



possession of the government and should be disclosed. The 302s could possibly be tendered to the Court *in camera*.

A memorandum issued on December 23, 2008 by White House Counsel Greg Craig<sup>1</sup> states that President Obama was interviewed by the FBI on December 18, 2008. In the Craig memorandum, it states that President Obama did not direct anyone to speak on his behalf regarding the White House's preferences for the Senate seat appointment.

President Obama has stated publicly that he was "confident that no representatives of mine would have any part of any deals<sup>2</sup> related to this seat."<sup>3</sup> In addition, the government's own assertions, prior to the first trial, corroborated this statement. For example, the U.S. Attorney represented that "there's no allegation that the president-elect – there's no reference in the complaint to any conversations involving president-elect or indicating that the president-elect was aware of it."<sup>4</sup>

However, trial testimony introduced by the government at the first trial was to the contrary. Numerous witnesses testified that President Obama sought the

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<sup>1</sup> Craig memorandum available online at <http://change.gov/page/-/hem5zet3nal2/2008%2012%2023%20PTT%20Contacts%20Memo.pdf>

<sup>2</sup> Deal is defined as a "transaction; bargain; contract; an arrangement for mutual advantage." *Merriam-Webster Online Dictionary*. A deal requires two willing participants.

<sup>3</sup> President-elect Barack Obama press conference, December 11, 2008.

<sup>4</sup> "Fitzgerald Press Conference on Blagojevich. Transcript." *Chicago Sun Times*, Lynn Sweet, December 9, 2008.

appointment of Valerie Jarrett<sup>5</sup>. Specifically, the government elicited testimony from its witness, Tom Balanoff, who testified that he received a call personally from President Obama on November 3, 2008. Balanoff testified that he was the emissary sent from President Obama to communicate the Valerie Jarrett request.

President Obama's public statements and the information contained within the Craig memorandum appear to directly contradict Balanoff's testimony. The 302s from the Obama interview(s) are needed to clarify exactly what, if anything, President Obama communicated to (or through) Balanoff or anyone else.

According to media reports, President Obama was interviewed by two United States attorneys and two FBI agents for two hours.<sup>6</sup> The defense certainly has the right to access the 302 summaries of that interview (and any other interviews). In order to effectively prepare for retrial, prepare a defense, confront the witnesses and evidence against Blagojevich and obtain a fair trial, disclosure of this discovery is necessary. U.S. Const. Amends. V, VI.

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<sup>5</sup> Testimony elicited by the government from John Harris and wiretaps played in court raise the issue of President Obama's communication with emissaries and others regarding the appointment to his senate seat. The government asked its cooperating witness, John Harris, questions referencing "President Obama's preferences," what President Obama knew, and what President Obama directed others to do and say, etc. John Harris testified for the government that it was his belief that messages were being communicated directly between President Obama and Balanoff (and perhaps others). Testimony was also elicited by the government regarding alleged discussions between Emil Jones and Rod Blagojevich, and also Emil Jones and President Obama (and specifically that Emil Jones received a call from President Obama directing Jones to call the Ethics Bill).

<sup>6</sup> "Barack Obama questioned by FBI agents over Blagojevich Illinois senate seat scandal", Toby Harnden, *The Telegraph*, December 26, 2008.

Moreover, it is worth noting that despite Blagojevich's requests, the Court has not lifted the protective order on any of the discovery, and as a result, these 302 reports will remain under seal. There can be no legitimate nor reasonable basis for the continued non-disclosure of these 302 reports.

Based upon the content contained in the disclosed 302s of other individuals that were tendered by the government, the Obama 302s at issue would almost certainly have been disclosed if the interviewee was anyone *other* than the President. The mere fact that these summaries are from FBI interviews with the President does not make them non-discoverable. Rather, "the need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. . . . To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense." *United States v. Nixon*, 418 US 683, 709 (1974).

The issue the Court should consider is the relevancy and materiality of the information in these 302s. The information contained within the 302s may impeach government witnesses and corroborate defense theories.

While the instant request seeks an order from this Court to compel the government to disclose the 302 summaries, the Court has even broader power. Federal precedent holds that "no person, even a President, is above the law and that in appropriate judicial proceedings, documents and other tangible evidence within

the very office of the President may be obtained for use in those judicial proceedings.” *United States v. Fromme*, 405 F.Supp. 578, 582 (ED Cal. 1975).

Insofar as this request seeks disclosure of FBI 302 summaries that go directly to the heart of testimony of several government witnesses, and that is necessary to Blagojevich’s defense, this Court should order the government to make this discovery disclosure *instanter*.

WHEREFORE, defendant Rod Blagojevich respectfully requests this Honorable Court order the government turn over to the defense any and all reports generated during any and all interviews had with President Barack Obama.

Respectfully submitted,

/s/ Lauren Kaeseberg

One of the attorneys for  
Rod Blagojevich

Attorneys for Rod Blagojevich

Sheldon Sorosky  
Aaron Goldstein  
Lauren Kaeseberg  
Elliott Riebman  
158 w. Erie  
Chicago, IL 60654