

Lessons Learned: U.S.A. v. Rod Blagojevich

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Partner



Overview of Lessons Learned

- Persistence Pays Dividends
- Honesty is rarely communicated in code
- Criminal shakedowns are not always explicit “this for that”
- You can always improve when given a second chance
- Setting a tone for compliance is critical

Investigation as of Fall 2008



Stuart Levine



Antoin "Tony" Rezko



John Wyma

Wyma Speaks

- Blagojevich links fundraising to state action:
 - Children’s Memorial Hospital
 - Member of the Illinois Road Builders Association
- Wyma informs Government of important meeting at Friends of Blagojevich (“FOB”) HQ on October 22, 2008

Wyma Draws a Line in the Sand

- October 20, 2008 – Offsite meeting
- Wyma chooses not to record meeting

Lesson: Persistence Pays Dividends (And The Government Does Not Give Up Easily)

- One last option: Obtain authority to plant a recording device in FOB's offices
- Told it can't be done

Persistence Pays Dividends

- Stay up all night writing wiretap application
- Approval received around 6 p.m.
- Early hours of October 22, 2008, FBI team covertly plants listening devices at FOB building

FOB Meeting

- Recording devices work
- Blagojevich makes incriminating statements
- Information from the meeting is used to quickly obtain wiretaps for Blagojevich's home and campaign office

The Wiretaps

- Wiretaps go live on October 28, 2008
- Expected to gather information on Blagojevich shaking down contributors for state action
- We do capture those conversations
- BUT, the majority of what Blagojevich talks about is . . .

Selling a U.S. Senate Seat

- Blagojevich has sole power to name a new United States senator
- Blagojevich is clear he wants to sell the Senate seat for personal benefits. Considers:
 - Various public sector jobs
 - Various private sector jobs
 - Over a million dollars in campaign contributions
- And Blagojevich is blunt

Senate Seat as Auction Item: November 4, 2008 (Election Day)

BLAGOJEVICH:

So the, you know, the trick's gonna be how do ya conduct, indirectly, and with a certain reserve, you know, a negotiation like a sports agent, where you're pitting one team against another, you know what I mean?

CHIEF OF STAFF:

(U).

BLAGOJEVICH:

My free agent wants to play for the Cowboys, he wants to play for the Eagles. Okay. How much you offering Obama? What are you offering Madigan? You know what, we can always go to the, we can always go to the 49ers with Emil, you know what I mean? We can always end up there. Or me.



Blagojevich's View of Life: November 4, 2008 (Election Day)

- BLAGOJEVICH:** ...my upward trajectory is fucking stalled if not fucking terminally wounded, you know, by Obama now. Okay?
- DEPUTY GOV:** Mm-hmm.
- BLAGOJEVICH:** You know? For the last, better than two decade, uh, you know, decades, I've made decisions at the expense of my family's best interests, for my political career and you, you know, my job as governor. You know?
- DEPUTY GOV:** Yeah.
- BLAGOJEVICH:** And, you know, because I'm, you know, the, this, his election blocks me now from any immediate upward mo-, movement or, you know, maybe never have any upward movement. Then, you know, now is the time for me to put my fucking children and my wife first, for a change.
- DEPUTY GOV:** Mm-hmm.
- BLAGOJEVICH:** Does that make sense Qui-, Greenlee?
- DEPUTY GOV:** Yeah. Look I, that's how I feel strongly.
- BLAGOJEVICH:** Yeah. You know...fuck Bill Knapp and fucking Fred, and all these fucking consultants who I listened to at the expense of my fucking family. Okay? And then I, I started venting...you know, part of my vent was, "yeah, and what have I gotten for-? Oh, the people are gonna fucking be mad and the fucking newspapers are gonna rip me for this?" Okay? "I fucking busted my ass and pissed people off and gave your grandmother a free fucking ride on a bus. Okay? I gave your fucking baby a chance to have health care. I fought every one of those assholes including every special interest out there, who can make my life easier and better, because they wanna raise taxes on you and I won't, I, I fight them and keep them from doing it. And what do I get for that? Only thirteen percent of you all out there think I'm doing a good job. So fuck all of you. Not to mention the fact that I'm a fucking, criminal investigations and my family's in jeopardy."



Day After Election

- President Obama has won. The Senate seat is now Blagojevich's to fill. How does he feel?

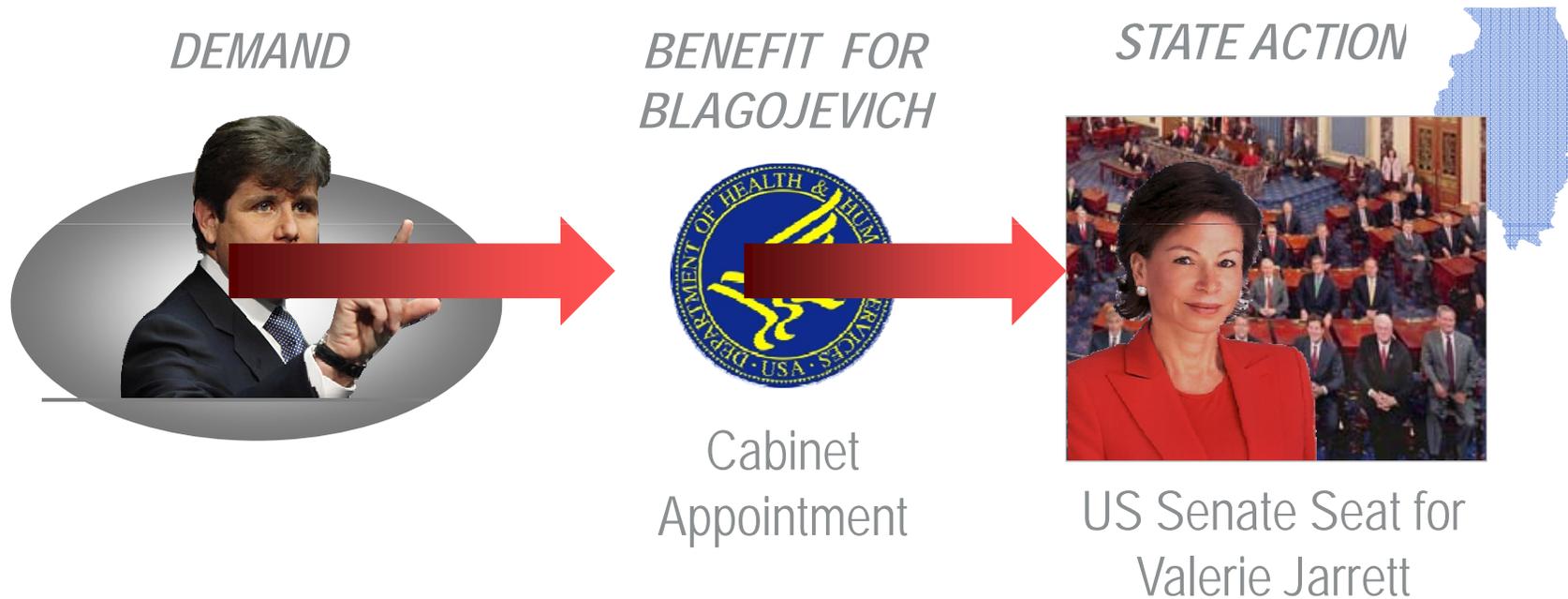
BLAGOJEVICH: I mean I, I've got this thing and it's fucking...golden.

CONSULTANT: Right.

BLAGOJEVICH: And I, I'm just not giving it up for fucking nothing.



Senate Seat for Health & Human Services



- November 6, 2008: Blagojevich Communicates His Extortionate Offer

November 7, 2008: The Day After Extortionate Offer

BLAGOJEVICH: So she's holding Health and Human Services and I'm holding a U.S. Senate seat. Okay? She's holding hers with two hands, just kinda clinging to, you know, little pieces of it. Me, I've got the whole thing wrapped around my arms, mine, okay?

CONSULTANT: Right.

BLAGOJEVICH: I'm willing to trade the thing I got tightly held, to her for something she doesn't hold quite as tightly.



Senate Seat for High-Paying Job: November 6, 2008

BLAGOJEVICH: Don't worry about it. Yeah that's, you negotiate that. I'd like a 4-year contract for a million a year or somethin'.

PATTI BLAGOJEVICH: Yeah.

BLAGOJEVICH: Or 750 or whatever. It'd have to be good. Obama's got excess money, he just gives them more money.



Days Pass: Blagojevich Gets Upset

- Nobody will play ball with Blagojevich
- Blagojevich is not used to people saying “no” to him
- Blagojevich’s advisors are telling him to name Jarrett because it is the right thing to do
- His response (November 10, 2008):

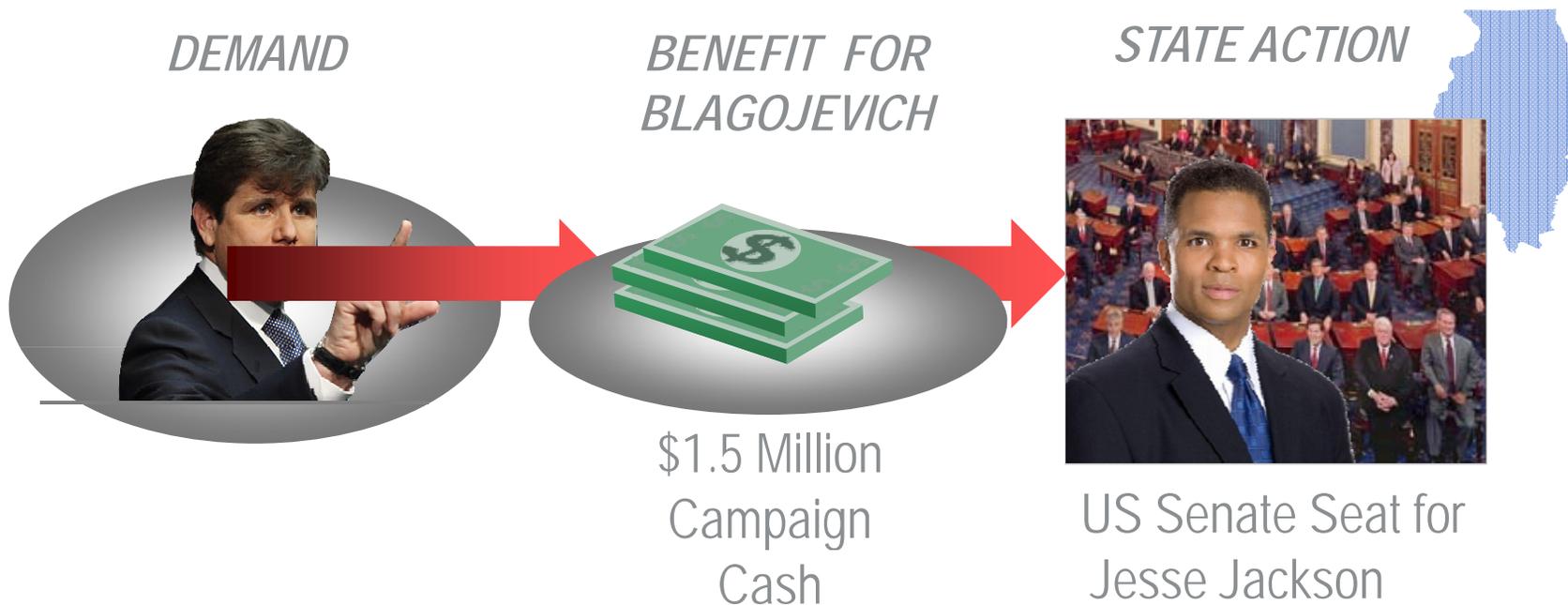
BLAGOJEVICH:

...The whole world's passing me by and I'm stuck in this fucking job as governor now. Everybody's passing me by and I'm stuck. . . . I mean you guys are telling me I just gotta suck it up for two years and do nothing. Give this motherfucker, his senator. Fuck him. For nothing? Fuck him.



Blagojevich's Final Effort

- In early December 2008, Blagojevich comes back to an offer floated to him weeks earlier (Raghu Nayak)



December 4, 2008 (11:23 a.m.): Blagojevich Speaks with Chief of Staff John Harris

HARRIS: Jesse's gonna tell you, you know what, I apologize for some of the things I've done. He'll say it privately, not publicly. He'll tell you that, I shouldn't of listened to my father and some of these other advisers...when it came to...

BLAGOJEVICH: Well, he's come to me with, through third parties, you know with offers of campaign contributions and help.

HARRIS: Right.

BLAGOJEVICH: You know what I mean? 1.5 million they've, they're throwin' numbers around.

- Blagojevich goes to a luncheon fundraiser and then returns home



Lesson: Honest Rarely Comes in Code

- When people will not state explicitly what they mean or want, red flag

December 4, 2008 (2:09 p.m.): Blagojevich Speaks with a Deputy Governor and Consultant

CONSULTANT: Is this, is essentially the deal with Jesse Jr. will be that the Jacksons will support you for re-election?

BLAGOJEVICH: No there's more to it.

CONSULTANT : What else?

BLAGOJEVICH: There's tangible, concrete tangible stuff from supporters.

CONSULTANT : Like what?

BLAGOJEVICH: Well like, you know. You know what I'm talking about.

DEPUTY GOV: (UI)...later.

BLAGOJEVICH: Political, tangible political support Fred.

CONSULTANT : Okay, alright.

BLAGOJEVICH: You know. Specific amounts and everything. And while, you know, I don't know that all of that is achievable, there is, some of it up-front.



December 4, 2008 (2:43 p.m.): Blagojevich Speaks with his Chief Fundraiser (Robert Blagojevich)

BLAGOJEVICH: So here, listen this...

CHIEF FUNDRAISER: Yeah.

BLAGOJEVICH: ...this whole Jesse Jr. thing, you, you gotta understand somethin'. I, I'm fucking elevating him now.

BLAGOJEVICH: What, here's, here's what you've got to do. You gotta talk to Raghu. You gotta call him and say hey, look. You know, Jesse Jr. you know, I think a Ro-, Rod's meeting with him at some point. Very much a real-, a realistic, and you should just let him know, you know, the Durbins and the others behind the scenes, they don't want him. They're afraid.



December 4, 2008 (2:43 p.m.): Blagojevich Speaks with his Chief Fundraiser (Robert Blagojevich)

BLAGOJEVICH: And the other point, you know, all these promises of help. That's all well and good but he's had an experience with Jesse and Jesse promised to endorse him for governor and lied to him. Okay?

CHIEF FUNDRAISER: Mm-hmm.

BLAGOJEVICH: So, you know, we, if, if in fact there's there's, this is, you know, this is possible, then some of the stuff's gotta start happening now.

CHIEF FUNDRAISER: Yep.

BLAGOJEVICH: Right now.

CHIEF FUNDRAISER: Very good.

BLAGOJEVICH: And we gotta see it.

CHIEF FUNDRAISER: Okay.

BLAGOJEVICH: You understand? Now you gotta be careful how you express that. And assume everybody's listening, the whole world's listening.



December 4, 2008 (2:43 p.m.): Blagojevich Speaks with his Chief Fundraiser (Robert Blagojevich)

CHIEF FUNDRAISER: Right.

BLAGOJEVICH: You hear me?

CHIEF FUNDRAISER: Right, right, right.

BLAGOJEVICH: But if there's tangible political support like you've said, start showing us now.

CHIEF FUNDRAISER: Yeah, okay.

BLAGOJEVICH: Okay?

CHIEF FUNDRAISER: Very good.

BLAGOJEVICH: Ah...

CHIEF FUNDRAISER: I'll make that call, I'll make that call this afternoon.

BLAGOJEVICH: I would do it in person. I would not do it on the phone.

- Robert Blagojevich gets off phone and immediately sets up meeting with Raghu Nayak



movies

Music rules in Beyoncé's Chicago story

Chicago Tribune

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Feds taped Blagojevich



Who is John Wyma? Wyma (above left) is among Gov. Rod Blagojevich's closest confidants, fundraisers and friends. Before becoming a top state lobbyist, he was Blagojevich's chief of staff when Blagojevich was in Congress and played key roles in the governor's campaigns.

TRIBUNE EXCLUSIVE: Adviser cooperated with corruption probe

By Jeff Coan, John Coase and David Kidwell
TRIBUNE REPORTERS

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Who is John Wyma? Wyma (above left) is among Gov. Rod Blagojevich's closest confidants, fundraisers and friends. Before becoming a top state lobbyist, he was Blagojevich's chief of staff when Blagojevich was in Congress and played key roles in the governor's campaigns.

TRIBUNE EXCLUSIVE: Adviser cooperated with corruption probe, sources say

By Jeff Coan, John Coase and David Kidwell
TRIBUNE REPORTERS

Federal investigators recently made covert tape recordings of Gov. Rod Blagojevich in the most dramatic step yet in their corruption investigation of him and his administration, the Tribune has learned.

As part of this undercover effort, one of the governor's closest confidants and former allies cooperated with investigators, and that assistance helped lead to recordings of the governor and others, sources said.

The cooperation of John Wyma, 43, one of the state's most influential

lobbyists, is the most stunning evidence yet that Blagojevich's once-tight inner circle appears to be collapsing under the pressure of myriad pay-to-play inquiries.

Wyma, Blagojevich's chief of staff when he was in Congress, has long been one of the few advisers trusted by Blagojevich and kept in the loop on matters of policy and politics. As the federal probe intensified, Wyma met privately with the governor and his former chief of staff at the governor's campaign headquarters on the North Side for 90 minutes on Oct. 22.

Confronted outside that meeting, Wyma declined to talk to Tribune reporters about what the meeting was

about before jumping into his car. The next day the Tribune was the first to report that Wyma's name appeared in a federal subpoena delivered to Provena Health, a former client of his.

The subpoena sought records about Provena's lobbying relationship with Wyma, the hospital's efforts to win state approval of a new heart program and a \$25,000 donation the company's for-profit affiliate gave to Blagojevich's campaign fund.

On Thursday, Wyma did not return phone messages and e-mails

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GOVERNMENT EXHIBIT
Tribune Article

EG1198_00001

December 5, 2008

- Downside: Article kills ability to observe potential future crime
- Upside: Blagojevich recorded telling his brother to cancel meeting with Nayak

Lesson: Shakedowns Are Not Always Explicit

- Children's Memorial ("CMH") Shakedown
- CMH was trying for years to get Blagojevich to raise Medicaid rates
- Blagojevich would not return CMH CEO Patrick Magoon's phone calls
 - Blagojevich took Dusty Baker's call
 - After talking to Dusty Baker, Blagojevich agreed to raise the rates

Children's Memorial Shakedown

- Timeline:
 - October 8: Blagojevich will raise rates and wants to “get” Magoon for \$50,000
 - October 17: Blagojevich calls Magoon: (a) Rates will increase; (b) Magoon told to keep quiet until end of year
 - October 22: Blagojevich directs his chief fundraiser to call Magoon and ask for money
 - October 22: Chief fundraiser calls Magoon and asks for fundraising by end of the year
 - Just 5 days between Blagojevich’s call and fundraiser’s call
 - “Ask” did not come from Blagojevich himself

Children's Memorial Shakedown

- Magoon is concerned about the timing
- Magoon seeks the advice of experienced outside white collar counsel
 - Fortunately, Magoon gets good advice—although no “explicit” *quid pro quo*, told to stop interacting with Blagojevich
 - If Magoon had received bad advice or contacted inexperienced counsel, continued conversations might have caused problems for him

Children's Memorial Shakedown

- Blagojevich gets frustrated
- November 12: Blagojevich directs a “hold” be placed on the rate increase
- Blagojevich ultimately convicted of this shakedown although no “explicit” one-for-the-other conversation

Trial 1 (2010)

- Trial 1 ends with conviction for lying to the FBI, but deadlocked jury on other counts
- Most were 11 to 1 to convict

Lesson: There is Always Room to Improve

- Could have retried the same case
- Spent time talking to jurors to see what we could do better
- Based on comments:
 - Cut significant detail from case
 - Changed from a chronological presentation to an episodic presentation

Trial 2 (2011)

- Focused on strongest evidence: started trial with Senate seat allegations
- Blagojevich aware that he was saved the first time by one juror
- Blagojevich decides he will testify

Blagojevich Testifies

- Direct Testimony
 - Lasted for 5 trial days
 - Spent most of first day telling stories about growing up
 - Very calculating—Had a story for each juror:
 - The Librarian
 - The Greek Restaurant Owner
 - The Video Store Owner

Blagojevich Cross

- Finished direct at 4 p.m. on the day before the three-day weekend
- Decided not to go into anything substantive about the case; just focus on lies
- The cross begins:
 - “Mr. Blagojevich, you are a convicted liar, correct?”
 - Blagojevich tried avoiding “yes” or “no” and we were off to a good start. Ultimately, conceded the “yes.”

Blagojevich Cross: Caught in Lies

- Captured on phone trying to plant a lie in the newspapers through Doug Scofield.

Schar: That was a lie.

Blagojevich: That was a misdirection play in politics. . . . It was not factual. It was not factual.

Schar: By “not factual” you mean it was untrue.

Blagojevich: It was not true.

Schar: It was a lie.

Blagojevich: I don’t see it that way, not that.

Schar: You knew the information was false.

Blagojevich: Yes . . .

Blagojevich Cross: Caught in Lies

Schar: You did not think anyone was going to contradict that lie.

Blagojevich: I don't know. I don't know that I thought that far ahead.

Schar: You did think that far ahead, Mr. Blagojevich, because a little bit later you talked to Mr. Harris. What you said was "Doug [Scofield] is trying to get a [newspaper] item in saying that Jesse Jr. and I had a real good conversation this weekend." Mr. Harris said "Did you?" You said, "No. So who's going to contradict that, you know?"

Blagojevich: Right, in other words, Jesse Jackson, Jr. . . ."

Schar: Yes or no?

Blagojevich: Well, I did say that.

Blagojevich Cross: Caught in Lies

- Claimed during his direct testimony he was always considering himself for the Senate seat. So . . .

Schar : You were asked, “How about yourself?” And your response was “I’m not interested in the U.S. Senate.”

Blagojevich: Right.

Schar: That was a lie.

Blagojevich: I try — what I did that —

Schar : Yes or No sir? That was a lie.

Blagojevich : You know, I hadn’t decided what I was going to do, so I would say no, I hadn’t reached a decision. I guess, it’s — it’s a political answer, but I — I can’t say that I was completely false. I didn’t know what I was going to do, so —

- **Verdict:**
 - Guilty of 17 of 20 counts of fraud, extortion, and bribery
- **Sentence:**
 - “When it is the governor who goes bad, the fabric of Illinois is torn and disfigured and not easily or quickly repaired.”
 - 14 years

Lesson: Setting Proper Tone is Critical

- Set a tone for compliance
 - Blagojevich was not only violating the law, he iced out advisors
- Foster an environment where employees are not penalized for coming forward with concerns
 - The Sarbanes-Oxley Act requires publicly listed companies to establish a whistleblower system for complaints about internal controls

Lesson: Setting Proper Tone is Critical

- It also makes good business sense:
- Many statutes incentivize employees to bring wrongdoing to the Government's attention
 - Dodd-Frank Act (awards 10% to 30% of \$1 million plus recoveries to whistleblowers)
 - **Foreign Corrupt Practices Act** whistleblowers are covered by Dodd-Frank recovery provisions
 - False Claims Act (awards up to 30% of recovery to whistleblowers who bring suits under the Act)

Final Thoughts

- What to do when put in a difficult spot:
 - Get help
 - Walk away
 - Deputy Governor Robert Greenlee

Thank You

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