



# Combating Corruption

Prosecution of Domestic Bribery Cases  
in the United States

Class 4

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# Former Illinois Governor Rod Blagojevich



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# What a Difference a Week Makes!

- On 12 February we reviewed the case of Rod Blagojevich, a former Illinois governor who in 2011 was convicted in a corruption scandal involving an attempt to “sell” the U.S. Senate seat vacated by Barack Obama when he was elected President of the United States.
- On 18 February 2020, President Donald J. Trump commuted Blagojevich’s 14-year prison sentence to the 8 years he had already served.
- Blagojevich was released from prison within hours of the announcement.
- “Commutation” of a sentence is different from a presidential pardon.
- A commutation reduces a sentence, either totally or partially, but does not change the status of the person as a convicted criminal, imply innocence or restore rights forfeited by convicted criminals, e.g., the right to vote, run for public office, etc.
- Despite the commutation of Blagojevich’s sentence, it is instructive for us to look at the grounds on which Blagojevich was convicted.



# Recap of Blagojevich's Actions

## Attempted Sale of U.S. Senate Seat



Blagojevich image by WBEG, licensed under Creative Commons License CC BY-NC 2.0



Obama image by dc blog, licensed under Creative Commons License CC BY-ND 2.0

- Was under investigation for corruption.
- 2008 telephone wiretap caught Blagojevich discussing filling President-Elect Barack Obama's soon-to-be vacant Senate seat in exchange for something of value.
  - "I'm going to keep this Senate option for me a real possibility, you know, and therefore I can drive a hard bargain. You hear what I'm saying. And if I don't get what I want and I'm not satisfied with it, then I'll just take the Senate seat myself."
  - "A fucking valuable thing; you just don't give it away for nothing."
  - "I've got this thing and it's f--king golden, and, uh, uh, I'm just not giving it up for f--kin' nothing. I'm not gonna do it. And, and I can always use it. I can parachute me there."

## One of Blagojevich's Proposals

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- Blagojevich will give the vacant Senate seat to Valerie Jarrett, President-elect Barack Obama's senior advisor.
- Proposal for Obama to appoint Blagojevich to the Cabinet position of Secretary of the U.S. Department of Health and Human Services.



Valerie Jarrett  
Photo by IREX  
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Rod Blagojevich  
Photo by Rachel Maddow  
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It didn't happen.




Rod Blagojevich  
Photo by Rachel Maddow  
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And neither did his  
other proposals to  
sell the Senate seat.

Rod Blagojevich  
Photo by Rachel Maddow  
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## Blagojevich Didn't Succeed in Leveraging the Senate Appointment

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- Eventually appointed Roland Burris to fill Barack Obama's vacant U.S. Senate seat.
- The appointment was contested by the Illinois Secretary of State and was not settled until the Illinois Supreme Court confirmed its validity on 9 January 2009.
- Burris did not run for reelection and retired at the end of the special replacement term on 29 November 2010.





## A Separate Fundraising “Shakedown”

- Blagojevich linked fundraising to state action:
  - Children’s Memorial Hospital had lobbied Blagojevich to raise state reimbursement rates for certain doctors.
  - Blagojevich had authority as governor to approve the hospital’s requested reimbursement increase.
  - Blagojevich held up a \$8 million funding increase in an effort to get the CEO of the hospital to make a \$25,000 campaign contribution.
  - The CEO made contributions, but the funding increase had not been approved when Blagojevich was arrested.



# Another Fundraising Scheme

Illinois legislature approved & sent to Gov. Blagojevich a bill that would provide up to \$35 million/yr. in subsidies for Illinois horse racing.

Blagojevich plotted to use his ability to sign or veto the law to get a \$100,000 campaign contribution from Maywood Park horse-racing track owner John Johnston.

At the time Blagojevich was arrested, he had not signed the bill.





# IMPORTANT

The fact that a public official fails in his/her effort to obtain a bribe is generally not a defense in a criminal prosecution.

So federal prosecutors pursued Blagojevich based on his failed efforts to sell the Senate seat and the separate scheme to extort campaign funds.

# Remember that the USA is a Federal Republic

- Federal legislature (the U.S. Congress).
  - Passes laws for the entire nation but has limited competence.
  - May only legislate in certain fields (e.g., federal taxation, interstate & foreign commerce, currency, maritime law, copyright, patent, foreign affairs, etc.).
- State legislatures (each of the 50 states & District of Columbia has a local legislature).
  - Pass laws of general application in the state.
  - May legislate in same fields as U.S. Congress unless U.S. Constitution gives exclusive competence to federal government or federal legislation “preempts” the subject matter area.



# Illinois State Law on Bribery

Sec. 33-1. Bribery. A person commits bribery when:

(a) With intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he or she promises or tenders to that person any property or personal advantage which he or she is not authorized by law to accept; or

(b) With intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he or she promises or tenders to one whom he or she believes to be a public officer, public employee, juror or witness, any property or personal advantage which a public officer, public employee, juror or witness would not be authorized by law to accept; or

(c) With intent to cause any person to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he or she promises or tenders to that person any property or personal advantage which he or she is not authorized by law to accept; or

(d) He or she receives, retains or agrees to accept any property or personal advantage which he or she is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him or her to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness; or

(e) He or she solicits, receives, retains, or agrees to accept any property or personal advantage pursuant to an understanding that he or she shall improperly influence or attempt to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness.

As used in this Section, "tenders" means any delivery or proffer made with the requisite intent.

Sentence. Bribery is a Class 2 felony.

720 ILCS 5/33-1. See also 5 ILCS 283, the Illinois Public Corruption Profit Forfeiture Act.



# Federal Law on Bribery of Federal Officials

18 U.S. Code § 201. Bribery of public officials and witnesses.

(Partial Quote below)

(a) For the purpose of this section—

- (1) the term “public official” means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;
- (2) the term “person who has been selected to be a public official” means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and
- (3) the term “official act” means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit.







Illinois State Capitol (state government)



US Capitol (federal government)

## Blagojevich was a State, not Federal, Official

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- But was prosecuted in U.S. federal court.
- U.S. federal courts do not charge violations of state criminal laws.
- So the Illinois statutes were not part of the federal prosecution.
- Moreover, because Blagojevich was a state official, not a federal one, the federal statute prohibiting bribery of public officials did not apply.
- There's no statute on attempting to sell Senate seats.
- For these reasons, the federal prosecutors in Blagojevich's case charged him with a variety of both "multi-purpose" crimes and special criminal statutes.

NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
 ) No. 08 CR 888  
 v. ) Violations: Title 18, Sections  
 ) 1001(a)(2), 1343, 1346, 1349, 1951(a),  
 ROD BLAGOJEVICH, ) and 1962(a)  
 CHRISTOPHER KELLY, )  
 ALONZO MONK, ) Judge James B. Zagel  
 WILLIAM F. CELLINI, SR., )  
 JOHN HARRIS, and ) Superseding Indictment  
 ROBERT BLAGOJEVICH )

COUNT ONE

The SPECIAL FEBRUARY 2008-2 GRAND JURY charges:

1. At times material to this Superseding Indictment:

Relevant Entities and Individuals

a. Defendant ROD BLAGOJEVICH was the Governor of the State of Illinois. He was elected Governor in 2002 and was reelected Governor in 2006. BLAGOJEVICH previously served as a Member of the United States House of Representatives from the Fifth Congressional District in Illinois.

b. Friends of Blagoievich was established in or about June 2000

- The federal indictment against Rod Blagojevich.
- **Indictment:** a formal written statement framed by a prosecuting authority and found by a jury (such as a grand jury) charging a person with a criminal offense.

Adapted from Merriam Webster Dictionary.

U.S.  
Statutes  
Blagojevich  
was alleged  
to have  
violated



Below: Lt. Gen. Michael Flynn, former National Security Advisor to President Donald Trump. Flynn was convicted of making false statements in investigation into alleged Russian interference in 2016 elections.



## 18 USC § 1001(a)(2) Making false statements

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- Sometimes people believe that if statements to investigators aren't under oath, there's no penalty for lying. Guess again.
- Prohibits knowingly and willfully making false or fraudulent statements to, or concealing information from, a federal agent or agency in "any matter within the jurisdiction" of the federal government of the United States. The statement must be material.
- Includes making false statements to federal investigators (e.g., FBI, Securities & Exchange Commission, etc.).
- A federal appeals court has written that, "Section 1001 is a catch-all, reaching those false representations that might substantially impair the basic functions entrusted by law to [the particular] agency, but which are not prohibited by other statutes." *United States v. Kappes*, 936 F.2d 227, 231 (6th Cir. 1991).
- Proves the axiom that often "it's not the crime; it's the cover-up" that secures a conviction.

## U.S. Court of Appeals for the Seventh Circuit on False Statements Count

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*Agents asked whether Blagojevich took contributions into account when approving state contracts or making appointments. He replied "that he does not track who contributes to him and does not want to know and does not keep track of how much they contribute to him." So an agent testified, relying on his notes. At Blagojevich's insistence, the interview was not recorded, but a jury could find the agent's testimony accurate. The jury also concluded that this answer was knowingly false, because in 2005 and earlier Blagojevich regularly found out who contributed how much.*



## Elements of Wire Fraud

(1) causing the use of the wire communications, including email or telephone;

(2) in conjunction with a scheme to intentionally defraud another of money or property; and

(3) by means of a material deception.

# 18 U.S.C. § 1343 Fraud by wire, radio, or television





# 18 USC § 1346

## Honest services fraud

“For the purposes of this chapter, the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services.”

This statute has been narrowly interpreted by US Supreme Court to apply only to "fraudulent schemes to deprive another of honest services through bribes or kickbacks supplied by a third party who ha[s] not been deceived." *Skilling v. United States*, 561 U.S. 358 (2010).





# 18 USC § 1349

## Attempt and conspiracy

“Any person who ... conspires to commit any offense under this chapter [relating to mail fraud, wire fraud, etc.] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of ... the conspiracy.”



18 USC § 1951(a)  
Attempted extortion, and  
conspiracy to commit  
extortion

Extortion is the obtaining of property from another, with his/her consent, induced by the wrongful use of actual or threatened force, violence, fear, or under color of official right.

In this case, the extortion charges against Blagojevich were based on alleged extortion of political campaign contributions.



*Extortion*

## 18 USC § 1962(d) Racketeer Influenced and Corrupt Organizations (“RICO”)

- RICO (Racketeer Influenced and Corrupt Organizations Act) outlaws employing the “patterned” commission of “predicate offenses” to conduct the affairs of an enterprise that impacts commerce.
- The “predicate acts” can (and often do) consist of a pattern of wire or mail fraud.
- “RICO is designed to address the infiltration of legitimate enterprises by organized crime and other illegal ventures.” – U.S. Sentencing Commission.
- However, it is often used in innovative ways, outside the context of traditional organized criminal enterprises. See, e.g., [The U.S. Hits Huawei with Racketeering Charge, EET Asia \(17 Feb. 2020\)](#).



# Conviction and Sentencing of Rod Blagojevich

- The first trial ended in a jury deadlock. The court ordered a second trial.
- June 27, 2011. A jury found Blagojevich guilty of 17 charges:
  - False statements to FBI about campaign contributions.
  - Wire fraud, attempted extortion, and conspiracy to solicit bribes in connection with attempt to sell Senate seat.
- Sentenced to 14 years' imprisonment.



## Reversal of Convictions on Some Counts

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July 21, 2015, U.S. Court of Appeals for the Seventh Circuit overturned 4 of Blagojevich's convictions due to ambiguous jury instructions.

*A political logroll ... is the swap of one official act for another. Representative A agrees with Representative B to vote for milk price supports, if B agrees to vote for tighter controls on air pollution. A President appoints C as an ambassador, which Senator D asked the President to do, in exchange for D's promise to vote to confirm E as a member of the National Labor Relations Board. Governance would hardly be possible without these accommodations, which allow each public official to achieve more of his principal objective while surrendering something about which he cares less, but the other politician cares more strongly. A proposal to appoint a particular person to one office (say, the Cabinet) in exchange for someone else's promise to appoint a different person to a different office (say, the Senate), is a common exercise in logrolling. We asked the prosecutor at oral argument if, before this case, logrolling had been the basis of a criminal conviction in the history of the United States. Counsel was unaware of any earlier conviction for an exchange of political favors. Our own research did not turn one up. It would be more than a little surprising to Members of Congress if the judiciary found in the Hobbs Act, or the mail fraud statute, a rule making everyday politics criminal.*

## Resentencing after Appeal

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- Despite the reversal of some of Blagojevich's convictions, when the case was returned to the trial court for resentencing, the court re-imposed the original 14-year sentence.





# Some Lessons from the Blagojevich Conviction

- Wiretaps can sometimes produce devastating evidence of defendant's corrupt intent.
- But even when the public official or party offering a bribe is not as blunt as Blagojevich, simply speaking in code can be a “red flag.”



## Some Lessons from the Blagojevich Conviction

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- Often it is the simple charges (false statements, wire fraud, etc.)—rather than specific corruption charges—that get a conviction.

A chalkboard with a dark green background. The words "Keep it Simple" are written in a white, hand-drawn, chalk-like font. The text is centered on the board.

Keep it  
Simple



# Reading for Next Week

Chapter 7 of Ray Fisman & Miriam A. Golden,  
CORRUPTION: WHAT EVERYONE NEEDS TO KNOW.

OR

Anti-corruption strategies for authoritarian states,  
<https://www.u4.no/publications/anti-corruption-strategies-for-authoritarian-states>  
Susan Rose-Ackerman, Political Corruption and  
Democracy, 14 CONN. J. INT. L. 363 (1999)  
([https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1580&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1580&context=fss_papers))