

# The BLACK Commentator

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[Contents of Issue Menu](#)

[Click Here](#)

[Home](#)

**Fitzgerald and Blagojevich**  
**National Affairs**  
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I have been "off the air" for some time now, basically because the last couple of months have been perhaps the most intense work-siege I have experienced in the 45 years since graduation from law school. I plan to write at least one other commentary before New Year's - likely a sort of semi-all-encompassing one covering things that have occurred lately, and briefly explaining some of the matters that have occupied so much of my time. But in the meanwhile I cannot resist dashing off a short piece on the Blagojevich matter. For I wish to present a possibility that, although it will strike lots of people as wrong or even crazy, may nonetheless ultimately prove accurate. If it does, you can say you read it here first.

Let me summarize the possible view being proffered this way: With regard to the claims of crime that Patrick Fitzgerald spoke of in his press conference, and only with regard to those matters, don't be utterly shocked if ultimately Blagojevich is acquitted on those particular claims. Maybe Fitzgerald can make a conspiracy to commit those crimes stick, but, on the other hand, maybe even conspiracy charges will lose.

Two things should be said about all this preliminarily. One is that I am sour on Fitzgerald. The cause of this disgruntlement is the Libby case. There Fitzgerald came on very powerfully at his initial press conference, where he made it appear that he was after really big game. But he was the lion that roared but then belched forth only a mouse, not going after or convicting Libby for what was done to Plame and not

touching a hair of the head of the arch-criminals Cheney and Rove - not to mention Bush. So when Fitzgerald came on so strong about Blagojevich, this writer's reaction was that it was wise to be skeptical unless Fitzgerald showed a lot more than he apparently could.

The other preliminary point is that the possibility being propounded here should not be misunderstood as a defense of or a liking for Blagojevich. He seems a very distasteful crook; the subject of political crookedness will reappear below.

What *did* Fitzgerald show at his press conference? He seems to have shown two things. He showed conversations, basically among Blagojevich and advisors as I understand it, about economic and political benefits that Blagojevich and his wife might obtain from a Senate appointment. (There *may* have been conversations with potential buyers of the Senate seat or their representatives, but mainly the conversations discussed by Fitzgerald were among Blagojevich people as I understand it. (Am I wrong about this?))

Now, there are millions of us - probably scores of millions of us, by now maybe close to hundreds of millions of us - who deplore and excoriate this kind of selling of political office. But does this constitute crime if it hasn't reached the stage of offers given or received? e.g., if it hasn't reached the stage where Blagojevich or an adviser says to or makes it known to, e.g., Jesse Jackson or one of his advisors that "We will appoint you [Jackson] to the Senate in return for one million dollars"? I really don't know the answer to this question. While I personally think matters should not have to come to this stage before a crime is committed, it is my bet that, except *possibly* for a conspiracy charge, the semi-intellectually-corrupt federal courts look at it differently than I do.

Involved here is a question which I have so far not seen mentioned or discussed *anywhere*, with the exception of one article in the *New York Times*. (Have I missed such discussions?) Isn't it true that politicians at *every* level - local, state, national and, we have been finding out, international - trade office for money every day, literally *every* day? For scores of years it has been a standing farce that ambassadorships are in effect sold to the rich for campaign contributions. Membership on state boards or commissions is traded for campaign contributions. It has for many decades been a standing practice for politicians to cast their votes in Congress in favor of positions desired by industries that give them money for their campaigns. (Elizabeth Warren tells a remarkable story about Saint Hillary and the banking industry in this regard.) Some Senators have been bought, paid for and owned by particular companies or industries. Wasn't a guy named Nelson Aldrich known as the Senator from the New York Central 110 years ago? Was Robert Kerr, as a Senator, *anti* the oil industry in which he was a very wealthy man? Perhaps you've heard of Kerr Magee - wasn't that his company if I'm not mistaken? Why *did* Billy Tauzin land a multimillion dollar per year job when he left Congress? Why do lobbyists raise millions for politicians? And has everyone forgotten about the Lincoln Bedroom business in the Clinton Administration? What was the Lincoln Bedroom business all about, if not all-important access and proximity in return for campaign money?

From the time when railroads used to give stock to federal and state legislators in return for favorable laws until today, giving money and economic position in return for

political favors from politicians has been *the* way of life in American politics, the crooked but permissible way of life. In the last few decades, the Supreme Court has generally called it free speech.

As near as I can see, all or nearly all that Fitzgerald seems to have given us to date are quotations and paraphrases of Blagojevich and company planning to do what all or nearly all American politicians - crooks, the lot of 'em - have been doing for scores of years. They've caught Blagojevich discussing what should be received in return for a political favor, here the favor of appointment to the Senate. So, if this case goes to a trial, don't be surprised to see a parade of defense witnesses, who are highly knowledgeable about history and current practice, who will say that what Blagojevich was caught doing is simply typical of how politics has been practiced in this country since at least the Gilded Age, if not the Age of Jackson. A trial, if there is one, thus has the potential to blow up the American political system. It is impossible to see how the pols can let a trial take place. It is equally impossible to see how they can stop one unless Blagojevich decides to cop a plea in return for a *very* light sentence and avoidance of *any* risk of a severe sentence. (And in return for a large under the table payment from pols? Or is this joke *only* a joke?)

Given that the crookedness Blagojevich is accused of has been an everyday matter in American politics for scores upon scores of years, why did Fitzgerald bring a case? Well, there are lots of possibilities, including one I shall ignore but not everyone has ignored: self aggrandizement (once again, as in his initial Libby press conference). Another is failure by Fitzgerald, his staff and the FBI to appreciate or care about the fact that our political system works this way. A third is something of the opposite of the second: knowledge that the system does work this way and a hope that they can strike a blow that could lead to change (which has not yet occurred despite many efforts to clean up the system over the decades).

But it is the fourth and fifth possible reasons that strike me as the most plausible, even if the fifth will strike others as bizarre.

The fourth reason is a desire that Obama's seat not be, and a fear that it imminently might be, sold to the highest bidder unless Fitzgerald acted immediately. Fitzgerald and company did not want to wait until the seat was sold, when they would have evidence of the completed purchase, and evidence of the participation of the other side to the transaction. Such evidence would have made the case more likely to succeed in court, but waiting for the sale was fraught with difficulties, including that there would be *very* strident accusations that Fitzgerald was acting because of some sort of antipathy to the particular buyer.

The fifth reason, the one that has struck some of my colleagues as bizarre, perhaps because they have never lived in Chicago, where I grew up, is this: I suggest that Fitzgerald and the FBI agents were really outraged by the language they heard (just as a lot of people, even Republicans, were outraged by the language they heard Nixon use on the Watergate tapes). Bleep this and bleep that obviously means "fuck this" and "fuck that." Around the country, most people don't punctuate every other sentence with fuck this, fuck that, fuck him, he's a fuckin' asshole, etc., etc. Nor do they like it when they hear people talk like that. But in Chicago that is how a lot of people regularly talk. (Not everyone in Chicago speaks like Obama, you know.) Many of us who grew up

there learned to talk like that, and, when we've lived elsewhere, have learned that people elsewhere dislike and won't listen to the views (no matter how intelligent) of someone who speaks in a way that is par for the course in Chicago. (You may remember that people used to react badly to a southern accent (which they considered a sign of stupidity) or to a Brooklyn accent or speech. The same is true of the Chicago style of speaking that I am discussing here.)

That this is one typical Chicago style of speech is only the more clear because it is well recognized that, as has sometimes been discussed here, some very famous Chicago writers combine very bad language, language from the streets of Chicago, with their otherwise high falutin' writing. Think Mamet. Think Terkel. Think Bellow.

One might say, "Well, Fitzgerald grew up as a poor kid in New York City. The language there is pretty bad, so he should be used to it." Here is one writer who begs to differ, and I know others who differ also. Though rough, the typical language of New York is *not* as rough as the language of Chicago. As someone knowledgeable about the speech pattern in both cities recently said to me, "Chicago is cruder." Yes it is. *Much* cruder as a general matter, and the crudeness often extends to the highly educated. It is one Chicago style. (It would be interesting, incidentally, to see a comparison by professional linguists of the styles of speech in Chicago and New York.)

(I note that Fitzgerald has lived in Chicago for a few years, so perhaps one could argue he should be prepared for or inured to the Chicago style. But on the other hand, there are those who think he is prissy and straight arrowish, and could never become used to such talk.)

So I think that even the ex New Yorker, Fitzgerald, was not prepared for the kind of language that was heard on the tapes (just as people weren't prepared for Nixon on tape). And I cannot help thinking that, in addition to not wanting the Senate seat to be sold before they acted, the Federal officials acted in major part because they were taken aback by the kind of language used.

You know, it might behoove Blagojevich not only to put on the stand a parade of witnesses who are knowledgeable about what has gone on in politics for scores of years in this country, but also linguistic experts who are familiar with and knowledgeable about the style of Chicago speech typified in the tapes of Blagojevich and, to a lesser extent, present in the works of some of the great Chicago writers. And maybe Blagojevich's counsel should seek to cross examine Fitzgerald himself and some of his staff about their reactions to Blagojevich's style of speech and what effect this had on them. But wouldn't it be a hoot if a Chicago federal trial judge were to deny efforts by Blagojevich to introduce evidence of the "widespreadness" in Chicago of Blagojevich's style of speech, and to deny examination of Fitzgerald and company by Blagojevich's lawyers, with the ruling of denial being encapsulated in a two word Chicagoesque ruling, "Fuck that." What, you say that can't happen? Well, I can dream, can't I?

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[Contents of Issue Menu](#)

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