't be able to afford to say to  
2 HFS here's \$6 billion for all of our medical an  
3 assistance programs, spend it wisely. They would have  
4 to say you can have \$2 for this program and you can  
5 have \$3 for this program, and they would put -- have  
6 to put the administration in a headlock. I mean, that  
7 would be the substitution for the process that we go  
8 to now.

9 REPRESENTATIVE LANG: Would it be fair to say  
10 that if JCAR was considered advisory and the General  
11 Assembly did not do that, leaving everything to a  
12 governor and a governor's administration to decide,  
13 that that would lead to really abuse of power as  
14 they -- as the administration just made every decision  
15 about every dollar they spent in state government.

16 MS. THOMAS: Abuse of power and serious  
17 problems with separation of powers because then you  
18 would have the administration making law.

19 REPRESENTATIVE LANG: Thank you very much.

20 CHAIRWOMAN CURRIE: Thank you.

21 Representative Rose.

22 REPRESENTATIVE ROSE: Just briefly. I'm not  
23 on JCAR so I want to make sure I understand the  
24 preemptory rule.

1 MS. THOMAS: Uh-huh.

2 REPRESENTATIVE ROSE: And to clarify. If I  
3 understood correctly, that is to -- in response to a  
4 court order?

5 MS. THOMAS: We've limited our discussions  
6 today, everyone, to that aspect of it, but it's not  
7 just a court order.

8 REPRESENTATIVE ROSE: Okay. What else can  
9 it --

10 MS. THOMAS: It's -- okay. It's federal  
11 regulations that the state has -- like, regulations or  
12 federal statute that the state has to follow and has  
13 no choice in.

14 It's court orders where, again, the court has  
15 ordered it and the agency has no discretion.

16 Collective bargaining agreements that have been  
17 entered into and the agency has no discretion, they  
18 have to live under that collective bargaining.

19 Those three? Those are the three instances when  
20 you can use preemptory rulemaking.

21 REPRESENTATIVE ROSE: And your -- if I  
22 understood correctly, your position was that the  
23 court -- the preemptory rule that was filed -- your  
24 position is that the court order that was filed was --

1 by the administration was not actually what was  
2 ordered by the court?

3 MS. THOMAS: I have to first of all state I'm  
4 not an attorney so I -- this is my view on it. What  
5 the judge did in the circuit court decision when he  
6 did his TRO was he went through several pages of  
7 discussion of what he had heard, what he thought.  
8 That's where the idea of this all being attached to  
9 TANF first was created. He made a lot of statements.  
10 When he got to issuing an order, his order was very  
11 simple. There was a preliminary stay against them  
12 running the program. I ran through every attorney I  
13 could get ahold of. Tell me, is the order what he --  
14 what the judge has depicted as the order, or is the  
15 order --

16 REPRESENTATIVE ROSE: Any beyond --

17 MS. THOMAS: -- the rhetoric?

18 REPRESENTATIVE ROSE: Well, go ahead.

19 MS. THOMAS: Okay. I was told the order is  
20 just the order, and the order was only the stay. So  
21 based on that, what they did is they got into  
22 conversational information the judge offered, and they  
23 tried to depict that as being a court order.

24 REPRESENTATIVE ROSE: Okay.

1 MS. THOMAS: Now, in addition to it being a  
2 court order --

3 MR. GENSON: Most respectfully, we had the  
4 lawyers there to testify.

5 CHAIRWOMAN CURRIE: Yeah, we did. We did.  
6 And I think the director has already said she's not a  
7 lawyer. So I think this line of questioning probably  
8 should come to a close.

9 REPRESENTATIVE ROSE: Okay.

10 MS. THOMAS: Just one point there, though, is  
11 there's two elements. One is it has to be a court  
12 order, and the other is there has to be no discretion  
13 on the agency's part. Nothing in the rhetoric  
14 dictated the language to them either. So it was on  
15 two strikes that they had a problem.

16 REPRESENTATIVE ROSE: Okay. And it was then  
17 overruled.

18 MS. THOMAS: And there was actually a third  
19 strike on it in that it can only be done within a  
20 30-day period after the action, and they did not do it  
21 within 30 days after the judge's decision. So they --  
22 there are many faults.

23 REPRESENTATIVE ROSE: Okay. Thank you.

24 CHAIRWOMAN CURRIE: Representative Tracy for

1 a quick question.

2 REPRESENTATIVE TRACY: Yes. Ms. Thomas, did  
3 you -- after the expansion of the healthcare program  
4 and the non-following of the JCAR rules, did you have  
5 a conversation with anybody in the Governor's office?

6 MS. THOMAS: No.

7 REPRESENTATIVE TRACY: Or anybody from DHS  
8 or Public Health?

9 MS. THOMAS: We had many conversations with  
10 DHS personnel -- or HFS personnel, but no one directly  
11 from the Governor's office.

12 REPRESENTATIVE TRACY: Okay. And what was  
13 the conversation summarization of the -- with DHS?

14 MS. THOMAS: There were many. I mean, we  
15 continued to do a staff investigation of the proposed  
16 rule which was identical to the emergency. For one  
17 thing, we sat down with them on a staff level. I  
18 personally participated in conversations on current  
19 medical assistance backlog. We just wanted to clear  
20 up that point. They were very unclear in our meeting  
21 as to how much of a backlog. They kept saying, well,  
22 it's not as bad as the Comptroller says, but they  
23 couldn't tell us how bad it was. They thought it was  
24 a few million dollars less than the Comptroller

1 thought.

2 So we scheduled the meeting and we sat down. By  
3 the time they came into the meeting, they had met with  
4 their accountants, and they decided there was no  
5 backlog. No backlog. So that -- I mean, was one of  
6 the instance, but, I mean, we did our normal  
7 investigation of a rulemaking like we always do. Tons  
8 of questions. Sometimes answers; usually not.

9 REPRESENTATIVE TRACY: Did you have any  
10 conversation with who was the driving force behind  
11 their decisions?

12 MS. THOMAS: We did not.

13 REPRESENTATIVE TRACY: And one clarification.  
14 Who do you report to? Are you, like, one of those  
15 quasi administrative bodies or --

16 MS. THOMAS: I report to the Speaker of the  
17 House, the Minority Leader, the President of the  
18 Senate, and the Minority Leader.

19 CHAIRWOMAN CURRIE: She's our agency.

20 MS. THOMAS: Yeah.

21 REPRESENTATIVE TRACY: Thank you.

22 CHAIRWOMAN CURRIE: And we're very happy to  
23 have her. Thank you very much.

24 MS. THOMAS: Thank you.

1 CHAIRWOMAN CURRIE: Thank you very much. We  
2 appreciate your being here today, and now we're ready  
3 to move to another totally different subject.

4 MR. ADAM: Could we ask --

5 CHAIRWOMAN CURRIE: Oh, I'm sorry. Mr. Adam,  
6 you wish to ask questions?

7 MR. ADAM: If we could, Your Honor, that  
8 would be -- I mean, Madam Chair, if we could.

9 CHAIRWOMAN CURRIE: Please. Please.

10 MR. ADAM: Thank you, Madam Chair.

11 I just have one question for your, Ms. Thomas, or  
12 should I say issue. To clarify, you have told us that  
13 in your entire experience looking at these matters --  
14 and I believe you told us in your opening remarks that  
15 you look at just about everything you can. In your  
16 entire time you've been there, you have not seen an  
17 administration this blatant. And, in fact, on 33  
18 separate and individual occasions this administration  
19 was either cited or violated the rules; is that right?

20 MS. THOMAS: Statute, usually.

21 MR. ADAM: Statute. Correct. So is it fair  
22 to say, then, that in everything that you have looked  
23 at and as -- in all over the country, when Blagojevich  
24 administration had to choose between bureaucracy or

1 fighting for sick children, he chose sick children  
2 every time? Every time he choose sick kids. Is that  
3 what you're telling us?

4 CHAIRWOMAN CURRIE: This is -- Mr. Adam. Mr.  
5 Adam. This is -- this is -- yeah, we are not -- we're  
6 not that kind of jury, I'm sorry to have to tell you.  
7 So -- no, you don't need to. Okay. Okay.

8 So I think that you're dismissed. Thank you very  
9 much for participating.

10 We now move to a totally different topic and that  
11 will be some reports from your Auditor General William  
12 Holland.

13 Mr. Genson.

14 MR. GENSON: And I have to read it, but on  
15 the agenda that I was given for 12-18, number G was  
16 Ann Lucine, Professor, John Marshall School of Law,  
17 written testimony only.

18 CHAIRWOMAN CURRIE: Yes, she --

19 REPRESENTATIVE TRACY: That will be admitted  
20 into evidence?

21 CHAIRWOMAN CURRIE: Yes, it is. And I  
22 appreciate your reminding me to say that we are taking  
23 into consideration or we're adding to the record the  
24 testimony from Ann Lucine, who is a professor at the

1 John Marshall Law School.

2 MR. GENSON: There would be no reason for me  
3 to read it. If I'm going to have a few moments to sum  
4 up, at least our position later on, I'm going to  
5 include it in the summation, if I get that.

6 CHAIRWOMAN CURRIE: Certainly. Certainly.

7 MR. GENSON: I don't need to read it now.  
8 Thank you.

9 CHAIRWOMAN CURRIE: Certainly.

10 And before we begin with Mr. Holland, I want just  
11 to enter into the record Exhibit 6, which is the  
12 Auditor General group exhibit, letter to Mr. Holland,  
13 Mr. Holland's response, and the three audits he plans  
14 to discuss.

15 Exhibit 7 will be the testimony of Mr. Ali Ata  
16 during the case United States versus Antoin Rezko.

17 And Exhibit 8 will be the testimony of Joseph Cari  
18 during the case the United States versus Antonio  
19 Rezko.

20 MR. GENSON: And I don't have copies of  
21 either of them, but do they include the  
22 cross-examination, or do they just include the direct,  
23 if you know?

24 CHAIRWOMAN CURRIE: They do. Apparently,

1 they do, but we'll make you get them as well.

2 Now, anybody who plans to speak --

3 MR. GENSON: Excuse me.

4 CHAIRWOMAN CURRIE: -- at that table should  
5 stand up so I can swear you in.

6 MR. GENSON: Representative -- Madam.

7 CHAIRWOMAN CURRIE: Yes.

8 MR. GENSON: I just want to make certain that  
9 what's admitted. I know -- I'll get them, I know  
10 that, but what it's my understanding that both the  
11 direct and cross as to both of them are admitted.

12 CHAIRWOMAN CURRIE: Is that right? That is  
13 right? Heather? Is it both the direct and the  
14 cross-examination.

15 MR. GENSON: As to both.

16 CHAIRWOMAN CURRIE: Yes.

17 MR. GENSON: Okay. Thank you very much.

18 CHAIRWOMAN CURRIE: Anything that either of  
19 these gentlemen said in court will be included in this  
20 transcript.

21 MR. GENSON: Okay. Thank you very much.

22 CHAIRWOMAN CURRIE: Thank you.

23 (Mr. Holland, Mr. Maziarz, and  
24 Ms. Patton were duly sworn.)

1           CHAIRWOMAN CURRIE: Thank you very much, and  
2 if you would be kind enough to say your names, and if  
3 they're difficult to spell, would you do that so that  
4 the court reporter knows who you are.

5           MR. HOLLAND: Madam Chair, my name is Bill  
6 Holland. I'm the Auditor General for the State of  
7 Illinois. On my right is Mike Maziarz, M-a-z-i-a-r-z.  
8 Maziarz. He's the senior audit manager in my office.  
9 And on my left is Rebecca Patton. She is my chief  
10 legal counsel. Patton, P-a-t-t-o-n.

11           CHAIRWOMAN CURRIE: Thank you very much, and  
12 would you proceed. I don't know which order you want  
13 to take your audits, but we're happy with whatever  
14 order you choose.

15           MR. HOLLAND: Members of the committee, Madam  
16 Chairman, Representative Durkin. The gravity of the  
17 committee's purpose is not lost on me. What is  
18 required for your consideration is a sober recital of  
19 the facts regarding the audits you have asked to  
20 discuss. With that in mind, I will begin.

21           Let me first begin by making a brief comment about  
22 the audit which I will not discuss, and that is the  
23 audit of the Loop Lab School. The Loop Lab School is  
24 an audit that was passed by the General Assembly

1 earlier this year. It called on me to conduct a  
2 management audit to look at how and when funds were  
3 promised to the Pilgrim Baptist Church; how and when  
4 funds were promised to the Loop Lab School; what  
5 person or persons were involved in these transactions;  
6 what internal controls were present in the grant award  
7 process; what actions, if any, have been taken to  
8 recover the misdirected funds; and, finally, whether a  
9 grant to the church is currently being developed.

10 I would have hoped that this particular audit --  
11 this management audit on a grant program of a million  
12 dollars would have been done sooner than it is, but I  
13 can tell you that we're struggling, and I'm sure you  
14 might appreciate this after listening to the testimony  
15 of the Department of Healthcare and Family Services.  
16 We're having trouble finding out who actually was  
17 responsible for some of the activities with regard to  
18 that particular transaction.

19 So we have not concluded our audit in this area,  
20 and when we do, we'll make it available to the members  
21 of the General Assembly.

22 So the reports I am prepared to talk about are the  
23 summary report on efficiency initiative payments  
24 released in June of 2005 and the management audit of

1 the flu vaccine procurement and the I-SaveRx program  
2 released in 2006.

3 First, in the spring of 2005, my office released a  
4 regularly scheduled compliance examination of the  
5 Department of Central Management Services that  
6 outlined significant problems at the very agency in  
7 which the Governor had centralized many of the state's  
8 key operations. One of the findings -- in fact, the  
9 first finding in the audit -- dealt with the  
10 newly-created efficiency initiative program.

11 Now, by way the background, effective June of  
12 2003, Public Act 9325 made CMS responsible for  
13 recommending efficiency initiatives to the Governor  
14 for reorganizing, restructuring, reengineering the  
15 business processes of the state.

16 Now, under the efficiency initiatives programs,  
17 CMS billed the various state agencies for savings they  
18 experienced through the efficiency initiatives. Now,  
19 the state agencies, in turn, were to pay CMS' bills  
20 from the line item appropriations where the cost  
21 savings were anticipated to occur. These payments  
22 were to be deposited into a newly-created efficiency  
23 initiatives revolving fund, and then CMS paid its  
24 expenses for administering the program from that fund.

1           As we audited the various state agencies  
2 throughout 2005, we noted several problems with the  
3 efficiency initiatives program. We summarized those  
4 issues in a report released in June of 2005, and the  
5 summary found that all of the audited agencies made  
6 payments for efficiency initiatives billings from  
7 improper line item appropriations.

8           State agencies generally made payments not from  
9 line items experiencing savings due to the efficiency  
10 initiatives, but rather from appropriations that  
11 simply had available funds to make payments from.  
12 Thus circumventing the legislature's appropriation  
13 process.

14           Agencies did not receive guidance or documentation  
15 from CMS detailing from which line item appropriation  
16 savings were anticipated to occur. While the State  
17 Finance Act directed CMS to develop the amounts to be  
18 billed to the state agencies, CMS officials noted that  
19 the Governor's office of management and budget simply  
20 established the amounts that were to be billed to all  
21 state agencies in September of 2003, and CMS  
22 accounting staff printed the amounts received from OMB  
23 onto CMS invoices.

24           These invoices were then returned to OMB which

1 then decided which invoices would or would not be sent  
2 to the agencies for payment. And in what may be the  
3 greatest irony, agencies reported that they had not  
4 experienced savings even though they were billed by  
5 CMS.

6 In fiscal year '04, agencies were billed \$137  
7 million and paid nearly \$130 million to CMS for  
8 initiatives related to procurement, information  
9 technology, fleet management, facilities management,  
10 internal audit consolidation, and legal research  
11 consolidation. CMS documentation showed a majority of  
12 the state agencies were overbilled. That is to say,  
13 agencies were billed more for the savings initiatives  
14 than the agencies had actually realized in savings.

15 As a part of the efficiency initiatives program,  
16 CMS entered into contracts with outside vendors worth  
17 \$69 million in fiscal year '04. These vendors  
18 included McKinsey and Company, Accenture, BearingPoint  
19 EKI, and IPAM. In each of these contracts, a  
20 representative of the Governor's office either  
21 assisted in developing the RFP or sat on the proposal  
22 evaluation committee. We found the IPAM contract for  
23 facility management services to be particularly  
24 troubling -- in part, because the company did not

1 exist prior to winning the contract award.

2 Additionally, our audit identified thousands of  
3 dollars in questionable expenses. Although the  
4 Governor initially defended the company, within nine  
5 days of the release of our audit, the IPAM contract  
6 was canceled. This matter is still in litigation, to  
7 the best of my knowledge.

8 In some cases the efficiency contracts were  
9 awarded based on the vendor's ability to show that  
10 they could meet savings goals stated in the RFP, the  
11 submitted proposal, or the contract. However, we  
12 found that CMS lacked the process to track and  
13 document savings achieved through these contracts.

14 In response to our audit, CMS entered into a  
15 million-dollar contract with a firm to provide  
16 assistance in calculating savings related to these  
17 initiative -- efficiency initiatives. And in October  
18 2005 CMS issued a report which purported to estimate  
19 the efficiency savings. We did not verify CMS' report  
20 as a part of our audit process.

21 However, in a casual review, we noted that the  
22 savings estimate was a gross number and failed to  
23 recognize documented costs in excess of \$72 million  
24 incurred by CMS in conjunction with their initiatives.

1 CMS discontinued billing for efficiency initiatives  
2 after fiscal year 2005.

3 Turning now to the management audit of the flu  
4 vaccine.

5 CHAIRWOMAN CURRIE: Wait. Wait. Sorry,  
6 Auditor General. I think some people wanted to ask  
7 questions as we went along, so if you could just stop  
8 there. If there are any questions about this audit.

9 Representative Franks.

10 REPRESENTATIVE FRANKS: Thank you, Madam  
11 Chair.

12 Thank you for being here, Auditor General, and I  
13 chaired those hearings a few years ago, and I  
14 appreciate the hard work that you did. And I wanted  
15 to follow up on the overview that you had given.

16 Would it be fair to characterize the evidence that  
17 you put forward is that the audit findings raised  
18 serious questions about the integrity of state  
19 contracts, the Illinois procurement process, and the  
20 state budget process?

21 MR. HOLLAND: Yes.

22 REPRESENTATIVE FRANKS: Did your findings  
23 indicate that CMS and Governor Blagojevich violated  
24 the state procurement code?

1 MR. HOLLAND: Our findings indicated that the  
2 Department of Central Management Services violated the  
3 procurement code.

4 REPRESENTATIVE FRANKS: Did your findings  
5 also show that this administration violated the State  
6 Ethics Act?

7 MR. HOLLAND: We didn't address the State  
8 Ethics Act in the audit.

9 REPRESENTATIVE FRANKS: What about the time  
10 sheets?

11 MR. HOLLAND: I stand corrected. The time  
12 sheets issue has been an issue with regard to many  
13 state agencies across state government.

14 REPRESENTATIVE FRANKS: Correct. But we had  
15 a new ethics law?

16 MR. HOLLAND: Yeah, that was passed in 2003.

17 REPRESENTATIVE FRANKS: Right. And we found  
18 this administration was not requiring its employees  
19 under their state agencies to comply with that law  
20 that we passed. Would that be a fair  
21 characterization?

22 MR. HOLLAND: That is true.

23 REPRESENTATIVE FRANKS: Okay. Would your  
24 findings also indicate that this administration

1 violated the State Finance Act?

2 MR. HOLLAND: Yes.

3 REPRESENTATIVE FRANKS: Would it also show  
4 that this administration violated the reporting  
5 responsibilities to the General Assembly?

6 MR. HOLLAND: Yes.

7 REPRESENTATIVE FRANKS: Did your findings  
8 also show that this administration violated the  
9 dispensing of surplus state materials provisions?

10 MR. HOLLAND: Yes, there has been problems.  
11 Yes.

12 REPRESENTATIVE FRANKS: Wasn't that with the  
13 computers that were not cleaned and they had a lot of  
14 sensitive information left on those hard drives, and  
15 then they were then sold?

16 MR. HOLLAND: That -- that particular issue  
17 was contained in that same audit, yes.

18 REPRESENTATIVE FRANKS: Okay. It was my  
19 concern that Governor Blagojevich was usurping the  
20 legislative authority related to the budget process,  
21 and I wanted to talk to you about those.

22 When we look at these initiatives, I had  
23 characterized it when I first saw it as an elaborate  
24 money laundering scheme where the Governor would take

1 state money from agencies, claim efficiencies that  
2 couldn't be proven, not using line items so the money  
3 was untraceable, and then transfer those funds to a  
4 line item that the Governor controlled. Would that be  
5 a fair characterization? That there was no  
6 traceability, there was no proven efficiencies and no  
7 savings, and the Governor would then move those moneys  
8 to a line item he controlled?

9 MR. HOLLAND: I would -- I -- the only  
10 statement that I would not concur with is no  
11 traceability because that's what we are. We're the  
12 auditors. Took us a long time to find it, but we did  
13 find it.

14 REPRESENTATIVE FRANKS: But did he ever show  
15 from which line item that he was -- excuse me,  
16 Heather. Did he ever show from which line item which  
17 he was claiming the efficiencies emanated from?

18 MR. HOLLAND: We never -- the efficiencies  
19 were a moving target.

20 REPRESENTATIVE FRANKS: Okay. Okay. Now,  
21 when we look at these contracts, we looked at about  
22 nine contracts, as I recall?

23 MR. HOLLAND: Yes.

24 REPRESENTATIVE FRANKS: Now, in many of

1 these, didn't we find that the entities that wrote the  
2 requests for -- RFP. Request for?

3 MR. HOLLAND: Proposal.

4 REPRESENTATIVE FRANKS: For proposal.  
5 They're the ones who also wrote the standards;  
6 correct?

7 MR. HOLLAND: That was one of the findings  
8 that we had is that many of the people who did some of  
9 the work on development of the RFPs were also then  
10 involved in the -- in the process of not only awarding  
11 but winning contracts.

12 REPRESENTATIVE FRANKS: Now, wasn't CMS  
13 legislatively mandated for the oversight of these  
14 efficiencies, but didn't they instead delegate the  
15 efficiency incentives to the Governor's own Office of  
16 Management and Budget despite a state law directing  
17 CMS to carry out that program?

18 MR. HOLLAND: It would seem as such.

19 REPRESENTATIVE FRANKS: Okay. which would  
20 make it much more -- would make -- effectively allow  
21 the Governor to rewrite the budget without legislative  
22 oversight.

23 MR. HOLLAND: That's your characterization.

24 REPRESENTATIVE FRANKS: Okay. Now, I want to

1 talk to you about the IPAM contract as well, but  
2 before we get there, I want to talk about how some of  
3 these came about. Did you find it in your audit odd  
4 that members of CMS would meet with the individuals  
5 who would write the RFPs, have dinner with these  
6 folks, then they would write the proposals, and then,  
7 ultimately, get the award in many cases?

8 MR. HOLLAND: Yes.

9 REPRESENTATIVE FRANKS: When we looked at  
10 these contracts as well, didn't CMS initially ask for  
11 the reimbursement on these contracts as professional  
12 and artistic? Didn't they even file affidavits that  
13 these were professional and artistic contract? And  
14 I'll tell you where I'm going with that. I'll wait  
15 till your counsel is done.

16 MR. HOLLAND: Some were classified as  
17 professional and artistic; some were not classified as  
18 professional and artistic. But the point that I think  
19 you're getting at is that CMS objected to that  
20 classification.

21 REPRESENTATIVE FRANKS: Because as  
22 professional or artistic contract, it requires the  
23 disclosure of the subcontractor?

24 MR. HOLLAND: Yes. There you go.

1 REPRESENTATIVE FRANKS: Correct?

2 MR. HOLLAND: Yes. I understand what you're  
3 asking now.

4 REPRESENTATIVE FRANKS: That's where I was  
5 going. But a contract done through an RFP process  
6 does not require those disclosure; isn't that correct?

7 MR. HOLLAND: Well, if it's a -- eventually  
8 all the subcontractor need to be disclosed.

9 REPRESENTATIVE FRANKS: But not initially.

10 MR. HOLLAND: Correct.

11 REPRESENTATIVE FRANKS: Okay. So CMS, even  
12 though they were asked to be reimbursed through a  
13 professional and artistic contract, indicated these  
14 contracts were rather RFP?

15 MR. HOLLAND: Correct.

16 REPRESENTATIVE FRANKS: Okay. Did we have --  
17 in your opinion, were sufficient written records  
18 explaining how these contracts were awarded?

19 MR. HOLLAND: Representative Franks, the  
20 issues here you're discussing are the first seven  
21 findings in that particular audit report, and the  
22 problem that we had --

23 MR. GENSON: Excuse me. Can we clarify which  
24 particular audit is that? I'm getting confused.

1           CHAIRWOMAN CURRIE: I believe we're talking  
2 only about the audit that has been described.

3           REPRESENTATIVE FRANKS: On the efficiency  
4 initiative.

5           CHAIRWOMAN CURRIE: Not about the other two  
6 audits. Representative Franks was particular. He  
7 wanted to talk one audit at a time.

8           REPRESENTATIVE FRANKS: I want to do one at a  
9 time.

10          MR. GENSON: Are they two audits at two  
11 different times or --

12          CHAIRWOMAN CURRIE: There are two others  
13 coming, yes.

14          MR. GENSON: Thank you.

15          MR. HOLLAND: If I may, in order to make sure  
16 it's clear for Mr. Genson, what we're -- what the  
17 audit findings we're referring to are in specific  
18 response to the Department of Central Management  
19 Services compliance examination for the two years  
20 ended June 30th of 2004, which was then followed up  
21 with a summary report in June of 2005.

22          MR. GENSON: Thank you.

23          MR. HOLLAND: You're welcome. I think that's  
24 the question you were looking for.

1           MR. GENSON: Probably said it before and I  
2 didn't hear.

3           REPRESENTATIVE FRANKS: Did you find it  
4 unusual that on 44 percent of the contracts they were  
5 not awarded to the lowest bidder, and they did not  
6 reveal that fact in the procurement bulletin as  
7 required by law?

8           MR. HOLLAND: As I began to say, you're  
9 asking all of the questions that are in those first  
10 seven or eight findings and all of those items which  
11 were included in those findings. You know, the --  
12 the -- the not disclosing, the changing of  
13 specifications, the negotiating on the best and final  
14 after there's a best and final. I mean, there was a  
15 lot of activities that surrounded the procurements of  
16 these major contracts, which were at the very -- at  
17 the time we were very troubled by because it indicated  
18 just a lack of understanding of what -- what the  
19 procurement process was all about.

20           REPRESENTATIVE FRANKS: Well, it could have  
21 been more than a lack of understanding. That's what  
22 concerned me. I saw one, I think it was Team  
23 Services, and I saw that they were a large contributor  
24 to the Governor, and then they got a \$5 million no-bid

1 state contract awarded by CMS; is that correct?

2 MR. HOLLAND: To the first half of that  
3 question, I don't know. That's not our issue. To the  
4 second half of that question, I do know and that is  
5 correct.

6 REPRESENTATIVE FRANKS: Okay. Well, we'll  
7 put that into evidence at a later time. I'm sure we  
8 can get a list of those individuals or entities that  
9 had donated to Friends of Blagojevich.

10 Can we talk briefly -- and I think the one that  
11 really stood out and probably got the most press  
12 contract was the IPAM contract.

13 MR. HOLLAND: Yes.

14 REPRESENTATIVE FRANKS: Which you briefly  
15 alluded to. May I ask you an open-ended question and  
16 just ask you to give us a little bit more background  
17 on that?

18 MR. HOLLAND: Well, as I indicated in my --  
19 in my opening comment, the high level overview of this  
20 particular audit, the IPAM contract was troubling from  
21 the standpoint that a contract was awarded to a  
22 company that did not exist.

23 REPRESENTATIVE FRANKS: Right.

24 MR. HOLLAND: That's good work if you can get

1 it.

2 REPRESENTATIVE FRANKS: That and no-show  
3 jobs. Got those both here.

4 REPRESENTATIVE LANG: Can you -- excuse me.  
5 I don't mean to interrupt. Can you say that again?  
6 Want to make sure I heard that.

7 MR. HOLLAND: It's good work if you can get  
8 it.

9 REPRESENTATIVE LANG: No. No. Before that.  
10 Did you say it was awarded to a company that did not  
11 exist?

12 MR. HOLLAND: That did not exist.

13 REPRESENTATIVE LANG: Can you give us the  
14 details of that before you proceed?

15 REPRESENTATIVE FRANKS: And before you --  
16 Auditor, we had a question. Wasn't this a 32 -- no,  
17 it was actually higher. It was a \$30 million  
18 contract, but didn't they go back and then add another  
19 \$5 million into -- back at the other end? After they  
20 were -- after they were given the contract, then they  
21 went back and add another 5 or \$6 million into it?  
22 Since we were being generous?

23 MR. HOLLAND: They attempted to, but they did  
24 not get it.

1           REPRESENTATIVE FRANKS: Okay. Thank you.  
2           And I'm sorry to cut you off. Just \$30 million,  
3           Representative Eddy.

4           MR. HOLLAND: So the award for the contract  
5           that was -- and the award notice presented by the --  
6           or filed by the -- this would be the purchasing  
7           agency, which would be the Central Management  
8           Services. The award for that contract was awarded on  
9           December the 29th, 2003. The date they filed with the  
10          Secretary of State their notice that they were a  
11          limited liability company was January the 15th of  
12          2004. They did not exist at the time of the award.

13          REPRESENTATIVE FRANKS: It's interesting.  
14          When you look at when they made their best and final  
15          proposal, and it was evaluated on CMS, IPAM, I  
16          noticed, changed its joint venture composition, and I  
17          would have thought that that would have impacted its  
18          background and staffing qualifications. But there was  
19          no indication at all that there was any change in the  
20          points awarded even after they had changed the joint  
21          venture composition. Would that be fair?

22          MR. HOLLAND: That is fair, yes. That's  
23          correct. They dropped some people off of the  
24          subcontractor list and --

1           REPRESENTATIVE FRANKS: And then they also  
2 included performance guarantees in both its original  
3 and best and final proposals, but none of those  
4 performance guarantees were ultimately included in the  
5 IPAM contract; isn't that correct?

6           MR. HOLLAND: That's also correct.

7           REPRESENTATIVE FRANKS: Okay. And it also  
8 shows that IPAM did not save the \$14 million it was  
9 supposed to save in fiscal year '04. Would that be  
10 correct as well?

11          MR. HOLLAND: That's correct also.

12          REPRESENTATIVE FRANKS: Okay. I remember  
13 when this came out -- this initial audit.

14          MR. HOLLAND: Yeah. So do I.

15          REPRESENTATIVE FRANKS: Do you remember what  
16 the administration's response was? Because I remember  
17 a very memorable quote. He said --

18          MR. HOLLAND: Want to remind me?

19          REPRESENTATIVE FRANKS: Yeah. And maybe I'm  
20 paraphrasing, but I think the Governor said this is a  
21 prize fight amongst accountants -- a lot of noise but  
22 not a lot of muscle.

23          MR. HOLLAND: That sounds pretty familiar.  
24 That sounds like it was.

1           REPRESENTATIVE FRANKS: And didn't he also  
2 say that he -- didn't he defend IPAM?

3           MR. HOLLAND: Yes.

4           REPRESENTATIVE FRANKS: And didn't they  
5 attack your ability to do these audits? And wasn't --  
6 and I want to know what your response was.

7           MR. HOLLAND: Well, as many of the members of  
8 this committee know, I am not an individual who is  
9 known for having, number one, press conferences or,  
10 number two, press releases. I've done one press  
11 release in my 17 years and one press conference in 17  
12 years. And the one press conference I did was in  
13 response to the audits -- to the agency's response  
14 to this particular audit, because at that time they  
15 were -- they were taking issue with virtually  
16 everything that we found, which I might add at this  
17 point, which is very significant, that as time wore  
18 on, the agency came to agree with virtually every one  
19 of the findings and withdrew all of their objections.

20           REPRESENTATIVE FRANKS: Right.

21           MR. HOLLAND: So, initially, I think it was a  
22 bit of an effort on the part of the -- on the part of  
23 the administration to exert some influence over the  
24 Office of the Auditor General, which I'm happy to say

1 was unsuccessful.

2 REPRESENTATIVE FRANKS: We are too.

3 And then in some instances didn't we see that  
4 the -- those that got contracts -- my memory may fail  
5 me. I think it was McKinsey. I think they were doing  
6 work, and it took like 234 days before they ever  
7 submitted a contract?

8 MR. HOLLAND: Well, we -- again, we had many  
9 problems with work being done and no contract on file,  
10 which is really a risky proposition, you know. If  
11 you're going to have your roof built on your house,  
12 you want to have a contract in place so you know what  
13 your costs are going to be. But when you don't have  
14 your contract in place, it becomes problematic.

15 REPRESENTATIVE FRANKS: Well, I know that  
16 your audits will go into evidence, but I just think  
17 for the edification of those members of the committee  
18 I think they need to know, for instance, when you  
19 examined \$708,000 worth of expenses, I think your  
20 findings were that 77 percent of them were  
21 questionable?

22 MR. HOLLAND: It was -- the expenses that  
23 were incurred by the IPAM group were excessive, and  
24 when we disclosed it and went after some of those

1 expenses, it became abundantly clear even to CMS  
2 that --

3 REPRESENTATIVE FRANKS: Weren't we paying for  
4 Bulls tickets and private limos and fancy dinners?

5 MR. HOLLAND: I think the most troublesome  
6 one was the victory dinner that they had in -- where  
7 they invited everybody who was a part of winning the  
8 contract and that we paid for.

9 REPRESENTATIVE FRANKS: I could go on for  
10 hours, as we did, and I don't want to do that. But I  
11 appreciate you -- and I want to let other people ask  
12 some questions. I'd like to reserve my right to ask  
13 you some more, and I want to ask you more certainly on  
14 the other ones. But I'd like to have other members of  
15 the committee go forward. But I very much appreciate  
16 you being here and helping explain this.

17 MR. HOLLAND: I wish I could say I  
18 appreciated being here.

19 CHAIRWOMAN CURRIE: How much -- how much  
20 was -- how much did dinner cost? 495,000. Okay.

21 MR. HOLLAND: \$495.

22 CHAIRWOMAN CURRIE: Okay. All right. Thank  
23 you.

24 Representative Davis is next up.

1           REPRESENTATIVE DAVIS: Thank you, Madam  
2 Chairman.

3           Mr. Holland, you've been a government auditor for  
4 quite a long time. Your reputation is certainly  
5 impeccable. In your professional opinion, how would  
6 you generally characterize the overall quality of our  
7 current or Blagojevich administration's management of  
8 our state? You're highly qualified. Your reputation  
9 is impeccable. You have been going over many of these  
10 records that some of us only see a piece of, depending  
11 on the committee we sit in, and I would just like your  
12 professional opinion.

13           MR. HOLLAND: I thought I might get a  
14 question like that. And I will tell you what I  
15 have -- what I have shared with Governor Blagojevich,  
16 with his office and with ever single agency director  
17 and every single finance officer and every single  
18 internal auditor in the State of Illinois is that  
19 recently I have been troubled by the way they've  
20 operated.

21           And I do this wide open. Once a year I put out an  
22 audit advisory, and the audit advisory goes, frankly,  
23 not to you because my view is share it with the people  
24 that I'm auditing; hopefully, they'll get the message;

1 we'll do the work; we'll solve the problems; we'll  
2 move on.

3 And over the last couple of years, it has been a  
4 challenge to do the audit work that you've asked me to  
5 do. And this year I said to agencies I'm going to  
6 tell you right up front where the problems are because  
7 I want you to deal with them because I'm not going to  
8 deal with them anymore.

9 I mean, one of the problems -- and I'll -- I  
10 should have brought more copies, and I'll make this  
11 available to you. But one of the problems we have  
12 when we request information, something that  
13 auditors -- auditors are routine, and I always like to  
14 remind people that it is in our nature to try and be  
15 as cooperative and as agreeable as possible because we  
16 come in every year. Every year we come in.

17 You know, the action that's taking place here  
18 today is unique, and when somebody else -- and,  
19 hopefully -- you know, not hopefully. This is a  
20 one-time action, but me, I'm every year. We've got to  
21 deal with agencies every year. We have to be at work  
22 in a cooperative venture.

23 But when I go in every year and routine audit  
24 requests -- can we have a copy of a contract? Can you

1 give us your travel vouchers? Here are the policies  
2 and procedures we need copies of. Every year those  
3 are questions that we're going to ask. It's routine  
4 audit things.

5 But when we ask for information and it is now  
6 routinely being submitted to legal staff, that is not  
7 making the audit process any easier. It is making it  
8 more complex. And I told agencies that.

9 I sent this audit advisory. Once a year I send it  
10 out, and this year I said these are the things I'm not  
11 going to deal with anymore. I'm not going to deal  
12 with having to -- delaying the audit process. You can  
13 give -- you can clear all of your -- my audit requests  
14 with whomever you want in your agency from the janitor  
15 to the director, but don't let it delay the process.  
16 The process is significantly delayed.

17 REPRESENTATIVE DAVIS: In comparison, Mr.  
18 Holland, to other states or other governors --

19 MR. HOLLAND: I can't speak to other states,  
20 and I can't speak to other governors. Oh, other  
21 governors in the State of Illinois.

22 REPRESENTATIVE DAVIS: Well, other governors  
23 in the State of Illinois or in other states. I mean,  
24 you go to -- I'm sure you go to conferences, and I'm

1 sure that you have obtained information from other  
2 states on how their audits go or are completed, and  
3 how would you compare the State of Illinois?

4 MR. HOLLAND: Well, I would -- I would --  
5 each state is unique. I would hate to have them  
6 compare me to them and for me to compare myself to  
7 other states.

8 But I will tell you that we've seen an erosion of  
9 cooperation in the audit process over the last couple  
10 of years. There's no question about that.

11 REPRESENTATIVE DAVIS: Would you say that the  
12 State of Illinois, from a financial and a management  
13 point of view, is in better or worse shape than it was  
14 before Rod Blagojevich became our governor?

15 MR. HOLLAND: Well, that answer can easily be  
16 found in the comprehensive annual financial report  
17 that is prepared by the Comptroller and audited by my  
18 office, and it would show that there is, again, a  
19 significant erosion in the financial stability for the  
20 State of Illinois.

21 REPRESENTATIVE DAVIS: Thank you, Mr.  
22 Holland, and we do appreciate the dedication that  
23 you've always shown towards your work in the state.  
24 Thank you, sir .

1 MR. HOLLAND: Thank you.

2 CHAIRWOMAN CURRIE: Representative Lang.

3 REPRESENTATIVE LANG: Thank you, Madam  
4 Chairman. You indicated at least once, maybe twice,  
5 in your comments of times that the Governor's office  
6 was involved in this or that. Can you tell me, when  
7 you say the Governor's office, who you mean?

8 MR. HOLLAND: Well, to give you a specific  
9 example, going back to that audit that we're talking  
10 about, the one -- the Central Management Services  
11 audit for 2004, 2000 -- for the two years ended 2004.  
12 In the procurement of many of those contracts -- in  
13 seven of nine of those contracts -- seven of nine of  
14 those contracts, there were people from the Governor's  
15 office sitting on the selection committee and being a  
16 part of the selection process.

17 REPRESENTATIVE LANG: Can you tell me who  
18 those people are, sir?

19 MR. HOLLAND: The answer is I believe we can.  
20 The answer is yes, but do I have them right here at my  
21 fingertips? I might.

22 REPRESENTATIVE LANG: We would like the names  
23 if you have them, but, certainly, if you don't have  
24 them with you, we would like the names today.

1           REPRESENTATIVE FRANKS: I can give you one,  
2 Lou, if that would help. From the audit. Oh, you've  
3 got them all right there?

4           REPRESENTATIVE LANG: Could you read them  
5 into the record, please, sir?

6           MR. HOLLAND: As -- I just want to make sure  
7 I'm --

8           MR. GENSON: I'm sorry. I didn't hear the  
9 question. Representative Franks, you said I could  
10 give you one, and then you said something.

11           REPRESENTATIVE FRANKS: I said if that would  
12 help, but, apparently, the auditor --

13           MR. GENSON: Okay. I'm very sorry. I  
14 thought you named them.

15           REPRESENTATIVE FRANKS: No. I apologize.

16           MR. HOLLAND: The answer is I do have the  
17 answer to your question. May I read it first?

18           REPRESENTATIVE LANG: Please.

19           MR. HOLLAND: So we actually have two  
20 categories of people. We have people who actually sat  
21 on the evaluation committee, and then we have people  
22 who participated in RFP specifications.

23           REPRESENTATIVE LANG: And this is for, what  
24 did you say, seven of the nine contracts?

1 MR. HOLLAND: Seven of the nine contracts.

2 REPRESENTATIVE LANG: Please give us those  
3 names.

4 MR. HOLLAND: So in the case of the asset  
5 management IPAM contract, there were people --  
6 participation in the RFP specification was reported by  
7 Prentice -- OMB provided savings figures. They were  
8 the people who actually provided. I do not have an  
9 exact name for that person -- for that one. For the  
10 first one. Let me go down the list.

11 REPRESENTATIVE LANG: OMB presented that  
12 information?

13 MR. HOLLAND: OMB. OMB.

14 REPRESENTATIVE LANG: On behalf of the  
15 bidder?

16 MR. HOLLAND: Figures for the RFP, and they  
17 gave whatever specification -- whatever savings  
18 figures that they had determined was going to be, I  
19 believe, addressed. What they wanted -- what their  
20 goal was was given to the Central Management Services.

21 REPRESENTATIVE LANG: All right.

22 MR. HOLLAND: Now, so the IT rationalization  
23 program, which was eventually awarded to BearingPoint  
24 and Accenture, a gentleman by the name of Scott

1 Kennedy sat on the evaluation committee.

2 For the procurement assessment program, McKinsey  
3 and Company, the individual who assisted in the  
4 specifications or participated in the RFP and the  
5 specifications development was John Filan, and he  
6 developed the original idea, and he reported that to  
7 Paul Campbell, who at the time was not the director of  
8 CMS, but I think he was high up. He might have been  
9 the assistant director.

10 The telecom rationalization program which was  
11 finally awarded to EKI, Scott Kennedy was the  
12 Governor's office staff on the evaluation committee.

13 REPRESENTATIVE LANG: Excuse me. Just so  
14 we're clear, what was Scott Kennedy's title, do you  
15 know?

16 MR. HOLLAND: Don't know.

17 REPRESENTATIVE LANG: We'll find out.

18 CHAIRWOMAN CURRIE: Is this information part  
19 of the audit?

20 MR. HOLLAND: No, it's not. It just happens  
21 to be the work papers that my ever-efficient staff was  
22 prepared to --

23 CHAIRWOMAN CURRIE: Okay. Thank you.

24 MR. HOLLAND: If you would like --

1 CHAIRWOMAN CURRIE: Proceed.

2 MR. HOLLAND: -- we can just give you a copy  
3 of this.

4 REPRESENTATIVE LANG: Yes, but I'd like the  
5 rest of the names publicly.

6 MR. HOLLAND: In the case of the risk  
7 assessment program, Deloitte and Touche was the  
8 eventual vendor that was selected, and the individual  
9 who was on the evaluation committee was an individual  
10 by the name of Abasse Tall, which would be  
11 A-b-a-s-s-e. Abasse Tall from OMB.

12 On the strategic marketing program, which was  
13 awarded to Team Services, the individual from the  
14 Governor's office on the evaluation committee was Seth  
15 Webb, who was the director of special projects. And  
16 the idea of the Governor -- I mean, the RFP  
17 specifications were actually developed out of the  
18 Governor's office and reported by Seth Webb.

19 The fleet management vendor was Maximus, and the  
20 individual who sat on the selection committee -- the  
21 evaluation committee was Brian Daly.

22 Then the other two contracts, which would be seven  
23 of nine I've talked about, the server consolidation  
24 and software review, which were won by BearingPoint,

1 there was nobody from either the Governor's office on  
2 the evaluation committee or preparing the RFP  
3 specifications.

4 REPRESENTATIVE LANG: So you've been Auditor  
5 General through three -- you've been Auditor General  
6 through three different governors; is that correct?

7 MR. HOLLAND: Yes. Edgar -- yes.

8 REPRESENTATIVE LANG: Parts of three  
9 different governors.

10 MR. HOLLAND: Yes.

11 REPRESENTATIVE LANG: Is it unusual to have  
12 someone from the Governor's staff on a selection  
13 committee?

14 MR. HOLLAND: Yes. We thought that -- we  
15 thought it was very unusual.

16 REPRESENTATIVE LANG: How often have you seen  
17 this with the other two governors that you've served  
18 under?

19 MR. HOLLAND: I can't say that we've seen it,  
20 but I don't know that it hasn't occurred, but I -- but  
21 we did -- it would -- this was pretty dramatic here.

22 REPRESENTATIVE LANG: Do you know of any way  
23 to determine whether the Governor's person that might  
24 have been on these selection committees had any

1 particular influence over the process? would there  
2 have been anyone that would have given you information  
3 about the interplay between the Governor's person on  
4 the selection committees and the ultimate decision?

5 MR. HOLLAND: No.

6 REPRESENTATIVE LANG: All right.

7 MR. HOLLAND: But I would -- if I can add  
8 something here. I mean, I think what you need to do  
9 is put it into perspective as to when the audit was  
10 released and where we are today.

11 REPRESENTATIVE LANG: Well, expound on that  
12 for us.

13 MR. HOLLAND: The audit was released in 2005,  
14 and at the time I would tell you that I -- we knew  
15 that there were problems, but we thought some of the  
16 problems might have been just simply inexperience with  
17 the procurement process. And I think, in light of  
18 some of the disclosures that we see recently, that,  
19 you know, maybe in retrospect this audit is a lot more  
20 valuable and lot more relevant than what we  
21 anticipated.

22 REPRESENTATIVE LANG: Can you tell me what  
23 the administration's response was when it was pointed  
24 out to them that they wanted to give a \$30 million

1 contract to a nonexistent company?

2 MR. HOLLAND: You know, they were -- they  
3 were -- I don't think they had a care in the world.

4 REPRESENTATIVE LANG: So they didn't really  
5 respond at all?

6 MR. HOLLAND: No.

7 REPRESENTATIVE LANG: They gave you no answer  
8 as to --

9 MR. HOLLAND: No.

10 REPRESENTATIVE LANG: -- how this could  
11 happen?

12 MR. GENSON: Do we know who "they" is? I'd  
13 like to know. I'm sure you would too.

14 REPRESENTATIVE LANG: Yes, I'm going to ask.

15 MR. GENSON: Thank you.

16 REPRESENTATIVE LANG: So if you could tell us  
17 who the "they" is. who you interfaced with.

18 MR. HOLLAND: well, we interfaced on a  
19 regular basis with all of the people at the Department  
20 of Central Management Services, and that would be  
21 everybody from the director on down. In that case it  
22 was Michael Rumman, and the assistant director was  
23 Paul Campbell, and the legal counsel was Ed Winn, and  
24 Ed Winn had access to the entire legal counsel that

1 existed for the State of Illinois.

2 REPRESENTATIVE LANG: So do you know who you  
3 might have talked to about this particular contract?

4 MR. HOLLAND: Yes. We talked to the  
5 individual who was head of the procurement bureau at  
6 the time, a gentleman by the name of Bruce Washington.

7 REPRESENTATIVE LANG: All right. So let me  
8 ask you this: You --

9 MR. HOLLAND: I'm sorry. I gave you the  
10 wrong name. Facility management. You're right.

11 REPRESENTATIVE LANG: So you have gone  
12 through a litany -- and my guess is there are more --  
13 of failures in this audit by the administration. One  
14 of the things this committee must face is whether this  
15 is just simply incompetence or whether it goes beyond  
16 incompetence to some pattern of behavior that would  
17 relate to a conclusion or not as to whether the  
18 Governor was involved in an abuse of power with the  
19 distribution of contracts -- the awarding of contracts  
20 at CMS. While you are not here for the purpose of  
21 proving or disproving this, do you have an opinion on  
22 the subject?

23 MR. HOLLAND: The -- what I've testified to  
24 about certainly are audit problems. Do they go beyond

1 audit problems? They may go beyond audit problems,  
2 but that's not for me to determine. That's for a  
3 prosecutor, and I'm not a prosecutor.

4 REPRESENTATIVE LANG: All right. One other  
5 thing, Mr. Holland, and I thank you for your answers.

6 You indicated that there were many cases where you  
7 asked for information and couldn't get it. Is it your  
8 view that it was purposeful or just simple slipshod  
9 work by staff?

10 MR. HOLLAND: Well, you know what? That's a  
11 great question, and I'm going to take a little liberty  
12 here and say I think it's on occasion purposeful, on  
13 occasion it's slipshod staff, on occasion it's people  
14 who are overworked and don't have the capacity to  
15 fulfill all our requests. So, I mean, it's a real  
16 problem.

17 And I was in the other room here listening to the  
18 discussion of Healthcare and Family Services, and that  
19 is an agency with which we struggle on a daily basis  
20 to get information out of them. I was chuckling. I  
21 hope -- I hope you will appreciate some of the  
22 problems I have on occasion in dealing with agencies.  
23 You do it once a year. I got to do it every year with  
24 this agency, and it is a real struggle to get routine

1 information.

2 In some cases, it is -- there's no question in my  
3 mind that it is people who have -- who are stalling,  
4 not wanting to respond, and I think in some cases  
5 because they're not getting guidance.

6 REPRESENTATIVE LANG: Do you have any  
7 specific situations where you would say the failure to  
8 provide the information was purposeful that you can  
9 point to us and tell us who might have been  
10 responsible, in your opinion, for not providing that  
11 information?

12 MR. HOLLAND: You know, I don't think -- I  
13 don't think I can give you an absolute purposeful. I  
14 can tell you that was my sense. Okay? And I have to  
15 go back and think about it. I would. I would have to  
16 go back and think if I've got purposeful occasions.  
17 There may be some. Off the top of my head -- and I  
18 apologize, Representative Lang.

19 REPRESENTATIVE LANG: That's all right. You  
20 weren't called here for that purpose. If you do have  
21 notes or any of your staff people have notes relative  
22 to this issue, the committee would be very interested  
23 in getting the information when it's available to you.

24 MR. HOLLAND: You know, I'm going to -- I'll

1 give this: And I'm going to tell you this is an  
2 indication of our broad-based struggle -- broad-based  
3 struggle in dealing with these agencies. It is a  
4 problem, and whether it's purposeful or whether it's  
5 lack of resources, whether it's people don't know  
6 doesn't make any difference to me.

7 REPRESENTATIVE LANG: How does this differ  
8 from your interplay with the Ryan or Edgar  
9 administrations?

10 MR. HOLLAND: We got substantially more  
11 cooperation out of both the Ryan and the Edgar  
12 administration, and nobody -- let me preface this.  
13 Nobody likes the auditor despite the fact that --

14 REPRESENTATIVE LANG: We kind of like you.

15 MR. HOLLAND: Yeah. Well, nobody likes the  
16 auditor.

17 REPRESENTATIVE LANG: All right. One  
18 additional question.

19 So would it be fair to assume that there were some  
20 people that worked in the Ryan and/or Edgar  
21 administrations that are still in state government who  
22 are not giving you information today that at one time  
23 were always giving you the information you asked for?

24 MR. HOLLAND: Oh, I have to think about that.

1 I'd have to go back. I don't --

2 REPRESENTATIVE LANG: You don't have to  
3 answer now. If you have some thoughts at any time,  
4 just let us know.

5 Thank you, Mr. Holland. I appreciate it.

6 CHAIRWOMAN CURRIE: Representative Eddy.

7 REPRESENTATIVE EDDY: Thank you.

8 The scope of work in the \$30 million contract that  
9 at the time had no -- the company that was awarded  
10 that didn't exist. What -- what was the scope of that  
11 work?

12 MR. HOLLAND: Well, essentially, they were  
13 going to be responsible for the cataloging, if you  
14 will, and renegotiating all the leases and determining  
15 what the -- what all of our assets were, I mean, in  
16 the State of Illinois. Property assets. And assets  
17 not just that we own but assets that we -- that we  
18 leased.

19 REPRESENTATIVE EDDY: Okay. The other  
20 question I have has to do with during the process and  
21 during the time you made certain findings related to,  
22 for example, the Team Services contract that was  
23 awarded and the connection between that and a campaign  
24 contribution or any of the other obvious egregious

1 findings, were any laws broken?

2 MR. HOLLAND: Well, we didn't look at any  
3 campaign contributions. That's not within the purview  
4 of the office. We would not do that.

5 REPRESENTATIVE EDDY: Well, okay. Just in  
6 the RFP process. Laws that govern the RFP process.

7 MR. HOLLAND: Well, you know, the procurement  
8 code was violated on a routine basis. There were all  
9 kinds of problems with the procurements and that was  
10 the essence of our findings.

11 REPRESENTATIVE EDDY: And were charges filed  
12 against individuals related to those?

13 MR. HOLLAND: Well, in the case of expenses,  
14 there was an attempt to recoup expenses, and I think  
15 they did recoup some money. With regard to other  
16 aspects of the IPAM contract, I believe it's still, as  
17 I indicated, under some litigation.

18 REPRESENTATIVE EDDY: So I guess my question  
19 is if a \$30 million contract is awarded to a company  
20 that does not exist, that doesn't violate a law that  
21 might require some type of prosecution?

22 MR. HOLLAND: That is -- as I indicated, this  
23 is still subject to some litigation. All aspects may  
24 be.

1 REPRESENTATIVE EDDY: Thank you.

2 CHAIRWOMAN CURRIE: Representative Tracy.

3 REPRESENTATIVE TRACY: Mr. Holland, you  
4 mentioned the Comptroller's annual report, and,  
5 obviously, we've all received those. But would you be  
6 able to make a copy of that available to us as well as  
7 part of our record?

8 MR. HOLLAND: Absolutely. And I'll make also  
9 for you a short summary that we prepare -- a digest  
10 that we prepared that compares --

11 REPRESENTATIVE TRACY: That's -- exactly.  
12 That's -- both would be great.

13 MR. HOLLAND: Yeah.

14 REPRESENTATIVE TRACY: Okay. Also, I was  
15 wondering, do you know who the owner of IPAM was?

16 MR. HOLLAND: The primary owner was Mesirow  
17 Stein Development.

18 REPRESENTATIVE TRACY: Okay. I mean, do  
19 you --

20 MR. HOLLAND: Mesirow Stein. It's a big firm  
21 in Chicago.

22 REPRESENTATIVE TRACY: Okay. What type of  
23 vendor were they attempting to be -- what services?

24 MR. HOLLAND: Can you -- can you help me a

1 little bit with that question? I'm not trying to --

2 REPRESENTATIVE TRACY: No. I just wondered  
3 what -- you know, some of this goes to  
4 telecommunications and the different -- I just  
5 wondered what their services were.

6 MR. HOLLAND: Okay. I'm sorry. Okay. That  
7 was to Representative Eddy's question. One of the  
8 things that the -- that actually it was the subject of  
9 an audit that we had released some time before, saying  
10 the State of Illinois does not have a grasp on its  
11 assets, on its property and its leases, and we  
12 suggested that they should get ahold of it. This was  
13 the tail end of the Ryan administration, the beginning  
14 of the Blagojevich administration. And these -- and  
15 IPAM was going to be put in place to -- to get a  
16 handle on our property assets.

17 REPRESENTATIVE TRACY: Lease management.

18 MR. HOLLAND: Yes.

19 REPRESENTATIVE TRACY: Of our properties?

20 MR. HOLLAND: Yes.

21 REPRESENTATIVE TRACY: Thank you.

22 MR. HOLLAND: I'm sorry. I didn't mean to  
23 be --

24 CHAIRWOMAN CURRIE: Representative Franks.

1           REPRESENTATIVE FRANKS: Thank you. I just  
2 had a few follow-ups on Representative Lang's  
3 questions.

4           We were talking about who the individuals were,  
5 and I think one -- I'm not sure you had mentioned him,  
6 and I apologize if you did -- was deputy director for  
7 property management Bruce Washington involved in the  
8 procurement at the initial meetings?

9           MR. HOLLAND: Yes.

10          REPRESENTATIVE FRANKS: And wasn't he the  
11 same individual who would have dinner with these  
12 proposed contractors before these -- before these  
13 contracts were let?

14          MR. HOLLAND: Yes.

15          REPRESENTATIVE FRANKS: That was one I saw.  
16 And also I think another one that we had left out --  
17 at one time during -- when we had these hearings,  
18 wasn't the CMS chief operating officer Brian Chapman?

19          MR. HOLLAND: Yes, he was.

20          REPRESENTATIVE FRANKS: And wasn't his former  
21 position as an employee of the McKinsey and Company?

22          MR. HOLLAND: The answer to that is yes.

23          REPRESENTATIVE FRANKS: Okay. And I believe  
24 that McKinsey was one of those entities that was

1 awarded a \$14.7 million contract to review the state's  
2 procurement process.

3 MR. HOLLAND: Yes.

4 REPRESENTATIVE FRANKS: And at the time --  
5 and maybe you don't know this. But in 2005, the time  
6 they received this contract, and Mr. Chapman being a  
7 former employee, McKenzie had also donated \$52,000 to  
8 Friends of Rod Blagojevich.

9 MR. HOLLAND: I don't know.

10 REPRESENTATIVE FRANKS: If you know that.  
11 Okay. Now, when I was also looking at this audit --  
12 and I don't think this came up. We were talking about  
13 these initiatives. When we did an analysis of each of  
14 the agencies which we were supposedly saving money on,  
15 wasn't your final tally that the audit showed that CMS  
16 ripped off state agencies and that 35 were losers and  
17 only four came out ahead?

18 MR. HOLLAND: We've never used the term  
19 "ripped off."

20 REPRESENTATIVE FRANKS: All right. I know  
21 that. That's a term -- that's a legal term that you  
22 wouldn't use in accounting.

23 MR. HOLLAND: I think I've got that answer  
24 right here.

1           REPRESENTATIVE FRANKS: Thank you.

2           MR. HOLLAND: Yeah, there you go. There  
3 were -- there were four winners in the agencies and 35  
4 losers.

5           REPRESENTATIVE FRANKS: That was my  
6 recollection of it.

7           MR. HOLLAND: Yeah.

8           REPRESENTATIVE FRANKS: I went through my  
9 notes last night. So I'm not sure how they can claim  
10 there's any efficiencies when the state agencies, who  
11 the legislature had appropriated funds to, were  
12 actually -- they were losing those funds, and in some  
13 cases, there was no showing that any work had actually  
14 been performed by CMS. Would that be a fair  
15 assessment?

16          MR. HOLLAND: We had troubles --

17          REPRESENTATIVE FRANKS: Okay.

18          MR. HOLLAND: -- getting our hands around  
19 this concept of efficiencies.

20          REPRESENTATIVE FRANKS: Well, one that really  
21 got me -- and this will be my last question -- is when  
22 CMS paid a bill for \$54,000 and it only said expenses  
23 incurred.

24          MR. HOLLAND: That's -- that's a red flag to

1 auditors.

2 REPRESENTATIVE FRANKS: Okay. Had you ever  
3 seen anything like that before?

4 MR. HOLLAND: Well, we do see that on  
5 occasion, and we go back and say you got to have a  
6 little bit more documentation, that ain't going to  
7 work.

8 REPRESENTATIVE FRANKS: Okay. Thank you.

9 MR. HOLLAND: Yeah.

10 CHAIRWOMAN CURRIE: Representative Howard.

11 And then we have two more audits after this last  
12 question.

13 REPRESENTATIVE HOWARD: Yes. Very quickly.  
14 As I understand, General Holland, you said that there  
15 were agencies -- I'm over here. This way.

16 MR. HOLLAND: I'm lost. I'm sorry. I  
17 apologize.

18 REPRESENTATIVE HOWARD: You said there were  
19 agencies that had to -- that were required to be  
20 billed despite the fact that they did not have  
21 savings. Would your audits have shown how that might  
22 have negatively impacted the programs that they were  
23 supposed to be ben -- the programs they were supposed  
24 to be funding?

1 MR. HOLLAND: No, it would not have shown  
2 that.

3 REPRESENTATIVE HOWARD: Okay. So --

4 MR. HOLLAND: It would just have shown that  
5 the money was paid out.

6 REPRESENTATIVE HOWARD: The money was paid  
7 out?

8 MR. HOLLAND: We would not have done an audit  
9 of how that impacted the programs of those individual  
10 agencies.

11 REPRESENTATIVE HOWARD: Okay. Is there  
12 anything we can do to ever find out whether or not  
13 some programs, because they did not have all of the  
14 money that they needed and that they had been  
15 allocated, therefore were negatively impacted?

16 MR. HOLLAND: Unfortunately, that particular  
17 initiative is now three, four years old and has been  
18 discontinued, and it would be very hard to do at this  
19 point.

20 REPRESENTATIVE HOWARD: I appreciate it.  
21 Thank you.

22 CHAIRWOMAN CURRIE: Thank you.

23 So, General Holland, do you want to go on then to  
24 the next audit?

1 MR. GENSON: Excuse me.

2 CHAIRWOMAN CURRIE: Mr. Genson.

3 MR. GENSON: I just have a few questions in  
4 this area. You want me to wait?

5 CHAIRWOMAN CURRIE: No. We're doing it one  
6 audit at a time, so now is your opportunity.

7 MR. GENSON: Fine. Thank you. I just have a  
8 few questions.

9 Now, Mesirow Stein. You're familiar with that  
10 company, are you?

11 MR. HOLLAND: I recognize the name.

12 MR. GENSON: A substantial company, are they?  
13 They deal in financial services?

14 MR. HOLLAND: Yes.

15 MR. GENSON: And, evidently, the -- were they  
16 the sole owners of IPAM?

17 MR. HOLLAND: I don't believe so.

18 REPRESENTATIVE HOWARD: Do you know who the  
19 other ones are?

20 MR. HOLLAND: The point of confusion that I  
21 had -- and I apologize -- was that initially Mesirow  
22 Stein was joined with a company by the name of New  
23 Frontier, and New Frontier dropped out.

24 MR. GENSON: I see. So Mesirow Stein put

1 together another company which they were the owners  
2 of, and they took the contract over?

3 MR. HOLLAND: They were the owners of and  
4 they won a contract.

5 REPRESENTATIVE HOWARD: They were the -- but  
6 Mesirow Stein was the principal of IPAM; is that  
7 correct?

8 MR. HOLLAND: Yes.

9 MR. GENSON: And they were the ones that  
10 ultimately got the contract; is that correct?

11 MR. HOLLAND: IPAM ultimately got the  
12 contract.

13 MR. GENSON: And this is not a -- Mesirow  
14 Stein didn't come into effect just at or about the  
15 time this contract was awarded, did it?

16 MR. HOLLAND: I have no idea when Mesirow  
17 Stein came into effect.

18 MR. GENSON: Well, it would be before this  
19 contract, certainly?

20 MR. HOLLAND: Yes.

21 MR. GENSON: Okay. Now, one other question,  
22 really. You were asked a question about the state's  
23 financial condition having significantly eroded in the  
24 last few years; is that correct?

1 MR. HOLLAND: Yes.

2 MR. GENSON: You'd agree that almost every  
3 state in the United States, except maybe Alaska, has a  
4 significant erosion in their financial condition in  
5 the last few years; is that right?

6 MR. HOLLAND: Most states have seen some  
7 erosion.

8 MR. GENSON: Thank you, sir. I have no  
9 further questions.

10 CHAIRWOMAN CURRIE: Thank you.

11 Then would you go ahead and proceed -- you don't  
12 want to go to the next audit? Mr. Mautino?

13 REPRESENTATIVE MAUTINO: I can do them at any  
14 time, if you want to go to the other one.

15 CHAIRWOMAN CURRIE: Okay. Why don't we go  
16 ahead and let him proceed. Yes, you, General Holland.

17 MR. HOLLAND: Thank you. Thank you,  
18 Representative Currie.

19 Turning now to the management audit of the flu  
20 vaccine procurement and the I-SaveRx program. Now,  
21 this audit was conducted pursuant to House Resolution  
22 394. Among the key findings contained in the report  
23 are the following: In the fall of 2004, the U.S. Food  
24 and Drug Administration determined that flu vaccine

1 manufactured by a United Kingdom-based manufacturer  
2 was unsafe for use. Approximately half of the United  
3 States' flu vaccine supply had been provided by this  
4 manufacturer.

5 As a result, in mid October of 2004, state  
6 officials, primarily from the Office of the Governor  
7 and the Office of the Special Advocate for  
8 Prescription Drugs, began taking steps to find  
9 additional flu vaccine for Illinois residents. Within  
10 days the Governor's office agreed to purchase the flu  
11 vaccine from Ecosse Hospital Products, Limited, even  
12 though the administration knew that the importation of  
13 flu vaccine was not legal because they did not have  
14 approval for importation from the Food and Drug  
15 Administration.

16 The administration proceeded with the procurement  
17 even after documentation showed that the Center for  
18 Disease Control had located sufficient flu vaccine to  
19 cover Illinois' priority population. In spite of  
20 this, the state increased the number of doses it  
21 sought to acquire by 74,000 doses to a total of  
22 254,000.

23 Not until almost three weeks after the Governor's  
24 office agreed to purchase flu vaccine did the special

1 advocate, who was negotiating the purchase, become  
2 aware that a contract was needed in order to purchase  
3 the vaccine. On October 10, 2004 the special advocate  
4 indicated in an e-mail to an official at the  
5 Department of Public Aid, quote, I've been talking to  
6 the budget office, the department, the Governor, and  
7 nobody has said word one about a contract. We've been  
8 told several times the payment would be processed COD.  
9 If someone needs a contract, then you or someone else  
10 needs to get it done without delay, unquote.

11 Now, as an aside, I know of no other product,  
12 service, or contract ever paid COD -- cash on  
13 delivery -- for any service in the State of  
14 Illinois -- certainly not for something that was in  
15 excess of \$2 million.

16 Further, the contract entered into between the  
17 state and the vendor was not timely. The contract was  
18 signed on January 13, 2005 -- January 13, 2005 -- by  
19 the deputy chief of staff. This was two days after --  
20 two days after the vendor submitted a bill for \$2.6  
21 million for the vaccine.

22 Illinois officials negotiated with the vendor to  
23 identify flu vaccine for five additional governments.  
24 The total amount of vaccine billed by the vendor to

1 the governments was over \$8.2 million for  
2 approximately 773,000 doses of vaccine. However,  
3 Illinois officials failed to develop agreements with  
4 the other governments, leaving the state potentially  
5 liable for \$8.2 million.

6 The vaccine was never allowed in the country, and  
7 16 months after these events the administration  
8 donated the vaccine to Pakistan. Reportedly,  
9 Pakistani officials destroyed the vaccine because it  
10 had expired.

11 One of the more troubling conclusions we reached  
12 IN our report is that high-ranking Illinois officials  
13 appeared to be aware that the vaccine would never be  
14 delivered, even prior to being billed by the vendor  
15 and executing a contract in January 2005.

16 In December -- in a December 21, 2004 e-mail to  
17 the Governor's office, the special advocate stated,  
18 quote, We probably will never take delivery of these  
19 doses; so we will need to find a way to pay for the  
20 service they performed.

21 Ultimately, payment to the vendor was stopped by  
22 the Comptroller's office because of a lack of federal  
23 approval for the importation of the vaccine purchased  
24 under the contract. The Comptroller also objected to

1 the Governor's office attempting to obligate  
2 appropriations made to the Department of Public Aid in  
3 order to make payments under a signed -- in order to  
4 make payments under a contract signed by the Deputy  
5 Governor's office.

6 As a result, the vendor was not paid, and it filed  
7 suit in March of 2005 in the Court of Claims, seeking  
8 \$2.6 million from the state.

9 Similar to the attempted purchase of flu vaccine,  
10 the I-SaveRx program also involves the importation of  
11 prescription drugs into the United States in violation  
12 of federal law. Under the I-SaveRx program, consumers  
13 in Illinois and other participating states purchased  
14 prescription refills --

15 REPRESENTATIVE TURNER: Mr. Holland.

16 MR. HOLLAND: I'm pretty close.

17 UNIDENTIFIED: Mr. Holland.

18 UNIDENTIFIED: Wait one second.

19 UNIDENTIFIED: I don't think that's part of  
20 the -- I don't think that's part of this.

21 MR. HOLLAND: Am I to --

22 REPRESENTATIVE FRANKS: I'm just saying  
23 I-SaveRx is not on our -- not on our sheet. It's not  
24 part of our curricula.

1 MR. HOLLAND: It's all part of the flu --

2 REPRESENTATIVE FRANKS: Unless you have a  
3 different one than we do. Okay.

4 REPRESENTATIVE TURNER: Continue. Continue,  
5 Mr. Holland.

6 MR. HOLLAND: Okay. Similar to the attempt  
7 to purchase the flu vaccine, the I-SaveRx program also  
8 involves the importation of prescription drugs into  
9 the United States in violation of federal law. Under  
10 the I-SaveRx program, consumers in Illinois and other  
11 participating states purchased prescription refills  
12 from pharmacies in Canada, the United Kingdom,  
13 Australia and New Zealand. Outreach activities for  
14 the I-SaveRx program were primarily coordinated  
15 through the Governor's office. Employees from 28  
16 agencies participated in the marketing of the I-SaveRx  
17 program.

18 At the time our audit was released, the I-SaveRx  
19 program had not been approved by the federal Food and  
20 Drug Administration and violated federal laws  
21 governing the importation of drugs. Nevertheless, the  
22 very same day the audit was released the Governor  
23 notified the Food and Drug Administration that he  
24 intended to continue the I-SaveRx program and even

1 expand it to state employees and their dependents.

2 overall, the state has spent considerable funds  
3 developing, maintaining, and marketing this program,  
4 despite the fact that it has not yet been approved by  
5 the federal government.

6 This concludes my remarks, and I'll be happy to  
7 continue to answer any questions.

8 CHAIRMAN TURNER: I did not identify myself.  
9 I'm Representative Turner in the chair.

10 The first person with questions is Representative  
11 Franks.

12 REPRESENTATIVE FRANKS: Thank you.

13 Auditor General, thank you. This was a -- you did  
14 this audit pursuant to a House resolution that I had  
15 authored, asking you to look into this, and I  
16 appreciate you doing it, and I don't want to belabor  
17 your -- what you've said.

18 I would direct the committee's attention to  
19 Exhibit 2.2 in the audit, which is the flu vaccine  
20 procurement timeline. I think if you'll look at that  
21 timeline, it really helps people understand what  
22 happened here. And just to summarize quickly, in  
23 October we thought there might have been a flu vaccine  
24 shortage and -- I guess I'm going to ask the Auditor

1 General.

2 In prior years the typical dosage that the -- that  
3 Illinois would purchase for its priority population  
4 was approximately 200,000 doses, wasn't it? I think  
5 the prior year was 208,000, if I recall correctly?

6 MR. HOLLAND: Pretty close to correct.

7 REPRESENTATIVE FRANKS: Okay. But in this  
8 year the Governor ordered over 500,000 doses, didn't  
9 he, just for Illinois, not including those other  
10 governments?

11 MR. HOLLAND: The 500,000, I believe,  
12 included the other governments also.

13 REPRESENTATIVE FRANKS: And I want to look at  
14 that pie chart. We might want to look at that later  
15 because I think there was 800,000 altogether?

16 MR. HOLLAND: There were 773,000 altogether  
17 for all the states.

18 REPRESENTATIVE FRANKS: Okay.

19 MR. HOLLAND: All the states.

20 REPRESENTATIVE FRANKS: Okay.

21 MR. HOLLAND: And the city of Cleveland.

22 REPRESENTATIVE FRANKS: But he ordered  
23 significantly more than prior years.

24 Going back to the time -- I think it's important

1 that the committee understands the timing. In October  
2 we thought there might have been a problem. But then  
3 we found out from the CDC -- and I believe that was  
4 sometime in early December. The Centers for Disease  
5 Control out of Atlanta said that we did not have a  
6 shortage and that there was enough flu vaccine for the  
7 priority population of the State of Illinois; is that  
8 correct?

9 MR. HOLLAND: They -- they -- I was looking  
10 on the chart.

11 REPRESENTATIVE FRANKS: Okay. I'm sorry.

12 MR. HOLLAND: I apologize.

13 REPRESENTATIVE FRANKS: No. My question is  
14 this: In December the Centers for Disease Control  
15 indicated that there was enough flu vaccine to cover  
16 the priority population for the State of Illinois and  
17 that there was no shortage?

18 MR. HOLLAND: Correct.

19 REPRESENTATIVE FRANKS: Okay. So that was in  
20 December sometime. I think it was early December.  
21 You had uncovered a memo on December 21st from Scott  
22 McKibben, the Governor's special advocate for  
23 prescription drugs, and he put in that memo to the  
24 Governor's office that we will probably never take

1 delivery; so we need a way to find to pay for the  
2 service, in quotations, they performed. Correct?

3 MR. HOLLAND: Correct.

4 REPRESENTATIVE FRANKS: So knowing -- and  
5 they found out from the FDA before then -- this was in  
6 the same month of December 2004. The FDA had stated  
7 that you will never bring these in because they're not  
8 approved.

9 MR. HOLLAND: correct.

10 REPRESENTATIVE FRANKS: So we knew in  
11 December that, (a), we didn't need them; (b), that  
12 they would never be brought in; and that, (c),  
13 there -- first on the -- (b) would -- the FDA wouldn't  
14 approve; and the third is that we knew they would  
15 never get here.

16 So what happened afterward was on January 13th the  
17 Governor signed a contract two days after they were  
18 billed by Ecosse. Would that be correct?

19 MR. HOLLAND: Yes.

20 REPRESENTATIVE FRANKS: All right. So three  
21 weeks after knowing we didn't need it and couldn't  
22 bring it here we were billed, and then we signed a  
23 contract?

24 MR. HOLLAND: Yes.

1           REPRESENTATIVE FRANKS: But then we never  
2 turned that contract in to the Comptroller; correct?

3           MR. HOLLAND: Well, the --

4           REPRESENTATIVE FRANKS: Not within the  
5 ten-day mandatory -- isn't there a ten-day time frame  
6 you're supposed to turn the contract in?

7           MR. HOLLAND: What happened was the contract  
8 was submitted to the Comptroller, but the Comptroller  
9 rejected it.

10          REPRESENTATIVE FRANKS: Right. And then the  
11 Comptroller said he's not going to pay for this.

12          MR. HOLLAND: Comptroller says he's not going  
13 to pay it. There were --

14          REPRESENTATIVE FRANKS: All right.

15          MR. HOLLAND: -- as we outline, significant  
16 problems.

17          REPRESENTATIVE FRANKS: So then we had the  
18 hearing in our -- in state government administration,  
19 and at that time the state had not paid for the  
20 billing of the \$2.6 million. Subsequent to that  
21 hearing, did we learn then that the state, knowing  
22 that we were in litigation already, determining  
23 whether we were going to have to pay for this --  
24 because there was a way -- I remember we talked about

1 this in committee. Hey, the contract should be void  
2 admonitio, meaning it should never have been entered  
3 into because it was an illegal contract; so we could  
4 get out of it that way, and we thought we might have  
5 some chance to defend that in the Court of Claims.

6 But didn't instead the Governor thereafter donate  
7 it to the government of Pakistan where it was then  
8 determined that these had been expired, and they were  
9 destroyed?

10 MR. HOLLAND: Yes.

11 REPRESENTATIVE FRANKS: So at that point we  
12 lost all of our legal defenses because we had actually  
13 taken control and given these flu vaccines to a  
14 sovereign nation.

15 MR. HOLLAND: As to the legal defenses, I'm  
16 not qualified to --

17 REPRESENTATIVE FRANKS: Okay. I just -- I  
18 just wanted to hit those highlights and show that  
19 there was a lot more ordered, we knew we didn't need  
20 them, we knew we couldn't bring them in, and then,  
21 even after knowing all that, the Governor then  
22 obligated us again when we still had a chance to get  
23 out. I'll let other folks --

24 MR. HOLLAND: But I just want to go back and

1 clarify one point for you --

2 REPRESENTATIVE FRANKS: Yes.

3 MR. HOLLAND: -- Representative Franks, and  
4 that is the breakout of the 773,000 doses is --  
5 254,000 were for the State of Illinois. New York City  
6 was in for 200,000. New Mexico was in for 150,000.  
7 Tennessee was in for -- it appears to be 150,000.  
8 Kansas was in for 15,000, and Cleveland was in for  
9 4,000.

10 REPRESENTATIVE FRANKS: Okay. But the  
11 254,000 would still be a 25 percent jump from what we  
12 had ever used in the past, knowing that we had no  
13 shortage.

14 MR. HOLLAND: That's correct.

15 REPRESENTATIVE FRANKS: Okay. And then  
16 wasn't there -- didn't Public Aid submit an emergency  
17 purchase affidavit for this?

18 MR. HOLLAND: Yeah. When did they do that?  
19 The answer to that is yes.

20 REPRESENTATIVE FRANKS: How --

21 MR. HOLLAND: The answer is yes.

22 REPRESENTATIVE FRANKS: And, now, was that  
23 what the Comptroller responded to and said we're not  
24 paying this?

1 MR. HOLLAND: That was in January of '05.

2 REPRESENTATIVE FRANKS: In January. Okay.

3 So that's the time the Comptroller -- and I was  
4 looking at your audit, and in the answer that the  
5 Governor gave -- and I'm going to direct your  
6 attention to page 38 of the office (sic) where it  
7 looks at procurement planning. I marked this last  
8 night. Just want to take a look. Was the Governor's  
9 answer in response to your audit was that "After the  
10 FDA did not respond to our -- underlined -- repeated  
11 requests, the Governor utilized the supreme executive  
12 authority granted to him through the Constitution of  
13 the State of Illinois to protect the health and  
14 welfare of the citizens of Illinois and authorized the  
15 procurement of flu shots for Illinois' most vulnerable  
16 population." Was that the Governor's response to your  
17 audit findings?

18 MR. HOLLAND: Yes.

19 REPRESENTATIVE FRANKS: Thank you. Nothing  
20 further.

21 CHAIRMAN TURNER: Representative Davis.

22 REPRESENTATIVE DAVIS: Thank you, Mr.  
23 Chairman.

24 Mr. Holland, we know that the mishandling of the

1 purchase of the flu vaccine as arranged by this  
2 administration resulted in significant cost to the  
3 state. At the end of the day, in your judgment, who  
4 would be responsible for this error?

5 MR. HOLLAND: I apologize. Can you restate  
6 that? I'm sorry.

7 REPRESENTATIVE DAVIS: I said, you know, at  
8 the end of the day, who would be responsible for this  
9 error? It was very -- a large cost to the State of  
10 Illinois.

11 MR. HOLLAND: It was the -- the -- the  
12 individuals or the entity that had taken virtual  
13 control over this particular initiative was the Office  
14 of the Governor and the Deputy Governor and the  
15 special advocate who was working very closely with the  
16 Deputy Governor.

17 REPRESENTATIVE DAVIS: You would say the  
18 Governor was responsible for --

19 MR. HOLLAND: This is pretty close, yes.

20 REPRESENTATIVE DAVIS: Can we assume that the  
21 Governor's office was fully aware that the purchase of  
22 the flu vaccine from a foreign source was unlikely to  
23 be approved by the FDA?

24 MR. HOLLAND: Yes.

1           REPRESENTATIVE DAVIS:  You're saying they --  
2 they knew that was unlikely for it to be approved?

3           MR. HOLLAND:  Either they knew or they should  
4 have known, and if didn't, either case is not exactly  
5 flattering.

6           REPRESENTATIVE DAVIS:  Is there any  
7 indication, Mr. Holland, that the Governor's office  
8 knew the vaccines were not licensed for use in the  
9 United States and therefore impossible to import?

10          MR. HOLLAND:  Well, they -- it was not  
11 approved for importation by the FDA; so they -- I  
12 mean, it goes back to your first question.

13          REPRESENTATIVE DAVIS:  Did the purchase of  
14 these vaccines or this vaccine happen after it was  
15 clear that the Governor's office knew that they  
16 wouldn't be licensed for use?  Did he continue to  
17 purchase this even though he knew this was not  
18 approved?

19          MR. HOLLAND:  I think the answer to that  
20 question is yes.

21          REPRESENTATIVE DAVIS:  Mr. Holland, with the  
22 additional vaccines made available by the Centers for  
23 Disease Control at the end of the year 2004, was the  
24 purchase or purchase of this magnitude even necessary

1 in the state of Illinois?

2 MR. HOLLAND: I think that in the end it  
3 turned out not to be.

4 REPRESENTATIVE DAVIS: Do you think that some  
5 of our agencies or one of them might have known that  
6 it would not have been needed?

7 MR. HOLLAND: I don't know that I can guess  
8 that. I don't know the answer to that, Representative  
9 Davis.

10 REPRESENTATIVE DAVIS: You think it's fair to  
11 say that, by ordering more vaccines than the state  
12 needed, the Governor's office was attempting to take  
13 the lead on purchasing vaccines for multiple states?

14 MR. HOLLAND: Oh, there's no question about  
15 that. Yes.

16 REPRESENTATIVE DAVIS: Do you think he was  
17 hoping to get credit or give credit to Illinois when  
18 other states had a shortage?

19 MR. HOLLAND: I think so, yes.

20 REPRESENTATIVE DAVIS: What would be the  
21 purpose? Why?

22 MR. HOLLAND: You know what, you'll have to  
23 ask the Governor that question.

24 REPRESENTATIVE DAVIS: You've asked that too.

1 what do you think -- or do you think it's reasonable  
2 to speculate that the purchase of the vaccines may  
3 have had more to do with our Governor's political  
4 positioning for perhaps presidential ambitions rather  
5 than for the health of the citizens of the State of  
6 Illinois?

7 MR. HOLLAND: I'm struggling to get routine  
8 audit material from these agencies.

9 REPRESENTATIVE DAVIS: You'd prefer not to  
10 say. Okay.

11 MR. HOLLAND: Yeah.

12 REPRESENTATIVE DAVIS: Despite the actual  
13 losses, Mr. Holland, that the state realized, were  
14 there potentially more greater losses -- would there  
15 have been greater losses if the state had actually  
16 been able to purchase the full amount of the vaccines?

17 MR. HOLLAND: Clearly. Yes.

18 REPRESENTATIVE DAVIS: Yes. Okay. And in  
19 your audit you state that the lead negotiator had no  
20 idea that a contract was necessary to complete the  
21 purchase, and the contract was not drawn up until  
22 after the state made the order and received the bill  
23 for the vaccines. How could this possibly have  
24 occurred?

1 MR. HOLLAND: A question we asked a thousand  
2 times, and it wasn't just the notion of we're not  
3 going to be able to purchase this product; now we want  
4 to change it. Because we can't purchase the product,  
5 we want to change it to a service, which is probably  
6 not subject to the importation prohibitions of the  
7 Food and Drug Administration. So that was  
8 problematic. It was a moving target what the State of  
9 Illinois' resources were going to be acquiring.

10 REPRESENTATIVE DAVIS: Have you ever seen any  
11 other state purchase of this size in your long career  
12 that didn't have a contract?

13 MR. HOLLAND: I can't address questions of  
14 other states.

15 REPRESENTATIVE DAVIS: Do you think it's  
16 possible that the Governor's office knew they would  
17 not get federal approval and they didn't draw up the  
18 contract to avoid paying the vendor?

19 MR. HOLLAND: I don't know what was going  
20 through their mind at the time.

21 REPRESENTATIVE DAVIS: My final question,  
22 Mr. Chairman.

23 MR. HOLLAND: Yes.

24 REPRESENTATIVE DAVIS: Mr. Holland, would you

1 classify the decision by the Governor's office to  
2 purchase a large amount of unneeded vaccines from a  
3 foreign supplier against federal regulations without  
4 the needed contract as willful deceit, gross  
5 mismanagement, and/or malfeasance? would you classify  
6 that decision --

7 MR. HOLLAND: It clearly is a waste of state  
8 resources.

9 REPRESENTATIVE DAVIS: Does that constitute  
10 malfeasance?

11 MR. HOLLAND: Well, I'm not an attorney, and  
12 I can't make that determination about malfeasance but  
13 it --

14 REPRESENTATIVE DAVIS: would it constitute  
15 gross misconduct, mismanagement?

16 MR. HOLLAND: What was problematic was they  
17 knew they couldn't do it and every step they took they  
18 became more aware, and yet they continued to pursue.  
19 It was a problem.

20 REPRESENTATIVE DAVIS: Were those practices  
21 deemed to be deceitful to the citizens of the State of  
22 Illinois?

23 MR. HOLLAND: Deceitful.

24 REPRESENTATIVE DAVIS: Yes?

1           MR. HOLLAND: It certainly was -- I'm sorry.  
2 Representative Sacia, you're right in my way -- my  
3 line --

4           REPRESENTATIVE DAVIS: I mean, the very fact  
5 that there's no contract?

6           MR. HOLLAND: It was -- it was -- it was  
7 lousy government at its best.

8           REPRESENTATIVE DAVIS: And very costly.

9           MR. HOLLAND: And very costly. Very costly.

10          REPRESENTATIVE DAVIS: And it was shipped to  
11 Pakistan; is that correct?

12          MR. HOLLAND: Shipped to Pakistan, we  
13 believe.

14          REPRESENTATIVE DAVIS: But, fortunately,  
15 their government realized it would have been deadly  
16 for them.

17          MR. HOLLAND: They destroyed it. It is the  
18 best of our knowledge they destroyed the product.

19          REPRESENTATIVE DAVIS: Mr. Holland, thank you  
20 much for your concise answers.

21          CHAIRMAN TURNER: Representative Rose.

22          REPRESENTATIVE ROSE: Thank you.

23                 Just to clarify. A minute ago, General, you  
24 referenced a Deputy Governor. Which Deputy Governor

1 would that have been?

2 MR. HOLLAND: That would have been Bradley  
3 Tusk.

4 REPRESENTATIVE ROSE: Okay. Thank you. Just  
5 want to get that on record.

6 I wanted to be clear because I think  
7 Representative Franks in his comments had pointed out  
8 that there was a memo that showed that the  
9 administration was aware that this wasn't going to  
10 work out from sometime in December. Was that a memo  
11 that you have, or is that a memo that you have?

12 MR. HOLLAND: It's a memo that we have, and  
13 it was an e-mail from -- and I referenced it in my  
14 comments.

15 REPRESENTATIVE ROSE: From Scott McKibben.  
16 And is that in the documents we have here we got this  
17 morning? If not, can we get a copy of it?

18 MR. HOLLAND: We'll make sure that that's  
19 available to the committee.

20 REPRESENTATIVE ROSE: Thank you.

21 Actually, this is just for my own information.  
22 Did -- who -- you think it was shipped to Pakistan.  
23 Who shipped it? Did the taxpayers pay for that  
24 shipment?

1           MR. HOLLAND: It was probably shipped from  
2       Ecosse, Limited in the United Kingdom because it never  
3       hit the borders of the United States.

4           REPRESENTATIVE ROSE: Okay. All right.  
5       Thank you.

6           MR. HOLLAND: To the best of our knowledge.

7           CHAIRMAN TURNER: Representative Lang.

8       And Representative Currie back in the chair.

9           REPRESENTATIVE LANG: Thank you very much.

10       Before I ask you some questions about the flu  
11       vaccine, I want to talk about the Loop Lab School  
12       briefly. You indicated that your audit is not  
13       complete. Can you give us some indication as to why  
14       it's not complete?

15           MR. HOLLAND: Well, as I indicated in my  
16       brief reference in the beginning is that we are --  
17       we're having some trouble with one of the resolved  
18       issues that the audit directs me to do, which is to  
19       find out what person or persons were involved in these  
20       transactions. And it's been a chore for us to try and  
21       find those people.

22           REPRESENTATIVE LANG: And so when you say  
23       "find those people," I assume that means you're trying  
24       to interface with the Governor's office to try and get

1 the information as to who approved the grant, who  
2 negotiated the grant, and those types of things, and  
3 they aren't forthcoming with the information; is that  
4 correct?

5 MR. HOLLAND: We're working with a number of  
6 agencies to try and find out the source of the -- of  
7 the initial grant and --

8 REPRESENTATIVE LANG: What are they  
9 telling -- I'm sorry to interrupt. What are they  
10 telling you?

11 MR. HOLLAND: And that's the step where I  
12 can't go into it because of the -- it's an ongoing  
13 audit issue.

14 REPRESENTATIVE LANG: Can you tell us the  
15 names of people you have talked to that have refused  
16 to answer your questions?

17 MR. HOLLAND: No, I didn't say that anybody  
18 had refused to answer the questions. I didn't say  
19 that. It's just that -- the answer to that question  
20 is no.

21 REPRESENTATIVE LANG: All right.

22 MR. HOLLAND: I apologize, but it's -- it  
23 would be inappropriate.

24 REPRESENTATIVE LANG: No. That's okay. We

1 don't want to step on your toes.

2 MR. HOLLAND: It would be inappropriate.

3 REPRESENTATIVE LANG: We want to let you do  
4 your work.

5 Relative to the flu vaccine, you indicated that  
6 there were high -- that the Governor's office took the  
7 lead on that issue and that there were high-ranking  
8 officials in the Governor's office that were involved  
9 in the process of making the decision, doing the  
10 negotiations, getting the contract prepared, et  
11 cetera. Can you give us the names of those high-  
12 ranking officials?

13 MR. HOLLAND: Well, clearly, Deputy Governor  
14 Tusk was involved, and the special advocate for  
15 prescription drugs was a guy by -- a gentleman by the  
16 name of -- I believe it's Scott McKibben; is that  
17 correct? Those were the two primary movers. Anybody  
18 else? And one other person who at the time was the --  
19 I believe the deputy chief of staff was Louanner  
20 Peters signed the actual contract.

21 REPRESENTATIVE LANG: All right. And was it  
22 your testimony that, because of a federal law, the  
23 State of Illinois broke federal law just by ordering  
24 the flu vaccine?

1           MR. HOLLAND: No. What was -- what is the --  
2 the federal law prohibited the importation. I guess  
3 you could order it, but if you didn't actually bring  
4 it in, you didn't break the law.

5           REPRESENTATIVE LANG: And so we -- the  
6 ordering of the vaccine was not the problem, but the  
7 federal law forbade the delivery of it into the United  
8 States; is that correct?

9           MR. HOLLAND: Yeah. And then the obligation  
10 of state resources.

11           REPRESENTATIVE LANG: And is it also your  
12 testimony that the Governor's office at some point --  
13 certainly, when the audit came forth, the Governor's  
14 office knew that that was an illegal act and proceeded  
15 to interface with the Food and Drug Administration and  
16 others as to the fact that he was going to do it  
17 anyway?

18           MR. HOLLAND: What -- well, first of all,  
19 he -- the -- the administration knew -- without a  
20 doubt in our mind, the administration knew that the  
21 importation of the flu vaccine was against federal  
22 law.

23           REPRESENTATIVE LANG: And at what time did  
24 they know that? Did they know it at the time they

1 ordered?

2 MR. HOLLAND: If they didn't, they should  
3 have, and then the question is when did -- when did  
4 the administration notify -- wrong issue. I'm  
5 floating between two drug issues.

6 REPRESENTATIVE LANG: All right. Let me move  
7 on. Where was the money to come from in the state  
8 budget to pay for this? What line item?

9 MR. HOLLAND: One of the trust funds within  
10 the Department of Public Aid.

11 REPRESENTATIVE LANG: And assuming all of the  
12 transactions were legal, would that have been  
13 appropriate?

14 MR. HOLLAND: In the letter -- and if you'll  
15 hang on, I had it right here in front of me -- the  
16 letter from the Comptroller's office, they did not  
17 believe so. So the answer -- so the short answer is  
18 no. The short answer is would it have been  
19 appropriate to use that -- those funds? The  
20 Comptroller's office did not believe so.

21 REPRESENTATIVE LANG: But I believe you said  
22 the Comptroller's office thought it was inappropriate  
23 because the law -- because it was illegal to import  
24 those drugs. My question was whether the line item

1 chosen to pay for those drugs was the appropriate line  
2 item.

3 MR. HOLLAND: Right. And in a letter sent to  
4 Mr. Monk, the chief of staff of the Governor, dated  
5 January 31st of 2005, by Keith Taylor, who is the  
6 Deputy Comptroller -- one of the Deputy  
7 Comptrollers -- he says we do not believe the  
8 Governor's office can obligate -- can obligate another  
9 agency's appropriations to make payments for its own  
10 contract liabilities.

11 So the issue was not so much could that fund have  
12 been used for it had the Department of Public Aid  
13 obligated. And then they then go on to say in a  
14 little bit of a -- in a hesitating language "Moreover,  
15 the use of the Public Aid Recoveries Trust Fund for  
16 the purposes of acquiring the vaccine at best  
17 represents an extremely broad interpretation of that  
18 fund's allowable utilization."

19 They didn't say no as a result of that, but they  
20 did say we don't think that the -- that you, the  
21 Governor's office, can obligate the Public Aid trust  
22 fund.

23 REPRESENTATIVE LANG: Should this have  
24 required legislative approval? Presuming that it was

1 a legal transaction in the first place, should it have  
2 required legislative approval? Would the Governor in  
3 some manner or form have the authority to do this  
4 without legislative approval?

5 MR. HOLLAND: I think the answer to that  
6 question is it is -- they purchase vaccines all the  
7 time. Okay? So that's not a problem. Were it an  
8 emergency? You know, an emergency? They might have  
9 been able to, but they would have purchased from  
10 someplace within the country.

11 So, you know, your question really doesn't get  
12 asked, because they've got problems right from the  
13 git-go in that they're trying to buy from outside the  
14 country. Does that make sense?

15 REPRESENTATIVE LANG: Just a couple of more  
16 things. What's the status of the \$2.6 million lawsuit  
17 against the state today?

18 MR. HOLLAND: I do not know the answer to  
19 that question.

20 REPRESENTATIVE LANG: All right. Is it  
21 something your office follows?

22 MR. HOLLAND: Not -- not particularly.

23 REPRESENTATIVE LANG: All right. We'll try  
24 to get the answer.

1           Last area relates to your audit report and your  
2 conclusions. And it appears that the Governor's  
3 office, through the Department of Healthcare and  
4 Family Services and perhaps others, spent a  
5 significant amount of money promoting this program  
6 even before there was a contract signed and even  
7 before there was any activity relative to the  
8 importation of the drugs. So I won't read all of it.

9           But it appears that you have an estimate of  
10 \$488,000 for estimated payroll costs, \$111,000 in  
11 travel expenses, \$220,000 in legal fees, \$51,000 for  
12 marketing, and other miscellaneous items. Is it your  
13 opinion -- go ahead. You wanted to say something.

14           MR. HOLLAND: No. You're doing fine.

15           REPRESENTATIVE LANG: Is it --

16           MR. HOLLAND: With the exception of one  
17 thing. You're talking about the I-SaveRx program.

18           REPRESENTATIVE LANG: Correct. Correct.  
19 Again, I'm now mixing two things. So in reference to  
20 that program, before the contract was signed, all of  
21 these expenditures were accomplished, and I know  
22 you're not an attorney but, in your opinion, was that  
23 an illegal thing to do?

24           MR. HOLLAND: We didn't think it was a

1 prudent thing to do.

2 REPRESENTATIVE LANG: Are there other  
3 instances in your terms as Auditor General where  
4 Governors have expended money to promote a program  
5 that is -- where the contract is not yet signed?

6 MR. HOLLAND: Boy, I'd have to go back and  
7 look, but I can't think of any. Hang on. I may stand  
8 corrected. Other than the fact that, you know, it is  
9 not unusual -- and we have found in this particular --  
10 this administration it happens a lot -- there is not a  
11 timely execution of contracts, in which case things  
12 are being done for which there is no contract in  
13 place.

14 REPRESENTATIVE LANG: And do you have an  
15 opinion as to why that happens? Is it incompetence,  
16 or is it purposeful moving ahead with a program,  
17 forcing a program through that really hasn't  
18 legitimately seen the light of day yet?

19 MR. HOLLAND: I think it's -- I think it's  
20 the latter. Is that there's these -- there's this  
21 mentality, this belief that we just got to move ahead  
22 without regard to what the laws and policies and the  
23 procedures and the rules and regulations, which are  
24 put into place to provide for accountable

1 transparency. I mean, it's nice to know that you have  
2 a contract in place to do certain things, and the way  
3 the public knows or the way the General Assembly knows  
4 is they have the opportunity to see those contracts.

5 REPRESENTATIVE LANG: Would you consider this  
6 a pattern of behavior that you have not seen in other  
7 administrations?

8 MR. HOLLAND: We have seen this a lot in this  
9 administration. More so than other administrations.

10 REPRESENTATIVE LANG: Thank you.

11 Just for the record, members of the committee, the  
12 \$2.6 million lawsuit is still pending and is not yet  
13 resolved.

14 Thank you, Mr. Holland. Thank you, Madam  
15 Chairman.

16 CHAIRWOMAN CURRIE: Representative Bellock.

17 REPRESENTATIVE BELLOCK: Thank you very much,  
18 Madam Chairman.

19 This is just kind of a follow-up on what  
20 Representative Lang was just talking about, but dating  
21 back to the announcement of this program in October 4,  
22 2004, just in general on the I-SaveRx program, when it  
23 was put up on the website, it said developed by the  
24 State of Illinois. As far as I can see, I don't think

1 that there was any statute or anything that developed  
2 this program. This was the Governor's program.

3 And from the beginning, this program was deemed --  
4 the operation of this operation was deemed as a  
5 violation of federal law; isn't that correct?

6 MR. HOLLAND: Yes.

7 REPRESENTATIVE BELLOCK: So just along with  
8 what we've spent three or four hours on this morning  
9 with FamilyCare, FamilyCare actually was a program  
10 that was developed. This was a program, I feel, that  
11 was developed going around, again, the legislative  
12 branch just by the executive branch.

13 But it was a program that, yes, had a laudable  
14 goal in providing drugs for seniors, but to the extent  
15 of putting seniors at jeopardy by going through a  
16 program that was in a viol -- the operation of  
17 importation of drugs from Canada was in violation of  
18 federal law.

19 And, also, that at this point they couldn't assure  
20 that where they were importing those drugs from. I  
21 think Canada had already been notified that even if  
22 the drugs were FDA approved -- which a lot of those  
23 drugs were not because they couldn't assure that the  
24 pharmaceutical companies that made them there were

1 assured -- that even if they were assured, they  
2 couldn't say that those drugs were the same exact as  
3 to what seniors or other people who were ordering the  
4 drugs thought they were from the beginning because  
5 there was no FDA approval of that.

6 So, again, I think it's a problem of going forward  
7 with a program that, yes, had a laudable goal, but  
8 that was illegal, it was in violation of federal law  
9 from the beginning of the original program, and then  
10 moving forward to when they got involved with the flu  
11 vaccine, it even enlarged that issue.

12 But during that time period, when several people  
13 objected to this, it was brought up at every single  
14 healthcare program that the state was talking about.  
15 They would -- even in the Medicare D forms that we had  
16 there would be mention of the I-SaveRx program and how  
17 to sign up for it and to go forward.

18 MR. GENSON: Excuse me. I understood this  
19 whole subject was not on the agenda.

20 CHAIRWOMAN CURRIE: Pardon me?

21 MR. GENSON: I understood this subject was  
22 not on the agenda.

23 CHAIRWOMAN CURRIE: This is the subject of  
24 the audit. That she's inquiring the audit --

1           MR. GENSON: But I had understood when the --  
2 when the gent -- when the Auditor General was asked to  
3 talk about it, it was said that this was not on our  
4 agenda, the I-Save program.

5           MR. HOLLAND: It's on the letter that I  
6 was -- received from the --

7           CHAIRWOMAN CURRIE: The which program?

8           MR. GENSON: All right. I'll -- like was  
9 talked about. I'll proceed to ask questions on it,  
10 but I was under -- it was understood, I thought, that  
11 that specific program was not on the agenda. It was  
12 not on the agenda that I've been furnished, but that's  
13 fine. If we're going into it --

14          CHAIRWOMAN CURRIE: This was part of the  
15 audit that I believe was part of the agenda.

16          Representative Bellock, did you finish your  
17 questions?

18          REPRESENTATIVE BELLOCK: Thank you very much.  
19 It was just part of the flu vaccine that they were  
20 discussing the I-Saverx. I think it was the Lab  
21 School that was not -- that audit wasn't going to be  
22 discussed.

23          CHAIRWOMAN CURRIE: Representative Mautino.

24          REPRESENTATIVE MAUTINO: Thank you, Madam

1 Chairman. I will be brief. Most of the questions  
2 that I had have been asked and answered. So I think  
3 I'm going to go just a little bit -- a little bit  
4 broader. I've heard all these audits and read them  
5 and actually am usually the one questioning them with  
6 the audit commission.

7 General Holland, has our -- in respect to the  
8 auditors within the agencies, do they report to the  
9 directors of those agencies?

10 MR. HOLLAND: Well, as you know,  
11 Representative Mautino, the internal auditors were  
12 moved from the individual agencies to the Office of  
13 Internal Audits under Executive Order No. 10 in 2003.  
14 So what has occurred now is that those auditors report  
15 to the chief internal auditor, and they do not have  
16 that direct contact -- that direct line contact,  
17 agency director to internal auditor, that they had  
18 before.

19 REPRESENTATIVE MAUTINO: With that report --  
20 and that's basically under the auspices of CMS?

21 MR. HOLLAND: That's under the auspices of  
22 CMS, and, you know, previously, the operation of the  
23 internal auditors was really the office that would  
24 discover the problems that existed before the external

1 auditors, that is, before my people got in.

2 REPRESENTATIVE MAUTINO: And that's to my  
3 point, and I've said this throughout the commission,  
4 as I said it with Ginger Austrow (sp) and with John  
5 Filan as we discussed the Wrigley Field and IFA audit  
6 in last week's meeting. Without the auditors within  
7 those agencies, there's no one who stands by the  
8 window, tells the director, you know what, you can't  
9 do that, or you're going to blow that deadline, which  
10 brings about the audit findings.

11 MR. HOLLAND: Problematic.

12 REPRESENTATIVE MAUTINO: For the -- in many  
13 cases, can you just give the committee a track of the  
14 agencies and findings since the auditors no longer  
15 report to the directors anymore, and then the copy of  
16 the federal single audit which shows, for this reason  
17 and other reasons, many of our major agencies are  
18 extremely screwed up. I mean, a lot of findings that  
19 we wouldn't have found a decade ago when I started  
20 serving on it. So if you can give federal single  
21 audits to the committee and just that rack up, which I  
22 know we have --

23 MR. HOLLAND: We have, and I will get you a  
24 summary of those findings.

1           REPRESENTATIVE MAUTINO:  -- to show how all  
2 agencies are doing?

3           MR. HOLLAND:  Yes.  I can do that.

4           REPRESENTATIVE MAUTINO:  Thank you.  /

5           MR. HOLLAND:  Yes.

6           CHAIRWOMAN CURRIE:  Representative Flowers.

7           REPRESENTATIVE FLOWERS:  Thank you, Madam  
8 Chairman.  I too shall be brief because most of my  
9 questions have been asked and answered, but just want  
10 to be clear.

11           The I-SaveRx program.  Is it illegal here in the  
12 State of Illinois?

13           MR. HOLLAND:  The importation of drugs from  
14 out of -- out of the country is.

15           REPRESENTATIVE FLOWERS:  It is.

16           MR. HOLLAND:  Yes.

17           REPRESENTATIVE FLOWERS:  And we're still  
18 doing it today?

19           MR. HOLLAND:  Well, we haven't imported any  
20 drugs.  I don't think they've come in.  Let me be  
21 clear on this because what has -- it is illegal to  
22 import those prescription drugs, but the FDA has  
23 chosen not to prosecute any individuals who have  
24 received drugs from a foreign country.  Does that make

1 sense? There's two different --

2 REPRESENTATIVE FLOWERS: There's a  
3 difference?

4 MR. HOLLAND: Yes.

5 REPRESENTATIVE FLOWERS: The federal  
6 government chose not to go after the people that is  
7 receiving the drugs --

8 MR. HOLLAND: Yes.

9 REPRESENTATIVE FLOWERS: -- because of cost  
10 savings.

11 MR. HOLLAND: That's true.

12 REPRESENTATIVE FLOWERS: But the  
13 implementation of the importation of drugs into this  
14 country that may not be FDA approved.

15 MR. HOLLAND: That's -- that still is the  
16 case, that it's --

17 REPRESENTATIVE FLOWERS: And no one is -- is  
18 anyone monitoring the safety of the drugs that's being  
19 imported into this country for the safety of the  
20 people who are to receive those drugs that may cost  
21 them their lives?

22 MR. HOLLAND: That was actually an issue that  
23 we brought up in the audit about the safety, to make  
24 sure that there was safety, and we were not

1 comfortable, in fact, that there was that oversight.

2 REPRESENTATIVE FLOWERS: So we're  
3 jeopardizing people's lives with this particular  
4 program. Is it possible that the Governor -- could  
5 the Governor have negotiated with the pharmaceutical  
6 companies in regards to cost savings as opposed to  
7 doing this illegal act in regards to what is a  
8 violation, obviously?

9 MR. HOLLAND: I don't know the answer to that  
10 question, what the Governor could have done or would  
11 have done or should have done. I don't know.

12 REPRESENTATIVE FLOWERS: Thank you very much.

13 CHAIRWOMAN CURRIE: And now would you like  
14 to -- do you have questions, Mr. Genson?

15 MR. GENSON: As a matter of fact, there's a  
16 federal law prohibiting any -- any negotiations with  
17 the -- with the drug companies regarding the purchase  
18 by the states. Do you know that to be the case?

19 REPRESENTATIVE FLOWERS: I think that's only  
20 applicable to Medicare Part D.

21 MR. GENSON: Did I interrupt you?

22 REPRESENTATIVE FLOWERS: I'm sorry.

23 MR. GENSON: I'm sorry, Representative  
24 Flowers. I thought I was being pointed at because I

1 was asked to ask questions. I'm sorry.

2 REPRESENTATIVE FLOWERS: I'm sorry. I was  
3 only commenting.

4 MR. GENSON: Okay. Thank you.

5 REPRESENTATIVE FLOWERS: Thank you.

6 MR. GENSON: And is it my floor or yours?  
7 whatever you like. No. And, as a matter of fact,  
8 doctors in the United States with people who suffer  
9 from rare conditions are entitled and do prescribe  
10 drugs that are shipped out of Canada because they're  
11 not FDA approved here. That's done with regularity,  
12 isn't it, if you know?

13 MR. HOLLAND: Frankly, I was getting ready to  
14 get a drink of water and didn't hear you.

15 MR. GENSON: All right. Well, finish your  
16 water, and then I'm ask again. As a matter of fact,  
17 I'll take a drink of water.

18 CHAIRWOMAN CURRIE: Are you ready then to go  
19 on with your third audit?

20 MR. HOLLAND: I'm sorry?

21 CHAIRWOMAN CURRIE: Are you ready to go with  
22 your -- do you have another audit?

23 MR. HOLLAND: No, I'm done.

24 CHAIRWOMAN CURRIE: Think of that. Well,

1 thank you very much for participating --

2 MR. GENSON: Can I ask a few more questions?

3 CHAIRWOMAN CURRIE: Representative Franks has  
4 just a -- huh?

5 MR. GENSON: I thought I was asking --

6 CHAIRWOMAN CURRIE: Oh, I'm sorry, Mr. --

7 MR. GENSON: Every time I start asking, they  
8 interrupt me, and I'm beginning to feel real picked  
9 on.

10 As a matter of fact, doctors in the United States,  
11 regarding people with rare conditions, sort of like  
12 people who can't walk real well, tend to prescribe  
13 drugs in Canada that are not FDA approved, and there's  
14 prohibition against them giving that to the  
15 individual; isn't that correct?

16 MR. HOLLAND: That was not the subject of any  
17 audit that I did, so I --

18 MR. GENSON: Okay. And with regard -- just  
19 going back to the flu vaccine -- oh, by the way, that  
20 I-Save program, the program where you -- where you --  
21 where the government was -- or the Governor or the  
22 Governor's staff was going to procure drugs through  
23 Canada. That's a program that's alive in lot of other  
24 states; isn't that right?

1 MR. HOLLAND: I don't know. I can't -- I  
2 can't say what's going on in other states.

3 MR. GENSON: Now, just a few questions about  
4 the flu vaccine. We're talking 2004, close to four  
5 years ago; is that right?

6 MR. HOLLAND: Yes.

7 MR. GENSON: And you talked about the  
8 timeline and whatever, but there was, at or about that  
9 time, a panic that the -- there was going to be a flu  
10 epidemic and they were -- they just didn't have enough  
11 flu vaccine. Do you remember that?

12 MR. HOLLAND: Yes.

13 MR. GENSON: Turned out, you said, that they  
14 didn't have to panic, but at the time there was one;  
15 is that right?

16 MR. HOLLAND: Yes.

17 MR. GENSON: And the flu vac -- and the flu  
18 vaccine -- and I think you used the word "priority"?  
19 Priority patients?

20 MR. HOLLAND: I didn't use that word.

21 MR. GENSON: I'm sorry. Do you know --

22 REPRESENTATIVE FRANKS: I used that word

23 MR. GENSON: Who used it? Do you know what a  
24 priority patient is? Because I wanted to know.

1 REPRESENTATIVE FRANKS: Seniors.

2 MR. HOLLAND: Yeah, seniors and --

3 MR. GENSON: People over 65 years old?

4 MR. HOLLAND: You probably don't qualify, Mr.  
5 Genson.

6 MR. GENSON: Well, I love you but I -- the  
7 point of the matter is, it was for seniors who  
8 couldn't afford flu vaccine; is that right?

9 MR. HOLLAND: Yes. That's correct.

10 MR. GENSON: I have no further questions.

11 CHAIRWOMAN CURRIE: Thank you.

12 Representative Franks wants to raise a slightly  
13 different issue that isn't relative to the Auditor  
14 General. So you are excused.

15 MR. HOLLAND: Not a moment too soon.

16 CHAIRWOMAN CURRIE: Representative Franks.

17 REPRESENTATIVE FRANKS: Thank you. Mr.  
18 Genson, I was wondering, since you're here on behalf  
19 of the Governor, and one of our -- one of the audits  
20 was on the Chicago Loop Lab School, but as we heard  
21 from testimony from the Auditor General --

22 MR. GENSON: Representative Franks, I am here  
23 on behalf of the Governor, but I never conferred with  
24 the Governor about this. I have absolutely no idea

1 what that's about.

2 REPRESENTATIVE FRANKS: That's what I was  
3 going to ask, because I had a series of questions that  
4 I was hoping you could bring back to the Governor that  
5 we could get answers on.

6 MR. GENSON: The only thing I know about that  
7 is it had to do with Pilgrim Baptist Church which used  
8 to be the original K.A.M. and was built by Sullivan,  
9 Louis Sullivan. Other than that, I know nothing.

10 REPRESENTATIVE FRANKS: Well, we had a  
11 hearing in our state government administration  
12 committee on this, and we are the ones who would ask  
13 the Auditor General to go forward with the audit  
14 because what we found -- we were disturbed, and we had  
15 the hearing, and at that time Deputy Governor Peters  
16 came to our committee, and we asked her a series of  
17 questions, and I think on 69 occasions she said she  
18 did not know.

19 And I was hoping we'd be able to get some answers,  
20 and maybe the Governor could respond to these if we  
21 provided them to you?

22 MR. GENSON: It could be. I know that I was  
23 given an agenda yesterday, and I was told that there  
24 would be no questions about the Chicago Loop School

1 last night. So I didn't see fit to inquire about it.  
2 I was told by the Chair that that portion of the  
3 Auditor General's report would not be given today.

4 REPRESENTATIVE FRANKS: Okay. Could I -- I'd  
5 like to just touch on a couple things, and maybe you  
6 could share --

7 MR. GENSON: Would you like to do it here in  
8 front of everyone? Or would you like to give me a  
9 list, and I'll go and do my best and try to get the  
10 questions answered?

11 REPRESENTATIVE FRANKS: I will get you a  
12 typed list but I want -- I think, for the sake of the  
13 record, I'd just like to get a bit of a timeline in so  
14 we'll have it for the record, and then I'll submit my  
15 written questions.

16 MR. GENSON: And I'm accept your written  
17 questions, with all due respect, but, again, this is  
18 just something I'm not used to -- people coming to  
19 people who are charged with things and making them  
20 answer before they tell you what it's about. It's a  
21 little bit of reversal in roles, but I guess a lot of  
22 those things are happening here, and I'm willing to  
23 accept them.

24 REPRESENTATIVE FRANKS: Well, I guess, Mr.

1 Genson, we've invited who would ever like to come and  
2 speak, the one with the most knowledge, and when we've  
3 asked the Governor to come to our committee, he chose  
4 to send a representative who frankly either did not  
5 know or did not -- or was not forthcoming with  
6 answers.

7 MR. GENSON: I hope this isn't personal, but,  
8 again, I don't know very much about this.

9 REPRESENTATIVE FRANKS: That's okay. I'm  
10 explaining why I'd like to ask these questions,  
11 because the Governor has been afforded multiple  
12 opportunities to respond to these questions, and he  
13 refuses to each time. We were hoping today that he  
14 would again have the opportunity to respond to this as  
15 well. And I don't want to put you on the spot to  
16 ask --

17 MR. GENSON: But, I mean, is a refusal of him  
18 to ask (sic) questions in this proceeding, if he, in  
19 fact, refuses, going to be used against him? Is that  
20 what you're saying?

21 REPRESENTATIVE FRANKS: I would think so  
22 because I think it's an inference that he does not  
23 wish to answer the questions of the committee, and  
24 when we have --

1 MR. GENSON: Does Madam -- does the  
2 Chairperson agree with Mr. Franks, that his failure to  
3 respond -- I'm sorry. I'll repeat it. I didn't mean  
4 to interrupt. Does the Chairperson agree with  
5 Mr. Franks that --

6 CHAIRWOMAN CURRIE: I'm sorry. I wasn't  
7 quite following the conversation.

8 MR. HOLLAND: Yeah. Mr. Franks made the  
9 point that he was going to ask some questions, and  
10 that he would hold the refusal of the Governor to  
11 answer those questions against him in this  
12 proceedings. Is that Your Honor's ruling?

13 CHAIRWOMAN CURRIE: That is certainly not a  
14 decision the committee has come to. Mr. Franks may  
15 feel that way, but I think as there's been no notice  
16 to the Governor --

17 MR. GENSON: Just wanted to check.

18 CHAIRWOMAN CURRIE: -- nor to the Governor's  
19 lawyer that these questions were even on the agenda,  
20 I'm not sure the committee would agree with his  
21 assessment.

22 MR. GENSON: And they're not on the agenda,  
23 at least I was told they wouldn't be, and, again, if  
24 Representative Franks would like to write up a list of

1 questions or even tell them to me after the hearing,  
2 I'd be very pleased to see if we're in a position to  
3 answer.

4 REPRESENTATIVE FRANKS: I will -- I will give  
5 you a list of the written questions, but I think for  
6 the edification of the committee that did not have the  
7 opportunity to sit in on our hearings and did not  
8 have -- did not hear the response of Deputy Governor  
9 Peters, who I would have hoped would have been here as  
10 well -- I know her office was called and she's not  
11 here today as well.

12 I think for the -- for the purpose of the record,  
13 I think we need to look at the timeline, and what  
14 happened here and, you're right, it was a tragedy.  
15 The Pilgrim Baptist Church succumbed to fire, and the  
16 Governor's intent, as he said, was to help rebuild  
17 that church.

18 Instead, a million dollars went to a school that  
19 was unaffiliated with the church. It had no assets,  
20 it no faculty, it had no students, and the purpose of  
21 the grant was \$1 million for a condominium to be  
22 purchased by a gentleman who apparently had a -- who  
23 was a mole in the Tony Rezko trial.

24 So there was many questions that came up. For

1 instance, the -- one of the individuals listed on the  
2 application was a lady by the name of Chandra Gill.  
3 She used -- she was listed as a volunteer, and her  
4 cell phone number was given as the business number for  
5 this school. Ms. Gill had also made an application  
6 for a pardon to this Governor, and the pardon was, I  
7 think, applied for in August and given, I think, in  
8 around January after a hearing in October, and there  
9 are, I think, 1700 or so pending pardon applications  
10 in front of the Governor.

11 And I'd like to know why this one was singled out,  
12 and then only after she received the pardon -- because  
13 on her pardon application she said she needed the  
14 pardon in order to receive the million dollars.

15 MR. GENSON: Again, I have absolutely no idea  
16 what you're talking about.

17 REPRESENTATIVE FRANKS: Okay. I'm hoping to  
18 educate you on this.

19 MR. GENSON: I just know about Louis  
20 Sullivan.

21 CHAIRWOMAN CURRIE: All right. Thank you  
22 very much. Shall we move on then to the final topic  
23 which is Freedom of Information Act. I see that we  
24 have Don Craven with us. I'm not sure who else is

1 here to -- Jay Stewart is apparently going to be  
2 first. Then we have Don Craven. Paul Orfanedes from  
3 Judicial Watch. So if you would raise your right  
4 hands.

5 (Mr. Stewart, Mr. Craven, and Mr.  
6 Orfanedes were duly sworn.)

7 CHAIRWOMAN CURRIE: All right. And then if  
8 you would say your names and make sure that the court  
9 reporter has the appropriate spelling that would be  
10 very helpful. Tells your name and your affiliation.

11 MR. STEWART: Jay Stewart, J-a-y  
12 S-t-e-w-a-r-t. Executive director of the Better  
13 Government Association.

14 MR. CRAVEN: Don Craven, C-r-a-v-e-n.

15 MR. ORFANEDES: Paul Orfanedes,  
16 O-r-f-a-n-e-d-e-s. I'm the director of litigation for  
17 Judicial Watch.

18 CHAIRWOMAN CURRIE: Yeah, be sure that you  
19 speak into the microphone.

20 Let me make just a couple of preliminary  
21 remarks, and that is that I think certainly there are  
22 reasons why government agents decide not to respond to  
23 or not to give information in response to a Freedom of  
24 Information Act request, and those requests can be

1 subjects of litigation, and if the court decides that  
2 the government entity was wrong, then the individual  
3 gets the information.

4 I think that part of the reason for including this  
5 topic in today's testimony is that we're looking  
6 mostly to see if there's some kind of overarching  
7 pattern of -- not just issues where we might agree to  
8 disagree about whether the information should or  
9 should not have been withheld, but if there is a kind  
10 of pattern of withholding things that in the minds of  
11 ordinary folks or consistently upheld by the court  
12 that the agency should have responded to.

13 So with that in mind, if you keep your remarks  
14 brief, and, again, we're looking, I think, primarily  
15 for either very egregious examples or a kind of  
16 overarching pattern.

17 MR. STEWART: I'd like to thank the committee  
18 for the opportunity to testify today. I've submitted  
19 prepared testimony and some exhibits, and I will try  
20 to go through the testimony briefly and be willing to  
21 answer any questions at that time.

22 It's my understanding that the committee is  
23 interested in issues regarding the BGA's litigation  
24 against Governor Blagojevich over his refusal to

1 produce federal grand jury subpoenas that we requested  
2 under the Freedom of Information Act.

3 We're a nonprofit watchdog group. We use the  
4 tools of investigative journalism and cooperate with  
5 the media to expose waste, corruption, and  
6 inefficiency in state and local government.

7 In the course of -- sure. Louder? Okay.

8 CHAIRWOMAN CURRIE: Could we have quiet.

9 MR. STEWART: Okay. The Better Government  
10 Association uses the Freedom of Information Act on a  
11 regular basis as part of our mission to expose waste,  
12 corruption, and inefficiency in state and local  
13 government.

14 During the summer of 2006, the BGA, along with  
15 many others, read news reports that the Governor's  
16 office had been subpoenaed by federal investigators.  
17 And I'm just summarizing our testimony.

18 Shortly after reading a news article about that,  
19 we sent in a Freedom of Information Act to the Office  
20 of the Governor that, in essence, asked for copies of  
21 the federal grand jury subpoenas in the first half of  
22 2006, any subpoenas they had received. We copied that  
23 request to the public access counselor in Attorney  
24 General Lisa Madigan's office.

1           On August 7, the counsel for the Governor  
2           responded with a denial. The letter stated, in part,  
3           that "As you know, this office cannot confirm or deny  
4           the existence of the documents requested." Never in  
5           my experience with a FOIA request have we ever gotten  
6           such a bizarre response. They just said we can't even  
7           tell you whether we have it or not.

8           They went on to say if they -- even if they did  
9           have the office -- excuse me -- even if they did have  
10          the documents responsive to our request, they would be  
11          exempt from release under the Act under Section  
12          7(1)(a) of the Act which prohibits disclosure of a  
13          document if it's prohibited by some other federal or  
14          state law, rule, or regulation.

15          August 31st of '06 we appealed the denial.  
16          We contested the denial is improper, claiming  
17          hypothetical grounds for denial are nowhere in the  
18          law, and to assert exemption 7(1)(a) you have to point  
19          to the federal law, which they didn't, that would  
20          prohibit disclosure. We copied that appeal to the  
21          public access counselor and General Madigan, among  
22          others.

23          On September 15th, we got a denial to our  
24          appeal.

1           On October 26, the public access counselor copied  
2 the BGA on a letter written to the Governor's general  
3 counsel, William Quinlan. The public access  
4 counselor, aware of our dispute with the Governor's  
5 office, informed the general counsel that, under the  
6 Illinois Freedom of Information Act, requests for  
7 copies of federal grand jury subpoenas must be  
8 complied with. Despite this letter, the Governor's  
9 office did not produce the subpoenas.

10           We then explored litigating this. We sent our  
11 appeal and were denied, so we could litigate if we  
12 chose.

13           Before doing so, on November 7, 2006, we wrote the  
14 United States Attorney's office for the Northern  
15 District of Illinois and asked if such a litigation  
16 would be opposed by their office. We recognize that  
17 if the U.S. Attorney objected to the disclosure, the  
18 state court might find release of the subpoenas would  
19 interfere with the ongoing investigation into, quote,  
20 fraudulent hiring practices, unquote, being conducted  
21 by the U.S. Attorney.

22           On November 13th, the U.S. Attorney responded to  
23 our letter and did not encourage or discourage such  
24 litigation, but they certainly did not assert our

1 action would interfere with the ongoing investigation.  
2 They more or less told us to do what you see fit.

3 On January 4th, we filed suit in Sangamon County  
4 against the Governor under the Freedom of Information  
5 Act, seeking production of the subpoenas. Amongst the  
6 exhibits we included was the letter from the public  
7 access counselor. At this time of the filing we  
8 informed the U.S. Attorney that we had, in fact, filed  
9 the suit.

10 On August 7th, we filed an amended complaint that  
11 added the Governor as a defendant. The Office of the  
12 Governor insisted the Governor be added as a  
13 defendant. So we did so, and, essentially, it was the  
14 same complaint.

15 To date the U.S. Attorney has never asked the  
16 BGA to cease the litigation and has not filed any  
17 pleadings with the state court to indicate disclosure  
18 would interfere with ongoing investigation.

19 We filed this suit for two reasons: We  
20 believe that the public has a right to know what's  
21 going on with the government, whether things are going  
22 well or not. Since the public pays for it, we believe  
23 the public should know about it.

24 Second, the BGA believes the law applies to

1 everyone, including the Governor of Illinois. He has  
2 public records related to a very important issue,  
3 namely, whether his office has been served with  
4 federal grand jury subpoenas. Rather than ignore this  
5 unpleasant issue, it should be aired to the fullest  
6 extent possible. Being Governor does not mean public  
7 records laws don't apply to you.

8 During the hearing in the trial court, Judge  
9 Kelley asked the Governor's lawyer, "I do have one  
10 question for you, Mr. Londrigan. Say a person  
11 receives a federal grand jury subpoena from the  
12 Northern District of Illinois. Could that person be  
13 subject to either contempt powers of the court or  
14 criminal prosecution if that person voluntarily  
15 discloses the subpoena to someone else?"

16 Mr. Londrigan: "No, sir."

17 The Governor acknowledged that the law and the  
18 rule which it relied on does not prohibit disclosure  
19 of the subpoenas. Yet he has not -- he's continued to  
20 deny access to the documents, continued to spend  
21 public dollars on private attorneys to fight our suit,  
22 and continued to defy the requirements of the Act.

23 On January 9th, Judge Kelley ruled on the  
24 Governor's motion for summary judgment and our motion

1 for judgment on the pleadings. Judge Kelley ruled in  
2 favor, finding, in part, the Federal Rule of Criminal  
3 Procedure 6(e)(2) does not prohibit disclosure of  
4 federal grand jury subpoenas. That had been the  
5 Governor's argument. In essence, federal grand jury  
6 secrecy rules prohibit disclosure. Judge Kelley did  
7 not agree with that argument.

8 In ruling in favor, Judge Kelley ruled -- relied,  
9 in part, upon the language of Freedom of Information  
10 Act. Quote, People have the right to know decisions,  
11 policies, procedures, rules and standards, and other  
12 aspects of government activity that affect the conduct  
13 of government and the lives of any or all the people.

14 On March 3rd, Judge Kelley denied the  
15 motion -- the Governor's motion to reconsider.

16 Subsequently, the Governor appealed Judge Kelley's  
17 decision to the Fourth District Court of Appeals.  
18 After briefs and oral argument, the Fourth District  
19 issued its opinion on November 19th. The appellate  
20 court upheld Judge Kelley's opinion in ruling against  
21 the Governor's argument that federal grand jury  
22 secrecy rules prohibit disclosure of such federal  
23 grand jury subpoenas under the Freedom of Information  
24 Act.

1           The court wrote "Our legislature enacted the FOIA  
2 in recognition that, one, blanket government secrecy  
3 does not serve the public interest, and, two,  
4 transparency should be the norm except in rare  
5 specified circumstances. The legislature has  
6 concluded that the sunshine of public scrutiny is the  
7 best antidote to public corruption, and Illinois  
8 courts are duty bound to enforce that policy."

9           We've asked the Fourth District to order the  
10 Governor to turn over the subpoenas. At this point in  
11 time, as far as I'm aware, the Governor has asked the  
12 Fourth District to refrain from doing so while they  
13 contemplate filing an appeal to Illinois Supreme  
14 Court.

15           According to published reports, the Governor has  
16 spent more than \$150,000 in legal fees on this matter  
17 and a similar matter in Cook County, despite the clear  
18 provisions of state law.

19           That concludes my summary, and I'd be happy to  
20 answer questions.

21           CHAIRWOMAN CURRIE: Thank you very much. Mr.  
22 Craven, let's hear from you and then we'll hit all  
23 three of you.

24           MR. CRAVEN: Paul, why don't you go ahead.

1 MR. ORFANEDES: Okay.

2 CHAIRWOMAN CURRIE: Okay. Go ahead.

3 MR. ORFANEDES: Paul Orfanedes. I am the  
4 director of litigation for Judicial Watch. We are a  
5 Washington D.C.-based educational foundation that  
6 seeks to promote transparency, integrity and  
7 accountability, and fidelity to the rule of law.

8 We also filed a FOIA request in the fall of 1996  
9 for these same subpoenas, and I would second  
10 everything that Jay had to say.

11 There's -- I litigate FOIA cases all around  
12 the country, and there's something that I want to add.  
13 What particularly struck me about the Governor's  
14 response to this FOIA request was his effort to  
15 control the litigation by excluding the Attorney  
16 General from any role in the process.

17 The first thing that the Governor did in our  
18 litigation was to move to strike -- to move to have  
19 the Attorney General be declared conflicted under the  
20 Attorney General Act because of the FOIA counselor  
21 Terry Mutchler's letter. We litigated that issue for  
22 approximately seven months.

23 It was just incredible to see seven lawyers come  
24 into court, including the Governor's main lawyer, I

1 guess, Mr. Quinlan, trying to exclude the Attorney  
2 General from performing her constitutional role in  
3 defending the Governor and the state in this  
4 litigation.

5 I don't know how much was spent paying Bell, Boyd  
6 and Lloyd in there. I think there were -- I counted  
7 at least five lawyers whose names showed up on the  
8 pleadings in order to have the Governor get the  
9 attorney -- the legal advice he wanted to hear, rather  
10 than the legal advice that the Attorney General's  
11 office was providing. It was remarkable.

12 For the past two years, also, Judicial Watch has  
13 been working with Americans for Prosperity's Illinois  
14 chapter. We filed maybe 40 or 50 different FOIA  
15 requests to different state agencies, and there are  
16 two that I think are particularly noteworthy.

17 Earlier this year we filed a FOIA request with the  
18 Office of the Governor seeking access to documents  
19 about fiscal year 2008 legislative earmarks. The  
20 Governor's office failed to respond. Because a  
21 failure to respond is deemed a denial, we filed an  
22 appeal. Again, there was no response.

23 We ended up suing the Governor -- the Office of  
24 the Governor and the Governor. He currently -- he has

1 failed to respond to the lawsuit. Sangamon County  
2 sheriff served him upstairs. He has not yet appeared  
3 in any way. He was served on August 1st.

4 In late August he did produce -- the office of the  
5 Governor did produce a 51-page spreadsheet that  
6 contains approximately 1500 legislative earmarks,  
7 along with a letter saying this is what we've got, we  
8 would hope you appreciate -- we hope you would dismiss  
9 your lawsuit now as being moot.

10 Something about the letter struck me as being odd,  
11 and I requested clarification. The clarification came  
12 back that that is not all that they have. Their  
13 letter to me was false. It certainly was misleading.  
14 I was on the verge of taking a voluntary dismissal,  
15 and then I reread the lawsuit -- the letter. I  
16 decided I should clarify did they have any additional  
17 documents.

18 It turns out that they do. They are withholding  
19 those records under claims of privilege, but they  
20 have not asserted those privileges. They have not  
21 sought -- asserted those withholdings, but have not  
22 sought to assert them in court. There apparently are  
23 some additional records that -- concerning  
24 communications about legislative earmarks with the

1 Senate President that they possess as well that we've  
2 sought. But that was for fiscal year 2008.

3 We also have submitted a similar FOIA request for  
4 legislative earmarks for fiscal year 2009. Again, we  
5 got one other document. Probably a ten-page document  
6 with maybe 70 or 80 legislative earmarks, totaling, I  
7 think, about \$8 million. They are withholding  
8 additional records under the claims of exemption. We  
9 filed an administrative appeal. There has been no  
10 response.

11 So these are two instances, very clear. One in  
12 which, I believe, there was perhaps some intentional  
13 effort to mislead about whether or not additional  
14 documents had been produced.

15 With that, I'll take any questions you might have.

16 CHAIRWOMAN CURRIE: Thank you very much. Do  
17 you want to add anything, Don, or just answer  
18 questions?

19 MR. CRAVEN: No, I have -- I'll be very  
20 brief, Madam Chairman.

21 Let me first stress, if I could, that I am  
22 here today as a private citizen. I am not here on  
23 behalf of any of the clients in my law firm. I thank  
24 the Chair for the invitation, but I do need to stress

1 that I appear simply as a poor country lawyer.

2 MR. GENSON: I'm the only one who's not a  
3 country lawyer.

4 CHAIRWOMAN CURRIE: So to your testimony.

5 MR. CRAVEN: Thank you, Madam Chairman.

6 Jay has -- Mr. Steward has described -- I did  
7 represent the BGA in the litigation that Jay has  
8 outlined, and I have represented many other citizens  
9 and organizations in FOIA litigation over my years in  
10 practice.

11 The behavior of the Blagojevich administration in  
12 the BGA litigation and in the Judicial Watch  
13 litigation is symptomatic of the behavior -- of its  
14 behavior in response to FOIA requests generally. Jay  
15 characterized it as bizarre, and I'm not going to  
16 quibble with his choice of adjectives.

17 One need look no further than the FOIA requests  
18 submitted to this administration by members of the  
19 General Assembly. Let me first suggest that it is  
20 bizarre, at best, that members of the General Assembly  
21 have to resort to the Freedom of Information Act in  
22 order to gain information about rather routine matters  
23 that are pending in legislative committees.

24 Members of the General Assembly have been required

1 to submit FOIA requests in order to gain information  
2 about the state budget. Specifically, a line item of  
3 more than \$850 million. Those requests were first  
4 ignored for over a month, and then were denied.

5 Members of the General Assembly, Senator Righter  
6 among them, were required for file a FOIA request to  
7 gain access to the Caremark contract, the contract  
8 between CMS and the company which filled prescriptions  
9 for state employees. The administration refused the  
10 request and litigation was necessary to force  
11 disclosure.

12 When the contract was finally disclosed, it became  
13 apparent that the administration had delegated to  
14 Caremark, the private company providing the service --  
15 they had delegated to Caremark the authority to  
16 determine whether the contract would be made public, a  
17 clear violation of the provisions of the Freedom of  
18 Information Act.

19 Members of the General Assembly were required to  
20 file a FOIA request to gain access to a list of job  
21 applicants for state positions. CMS rules are clear  
22 that those lists are public records. Yet the request  
23 was denied.

24 The request was made in connection with an inquiry

1 by a House committee into the application of the  
2 statutory veterans preference by the Blagojevich  
3 administration. The committee cited a newspaper  
4 report that the husband of a successful job applicant  
5 had issued a \$1500 check to the Governor's daughter at  
6 about the same time his wife got a state job. The  
7 Governor issued contradictory statements about the  
8 purpose of the check. First it was a birthday  
9 present. Then it was a present to the other daughter.

10 Similar requests were made by reporters for lists  
11 of applicants for state jobs, and, as in the BGA case,  
12 the Attorney General, the chief law officer of the  
13 State of Illinois, urged disclosure of the lists. One  
14 such list was disclosed in 2005, but all subsequent  
15 requests were denied.

16 The administration assured the people that the  
17 denial of the request was in no way related to the  
18 fact that the request -- that the -- that the request  
19 related to jobs filled by the son -- by a son of a  
20 congressman and the son of a major donor. The  
21 administration has yet to respond to the proposition  
22 that the list should be made public because CMS rules  
23 say so.

24 Senator Jones -- John -- was required to file a

1 FOIA request for a study relating to prison staffing.  
2 The Governor claimed savings of more than \$400,000,  
3 but then refused to produce the report to substantiate  
4 the claim. The Governor has asserted and never  
5 substantiated similar claims of cost savings related  
6 to moving the division of traffic safety to Harrisburg  
7 and closing the prison in Pontiac, among others.

8 Other FOIA requests have suffered similar and yet  
9 equally bizarre fates. A request for documents  
10 relating to a hospital tax plan resulted in a denial  
11 of a request with the assertion that the documents did  
12 not exist.

13 Senator Trotter found that response rather  
14 puzzling, given the state's response to an inquiry  
15 from the federal government included the requested  
16 documents. When questioned by Senator Trotter, the  
17 director of Public Aid, as it was then known,  
18 suggested that he was surprised the records were not  
19 released and suggested that Senator Trotter contact  
20 the agency PR, volunteering that his name begins with  
21 C.

22 A request for records of phone numbers dialed by  
23 state employees during work hours on taxpayer-financed  
24 phones was likewise denied on some unexplained theory

1 that release of the records would violate the state  
2 Constitution. Again, the Attorney General, the chief  
3 law officer of the State of Illinois, weighed in in  
4 favor of disclosure, but the administration has  
5 refused to disclose those records.

6 Records for correspondence to the Governor  
7 relating to references for appointments to boards and  
8 commissions have been denied. The fact that the  
9 Governor has selectively released such correspondence  
10 from some members of the General Assembly -- at least  
11 one member of the General Assembly -- yet has refused  
12 to release any other similar correspondence has also  
13 yet to be explained.

14 A request for access to files at the Prison Review  
15 Board, which traditionally have been made public, was  
16 denied, relying only on a North Carolina court  
17 decision which has no relation to Illinois law.

18 The Governor had been criticized in relation to  
19 two pardons, and the subsequent request for the files  
20 on the pardons was rejected. The Governor granted a  
21 pardon to one person talked about earlier shortly  
22 before her organization was given a \$1 million grant  
23 for the Loop Lab School.

24 In another case, he granted a pardon to a former

1 employee of his office for a conviction for stealing  
2 \$17,000 thousand from the Chicago City treasurer's  
3 office.

4 The Governor granted 69 pardons and, contrary to  
5 the Freedom of Information Act and past practice, has  
6 refused to release any details to support those  
7 discretionary decisions.

8 This is -- one minute. This is far from a  
9 complete collection of the practices of this  
10 administration and its approach to disclosure of  
11 public records. As I have gone through these, I am  
12 sure others have been brought to mind. Make no  
13 mistake, I confess to being an advocate for the  
14 release of public records. Call me guilty.  
15 Inquisitive and informed voters and an inquisitive and  
16 informed legislative body are fundamental to a  
17 representative democracy.

18 One need go no further than the preamble to  
19 the Freedom of Information Act which I commend to your  
20 reading if you're having trouble sleeping at night  
21 but -- and I make a joke, and it's not a joking matter  
22 because it is very -- the process of gathering  
23 information, as Mr. Holland said, is fundamental to  
24 this process.

1           In my personal view -- and, again, I stress it is  
2 my personal view -- the efforts of this administration  
3 are absolutely contrary to the precepts underlying the  
4 Freedom of Information Act. The actions of this  
5 administration are evidence of more than simple  
6 disregard for the law. The actions of this  
7 administration are evidence of contempt for the law  
8 and the underlying philosophy expressed by the General  
9 Assembly in the Freedom of Information Act.

10           I'll take your questions.

11           CHAIRWOMAN CURRIE: Thank you very much, and  
12 if you have written testimony, we would appreciate  
13 having it.

14           Just housekeeping. Representative Reboletti is  
15 replacing Represented Black, and the Auditor General  
16 has give us a copy for the record and for each of us  
17 individually of the Illinois Audit Advisory and the  
18 Comptroller's report that he referenced in his  
19 testimony.

20           Representative Hamos.

21           REPRESENTATIVE HAMOS: Yes. I know it's  
22 getting late. Just a quick question.

23           So what you're describing is your rather routine  
24 requests for documents which are denied, and then the

1 case proceeds to litigation, and then the Governor  
2 comes in and asks to have the Attorney General recused  
3 from the case and to have Special Assistant Attorneys  
4 General appointed? Is that right?

5 MR. CRAVEN: I'm with you so far, yes.

6 REPRESENTATIVE HAMOS: All three of you have  
7 had that experience?

8 MR. CRAVEN: Yes.

9 MR. ORFANEDES: Yes.

10 MR. STEWART: Yes.

11 REPRESENTATIVE HAMOS: And do we know -- and  
12 its sounds like in the case of Bell, Boyd that there  
13 was a large number of attorneys were in on the case  
14 representing the Governor. And do we know what the  
15 cost is to the taxpayers of doing this?

16 MR. CRAVEN: The latest -- the latest  
17 publication I saw, Bell, Boyd had been paid -- and  
18 this was early in the litigation -- had been paid  
19 \$130,000.

20 REPRESENTATIVE HAMOS: And Jay Stewart talked  
21 about 150. Is that the same thing that you're talking  
22 about?

23 MR. CRAVEN: No, that was combined. They --

24 REPRESENTATIVE HAMOS: So is there some way

1 that we could as a committee, if we wanted to see an  
2 accumulated sum of how much it costs for the Governor  
3 to defend himself with special assistant attorney  
4 generals against FOIA requests?

5 CHAIRWOMAN CURRIE: I think we could ask our  
6 staff to investigate that question. I don't think  
7 these three --

8 MR. CRAVEN: I'm sure the Comptroller's  
9 office has those document.

10 REPRESENTATIVE HAMOS: Okay. Thank you. We  
11 could FOIA it, but I don't know. Could take a little  
12 while.

13 CHAIRWOMAN CURRIE: But I think our staff  
14 could probably figure that out.

15 REPRESENTATIVE HAMOS: I would request that  
16 as part of the record. I think it might be  
17 instructive.

18 CHAIRWOMAN CURRIE: All right. Thank you.  
19 Representative Lang.

20 REPRESENTATIVE LANG: Thank you, Madam  
21 chairman.

22 Additionally, for the record, we've been furnished  
23 with a document that I requested from the attorneys in  
24 the Caro case relative to the pleading filed by the

1 state, indicating they had an inherent authority to  
2 charge premiums on the FamilyCare program.

3 Just a couple of questions. Has anybody done a  
4 full study of all the FOIA requests over a given  
5 period of time to see if -- other than the anecdotal  
6 evidence, which is strong, to see if this  
7 administration significantly stonewalls FOIA requests  
8 differently than maybe other administrations have?

9 MR. ORFANEDES: We have not.

10 MR. CRAVEN: Representative Lang, that would  
11 be very difficult to do very simply because, as with  
12 some of the requests from the members of the General  
13 Assembly, they're simply denied, and people go on with  
14 their lives. The only way to track that would be  
15 under the Free -- under the Freedom of Information  
16 Act, every request made is subject to a request itself  
17 and as well as the response. But that would be a --  
18 that would be a process that, to my knowledge, has not  
19 been undertaken.

20 REPRESENTATIVE LANG: To Mr. Orfanedes. You  
21 indicated that in the response by the Governor's  
22 office there were false statements when they said this  
23 is everything but it wasn't everything.

24 MR. ORFANEDES: That's right.

1           REPRESENTATIVE LANG:  Who made false  
2 statements?

3           MR. ORFANEDES:  It was the Governor's legal  
4 counsel.  I believe her name is Erin Knowles.

5           REPRESENTATIVE LANG:  All right.  Did she  
6 indicate that she was sending this letter on behalf of  
7 the Governor personally?

8           MR. ORFANEDES:  I believe it was given under  
9 the title legal counsel on Office of the Governor  
10 letterhead.  So I assumed it was on behalf of the  
11 Governor.

12           REPRESENTATIVE LANG:  If you could provide  
13 that letter to the committee, we'd appreciate it.

14           MR. ORFANEDES:  Yes.

15           REPRESENTATIVE LANG:  And, finally, to  
16 Mr. Stewart.  I think, as we know, all FOIA requests  
17 are not valid.  There are some that are not valid.  
18 Here and there people make requests that are not valid  
19 under the law.

20           And so my question to you is that you refer to the  
21 Governor's general demeanor or the Governor's office's  
22 general demeanor in this matter as bizarre.  And I  
23 just would like a response from you as to what makes  
24 it bizarre, other the fact that they have just simply

1 denied it as would happen -- it's the same denial you  
2 would get if it was a valid denial.

3 MR. STEWART: Denials are an unfortunate  
4 regular part of the FOIA process.

5 what was bizarre was the assertion that -- I've  
6 been told lots of things. No, you can't have it. Sue  
7 me. Don't care. All sorts of things. We don't have  
8 the records, et cetera. What was different about that  
9 one, I'd never been told before they got to the denial  
10 that we can't even tell you if we have the thing you  
11 asked for. We can't -- we can't even confirm we have  
12 this thing.

13 However, then they went into a hypothetical.  
14 However, if we had it, we deny you. So I've never  
15 gotten a hypothetical denial before. That was --  
16 I've been told -- you know, I've been told very rudely  
17 to buzz off and all sorts of things, but I never was  
18 told I can't even answer your question, but if we did  
19 have it, no.

20 REPRESENTATIVE LANG: So this is a first?

21 MR. STEWART: That's a first.

22 REPRESENTATIVE LANG: For all of us, sir.

23 Thank you very much, Madam Chairman.

24 CHAIRWOMAN CURRIE: Thank you.

1           Now, it looks to me as if we've pretty much come  
2 to the end of today's hearing. I know we still want  
3 to hear from Mr. Genson if he has anything to add.

4           MR. ADAM: Maybe just ask a couple of  
5 questions of the --

6           CHAIRWOMAN CURRIE: You may ask a couple of  
7 questions, and then we'll talk about the schedule.

8           MR. ADAM: Thank you, Madam Chair.

9           One of the questions that I had -- I would like to  
10 ask is you had made reference that the Governor in  
11 fighting these FOIA requests asked whatever magistrate  
12 it was before that there would be a -- that Lisa  
13 Madigan, the Attorney General, would not represent as  
14 a conflict.

15          Can you tell us -- how did the judge rule in those  
16 cases? Was there a conflict? And was Lisa Madigan  
17 allowed to come in or was she kept out?

18          MR. ORFANEDES: Well, in our case in Cook  
19 County, it was a judge. It was not a magistrate. The  
20 Attorney General's office had actually contacted us  
21 with some of the preliminaries to the litigation and  
22 requesting extensions of time. The Governor, through  
23 his in-house legal counsel, came in, requested a  
24 hearing, moved to strike the Governor's appearance --

1 or I'm sorry -- the Attorney General's appearance.

2 I think in our case, after about eight months, the  
3 Attorney General threw in the towel. We objected  
4 because we thought as the chief constitutional officer  
5 for the state it was her duty to continue to appear,  
6 but she agreed that she would withdraw and the Bell,  
7 Boyd and Lloyd folks would come in.

8 MR. ADAM: So is it fair to say, then, that  
9 there's been no finding that this is an inappropriate  
10 action by -- on the office by the Governor's office;  
11 that Lisa Madigan actually ended up agreeing and  
12 withdrawing on this case.

13 MR. ORFANEDES: Oh, no. I don't think she  
14 agreed at all and if I -- I think it was starting to  
15 delay the progress of the litigation such that we  
16 weren't going to get our requests at all. I mean, one  
17 point the Bell, Boyd and Lloyd lawyers are making  
18 arguments to the effect that the Office of the  
19 Governor doesn't even exist such that we named the  
20 wrong defendant, and we really intended to name the  
21 Governor but we didn't so we need to amend our  
22 complaint so that they can come in.

23 It was just a bizarre set of circumstances that so  
24 frustrated the Attorney General and really frustrated

1 our ability to get these documents that the Attorney  
2 General decided to step back.

3 MR. ADAM: But as the committee sits here  
4 now, the Office of the Attorney General does not  
5 represent the Governor on any of these cases that you  
6 came in here to testify to today?

7 MR. CRAVEN: In either of the cases relating  
8 to the subpoenas, that is correct.

9 MR. ADAM: Last question.

10 MR. ORFANEDES: In my other case against the  
11 Office of the Governor here in Sangamon County, the  
12 Governor hasn't appeared in any way.

13 MR. ADAM: Last question. Oh, I'm sorry.  
14 Last question, good counsel, and that is -- and I  
15 believe this is for Mr. Stewart.

16 Mr. Stewart, you have told us and actually cited  
17 in what you have presented here today that the Fourth  
18 District Appellate Court has upheld the previous  
19 ruling; is that correct?

20 MR. STEWART: Yes.

21 MR. ADAM: And that was on November 19 of  
22 2008?

23 MR. STEWART: Yes.

24 MR. STEWART: And which means that the

1 Governor, should he be correct in his assertions --  
2 and the Office of the Governor -- still has a right to  
3 a PLA, which is a petition for leave to appeal, to the  
4 Supreme Court for the Supreme Court to make this  
5 determination; is that right?

6 MR. STEWART: Any appellant can, yes.

7 MR. ADAM: And so he has not actually  
8 violated any of the rights regarding the FOIA requests  
9 until the Supreme Court of Illinois, the highest court  
10 in the state, has said he must do something one or the  
11 other, and then he will be in violation; is that  
12 right? He is still within his rights to challenge a  
13 request.

14 MR. STEWART: I don't know what the court's  
15 going to do. I don't believe they've agreed to hear  
16 it. So the last court decision on record is the  
17 Better Government Association is correct, the Governor  
18 is wrong, and he has asked the court to stay  
19 production pending -- we don't know. They haven't  
20 decided what they're going to do yet.

21 MR. ADAM: He is still within his right.

22 MR. STEWART: He has a right to -- he -- I  
23 don't know what he's going to do, so I can't tell you.  
24 He has the option to appeal -- to at least petition to

1 appeal if he'd like to.

2 MR. ADAM: That time period has not run.

3 MR. STEWART: No.

4 MR. ADAM: Thank you.

5 CHAIRWOMAN CURRIE: Representative Lang for  
6 one final question.

7 REPRESENTATIVE LANG: Thanks. Real quick,  
8 Mr. Orfanedes. You indicated that some requests have  
9 not been responded to at all. Is this something that  
10 happens to you in other states?

11 MR. ORFANEDES: Yes. Unfortunately, it does.  
12 I have seen it more in Illinois than -- yes,  
13 unfortunately, that's the case. I've seen it more in  
14 Illinois and especially with requests to the Office of  
15 the Governor.

16 REPRESENTATIVE LANG: All right. Thank you.

17 CHAIRWOMAN CURRIE: Okay. Then let's go to  
18 the schedule. We are not going to meet tomorrow. We  
19 have done the things we intended to do this week. We  
20 are still in -- so we still have the other business to  
21 deal with questions about whether we might hear from  
22 witnesses involved in the criminal complaint and so  
23 forth and so on.

24 We will reconvene in this room on Monday, December

1 22nd, at the hour of noon, and we'll be in touch. Our  
2 lawyers will be in touch with you lawyers to talk  
3 about the agenda, and if we can have everybody's phone  
4 number, your cell phones and so forth.

5 MR. GENSON: We would be in contact probably  
6 Friday so we could tell you what we plan to do and  
7 what -- that would be appropriate.

8 CHAIRWOMAN CURRIE. Yes. Yeah. But it might  
9 be helpful for us for the staff to have everybody's  
10 home numbers and cell phone numbers just in case there  
11 are any changes.

12 MR. GENSON: Thank you very much.

13 CHAIRWOMAN CURRIE: So look forward to a  
14 happy pre-Christmas weekend, and we look forward to  
15 seeing you all in this room on Monday at noon.

16 Representative Durkin moves that the committee  
17 stand -- what? Representative Eddy.

18 REPRESENTATIVE EDDY: Madam Chair, I just --  
19 for those of us traveling, would we plan on more than  
20 one day coming Monday just as a precaution.

21 CHAIRWOMAN CURRIE: I would be prepared for  
22 two days. As you know, we're off Christmas Eve and  
23 Christmas Day.

24 REPRESENTATIVE EDDY: Okay. Thank you.

1                   CHAIRWOMAN CURRIE: And I just can't answer  
2 the -- I'd answer your question if I could, but I  
3 don't know the answer. So I'd say bring an extra set  
4 of clothes.

5                   REPRESENTATIVE LANG: For two days. Thank  
6 you very much.

7                   CHAIRWOMAN CURRIE: Representative Durkin  
8 moves the committee stand adjourned. All in favor say  
9 aye. Opposed no. The ayes have it, and the Special  
10 Investigate Committee stands adjourned until Monday at  
11 the hour of noon.

12                                   (Hearing adjourned.)  
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1 STATE OF ILLINOIS )  
2 COUNTY OF SANGAMON ) SS

3 CERTIFICATE

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22 at Springfield, Illinois.  
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24