

**IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS--EASTERN DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff,**

vs

08 CR 888

**ROD BLAGOJEVICH,
Defendant.**

Honorable James B Zagel

**MOTION FOR ORDER PERMITTING THE PLAYING OF ALL TAPES
and
WAIVER OF RIGHTS**

Here comes Defendant, Rod Blagojevich, by his attorneys, Sheldon Sorosky, Samuel Adam, Jr., Aaron Goldstein and Sam Adam, and in support of the above states as follows:

1. The Government pursuant to ORDER AUTHORIZING INTERCEPTION OF ORAL COMMUNICATIONS, 06 GJ 1160, [18 U.S.C. 2518, et. seq.] issued by the Honorable James Holderman, has electronically recorded many hours of telephone and other conversations of the defendant and others during the months of October, November, and December, 2008.
2. These recorded conversations occurred at the defendant's home, his campaign offices, and in the case of cell phones at various and sundry places.
3. Among the several persons engaged in such recorded conversations in addition to the defendant were the co-defendant, Robert Blagojevich, the defendant's wife, Patti Blagojevich, the defendant's two minor children, certain members of the Governor's staff, his campaign staff, and lawyers both for the Office of the Governor of the State of Illinois and for the defendant.

4. Pursuant to the Federal Rules of Criminal Procedure, Rule 16 the defendant has been provided with the electronic recordings made pursuant to the aforesaid Order.

5. The defendant together with his defense team of lawyers have spent scores of hours together listening to and discussing every one of the aforesaid recordings made available to the defense. Defendant is fully aware of the content of all of those recorded conversations.

6. The defendant has been a lawyer for more than two decades, licensed by the Supreme Court of Illinois in 1984. He has actively participated in litigation both as an assistant state's attorney for the County of Cook, Illinois, and thereafter as a plaintiff's attorney and as a defense attorney. As such, the defendant is fully aware of the marital privilege, the attorney client privilege, the executive privilege, the doctrine of spoliation, and the Constitution of the United States including the Fourth, Fifth and Sixth Amendments thereto.

7. Defendant is fully aware that pursuant to 18 U.S.C. 2518(10) and the Federal Rules of Criminal Procedure, Rule 12(b)(3)(C), he has a right to move the court to suppress these recordings on grounds stated therein, including but not limited to the requirements of minimization, completeness and authenticity of the recordings, as well as the grounds delineated in subparagraph #6, supra.

8. In addition, defendant has read a proposed MOTION TO SUPPRESS EVIDENCE and the MEMORANDUM which may be submitted by his co-defendant, Robert Blagojevich, in the instant cause, and the defendant has discussed the same with his own lawyers.

9. Defendant and his defense team have discussed and believe that credible arguments *could* be made to the court in support of a motion to suppress the recordings that there was no probable cause for the issuance of the Order(s) of Judge Holderman, i.e. that there was no probable cause to believe that crime(s) had been, or would be committed; and that many of the recordings violate the marital privilege, the attorney-client privilege, spoliation, and the executive privilege.

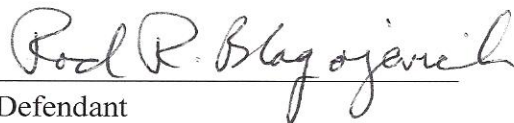
10. Despite the foregoing, the defendant knowingly, intentionally, willfully, and voluntarily waives any right that he possesses to move to suppress the said recordings, and is expressly desirous that the recordings be heard in open court by the jury, believing as he does that a full airing of the recordings will establish his innocence of every count in the indictment.

11. Defendant specifically moves that the court enter an order providing that at the trial either party---the government or the defendant Rod Blagojevich--- be permitted to play in the presence of the jury any recordings made pursuant to the aforesaid Order(s) issued by Judge Holderman at least once and without reservation or limitation in open court during the forthcoming trial.

12. This honorable court is respectfully reminded of the following language taken from **United States v Giles** (7 Cir. 2001), 246 F. 3d. 966, 974 wherein the trial court excluded a February 11, 1995 tape which the defendant wanted played to show his own

mental state:

“We think the February 11 tape should have been admitted, especially in this case where Giles was going to (and did) testify. The government’s argument that the tape was a product of Giles’ reflection—an attempt to cover his tracks in case he got caught—should have been made by the jury, not the judge. On a close evidentiary call like this, we think it’s best to err on the side of inclusion rather than exclusion.”


Defendant

/s/ Sam Adam

Sheldon Sorosky
Samuel E. Adam
Aaron Goldstein
Sam Adam
6133 South Ellis Avenue
Chicago, Illinois 60637

(312) 726-2326

Attorneys for Defendant Rod Blagojevich