

PROCEDURAL HISTORY

I. Criminal Case

Defendants Rod Blagojevich (“Blagojevich”) and Robert Blagojevich were initially charged in a criminal complaint federal corruption offenses and arrested on December 9, 2008. R.1. Subsequently, defendants were charged in a second superseding indictment, together with others, with various offenses arising out of Rod Blagojevich’s alleged use and agreement to use the powers of the Office of the Governor of the State of Illinois, and of certain state boards and commissions subject to influence by the Office of the Governor, to take and cause governmental actions, including: appointments to boards and commissions; the awarding of state business, grants, and investment fund allocations; the enactment of legislation and executive orders; and the appointment of a United States Senator, in order to obtain financial benefits for defendant Rod Blagojevich and others. R. 231.

On June 25, 2009, this case against these two defendants was scheduled for trial beginning on June 3, 2010. R. 132. Jury selection began on June 3, 2010, R. 421, as scheduled, and the trial is ongoing.

II. Motion to Intervene

On May 17, 2010, this Court informed the parties at a hearing regarding the status of efforts to obtain a pool of potential jurors for the case. The Court advised that a large mailing had been sent to prospective jurors, that the court had identified potential jurors numbering “somewhere in the 90’s” who were available for the relevant time period, and that a large number of potential jurors had provided satisfactory

reasons establishing that service for this extended period would cause them undue hardship. 5/17/2010 Tr. 7-8. Accordingly, the Court advised that it would have in place an expedited process for summoning additional potential jurors should that become necessary. *Id.* at 8. Finally, the Court advised that potential jurors would be filling out jury questionnaires one day before voir dire (on June 2, 2010). *Id.* at 9.

Later the same day, during a meeting with members of the media to discuss procedures that would be in place during the trial, the Court indicated that the names of jurors seated in the case would not be released to the public until after verdicts had been reached. *See, e.g.*, Jeff Coen and Bob Sexter, Chicago Tribune, “Jurors’ identities to be kept secret until verdict is in,” 5/18/10 CHICAGOTR 4 2010 WLNR 10325781.

On June 1, 2010, members of the news media (the “Media”)¹ filed a “Motion to Intervene and for Immediate Public Access to Names of Jurors,” together with a supporting memorandum, R. 407, 408, and noticed the motion for hearing on June 3, 2010. R. 409.

On June 2, 2010, prospective jurors came to court and filled out jury questionnaires. 6/3/2010 Tr. 12. While they were in the courthouse, the jurors were advised that their identities would be withheld from the public until after verdicts had been reached in the case. *Id.*

On June 13, 2010, after hearing argument from the parties, this Court denied

¹ The movants included: Chicago Tribune Company (“Tribune”), the Associated Press (“AP”), the Illinois Press Association (“IPA”), the Illinois Broadcasters’ Association (“IBA”), and the New York Times Company (“New York Times”).

the motion to intervene. R.423.

The Media appealed and, on July 2, 2010, the Court of appeals reversed and remanded for further proceedings. *United States v. Blagojevich*, — F.3d —, 2010 WL 2649879 (July 2, 2010);² *amended*, — F.3d —, 2010 WL 2778838 (July 12, 2010). In its amended opinion, the court of appeals stated the following regarding the hearing to be conducted on remand:

What evidence the judge must consider depends on what the parties submit. We do not imply that any of the subjects mentioned above is indispensable to a decision. In *Black* the parties chose not to present any evidence, and the court then decided in light of the parties' arguments and the judge's experience with jurors' concerns and behavior. The district judge in this case has referred elliptically to efforts to contact him by email and in other ways; perhaps putting details on the record would help to make concrete some potential effects of disclosing jurors' names while the trial is under way. What is essential-what occurred in *Black* but not so far in this case-is an opportunity for the parties (including the intervenors) to make their views known in detail, followed by a considered decision that includes an explanation why alternatives to delayed release of the jurors' names would be unsatisfactory.

Blagojevich, 2010 WL 2778838 at *6.

On July 8, 2010, the Media moved for a hearing on remand, R.490, and the Court scheduled the hearing for July 23, 2010, 7/12/10 Tr. 11.

² After the appellate court issued its opinion on July 2, 2010, a member of the court made a suggestion of rehearing en banc pursuant to Fed. R. App. 35(a), and called for a vote. *United States v. Blagojevich*, — F.3d —, 2010 WL 2767760 (7th Cir. July 14, 2010) at *1. A majority of the judges in active service voted not to hear the appeal en banc. *Id.* On July 14, 2010, a dissent from the decision not to hear the appeal en banc was issued by Judge Richard Posner. *Id.*

BACKGROUND

I. Intense Media Interest

As this Court is well aware, this case has attracted extensive media interest. In the weeks and months prior to the trial, the case regularly was the subject of local, national, and even international headlines – in newspapers and magazines such as *Time* and *Newsweek*, and on the internet. The intense interest is not surprising in light of the fact that the charges relate to the principal defendant's conduct while governor of the fifth most populous state in the country, and relate, in part, to the appointment of a replacement to fill the Senate Seat previously held by the sitting president of the United States.

Media interest intensified in the weeks leading up to the trial, due, in part, to numerous public appearances by defendant Rod Blagojevich and his counsel, arranged with the help of a retained public relations firm, and other “unusual attention-getting conduct” by Blagojevich and his wife. *Blagojevich*, — F.3d — 2010 WL 2767760 at *1; *see also* <http://www.thepublicityagency.com/> (advertising that the firm “represent[s] the über famous like Rod Blagojevich”) (visited July 19, 2010). Blagojevich has appeared on network and cable television news and radio programs, as well as on television talk and comedy programs, such as “The View,” “The Daily Show,” “Late Night with David Letterman,” and also appeared as a contestant on the popular reality television show, “Celebrity Apprentice.” *See* Exhibit 1. The case has been referenced in countless more entertainment-oriented programs, including “Saturday Night Live,” and was also the subject of a theater production called “Rod Blagojevich Superstar!,” debuted by

Chicago's Second City in February, 2009. It has even inspired merchandise, some marketed for profit and some not, including t-shirts distributed by the Republican party and cell phone ring tones, distributed by a Springfield, Illinois newspaper. *See* Exhibit 2; "Paper offers Blagojevich ringtones," UPI July 15, 2010, (available at http://www.upi.com/Odd_News/2010/07/15/Paper-offers-Blagojevich-ringtones/UPI-43241279221672/).

Immediately before trial, defendant Rod Blagojevich and his attorneys announced plans to communicate regularly with the public while the trial was pending, including by using "twitter" to communicate with the public throughout the trial, and by appearing as a "contributor" on WLS radio to discuss the trial. R. 439 at 9.³ Although the Court prohibited Blagojevich from "tweeting" in the courtroom, he was not restricted from making public comments outside the courtroom during the trial. *Id.* at 9; Exhibit 4. Comments by both Blagojevich and his counsel frequently have referred to information and arguments the Court would not permit them to put before the jury. R. 439 at 6-9.

Since its inception, the trial has been covered on a daily basis by every major local print and media news outlet, and on a regular basis by print and media outlets across the country and around the world.⁴ Indeed, Judge Posner of the Seventh Circuit

³Up until the week before trial, Blagojevich hosted a weekly radio show. *See* "WLS Radio Shuts Off Blago's Mike, Associated Press, June 3, 2010 (Exhibit 3).

⁴ *See, e.g.*, "Blagojevich trial begins in Chicago," CBC News June 3, 2010 (available at <http://www.cbc.ca/world/story/2010/06/03/blagojevich-trial003>"); Slevin, "In Blagojevich trial, prosecution and defense paint very different pictures,"

Court of Appeals described it as “the most closely followed criminal proceeding in this circuit since the trial of Rod Blagojevich’s predecessor as governor, George Ryan.” *Blagojevich*, — F.3d — , 2010 WL 2767760 at *1. In addition to “mainstream media,” the case is being covered by an unprecedented number of blogs.⁵

II. Activities at the Courthouse

On a daily basis, the trial has been attended by journalists too numerous to fit inside the courtroom. Early each morning, citizens form a queue for the chance to obtain one of the limited number of seats inside the courtroom set aside for non-press spectators. An overflow courtroom has been provided so that additional members of the press and public may hear a live audio feed of the proceedings.

The defendants are escorted into the courthouse each day through barricades set up to hold back the crowds. See Exhibit 5. Images captured by newspaper and television photographers depict throngs of curiosity-seekers and well-wishers who have at times crowded around the barricades, posing for pictures with defendant Rod Blagojevich and requesting his autograph. As described by Monica Davey of *The New York Times*,

A circuslike feel, meanwhile, has already taken seed here, though the

Washington Post, June 18, 2010 (available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/17/AR2010061705255.html>); “Rod Blagojevich ‘didn’t take a dime,’ Lawyer Says,” BBC News June 8, 2010 (available at <http://www.bbc.co.uk/news/10270971>).

⁵ See, e.g., “The Official Guide to Blagojevich Blogs,” <http://legalinsurrection.blogspot.com/2008/12/official-guide-toblagojevich-blogs.html>, cited in *Blagojevich*, 2010 WL 2767760 at *7.

trial is expected to last for months. On Thursday morning, the courtroom was packed, and many curiosity seekers were turned away. Outside the courthouse, cameras whirled and a crush of people surrounded all those involved. People stopped to stare, snapping photographs on cellphones.

See, e.g., M. Davey, “Jury Selection Starts, Slowly, in Blagojevich Trial,” *The New York Times*, June 3, 2010. *See also* D. Reiss, “Blagojevich on Trial — and a State’s Culture of Corruption in the Spotlight,” *TIME Magazine*, June 9, 2010 (available at <http://www.time.com/time/printout/0,8816,1995376,00.html>) (opining that “[t]he fanfare surrounding the trial of former Illinois Governor Rod Blagojevich seems more appropriate for a Hollywood red carpet than a federal prosecution case . . .” and noting that Blagojevich was besieged with sympathetic words and requests for autographs as he entered the court house on the day scheduled for opening statements).

II. Unsolicited Contacts Directed to the Court

The intense interest in this case has motivated individuals to take it upon themselves to engage in direct contacts with this Court. As the Court has indicated, during the run-up to the trial, it received unsolicited communications from writers who expressed opinions on the case and offered opinions regarding how the case should be handled by the Court. *See* 6/9/09 Tr. 10; 7/12/10 Tr. 12-13. These communications included letters, email and voice mail messages which, as described by the Court, generally expressed the view that the voters who had voted for Blagojevich needed to atone for their sins. 7/12/10 Tr. 12. According to the Court, the last of these unsolicited communications arrived about three months before July 12, 2010 (*i.e.*, about two months prior to the beginning of trial).

According to the Court, all three e-mails referred to defendant Rod Blagojevich's participation (or attempted participation) in reality television programs. One of the emails urged the Court not to allow Blagojevich go to Costa Rica, while the other two referred to Blagojevich's appearance on "Celebrity Apprentice." 7/12/10 Tr. 13. Another email asserted the opinion that Blagojevich was an awful person and should go to jail. *Id.* Another commented, based on Blagojevich's appearance on "Celebrity Apprentice," that "they could not see how somebody who appeared to have as few skills as he had could actually commit such a crime." *Id.*

The Court described the letters it received as generally expressing the view that Rod Blagojevich was guilty, and that the writers were depending on the Court to see that he got "what he deserved." 7/12/10 Tr. 13.

Two voice mail messages were preserved by the Court and played for counsel. The first of these was laced with obscenity; the second expressed the view that it was possible that the government would use recently-developed technology to manufacture recordings that included a voice that sounded like, but was not actually, Blagojevich's. 7/13/10 Tr.

Finally, the Court reported that, on one occasion, he was stopped on the street by a person who he did not recognize, and who did not think was a lawyer, who (repeating a theme from the emails) made a comment concerning "the guilt of the voters." 7/12/10 Tr. 13.

III. Attempts to Interject External Matters into Proceedings

Since the beginning of the trial, court personnel, as well as the multiple deputy

Marshals and Court Security Officers assigned to monitor and provide security for the case, have had to contend with individuals who have attempted to insert themselves into the proceedings, through unauthorized filings in the criminal case, and through disruptive conduct in the courthouse.

For example, on June 15, 2010, an individual filed in the clerk's office a motion to file an amicus curiae brief and to testify at defendants' trial. R. 441; See R. 443 (striking the filing). Another individual filed documents with the clerk's office on May 17 and June 1, 2010, seeking ten billion dollars and the release of certain files relating to an investigation into the theft and sale of her grandchildren, which documents were allegedly taken from defendant Rod Blagojevich's office by the government in the course of its investigation of the charged offenses. R. 376, 416, 417; *see* R. 444. Subsequently, that individual attempted to enter the courtroom against the orders of Deputy Marshals and, when prevented from doing so, became argumentative and disruptive. See N.D. Illinois No. 10 CR 536. On June 23, 2010, this individual was charged and convicted of criminal contempt of court, and sentenced to serve one year of probation and prohibiting her from coming to courthouse on any matter to which she is not a party. See N.D. Illinois No. 10 CR 536 at R. 1, 2.⁶

⁶ The Court has taken steps to admonish the jury to avoid any discussion regarding the case, and to avoid any contact with newspaper or media coverage related to the case, and has ordered that they advise the court anyone attempt to communicate with them by any means regarding the case. Despite the many challenges faced by the Court, the Marshal Service, and court personnel, disruptions of the proceedings have been averted and order has been maintained in the courtroom.

IV. Other Cases Involving Contacts with Jurors

Apart from the specific circumstances of this case, jurors in other cases have been exposed to external contacts and information. The government has not located studies or statistics related to third-party contacts with jurors during trial or deliberations. However, numerous reported decisions, news articles and law review articles address such contacts. We have collected a sampling of such cases here:

(1) Tyco Mistrial (*People v. Kozlowski*, New York, 2004). After a juror's identity was published during deliberations, the juror received a letter pressuring her to convict, the judge declared mistrial. See <http://www.nytimes.com/2004/04/03/business/tyco-mistrial-overview-tyco-trial-ended-juror-cites-outside-pressure.html>.

(2) *United States v. Corrado*, 227 F.3d 528 (6th Cir. 2000). The Court of Appeals remanded for hearing to determine whether jury tampering occurred in RICO prosecution, and whether jurors learned of, and were biased by, news reporting about the arrest of a suspect for jury tampering.

(3) *United States v. Jackson*, 209 F.3d 1103 (9th Cir. 2000) The appellate court ruled that an evidentiary hearing was required where a juror was allowed to remain on the jury after receiving a threatening phone call during trial of the bribery case, but denied that the call had any negative impact but, years later, told the defendant's investigator that she thought the call was from one of the defendant's associates and was related to the trial, and that the defendant would be entitled to a new trial if the juror affirmed the statements purportedly made to the investigator.

(4) *State v. Bisaccia*, 319 N.J. Super. 1, 724 A.2d 836 (N.J. Super. Ct. App. Div. 1999). The case was remanded for a hearing where judge had failed to inquire into outside influences on jurors, including their being followed by strangers and their receipt of implied threats and exposure to media coverage of case. After remand, a new trial was granted when the state was unable to rebut presumption of taint of jury as a result of contacts. *State v. De Stefano*, 339 N.J. Super. 153, 771 A.2d 592 (N.J. Super. A.D. 2001).

(5) *United States v. Sylvester*, 143 F.3d 923 (5th Cir. 1998). After three separate instances of potential jury tampering, including phone calls to two jurors (one followed by the attempted delivery of a mysterious package), and an in-person incident in which an individual told a juror to “take it easy’ on the defendants,” were investigated by the court ex parte, the case was remanded for an evidentiary hearing, so that parties could participate in inquiry to determine whether intrusion affected jury’s deliberations and verdict.

(6) *United States v. Ruggiero*, 928 F.2d 1289 (2nd Cir. 1991). In this case, the appellate court upheld the district court’s dismissal of a juror after, on the eve of deliberations, he was confronted in his driveway by two men who asked him if he served on the jury, and the juror stated that the encounter made him fearful.

(7) *Gannett Co. v. State*, 571 A.2d 735 (Del. 1990). In this case, the court upheld an order restricting access to juror names and notes where, in a previous case against a co-defendant, a local newspaper published an article in the midst of trial providing information regarding the jurors’ names, hometowns, occupations, marital status, number and ages of their children, personal mannerisms and appearance (such as “stout,” “mostly bald,” “short and round,” “tall, balding and thin,” and having a “stern expression” or a “stern demeanor,” being “stylishly dressed,” and admitting to having a hearing problem, and a television crew thereafter followed some of them to lunch and attempted to film them eating. The court noted that the news article, which apparently this was the first newspaper article in Delaware to publish such information while a trial was in progress, admitted that the “jurors value[d] their privacy highly and became extremely upset when a . . . television crew followed some of them to lunch and attempted to film them eating,” and that the jurors “avoid[ed] media, family members of the victims and defendant, and anyone else who appear[ed] recognizable, leaving local restaurants at the sight of a familiar face from the courtroom.”

(8) *United States v. McAnderson*, 914 F.2d 934 (7th Cir. 1990). In this case, the court of appeals upheld the district court’s dismissal of four jurors who received threatening calls during trial, as well as a fifth juror who had heard about the threatening calls; district court determined removed jurors to be genuinely fearful

(9) *Stockton v. Virginia*, 852 F.2d 740 (4th Cir. 1988). In this capital case a death sentence was reversed after jurors were approached at dinner during the deliberation stage, by the proprietor who said,

among other things, that they ought to “fry that son of a bitch.”

Other relevant cases are collected and discussed in various law review articles, including articles cited by Judge Posner in his dissent from the denial of rehearing en banc in this case. See *Blagojevich*, 2010 WL 2767760 (citing Kenneth J. Melilli, “Disclosure of Juror Identities to the Press: Who Will Speak for the Jurors?,” 8 *Cardozo Pub. L., Policy & Ethics J.* 1 (2009); David Weinstein, “Protecting a Juror’s Right to Privacy: Constitutional Constraints and Policy Options,” 70 *Temple L. Rev.* 1, 2–3 (1997); Nancy J. King, “Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials,” 49 *Vand. L. Rev.* 123, 129 (1996); Kenneth B. Nunn, “When Juries Meet the Press: Rethinking the Jury’s Representative Function in Highly Publicized Cases,” 22 *Hastings Const’l L.Q.* 405, 429–34 (1995); Abraham S. Goldstein, “Jury Secrecy and the Media: The Problem of Postverdict Interviews,” 1993 *U. Ill. L. Rev.* 295.

V. Experience in the Ryan Trial

Experience in the trial of former Governor George Ryan is also instructive. As this Court has noted, a news media investigation of jurors in the trial of former Governor Ryan led to the dismissal of two jurors and their replacement with two alternate jurors during the course of deliberations. *United States v. Warner*, 498 F.3d 666 (7th Cir. 2007) (the “Ryan prosecution”). Although the names of the jurors were publicly disclosed at the time of jury selection, to the government’s knowledge, they were not publicly disseminated until the eighth day of deliberations, when the Chicago Tribune announced that it had uncovered information indicating that certain jurors

had failed to disclose prior criminal convictions in the questionnaires they filled out prior to jury selection. After an investigation was conducted of the jurors' representations concerning criminal convictions, two of the jurors were dismissed based on a finding that they intentionally concealed their prior convictions, the adult son of one of the dismissed jurors, substituting for his mother, who was subject to a gag order entered by the district court, promptly gave a provocative quote to one of the local television stations, which was widely reported.

In the aftermath of the extensive publicity that attended the dismissal of the two jurors and their replacement with alternates, a call to a local radio show, the "Roe Conn" show, when Channel 7 television personality Ron Magers was appearing on the show spawned a second round of investigations. The caller reported that he had had a conversation with a female juror in the case (specifically, as the caller later stated, the foreperson). The district court conducted an inquiry into this alleged conversation, beginning by questioning the caller, who owned a coffee stand at the Lisle train station. The caller claimed that a customer of his has told him that she was the jury's foreperson and that, on the day the two alternate jurors were added to the deliberations, she stated that the jury "hadn't even started deliberations" because they were still reviewing "rules." 4/11/06 Tr. 25129, 25143, 25146, 25151.⁷ The caller stated that he told the foreperson about the public comment made by the dismissed juror's son, and that the foreperson replied that maybe that was why she was off the

⁷ The transcripts of these proceedings are in storage, but can be obtained if the Court wishes to review them.

case. *Id.* The caller explained that, when he raised this topic on the radio show, he “basically was trying to get Ron Magers’ reaction to that comment, since he is with Channel 7, but [Magers] didn’t say anything.” *Id.* at 25138.

The Court then questioned the foreperson, who freely acknowledged that she occasionally spoke with a man who sold coffee at the train station, whose name she did not know, but insisted she never discussed with him anything related to the case or the deliberations. *Id.* at 25192. After conducting this inquiry, the Court found that the foreperson’s account of her conduct, including her assertion that no improper conversation had occurred, was credible, and she was not excused from the jury. *Id.* at 25237.

DISCUSSION

Just as juries must be free to function in secrecy, they must also function free from outside contacts and influences which are presumptively prejudicial to the parties’ right to a fair trial, *United States v. Harbin*, 250 F.3d 532, 544 (7th Cir. 2001) (communications with jurors during the pendency of trial are presumptively prejudicial) (citing *Remmer v. United States*, 347 U.S. 227, 229 (1954)). As the Supreme Court has recognized, in a case involving intense media attention, public disclosure of juror names during trial increases the risk of third-party contact by the press or by non-parties, and threatens the jury’s ability to render a verdict solely based upon the evidence and applicable law, without regard to outside influences:

As a consequence [of publishing the names and addresses of the “veniremen”], anonymous letters and telephone calls, as well as calls from friends, regarding the impending prosecution were received by all of the

prospective jurors....

* * * * *

[N]umerous pictures of the jurors, with their addresses, which appeared in the newspapers before and during the trial itself exposed them to expressions of opinion from both cranks and friends. The fact that anonymous letters had been received by prospective jurors should have made the judge aware that this publicity seriously threatened the jurors' privacy.

Shepard v. Maxwell, 384 U.S. 333, 342 (1966). Once a trial begins, "there is likely to be the most intense news coverage[,] which therefore creates the most need to ensure that inadmissible opinions or statements do not encroach upon the laboratory conditions of the trial." *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 256 (7th Cir. 1975). The ease of accessing and distributing information via the internet amplifies both likelihood that the jury will be exposed to external contacts and information, as well as the risk that such contacts will originate outside the Court's jurisdiction. See *United States v. Black*, 483 F. Supp. 2d 681, 630 (N.D. Ill. 2007).

One way of reducing those risks is to withhold public disclosure of juror names until the conclusion of the trial. See, e.g., *ABC, Inc. v. Stewart*, 360 F.3d 90, 104-05 (2d Cir. 2004); *United States v. Brown*, 250 F.3d 907, 917 (5th Cir.2001); *United States v. Wong*, 40 F.3d 1347, 1376-77 (2d Cir. 1994). *C.f. Gannett Co. v. DePasquale*, 443 U.S. 368, 391-93 (1979). In the government's view, given the exceptional circumstances of this case, this step is the most effective and least restrictive alternative for protecting the defendant's right to a fair trial, and the public's interest in the fair administration of justice.

As demonstrated above, the media interest that this case has generated is, as the Court noted originally, “enormous.” Moreover, that interest is not limited to news reporting. Instead, it includes a vast array of public discourse in realms ranging from serious news to blogs to pure entertainment. Moreover, there have already been attempts by third-parties to involve themselves in the proceedings. As demonstrated above, multiple individuals have contacted the Court through mail, email and voice mail. Non-parties have filed unauthorized pleadings. A spectator has had to be removed from the courtroom corridor to prevent disruption. These are not isolated events but, rather, the types of interference that may occur in any case, but are much more likely to occur in a case such as this one. And the additional efforts the Court is already employing, *i.e.*, instructing the jury to avoid media reports and contacts related to the case and providing additional security are not sufficient.

The Ryan prosecution provides insight that is not limited to the fact that the press was able to identify failures by certain jurors to disclose criminal convictions. After extensive publicity was focused on the jurors, rather than the witnesses and evidence, a third-party with an interest in being noticed in connection with a high-profile, high-publicity case hit upon a new method of involving himself – that is, contacting (or exaggerating or fabricating contacts) with a juror. The radio show caller’s effort to get a rise out of Ron Magers on the radio illustrates the type of pernicious interference that is highly likely to arise in cases in which interjecting oneself is almost certain to result in publicity. Given the negative effects that interrogations of jurors may pose to the deliberative process, it is crucial to minimize

the risk of third-party contacts. Indeed, the fact that responsible journalists make a practice of *not* publicizing jurors' names during trial without special reasons for doing so, see *United States v. Warner*, 396 F. Supp. 2d 924, 928-29 (N.D. Ill. 2005), demonstrates their understanding of the fact that the risks to justice are greatly reduced when publication is delayed until the conclusion of trial.

As this Court recently suggested, the fact that the Court represented to the prospective jurors in this case that their identities would be protected until verdicts were reached militates strongly in favor of continuing to withhold public disclosure of the jurors' names. It is highly likely that the jurors viewed the Court's representation as a promise affecting their well-being, and will almost certainly view a change at this juncture as reneging, thereby diminishing their respect for the Court, as well as the Court's instructions. In this respect, Judge Posner's description of the situation is particularly apt. See *Blagojevich*, 2010 WL 2767760 at *2.

CONCLUSION

For all of the foregoing reasons, to ensure the fairness of the trial, the government respectfully requests that this Court continue to withhold from public disclosure the names of the sitting jurors until verdicts have been rendered.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following document:

**GOVERNMENT'S MOTION TO LIMIT PUBLIC RELEASE OF
JUROR NAMES UNTIL VERDICTS HAVE BEEN RENDERED**

was served on July 19, 2010, in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

Respectfully submitted,
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Today is what Blago blitz was all about

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Potential jurors among 84.2 million TV viewers who've seen him
Daily Herald 6/3/10

When Rod Blagojevich faced the classic boardroom grilling before Donald Trump fired him from "Celebrity Apprentice," the real estate mogul may have accurately

summed up what was the pinnacle of the former governor's exhausting media blitz.

"I don't know that we are seeing the real Rod," Trump told Blagojevich and other contestants from across an

imposing table. "I think Rod is a much more competitive person than we are seeing. I think Rod is being overly nice because, you know, you have some pretty big things to do when you finish this, right?"

Blagojevich didn't answer, but the implication was clear: The former governor's circus-like media tour in the wake of his stunning arrest on corruption charges has been directly aimed at swaying public

opinion. By extension, that also means potential jurors.

Today, federal prosecutors and Blagojevich's defense team are set to start picking those jurors as they put together a panel of citizens who will have the final say on



Rod Blagojevich

See **JURY** on **PAGE 8**

Page 8

• Defense team fails to delay jury selection, which begins today

Jury: Will tactic work, or turn out like 'Celebrity Apprentice'?

Continued from Page 1

Daily Herald 6/3/10
the former governor's guilt or innocence.

Between the time of his arrest on the brisk morning of Dec. 9, 2008, and today, Blagojevich has appeared on more than 38 TV shows, many of them prime time, hitting news and entertainment programs geared toward every slice of the demographic pie, from stay-at-home moms and business executives to minorities and young adults.

In all, figures provided by The Nielsen Co. show the governor reached more than 84.2 million viewers.

Of course, that wasn't all Blagojevich has been up to.

He released a book, set out on a book tour, hosted numerous two-hour radio programs in the Chicago market, sang Elvis songs at a corporate event and sat for lengthy interviews for national magazines.

Through it all, he has proclaimed innocence, insisting there is a political conspiracy to put him behind bars because he wouldn't raise taxes in office.

Some have called him a liar, and others have championed his cause.

On Wednesday, WLS-AM radio pulled the plug on Blagojevich's Sunday radio show, at least until after the trial.

But the only opinions that matter to Blagojevich now will be jurors' after they sit through months of testimony and listen to the government's wiretap recordings in a downtown Chicago courtroom.

Blagojevich publicist Glenn Selig of the Tampa-based Publicity Agency makes no bones about the purpose of the ousted governor's endless media tour — one that skipped over the Chicago press corps.

"The goal from the get-go was to get the truth out and make sure that people understood," Selig said.

"I think he did a very good job of setting the record straight and, at the very least, showing there was another side of the story."

To a courtroom expert, publicity is all about who eventually ends up casting the verdict from the jury box.

"The more faces he touches the more potential pool members are involved and a mom talks to a daughter and an aunt talks to a niece and word spreads that 'Hey, this guy is not the monster that we thought he might be,'" said Stanley Curbo, a senior litigation consultant with Texas-based Courtroom Sciences.

Whether Blagojevich's side of the story was heard or believed by a potential juror is certainly on the minds of prosecutors and defense attorneys as they sift through lengthy jury surveys and question those who may make the final cut.

The goal of jury selection will not be to impanel men and women who have never heard of Blagojevich or seen him on TV, but rather those who at least appear to remain open-minded, experts say.

And both sides will have a different interpretation of that.

In general, prosecutors will be looking for "law and order" types who see the world in "black and white." On the other side, defense attorneys are looking for those who see the world in more gray terms, or as Curbo puts it, "lead with their heart instead of their head."

Yet, Blagojevich has taken a risk with his media tour and book-peddling.

He may have said things that could come back to haunt him in court or, at the very least, he might have looked like a fool.

For these kinds of reasons, Blagojevich's first attorney reportedly walked out when the former governor insisted on going public with his pleas of innocence.

"A lot of people feel that he has been manipulative," said Dr. Richard Waites, a lawyer and psychologist in

On the tube Daily Herald 6/3/10

Here is a list of some of the TV shows Rod Blagojevich or his wife have appeared on since the former governor's arrest in December 2008 and an estimate of average viewership during that month provided by The Nielsen Co.

Date	Show	Station	Viewership
Jan-09	D.L. Hughley	CNN	433,000
Jan-09	Larry King Live	CNN	741,000
Jan-09	Rachel Maddow Show	MSNBC	755,000
Jan-09	Fox & Friends	FNC	999,000
Jan-09	On the Record	FNC	1,123,000
Jan-09	Campbell Brown	CNN	1,244,000
Jan-09	Glenn Beck	FNC	1,715,000
Jan-09	The Early Show	CBS	3,577,000
Jan-09	The View	ABC	4,458,000
Jan-09	Good Morning America	ABC	4,757,000
Jan-09	Evening News	CBS	7,400,000
Feb-09	Larry King Live	CNN	667,000
Feb-09	On the Record	FNC	1,276,000
Feb-09	Hannity	FNC	1,839,000
Feb-09	Late Show with David Letterman	CBS	3,737,000
Feb-09	Today	NBC	5,928,000
Apr-09	Today	NBC	5,647,000
Jun-09	Huckabee	FNC	762,000
Jun-09	I'm a Celebrity...Get Me Out of Here!	NBC	5,172,000
Sep-09	Squawk Box	CNBC	180,000
Sep-09	Morning Joe	MSNBC	380,000
Sep-09	Chelsea Lately	EI	459,000
Sep-09	Hardball with Chris Matthews	MSNBC	530,000
Sep-09	The Daily Show with Jon Stewart	COM	636,000
Sep-09	Campbell Brown	CNN	668,000
Sep-09	The Bonnie Hunt Show	NBC	945,000
Sep-09	Fox & Friends	FNC	1,135,000
Sep-09	Jimmy Kimmel Live!	ABC	1,559,000
Sep-09	The View	ABC	3,509,000
Sep-09	Inside Edition	CBS	4,262,000
Feb-10	The O'Reilly Factor	FNC	1,734,000
Mar-10	Geraldo at Large	FNC	771,000
Mar-10	Wendy Williams Show	BET	1,633,000
Mar-10	Late Show with David Letterman	CBS	3,654,000
Apr-10	Lopez Tonight	TBS	642,000
Apr-10	On the Record	FNC	1,146,000
Apr-10	Celebrity Apprentice	NBC	8,376,000
Estimated total viewership			84,249,000

Source: Daily Herald research, The Nielsen Co., The Publicity Agency

Rod Blagojevich, leaving court Thursday, shouts to everyone within earshot that he is innocent. | TOM CRUISE-SUN-TIMES

SEIZING THE DAY

Never let a good crisis go to waste, or so the saying goes.

With that in mind, Illinois Republicans are marketing a line of "Blagowear" to remind voters about the allegedly corrupt former governor.

The T-shirts, coffee mugs, tote bags and doggie shirts show an elephant unplugging the former governor's blow dryer with the slogan, "Unplug the Machine."

"This is an opportunity to poke a little fun, but with a serious underlying point that it's time for something different," said Patrick Brady, chairman of the Illinois Republican Party.

"Blagowear" is available online at: cfeexpress.com/blagowear

"I'm doing a good job. So f--- all of you."

To make matters worse, that same day, Blagojevich caught some flak trying to go to Obama's historic victory rally at Grant Park.

When Blagojevich requested credentials, it put up "red flags" with the Obama camp, prompting an e-mail from then-Obama staffer Anita Dunn that was forwarded to Greenlee.

The message: "WTF?"

Greenlee explains that he had to practically beg Obama's people for an invite so that when the media asked Blagojevich if he got one, he didn't have to admit he got snubbed. Greenlee said he believed he won one, in part, because he "suggested" to Obama's people that Blagojevich wouldn't actually show.

Blagojevich ultimately attended the rally but later is heard on a recording complaining that he wasn't really welcome.

Greenlee testified Blagojevich was in the office just two to eight hours a week and he had to "trap him" to sign bills. "It was relatively difficult . . . because of a limited attention span," Greenlee said.

Once, Greenlee said he joined the Blagojevich family at Southport Lanes restaurant and bowling alley, where they reviewed a stack of 20 pressing bills.

Blagojevich vetoed some of the bills. Greenlee suggested if he hadn't dined

with the governor that night, some of the vetoed legislation would instead have been law.

He also testified that he would say things to appease Blagojevich because the then-governor had a tendency to shut people out if he didn't like what they had to say.

That included Blagojevich's budget director John Filan. Greenlee said Blagojevich would hide in the bathroom, in the back of his office or leave early to avoid Filan.

In another embarrassing revelation, former first lady Patti Blagojevich was heard giving her thoughts on what to do with the Chicago Tribune editorial board.

On a conference call, Patti Blagojevich is heard chiming in over her husband about Tribune Co.'s desire to get state help in selling the Cubs and Wrigley Field at the same time the newspaper was calling for the governor to be removed from office.

"Tell them to hold up that f--- Cubs s---," she said. "F--- them. F--- them. What kind of bulls--- is that?"

Later in the tape, Patti Blagojevich is heard going on about the editorial board:

"Just fire them . . . what would William Randolph Hearst do?"

Comment at suntimes.com.



WLS radio shuts off Blago's mike

ON HIATUS | Weekly show off the air during trial

A Chicago radio station is pulling the plug on former Gov. Rod Blagojevich — at least for now.

Officials with WLS-AM (890) say they're putting Blagojevich's weekly Sunday afternoon radio show on hiatus until after the his federal corruption trial.

WLS says it's making the move out of respect for the legal process, and it will re-evaluate the show's status after the trial.

The radio station announced the hiatus Wednesday during Blagojevich's appearance on the "Don Wade and Roma Morning Show." Blagojevich says he'll miss doing the show and the listeners who call in each week.

Putting a positive spin on the news, Blagojevich's publicist sent out a news release headlined "Rod Blagojevich Named 'Contributor' on WLS-AM Radio; Governor's Weekly Talk Show Put on Hiatus."

"I thank WLS for hiring me and continuing to give me a voice even with this cloud over my head," the

former governor said in the release. "That takes guts. I am looking forward to clearing my name and for the truth to come out."

Blagojevich pleaded not guilty to scheming to sell or trade President Obama's former Senate seat and other charges. Blagojevich said he plans on returning to the airwaves.

"I thank all those who listened and especially the regular callers," he said in the release. "I look forward to coming back to the show when the trial is over and I am vindicated, perhaps in an even better time slot." AP

SUN-TIMES 6-3-10



Rod Blagojevich is interviewed on the Don Wade and Roma show on WLS-AM (890) in January 2009. | ERNIE TORRES/SUN-TIMES

Tried 4/9/10

Judge orders Blago into Tweet retreat

No court reports from ex-governor

Before opening statements began Tuesday at former Gov. Rod Blagojevich's corruption trial, U.S. District Judge James Zagel issued a ruling sure to make cyberspace all a-Twitter: Or not.

Zagel banned Blagojevich from Tweeting from the courtroom.

The technologically challenged ex-governor joined Twitter this month, but most of his milquetoast, 140-character messages seem to be written by his publicist. After all, Blagojevich didn't even know how to send a text message or open a text file on "The Celebrity Apprentice" when it was filmed last year.

However, the ex-governor

will be allowed to continue speaking with the media and appearing on radio programs — at his own peril.

Zagel told Blagojevich that his "repeated public statements" could be used against him if he testifies during his corruption trial.

Blagojevich's attorney, Sam Adam Jr., also made one last attempt to postpone opening statements, asking the judge to be sympathetic to the fact that Amy Blagojevich's eighth-grade graduation was Tuesday. The judge denied the request, telling Adam that if he wanted to get out early, he could cut his own 105-minute opening.

"You are going last, so you might want to shorten your own statement," Zagel said.

— *Bob Sexter*

Witness: Blago out of it

Southtown Star 7/9/10

Aide: Gov hid; prosecution could rest case on Tuesday

BY MIKE ROBINSON
AND MICHAEL TARM
The Associated Press

Rod Blagojevich hid in the bathroom, ducked into a back room and left the office early to avoid discussing complex issues with his budget director, his former deputy said Thursday at the ousted governor's corruption trial.

Blagojevich worked in the office less than nine hours a week and had trouble focusing on legislation, former Deputy Governor Robert Greenlee said in testimony that portrayed the governor as disengaged in the affairs of state government.

His testimony came as prosecutors announced they probably would rest their case on Tuesday, weeks ahead of schedule, and as Blagojevich was heard on an FBI wiretap tape saying he would get "tangible political support" if he named U.S. Rep. Jesse Jackson Jr. (D-2nd) to the Senate seat Barack Obama was leaving to become president.

"Specific amounts and everything," Blagojevich said on the tape, adding, "some of it up front." Greenlee testified that he believed the governor had been talking about campaign money in exchange for the seat.

Jackson has not been charged with wrongdoing in the case, but prosecutors have said there is evidence that some of his supporters spoke about raising funds for Blagojevich.

The trial began in earnest with opening statements June 8 and the prosecution's case was expected to last through the month of July, but Assistant U.S. Attorney Reid Schar told U.S. District Judge James B. Zagel on Thursday after jurors left for the weekend "there is a good chance" the government will rest on Tuesday.

Blagojevich's attorneys immediately asked for a break in the trial that would allow them to start their case



Making his move: Rod Blagojevich leaps over a puddle Thursday after leaving federal court in Chicago.
TOM CRUZE — SUN-TIMES MEDIA

a week from Monday. Zagel told them to be ready Wednesday.

Blagojevich, 53, has pleaded innocent to scheming to get a high-paying job, a Cabinet post or a large campaign contribution in exchange for the appointment to the Senate seat. He has also pleaded innocent to plotting to use his power as governor to engage in racketeering.

His brother, Robert Blagojevich, 54, has pleaded innocent to taking part in the alleged Senate scheme and what prosecutors call illegal efforts to pressure two businessmen for campaign contributions.

Greenlee testified that most weeks Blagojevich spent between two and eight hours in his office and most of the time was at home or at high-profile events.

He said he often conferred with the governor by phone but once had to go to dinner with Blagojevich and his fam-

ily at a bowling alley to force him to focus on 20 pieces of legislation that would have become law if not addressed immediately. Greenlee said Blagojevich ended up vetoing several.

Greenlee said that budget director John Filan had to chase Blagojevich to get him to address complex state issues and the governor would try to get away.

"He would hide in the bathroom, hide in the back room or leave early," Greenlee said.

Greenlee also said Blagojevich didn't like to hear bad news, refused to believe it and became dismissive of staffers who insisted on conveying it to him.

In late 2008 when Obama was headed for the White House, Greenlee said, Blagojevich thought about appointing himself to the Senate seat and asked if he did so whether his wife, Patti, would be allowed to lobby the senators. Greenlee said he

checked and found that Senate rules allowed it but say that Senate spouses who work as lobbyists should not lobby the person to whom they are married.

Even as Blagojevich was hoping to be named secretary of health and human services or to another major post in the Obama administration, the Obama camp was apparently trying to keep its distance.

Blagojevich initially was not invited to the huge, nationally televised Obama victory rally in downtown Chicago on election night 2008, Greenlee said. The Obama campaign, Greenlee said, had "concerns about being seen with him."

But Blagojevich's aides worried that would mean embarrassing publicity. So they arranged to get the governor credentials for the rally on the condition that he not actually attend, Greenlee testified.