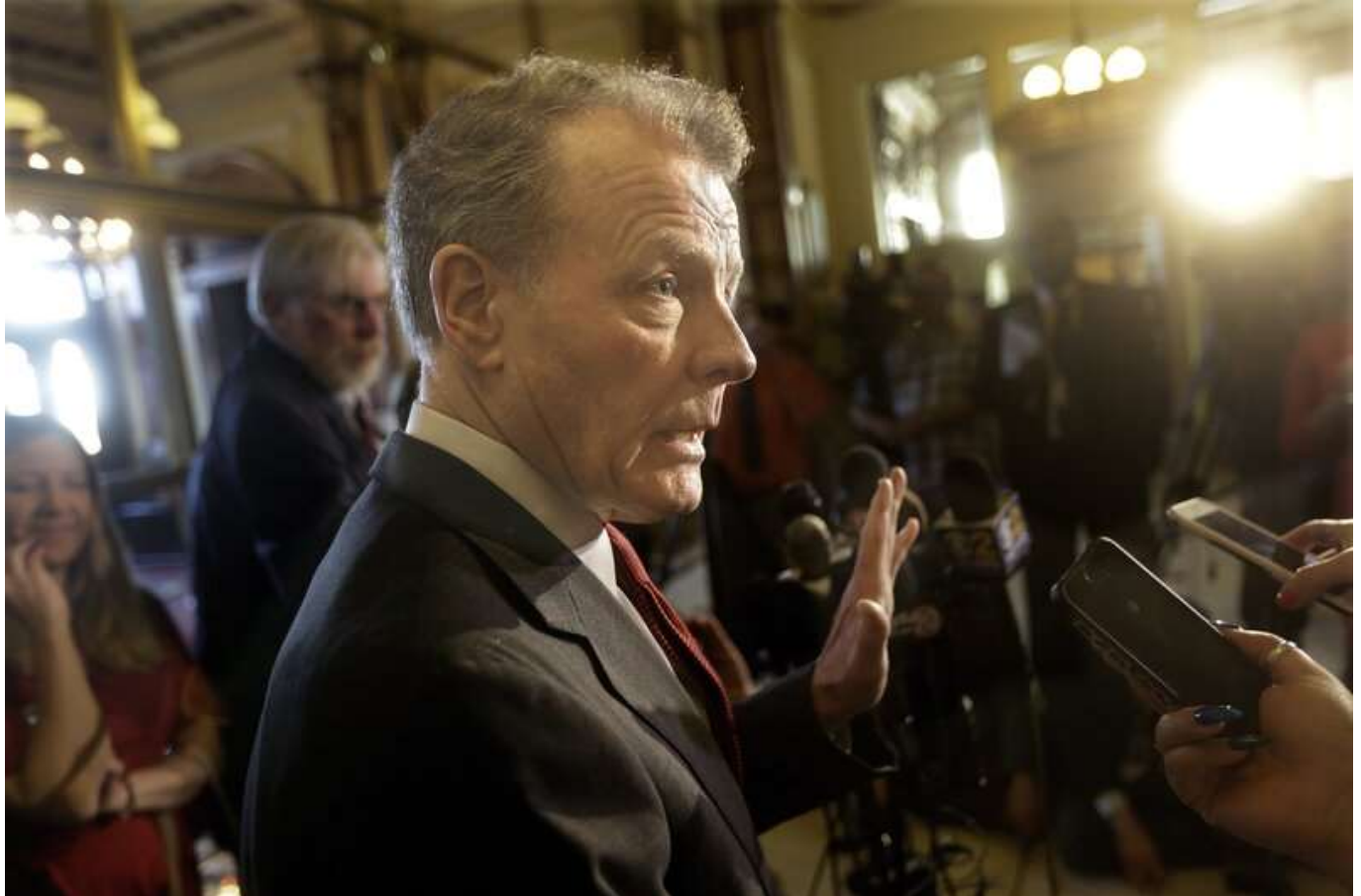


How Feds Closed In On Ill. Speaker In Corruption Probe

By **Celeste Bott**

Law360 (March 4, 2022, 8:02 PM EST) -- Long-awaited racketeering charges against one of Illinois' most powerful and prominent politicians, former House Speaker Michael Madigan, were the culmination of years of a painstaking investigation by federal prosecutors who likely convinced lower-level participants in the bribery scheme to cooperate, white collar experts say.



Michael Madigan, then the Illinois House speaker, talks to reporters at the Illinois Capitol in November 2016. After at least three years of investigation, the Chicago Democrat was charged this week with 22 criminal counts in an indictment that accuses him of leading a decadelong criminal enterprise. (AP Photo/Seth Perlman)

Madigan, a Chicago Democrat, was long regarded as the most powerful politician in the Prairie State. He was **charged March 2** with 22 criminal counts in a lengthy, detailed indictment that accuses him of leading a decadelong criminal enterprise in which he traded on that political power to secure work for his private law firm, political appointments and jobs for friends, and entrenched loyalty from legislators who needed support and money for their campaigns.

Before that shoe dropped, prosecutors had aired salacious details of the bribery scheme in related indictments, building steady pressure that ultimately forced Madigan to resign from office before he'd been charged with wrongdoing.

The biggest bombshell came when Exelon Corp. subsidiary Commonwealth Edison **agreed to pay \$200 million** to end an investigation into a yearslong scheme in which it allegedly arranged jobs and other benefits for allies of "Public Official A" — identified at that time not by his name but as then-speaker of the Illinois House of Representatives, implicating Madigan without outright naming him.

To make the leap to criminally charge Madigan took years' more investigation as prosecutors sought to dot every i and cross every t, white-collar experts say.

"In a high-profile case like this, a speaker or a governor, you get one shot at it. You have to make sure what you're

putting out there is the strongest, most compelling case," said Nixon Peabody partner Chris Hotaling. "It's going to play out in the papers. It's going to play out online. It's incumbent to make sure everything is top of the line, top-notch, the evidence is spot on. It adds an additional level of scrutiny."

Or, as Benesch Friedlander Coplan & Aronoff attorney Mark Silberman puts it: "If you're taking a shot at the king, you better not miss."

But a changing legal landscape in the public corruption space may make it easier for Madigan to wage a defense he's already alluded to in denying involvement in any criminal activity and claiming the government is attempting to criminalize job referrals, they said.

Tightening the Screws

Madigan built up substantial influence as he led the state's House of Representatives, chaired the Illinois Democratic Party, served as committeeman of Chicago's 13th Ward and worked as a partner of Chicago law firm Madigan & Getzendanner.

It's no secret that Madigan had been **at the center** of the government's sprawling investigation into public corruption in Illinois for years now. Search warrants seeking information about the former speaker were first executed in 2019, and prosecutors came just shy of naming him in the ComEd settlement.

By the time Madigan was indicted, he'd been investigated for three to four years at minimum, meaning that behind the scenes, prosecutors were gathering evidence through recordings, witness interviews, subpoenaing and gathering documents, and securing other guilty pleas and cooperators, said Leonid Feller, a former prosecutor and partner in Quinn Emanuel's Chicago office. And given the racketeering charges and Madigan's status as a public figure, it's likely the prosecutors needed to clear various levels of approval at Main Justice, he said.

"The biggest challenge in bringing any public corruption case generally is that it's going to require some amount of cooperation from other targets and other defendants," Feller told Law360. "You're going to need folks to tell you about the conspiracy. Typically, a lot of stuff will be talked about in code and in lingo that might not be clear even if you have recordings."

In this case, it seems like the government has overcome that hurdle and does have various individuals cooperating in the investigation, he said.

Prosecutors have already charged **former ComEd executives and lobbyists**, state and local **lawmakers** and even Madigan's former chief of staff in its ongoing corruption probe. Some are **continuing to defend** those charges in court, while others have pled guilty and **agreed to cooperate** with the government.

The trickling in of these other indictments, as they're publicly announced, ramps up pressure on other individuals and entities who could somehow be involved, which can help the government catch a bigger fish, said Juliet Sorensen, a Northwestern University law professor and a former Chicago prosecutor focused on fraud and public corruption.

"Then if faced with direct pressure from the criminal charges, they may well decide that what they want to do is cooperate with the government in exchange for a more favorable resolution," she said.

Hotaling of Nixon Peabody, also a former prosecutor, likens the government's process to building a pyramid.

"If you know Speaker Madigan is at the top of the pyramid, you want the foundational blocks to be secure," he said. Securing cooperation, interviewing witnesses, reviewing records and having internal discussions are all part of that process of making sure "those layers of the pyramid are in place, locked in, set in stone," he said.

A Potential Defense: Politics As Usual

Part of why it may have taken so long to build a criminal case against the former speaker, who is 79, could stem from his reputation as a savvy, careful politician who rarely put directives in writing and frequently relayed them through associates instead, said Kent Redfield, an emeritus professor of political science at the University of Illinois Springfield.

"The biggest guessing game around the Statehouse in Madigan's reign was always, what does the speaker think? Because he rarely talks publicly, and his interactions are through intermediaries," Redfield said. "Absent some testimony from a participant, an email, a recorded phone call ... it literally is the wink and the nod."

And Madigan and his attorneys already contend that the government is overreaching, giving a glimpse into arguments they may raise in his defense in the coming months.

"The government is attempting to criminalize a routine constituent service: job recommendations," Madigan said in a statement on Wednesday. "That is not illegal, and these other charges are equally unfounded."

To make their case against the ex-speaker, the government will have to prove he had corrupt intent, said Benesch's Silberman, who chairs the firm's white collar, government investigations and regulatory compliance practice group.

"I'm sure you've recommended someone for a job. I know I have. That in and of itself isn't improper," he said. "The most

challenging aspect of allegations like this is that when you look at the regulation, it requires the conduct to have been done corruptly with the intent to influence."

It's an unsurprising theory of defense, Sorensen said, but while it may be politics as usual to recommend people for jobs, "it's criminal to request bribes in exchange for those jobs."

She also noted that the government appears to have evidence that both Madigan and his co-defendant, Michael McClain, a former ComEd lobbyist and friend and confidant to the speaker, were operating with a degree of secrecy by never using Madigan's name in emails and speaking in a "thinly veiled code."

"That can itself be evidence of corrupt intent — that is to say, consciousness that what they're doing is improper, that they're keeping it a secret," Sorensen said.

The law and legal landscape has also changed in recent years, Hotaling noted, citing as examples the U.S. Supreme Court **throwing out the convictions** of two former New Jersey public officials in the infamous Bridgegate scandal to realign lanes on the George Washington Bridge as political revenge, and the high court **vacating and remanding** the corruption conviction of former Virginia Gov. Bob McDonnell in 2016.

"Any time you see public corruption cases that are getting convictions reversed, the court is taking steps to say, what you're alleging here isn't a federal crime," Hotaling said. "I would say there are certainly a lot more arguments on Madigan's behalf now than there were a couple of years ago."

Hotaling said he expects lots of motion practice in the case as Madigan and his team argue that this is legitimate political conduct.

Redfield said he also wouldn't be surprised if Madigan argued that with his long-standing reputation as an Illinois power broker, he wouldn't have needed to shake down anyone for tax and legal business that he allegedly steered to his law firm in exchange for political favors.

"People just assumed this guy controls everything," Redfield said. "Why wouldn't they then want him to handle their real estate taxes?"

The 'Old Chicago Way'

In Illinois, the story the government lays out in its 106-page indictment against Madigan is an all-too-familiar one in the state's **long history of crooked politics**.

"We have a very stubborn public corruption problem here in Illinois," John R. Lausch Jr., U.S. attorney for the Northern District of Illinois, said while announcing the charges against Madigan. "Rooting out and prosecuting public corruption has been and will always be a top priority of this office. This investigation remains ongoing."

What the government has alleged is "a textbook description of the old Chicago way and of a powerful politician abusing power again to enrich himself and his associates," Sorensen said.

A goal of bringing these cases is not just to hold the individuals accountable, but to deter future wrongdoing and stir up the state's culture of patronage and relationship-based governance, she said.

"That's a very hard thing to do, because cultural and behavioral norms are sticky, they're hard to change," Sorensen said.

In reading the Madigan indictment, Feller of Quinn Emmanuel said he was struck by how similar it was in structure to the case prosecutors brought against former Illinois Gov. Rod Blagojevich, who was accused of trying to sell former President Barack Obama's vacant U.S. Senate seat and was charged with racketeering conspiracy, extortion and more.

He was **sentenced to 14 years in prison** in 2011 after a jury found him guilty on 18 criminal counts.

"Whenever you have a RICO charge, you need to have an organization. In Blagojevich, it was the office of the governor; here, it's the 13th Ward Democratic Party," Feller said. "That's pretty extraordinary, that a public organization like that could be involved in a criminal conspiracy."

Blagojevich, like Madigan, argued that his actions were ordinary political favors and political horse-trading, Feller noted.

"Last time we saw that defense was in the Blagojevich indictment," Feller said. "And things didn't work out too well for him there."

--Editing by Philip Shea.