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Patrick Fitzgerald†

Being a US Attorney is the best job ever. I get to take credit for everyone else's work. I have 300 people, 170 attorneys, out there working their tails off over the weekend and when I am taking a shower Monday morning, I hear a reporter on the radio say, "The US Attorney did this." And sometimes, I think to myself, "I did?"

But any of you who have attended today’s Symposium, or have seen or heard our Assistant US Attorneys, know that they actually do the work and accomplish things. I just get to stand up and announce them. This reminds me of my job as a janitor and specifically, a boss I worked for at that job. The head janitor had

† Mr. Fitzgerald began serving as US Attorney for the Northern District of Illinois on September 1, 2001, and held the post until June 30, 2012. Mr. Fitzgerald’s eleven-year tenure made him the longest-serving US Attorney ever in Chicago. He served two terms on the Attorney General’s Advisory Committee and was named a Fellow of the American College of Trial Lawyers in 2010. He has received numerous other awards and honors, including the Harvard Law School’s Coleman, Cox, Richardson Award for Distinguished Public Service in 2007, The National Law Journal’s Lawyer of the Year in 2007, the Attorney General’s Award for Distinguished Service in 2002, the Attorney General’s Award for Exceptional Service in 1996, and the Stimson Medal from the Association of the Bar of the City of New York in 1997. Mr. Fitzgerald graduated from Amherst College, Phi Beta Kappa, with a bachelor’s degree in economics and mathematics in 1982, and from Harvard Law School in 1985.
a sign above his desk that read: “Work: I could sit and watch it all day.”

The other thing I will tell you about my office is that it is a very collegial place. I have a torn calf muscle right now, and as I left the office this morning, getting on the elevator, a fellow in the office who’s been there for thirty-seven years asked, “Where are you going?” I told him I was going to give the keynote speech at The University of Chicago Law School Legal Forum Symposium and he smiled and looked at me and said, “Break a leg.” That demonstrates to you the culture of the office.

Now, let me venture forth and provide some of my thoughts about the fight against public corruption. When I thought about speaking here, I wondered, “Why even bother talking about why fighting public corruption is good, because who in their right mind would say that public corruption is not a bad thing?” But the more I thought about it, I realized that we should actually talk about what the elements of public corruption are and why fighting corruption is important, in terms of how serious a problem it is, because I actually do think that people underestimate the harm caused by public corruption. So I will attempt to bear that out by talking about, at a high level, what cases have been going on at the office over the last ten years.

In particular, one of the things that frustrates me is that sometimes I will hear remarks that abet and enable public corruption. For example, I might hear people say about individuals who were convicted of public corruption, “Well gee, he sort of lost his way,” or “it [corruption] just sort of happened.” This kind of talk almost makes it seem like the corrupt individual caught a flu bug—somehow the individual is in the middle of an extortion conspiracy or ends up with a bribe in his or her pocket, and the individual just says, “Well, the [anti-corruption] laws are not that clear”—as if had someone just put a yellow stripe down the road, the individual would have stayed on the right side of the road. Moreover, I think that one of the things that most enables public corruption is silence. Sometimes corruption occurs when people do not speak up about it but rather take the occurrence of corruption as something that is inevitable or even acceptable.

Thus, I would like to talk about the actual conduct that was involved in some of the public corruption cases that my office has worked on and the unforeseen, or not often discussed, consequences of that corruption. My goal is to convince you that public corruption is a serious problem.
First, let me talk a bit about the case against former Governor George Ryan, *United States v Warner*, a part of the Operation Safe Road cases. I think people have forgotten what that case was about or what its consequences were. The Governor Ryan case had two very serious aspects. One was corruption in the main: Ryan, as Secretary of State for eight years and later as Governor for four years, was steering contracts to friends and family—people he knew well or who were taking care of him. Contracts and leases were being rigged. People were told to give a contract or lease to someone; bid specifications were guided by Ryan’s friends to ensure that those friends won the contract; and people were told they would get a contract if they hired a certain person at a high fee as a lobbyist.

Without getting into the weeds—because these so-called “sweetheart deals” are something that people appreciate as corrupt—you have to think about the economic cost of corruption. The free market system is not a free market system when this type of corruption is present, and that is obviously costly. If people are supposed to compete for contracts on the basis of quality and price, but that competition is rigged, there is a cost to the public. Evidence at the Governor Ryan trial showed that some of the leases were pretty exorbitantly priced. People were buying property and leasing it back to the state and making nearly the entire purchase price back in the first year’s rent.

When you think about the economic difficulties that the City of Chicago is in, that this state is in, that this country is in, you have to wonder how you can possibly quantify the cost of corruption. Where would we be, in terms of being able to fund programs for education, crime prevention, and social programs, if we were not paying the tax imposed by public corruption? When you think about the money that gets wasted because of public corruption, the seriousness of the problem becomes evident. For example, a different kind of corruption—fraud on the government, best represented by Medicare and Medicaid fraud—is estimated to cost, conservatively, up to $70 billion a year.²

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The second part of the Governor Ryan case that I want to discuss is the very significant non-monetary cost of public corruption. I call this the "priceless cost"—the cost of a loss of trust in government. The priceless cost in the Governor Ryan case had to do with the fact that, for eight years while Ryan was Secretary of State, licenses were being sold to people for bribes—cash bribe rs used to buy fundraising tickets to fund Ryan's political machine. This went on for years and years. But what I think people forget is that Governor Ryan was the sixty-sixth defendant in the Operation Safe Road cases, which began, and bloomed, under my predecessor in the 1990s. The Operation Safe Road cases led to the conviction of seventy-five defendants in total.\(^3\)

If there are massive sales of licenses for bribes in the Secretary of State's office, ideally the Office of the Inspector General of the Secretary of State would root out that corruption. And in the Governor Ryan case, the Inspector General's police force did investigate people who were accused of selling licenses for bribes. But the Inspector General himself was shutting down those investigations. He told people who were looking at the bribes-for-licenses program to stop their investigations and hand the folder over to him, and then the investigation stopped.

The bribes-for-licenses program hit a true low on a very sad day in November 1994: A man who had obtained a driver's license through the bribes-for-licenses program was driving a truck in Wisconsin. He did not know how to drive a truck and had not properly secured a piece of heavy machinery that he was hauling. The piece of machinery fell off the back of the truck and bounced into a van driven by Reverend Scott Willis and carrying his wife and six children, causing the van to explode. Although Reverend Willis and his wife survived, his six children did not. Six children were killed because someone who had paid a bribe to get a license was driving when he should not have been.

That moment—when six children were killed as a result of this scheme—should have been a wakeup call, saying, "We ought to stop what we are doing"; not, "Let's terminate the investigation." But when the Inspector General's police started looking into that specific bribe, the Inspector General shut down the investigation. As with other bribes, the Inspector General told oth-

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er investigators that he was looking at it, but then ordered his people to terminate the investigation. In fact, the Inspector General and his associates were writing emails about getting rid of those members of the Inspector General’s police force who were asking too many questions. Although the Inspector General, after Ryan became Governor, pled guilty to obstruction of justice, the cost of the bribes-for-licenses corruption was measured in human lives and there was the priceless cost of a basic loss of trust in government as a result.

One final comment about the Governor Ryan case, a fact that people tend to gloss over at times, is that Ryan, as a sitting governor, lied to the FBI and was convicted for it. This was obviously a less serious crime than the crime that led to the death of the six children, but Ryan was steering leases to a friend who then entertained Ryan every year for a week in Jamaica. When the FBI asked Ryan about this, he proudly told them that he had paid for these trips himself and that he had the checks to prove it. Ryan provided a check showing that he gave his friend $1,000 every year to cover the cost of his Jamaican vacations. What he did not tell the FBI, however, was that these checks were a sham. Ryan would give his friend a check every year and his friend would give him back $1,000 in cash. The most shocking behavior by Ryan in this specific incident of corruption was that, after telling the FBI in an interview that he was paying for these vacations, Ryan went out and did it again—he went on another vacation, paid another $1,000 by check, and took $1,000 in cash back once again. This incident demonstrates that people can be pretty brazen about lying to the authorities.

Another episode of corruption that got some attention, at least in Chicago before the Governor Rod Blagojevich scandal, was the Hired Truck matter, represented by the cases of United States v Sorich and United States v Sanchez. The Hired Truck matter had two noteworthy aspects. First, in the main, it involved people paying bribes to get contracts to drive trucks for the City of Chicago. These were trucks that were not being well-utilized, but were on contract and were costing the City millions

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4 See US Attorney for the Northern District of Illinois, Operation Safe Road Summary of Cases at 7 (cited in note 3).
5 531 F3d 501 (7th Cir 2008).
6 2009 WL 5166230 (ND Ill). See also United States v Del Valle, 674 F3d 696 (7th Cir 2012). For information on the Sorich and Sanchez cases, see US Attorney for the Northern District of Illinois, Summary of Selected Matters at 2 (cited in note 1).
of dollars, because people were paying cash bribes for the right to drive these trucks.\footnote{One day, in the early 2000s, my neighbor came up to me and pointed to a City of Chicago truck and said, "You know, those guys sleep all day. You should do something about that." At the time, I thought to myself, "We have bigger things to do than worry about people sleeping in trucks!" But then, a few months later, when we were in the middle of the Hired Truck investigation, I realized that the next time my neighbor stops me, I am going to listen a little bit more closely.}

Another element of the Hired Truck matter—again, an instance of corruption in the main—was a patronage scheme at City Hall. Chicago had a long tradition of politically based hiring, and this tradition indicated to people that city jobs were available if you worked for the right political party. That tradition, however, was ended by a court order called the Shakman Decree, which mandated that City hiring be done in a politically neutral manner.\footnote{For a summary of the Shakman Decree cases, see Shakman v City of Chicago, 426 F3d 925 (7th Cir 2005). See also Roger R. Fross, Shakman Decrees, Encyclopedia of Chicago (Chicago Historical Society 2005), online at http://www.encyclopedia.chicagohistory.org/pages/1138.html (visited Sept 10, 2012).} Hiring decisions were supposed to be based on an applicant's qualifications. However, the Hired Truck matter exposed a massive hiring scheme wherein people were being hired based upon political patronage. Applicants for City jobs were required to work on political campaigns for free on the weekends or else they were not given jobs.

Certain City officials rigged the hiring system by submitting false certifications to the City and the courts, claiming that politics had been removed from the hiring process. Yet applicants were showing up for interviews for City jobs, unaware that those jobs had been secretly awarded to a political patron one day earlier. For example, a dead man won an interview. In another instance of extreme brazenness, a soldier fighting the war in Iraq was reported to have done well in his interview in Chicago, even though he was in Iraq. Because of this corruption, qualified people did not get the jobs they deserved.

The second noteworthy aspect of the Hired Truck matter was that the corrupt individuals used a front group called the Hispanic Democratic Organization, an organization that was supposed to be an empowerment group that looked out for minorities. Instead, the organization was used as a shield to carry out this scheme. When money is set aside to empower minority groups—to get them government contracts—and this process is abused, trust in government is undermined. In the Hired Truck incident, there were many qualified applicants who did not get
jobs because other people—people who were not minorities—did political work and ended up with the jobs instead.

As in the Governor Ryan case, in the Hired Truck investigation we saw massive obstruction. We did a search warrant of City Hall—which is always awkward—to investigate the Office of Government Affairs. The number two official in the City is the City Clerk and he was eventually convicted. He had been taking cash bribes and, even as the investigation continued, he was caught on tape telling an individual to stay quiet and that the individual would pay for his [the City Clerk's] lawyer. Also, a big man, who talked about his violent history, visited that same individual and said, "If you are wearing a wire, you better go into the witness protection program." Unfortunately for the big-guy goon, the individual was wearing a wire.

In another instance of obstruction in the Hired Truck matter, one of the highest-ranking members of the City's Water Department was also taking bribes, and he too was caught on tape telling people to keep quiet in terms of our investigation. The head of the Streets and Sanitation Department was also convicted. In the same trial, his codefendant was convicted of perjury for going in under a grant of immunity and lying to the grand jury about what was happening in the Streets and Sanitation Department. All of this demonstrates that, with public corruption, time after time we encountered false statements, obstruction, and perjury just as much as we encountered bribery.

To address the case against former Governor Rod Blagojevich, United States v Blagojevich,9 I first want to point out that Blagojevich ran for governor during the time when Operation Safe Road—the Governor Ryan case—was being exposed. Blagojevich ran on a platform against pay-to-play. But at the first trial of Blagojevich, we presented evidence that showed that, even before he took office, Blagojevich and his associates were talking about how to divvy up profits from illegal schemes. It is particularly brazen to run against pay-to-play while planning to utilize pay-to-play schemes yourself. To later follow through and attempt to sell a Senate seat, to shake down a children's hospital, and to ask for cash to sign a bill that is sitting on your desk, further demonstrates a high level of public corruption.

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9 See Criminal Complaint, United States v Blagojevich, 08-CR-888-1 (ND Ill filed Dec 9, 2008); Superseding Indictment, United States v Blagojevich, 08-CR-888-1 (ND Ill filed Apr 2, 2009); Second Superseding Indictment, United States v Blagojevich, 08-CR-888-1 (ND Ill filed Feb 2, 2010). See also US Attorney for the Northern District of Illinois, Summary of Selected Matters at 1 (cited in note 1).
At the first trial, Blagojevich was convicted of lying to the FBI. So, it might be clear now, the hidden theme of public corruption is this: there is a link between corruption and obstruction in the course of investigations. Of course, public corruption costs a great deal, both in terms of money and in terms of the priceless cost I discussed before. It is horrendously unfair to people who want to compete as honest, open businesspeople—who want to compete fairly for a contract, a lease, or a job—to find out that the whole system is rigged. Nothing more fundamentally undermines trust in government than to think that you never had a fair shot—that you showed up to interview on Tuesday for a job that was secretly awarded on Monday. But one of the key things to focus on is how many people are lying, shredding documents, concealing evidence, threatening witnesses, and otherwise obstructing justice.

I want to make five points about the relationship between public corruption and obstruction of justice. First, obstruction presents an obvious investigative opportunity. The best evidence of someone committing a crime is having that person tell a witness that if he is wearing a wire, he better enter the witness protection program. For this reason, we often seek to tap phones and have people wear wires. In many of our cases, convictions would have been much tougher to obtain or charges might not even have been brought if we did not have wiretaps. Who would believe that a governor was scheming to sell a Senate seat, without that type of evidence?

In the case of United States v Troutman, former Alderman Arenda Troutman pleaded guilty after she was caught on tape saying, “All Aldermen are hos,” as she asked for a bribe. That statement might be pretty unbelievable if a witness claims that the defendant said it, but having a tape of the defendant saying it leads to a plea. The cases of United States v Vrdolyak, which charged the former alderman and longtime Chicago figure Edward Vrdolyak with fraud and bribery, and United States v Cel-

which charged William Cellini, a Springfield, Illinois, political insider, with extortion, conspiracy, and aiding and abetting the solicitation of a bribe, would not have been the same—might not even exist—without wiretap evidence. In these cases, an untold number of witnesses came clean because we had tapes. People would tell us, “I did nothing. I know nothing. I saw nothing. Why are you bothering me?” Then we would play the tapes and suddenly, the individual’s recollection was extraordinarily refreshed. Oftentimes, these individuals would later become witnesses, for whom we could vouch simply by pointing to the tapes that corroborated what was said on the witness stand.

Second, there is a reason why we so often charge obstruction of justice and perjury in connection with public corruption. In fact, we have made it a point to charge, in corruption cases and corporate fraud cases, obstruction of justice and perjury as often as we can. The goal is to send a message: If you are thinking about covering up a crime by committing a new one, we will bring that additional charge every time we can. Charges for obstruction and perjury are incredibly strategic charges to bring because they allow us to demonstrate to the jury that the defendant did wrong and knew it.

Third, the debate over the “Honest Services” law is a legitimate one. We need laws that give people fair notice of what type of behavior is a violation. We need laws that are not overly broad. But from a prosecutor’s point of view, we also need laws that fit the variety of situations in which people abuse the power they have been given by the public. In the public debate about the Honest Services law, people have been left with the impression that a multitude of outlandish theories have been dragged out of a laboratory and thrown into a courtroom in order to convict defendants under the guise of Honest Services fraud. In the Northern District of Illinois, we have come up with a variety of strange theories but, by and large, they die in our conference.

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13 For additional information on instances of perjury and obstruction in recent high-profile cases, see generally James B. Stewart, Tangled Webs: How False Statements are Undermining America: From Martha Stewart to Bernie Madoff (Penguin 2011).

14 The Honest Services law is codified at 18 USC § 1346 (“For the purposes of [18 USC §§ 1341–1360], the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services.”).
room. Many times, we just are not willing to go there, even when a proposed theory is pretty terrific.

This is not to say that we have not charged Honest Services fraud, because we have. And even in light of *Skilling v United States*\(^\text{15}\) and *Weyhrauch v United States*,\(^\text{16}\) we have only lost one case outright against an Honest Services defendant. We have lost counts, had sentences reduced, and had motions for new trial granted, but the majority of our Honest Services convictions have stood. I believe this is because the Honest Services cases we charged were mingled with out-and-out property fraud. When we charged both property fraud and honest services fraud, and when judges looked back on the convictions we obtained in those cases, they realized that the property fraud was clear.

In light of *Skilling*, prosecutors will file fewer Honest Services charges and more property fraud but, in the main, these were the same cases from the start. Rigging contracts and leases for bribes is property fraud. Moreover, to the extent that laymen think that defendants are being convicted under the Honest Services law for crimes that those defendants did not know were crimes, there is no better proof that someone knew he was committing a crime than the fact that the person was also lying, shredding documents, dumping computers into Lake Michigan, doing massive burning, threatening people not to talk, and so forth.

*Fourth*, even with the success we have had fighting public corruption, who knows what we missed along the way? We are very delighted when we get people on tape obstructing justice; but the witness who agreed, before he was threatened with death if he cooperated with us, to wire up—what if he had not yet decided to wire up when he was threatened with death? In the later stages of some of our investigations, we have discovered numerous people who possessed information but were afraid to talk. We know we are missing a lot of information and evidence about corruption that is out there.\(^\text{17}\)

\(^\text{15}\) 130 S Ct 2896 (2010).

\(^\text{16}\) 130 S Ct 2971 (2010).

\(^\text{17}\) When I think about the information we have missed, I think about barbeque grills: One of the key pieces of evidence in the Governor Ryan trial was a zip drive that contained memos of the Inspector General, discussing what was and was not being done in terms of the investigation into the crash in Wisconsin. When one of the conspirators wanted to get rid of the zip drive, that conspirator asked the husband of another conspirator to put the zip drive onto a barbeque grill and destroy it that way. But the husband suspected that the conspirator and his wife were having an affair, so he secreted away the zip drive and once he confirmed his suspicion regarding the affair, we obtained...
Fifth, the emphasis by corrupt individuals on securing silence by, or false statements from, key witnesses and destroying physical evidence speaks volumes about the real solution to the problem of public corruption. There is a tendency to view public corruption as a problem for law enforcement to clean up. But public corruption is not something that can be solved simply by supporting the efforts of law enforcement; by the time a case gets to the point where we have to investigate it, it is too late. The real solution to public corruption is a change in culture—we need to attack the problem of silence.

In the Governor Ryan case, the Governor Blagojevich case, or the Hired Truck cases—in any anticorruption case—we have law enforcement witnesses who say: “I am the one who started tapping the phone”; “I am the one who translated this call”; “I am the one who saw this”; or “I searched and seized that.” Many of our cooperating witnesses engaged in terrible conduct and were defendants themselves until they decided that the evidence was overwhelming. When these witnesses testify for us, they come with baggage and that is something we have to address. But more importantly, there are many civilian witnesses who are not engaged in crime and who are not FBI agents, but simply come across very relevant information. There are a large number of people who know about criminal activity—who did not participate in it, but who nonetheless remain silent—and this is what we need to change if we want to limit the spread of corruption.

I have been stunned by how offended jurors are when you put conduct involving corruption in front of them. But, at the same time, I have been taken aback by how little voters seem to respond to corruption. I wonder, then, whether voters do not see corruption up close, in the way that jurors do. Whether this is the problem, or whether voters are apathetic and have given up on clean government, we need to affect the culture. The public’s answer to corruption should not be, “As long as I do not pay a bribe, I am not part of the problem.” Instead, the public needs to realize that this silence is a part of the problem.

Right now, we are at the point where people who are seeking governmental services in Chicago, in Cook County, or in the State of Illinois are sometimes asked for an improper payment. The people seeking governmental services are afraid that if they do not comply with these requests, they will be denied the services they need, the services that they are entitled to receive.
People seeking governmental services are afraid not to play along and afraid to speak up for fear of what the consequences will be. This is not a problem that can be fixed with indictments and convictions and sharp sentences. While all of those elements of law enforcement will help, we need a paradigm shift. We need to create a culture in which people who would otherwise request improper payments are too afraid to do so. When confronted with corruption, the public needs to write to the newspapers, have exposés on TV, and report to the FBI.

To conclude my remarks today, I want to think about our public officials for a moment, and specifically those who characterize public corruption as “shades of gray.” Some public officials take great umbrage that people think it is a crime to do some of the things that these officials are caught doing. But when public officials make the “shades of gray” argument, what does this imply about honest public officials? Think about the sacrifices made by people who chose to run for elective office: If they are honest and not taking bribes, they are probably giving up a lot of money. They are certainly giving up their free weekends. They go through the grueling campaign process, in which strangers poke and pry into their private lives. If we treat all public officials identically—if we think, “That guy just got caught”—what kind of incentive system are we creating for potentially honest public officials? Do those persons deserve to have the guilt of corrupt officials wash off on them? When I hear people say, “Public corruption is all just shades of gray. All people do the same thing,” I ask if we are being fair to those officials who do it the right way.

In essence, the problem of public corruption is very, very real. It is not highly abstract. As in the cases I discussed today, public corruption has concrete, significant consequences for the economy, for our culture, and for the amount of respect given to our government. Public corruption can even result in a loss of life, as in the Governor Ryan case. We have to keep fighting against corruption, and our main weapon has to be a cultural change. The general public has to decide that public corruption is completely unacceptable and has to start coming forward and providing us with evidence, instead of waiting for law enforcement to do it.