

June 19, 2009

Honorable Michael J. Madigan
Speaker House of Representatives
Room 300
State House
Springfield, IL 62706

Re: *Senator Roland Burris*

Dear Speaker Madigan:

Pursuant to our telephone conversation and your letter dated February 17, 2009 this office has concluded the review of Senator Burris' testimony before the House Special Investigative Committee. Our office interviewed numerous individuals and reviewed transcripts and affidavits. For the reasons set forth below there is insufficient evidence to charge Senator Burris with the offense of perjury.

Before a prosecutor charges an individual with a criminal offense, he must review all known evidence both inculpatory and exculpatory and determine whether or not based upon the known admissible evidence there is a reasonable likelihood of a success at trial. Thus, any decision to charge must be based solely on the evidence.

In Illinois, the offense of Perjury (720 ILCS 5/32-2) is committed when an individual under oath makes a false statement and at the time of the statement he believes it not to be true. *Illinois Pattern Jury Instruction 22.01*. Moreover, an individual does not commit perjury if he corrects the known falsity before the adjournment of the tribunal. This provision accomplishes the legislative intent of the law of perjury which is to get complete and truthful information before the tribunal.

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Beginning with the 2008 Democratic National Convention and through the election of President Barack Obama, Roland Burris told anyone he thought had the attention of Governor Rod Blagojevich that he was interested in being appointed to President Obama's vacant senate seat. These conversations occurred at fundraisers where Senator Burris would see individuals he thought were speaking to the governor, and in telephone conversations. The one-on-one conversations were brief and were characterized by the individuals he spoke to as not memorable, and "in passing." In the November 13, 2008 phone conversation with Robert Blagojevich, Mr. Blagojevich called Senator Burris and asked him if he would raise money for Governor Rod Blagojevich. During the call Burris asked how the appointment process was going and asked Robert Blagojevich to remind his brother he (Burris) was interested in the senate appointment. It is clear from the conversation that Robert Blagojevich's call was to raise money for Governor Blagojevich and not to discuss the vacant senate seat.

In a telephone conversation in late November 2008 with John Harris Chief of Staff to Governor Rod Blagojevich, Senator Burris inquired about a job for a family member. He then asked Harris to tell the Governor he was interested in being appointed to the senate seat.

These conversations were not substantive discussions concerning how to get the appointment, but rather Burris imploring the listener to tell Governor Blagojevich he was interested in the appointment.

When Representative Durkin asked Senator Burris if he spoke to members of the Governor's staff or family members regarding his interest in the senate seat, Burris responded, "I talked to some friends about my desire to be appointed, yes." *Transcript House Impeachment Committee January 8, 2009 page 941 lines 9-20*. This is a truthful answer. While Senator Burris failed to mention the phone conversations with Rob Blagojevich or John Harris, he did say he spoke to friends about his interest. The Illinois Supreme Court has consistently held the burden is on the questioner to pin the witness down as to the specific object of the questioner's inquiry. *People v. Robert Willis*, 71 Ill 2nd 138 (1978). Next, Senator Burris was asked:

REPRESENTATIVE DURKIN: I guess the point is I was trying to ask, did you speak to anybody who was on the Governor's staff prior to the Governor's arrest or anybody, any of those individuals or anybody who is closely related to the Governor.

MR. BURRIS: I recall having a conversation meeting with Lon Monk about my Partner and I trying to get continued business . . . *Transcript January 8, 2009 Page 941-942*

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Senator Burriss answered the question by recalling a conversation with Lon Monk. The fact he did not mention others does not make the statement perjurious. It makes it incomplete. Again, the burden is on the questioner to ask specific questions. Senator Burriss truthfully stated he had a conversation with Lon Monk.

The same analysis applies to Senator Burriss's responses to Representative Tracy. Senator Burriss is asked to whom he expressed senate seat interest and the time frame September of 2008 or as early as July of 2008. *Transcript 998 Lines 13-17*. Burriss responded that one person he spoke with was his law partner. Chairwoman Currie stated, "Is that when you talked to Lon Monk?" Then Representative Tracy asked, "Was it Lon Monk was that the extent of it Lon Monk?" *Transcript pages 998-999*. Senator Burriss reiterated his conversation where Lon Monk told him he was qualified to be in the U.S. Senate. *Transcript page 999*. Senator Burriss was asked, "So you don't recall that there was anybody else besides Lon Monk that you expressed an interest to at that point?" He responded, "No, I can't recall because people were coming to me saying Roland you should pursue the appointment . . ." *Id.* Moreover, Senator Burriss volunteered to give names of individuals the committee could contact regarding his interest in the senate seat. See *Transcript page 1000, Line 17-21*.

Burriss' responses cannot support a perjury charge. He said he could not recall anyone specific because there were many individuals urging him to run. The answer was incomplete, but that is not perjury given the form of the questions.

This is not a criticism of the questioners. The committee was finding facts concerning the possible impeachment of Governor Blagojevich. Asking broad questions allowed a great deal of information to be discussed without the need to constantly ask follow-up questions. However, such questioning makes difficult the prosecution the crime of perjury which is a knowingly untruthful answer to a precise question. Case law clearly mandates very direct specific questions be asked and knowing false answers be given to support perjury. Answers subject to different interpretations or incomplete are insufficient to support perjury.

The two affidavits signed by Senator Burriss dated January 5, 2009 and February 4, 2009 are not inconsistent, thus do not support a perjury charge. The January 5, 2009 affidavit only describes the actual appointment process of Governor Blagojevich appointing Roland Burriss to the vacant senate seat. It is insufficient to support perjury charges based upon Burriss' testimony before the House Impeachment Committee.

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The February 4, 2009 affidavit was requested by the Committee and filed to supplement Burris' testimony. This affidavit does not support perjury charges based upon Senator Burris' answers to the House Committee. This affidavit supplements and expands answers while the tribunal was still convened. It should be noted the affidavit was filed with the Special Committee long before Senator Burris knew his conversation with Robert Blagojevich was captured on tape. This fact supports Senator Burris' claim the affidavit was meant to supplement the record while the tribunal was in session.

In sum, based upon our review of the facts and the applicable law, there is insufficient evidence to charge Senator Roland Burris with perjury.

Sincerely,

JOHN SCHMIDT

cc: Honorable Tom Cross
Minority Leader Illinois House of Representatives