

WHAT FITZGERALD IS HIDING IN HIS BLAGOJEVICH COMPLAINT

Two days after Fitz indicted Scooter Libby, I did a post showing how details Fitz left unstated in the indictment pointed directly at Dick Cheney.

Tricky Fitzgerald!! He's been hiding Dick right in the middle of his Libby indictment.

Fifteen months later, the press finally noticed Fitz pointing to the cloud over the Vice President.

Yesterday's complaint against Blagojevich has similar silences worthy of note. We know this, partly, because Fitz tells us. He makes it clear that he has not included everything he's got in this case, generally.

Because this affidavit is submitted for the limited purpose of securing a criminal complaint and corresponding arrest warrants, I have not included each and every fact known to me concerning this investigation.

That is, Fitz has only laid out what he needs to make the case on the two charges described here—the conspiracy to commit mail and wire fraud to deprive Illinois of his honest services (this includes attempts to get campaign contributions, favorable coverage from the Trib, and money or a job for the Senate seat), and the attempt to extort the Tribune Company (the firing of editorial staff in exchange for help on Wrigley Field). Note already how this shifts the focus onto recent events—particularly the Trib bribery attempt—and away from his larger

investigation into corruption; this allows him to keep much of the latter investigation (which undoubtedly relies on more cooperating witnesses than he has named) hidden for now. Indeed, note how the general corruption investigation generally jumps from evidence from the 2004 timeframe presented at Rezko's trial to stuff collected from the wiretaps. Fitz doesn't want to tell us everything about how he got from Rezko to the taps (except insofar as revealing some details of Rezko's cooperation, which I'll get to in a later post).

Similarly, Fitz tells us that he hasn't revealed everything pertaining to Blago's attempt to sell Obama's Senate seat.

Set out below are **summaries of certain of the conversations** referenced above. This affidavit **does not include all calls** dealing with the corrupt efforts of ROD BLAGOJEVICH, JOHN HARRIS, and others to misuse the power of ROD BLAGOJEVICH to appoint a United States Senator for the personal gain of ROD BLAGOJEVICH and his family, **nor does this affidavit set forth other calls** where ROD BLAGOJEVICH and others discussed a possible appointment to the Senate seat **based on considerations other than financial gain** for ROD BLAGOJEVICH and his family, discussions which took place with greater frequency after efforts to arrange for a private job for ROD BLAGOJEVICH in exchange for appointing a particular candidate to the open Senate seat did not meet with success. As set forth below, more recent discussions focused on an effort to obtain campaign contributions up front in consideration of an appointment to the Senate. [my emphasis]

Now, in this case, I don't so much think Fitz is hiding how he got the evidence about the Senate seat. We know that: he discovered this in the course of his taps regarding campaign donations.

Overall, I think Fitz leaves all this unsaid for two reasons: to hide the extent to which he may have gotten cooperation from witnesses. More importantly—and he made this point in his press conference yesterday—to encourage those who have evidence about this stuff to come forward on their own accord to provide information to investigators. Fitz knows he hasn't nailed this prosecution yet, and he's trying to turn the lemon of having to arrest Blago early into lemonade, by using the complaint to encourage cooperation from others. So he has repeatedly provided enough in the complaint to let people know he's investigating them, without revealing everything he has against those people.

Just as an example, consider Fitz's mention of a list of people Blago's team intended to target for bribes before yearend, when the new Ethics Law goes into effect.

Specifically, Individual A advised that ROD BLAGOJEVICH is seeking a total of approximately \$2.5 million in campaign contributions by the end of the year, principally from or through individuals identified on a list maintained by Friends of Blagojevich. The FBI has obtained a copy of that list, which identifies individuals and entities targeted for campaign contributions, as well as amounts sought from those individuals and entities.

The FBI executed a search warrant at Friends of Blagojevich yesterday, so they not only have this list, records of any campaign donations, but potentially more from the campaign office that would incriminate these people. I'm guessing that if people have been hit up for donations of late, they're going to get awfully chatty with the FBI in short order, because they know Fitz has that list in his hand and has been using it as a road map of whose donations to investigate next. Clearly, Fitz has left clues like this in the complaint to induce other to come forward to tell about Blago's demands for

bribes from government contractors.

Now, I don't think there's much that Fitz left out of the Trib discussions; while Zell and his finance advisor may be in some trouble (particularly if they left the Cubbies out of Monday's bankruptcy deal believing they had won favors from Blago), Zell may have been saved by the Trib's decision to break the wiretap story on Friday, forestalling layoffs that could be construed as Zell delivering his end of the bribe.

But the sale of the Senate seat is another issue. As I've pointed out in comments, for example, Candidate 5 is in a heap of trouble right now. Fitz includes details of Candidate 5's discussions with Blago's team as if it were an afterthought, just one more example of Blago's continued scheming.

These calls [after the SEIU and Obama-related ones] have included the following:

a. On December 4, 2008, ROD BLAGOJEVICH spoke to Advisor B and informed Advisor B that he was giving Senate Candidate 5 greater consideration for the Senate seat because, among other reasons, if ROD BLAGOJEVICH ran for re-election Senate Candidate 5 would "raise[] money" for ROD BLAGOJEVICH, although ROD BLAGOJEVICH said he might "get some (money) up front, maybe" from Senate Candidate 5 to insure Senate Candidate 5 kept his promise about raising money for ROD BLAGOJEVICH. (In a recorded conversation on October 31, 2008, ROD BLAGOJEVICH described an earlier approach by an associate of Senate Candidate Five as follows: "We were approached 'pay to play.' That, you know, he'd raise me 500 grand. An emissary came. Then the other guy would raise a million, if I made him (Senate Candidate 5) a Senator.")

Yet this is obviously no afterthought. Candidate 5 is portrayed as having approached Blago, not the other way around, and offered large sums for the Senate seat. By saying they got this conversation among others, Fitz is suggesting to those around Candidate 5 that he may well have more and that they might want to come forth to explain that more of their own accord.

"Oh, by the way, Candidate 5? Blago says you tried to bribe him to the tune of \$500,000. What do you have to say about that, Candidate 5? I'd love to hear your version of that story..."

The most intriguing such reference, in my opinion, is Fitz's description of a November 10 strategy session that took place on a 2-hour conference call between Chicago and DC.

On November 10, 2008, ROD BLAGOJEVICH, **his wife**, JOHN HARRIS, Governor General Counsel, and **various Washington-D.C. based advisors, including Advisor B**, discussed the open Senate seat during a conference call. (The Washington D.C.-based advisors to ROD BLAGOJEVICH are believed to have participated on this call from Washington D.C.). **Various individuals participated at different times** during the call. The call lasted for approximately two hours, and what follows are simply summaries of various portions of the two-hour call. [my emphasis]

Fitz makes sure to signal to Blago's wife (who is legally implicated elsewhere in this complaint, and in other activities reported by the Trib) and Advisor B (who brokered some of these deals, including to Obama's team) that he's got their statements during this long meeting. But he also signals to others who participated in the call—"various individuals"—that he knows they were part of these discussions but has not yet focused on their particular actions.

Fitz spends three pages discussing the various strategies laid out in this call, and describes Blago's insistence on getting cash value for himself or his wife in exchange for the Senate seat. It's clearly a goldmine of proof about Blago's efforts to sell the seat.

Advisor B has got to realize he's in some doo doo here; that may make him want to chat.

But those other individuals who participated in the call? They've just been sent a very clear invitation from Fitz to visit their local FBI office for a long discussion.

It's a remarkable sort of hospitality Fitz has, with these public but unspoken invitations, don't you think?

One final thing. Fitz states clearly that he does not include details of discussions that aren't clearly related to financial gain for his family.

nor does this affidavit set forth other calls where ROD BLAGOJEVICH and others discussed a possible appointment to the Senate seat based on considerations other than financial gain for ROD BLAGOJEVICH and his family

He may do this for one of two reasons. First, he may simply not think it appropriate to show us all the sausage-making that got picked up on the wiretaps, the offers of political (as opposed to financial) favors in exchange for the Senate seat. He's right—since those things would not support his legal case, why include them? **That's** when you'd get into criminalizing politics (and laying out those discussions would only intensify the feeding frenzy to determine who gets mentioned where in this complaint.

But there is one other possibility—that those things, not of financial value, still have interest for his legal case, and he's signaling that he heard those conversations as well. For example, is it possible Blago pitched a

Presidential pardon in exchange for the Senate seat? I have no idea—he was thinking more seriously about impeachment than prosecution—but if so, it would be of legal interest. I actually think a pardon would be considered to have financial value, but who knows what else the flailing Blago was pitching?

If those discussions were of more interest than simple political horsetrading, then Fitz has made it clear he'd like to learn more about them.