Foreword

The trial of Illinois Governor Rod Blagojevich and his brother Robert was national news. In Chicago, it was daily headline news. It was the latest in a series of “trials of the century,” especially for Illinoisans who were about to see the third of their last four governors go to jail for corruption. I watched the trial at relatively close range because, as a law professor, I was using the trial in my classes and, as a frequent media commentator, I had to distill what happened into manageable sound bites or brief commentary. When Robert told me he was writing this book I was thrilled, not only because of the enticing prospect of getting to know what really happened, but also because of the important social interest served by a close-up look at what many saw as a federal abuse of power in the criminal justice system. The government’s prosecution of Robert was in all senses wrongful but, nonetheless, prosecutors tenaciously pursued charges long after it was obvious that Robert was innocent. The arrogance of that use of power is a central theme of this book.

In *Fundraiser A*, we now get the story in dramatic and sometimes riveting fashion from the defendant himself. As Robert told the media after the verdict, “I have lived through the most surreal experience anyone could live through. This has been, from the beginning, a slow bleed both financially, emotionally, and otherwise.” After reading Robert’s complete story, I found him to be an astute if sometimes flabbergasted observer who still doesn’t quite believe this happened to him and his family. The criminal justice system in this country is flawed, and the power given to prosecutors is excessive. There’s nothing new in those observations, but to really understand why this happened to Robert is simple: it’s the story of overreaching prosecutorial power and the adversarial system gone bad.

Chicago has certainly seen its share of circus-like trials, but this one promised to be the best, even without any dead bodies. Right from the day the US attorney announced the indictment, he promised a story of corruption that would “make Lincoln roll over in his grave.” We all waited for the smoking guns, the stories of drugs, sex, lies, and greed sure to come.

While the governor was talking on tape (forty-five days’ worth of tape), his main advisors—John Wyma, Chris Kelly, Bob Greenlee, John Harris, and Alonzo Monk—were talking directly to the government because they had legal problems of their own. Chiefs of staff, advisors, and deputy governors—colleagues who had worked closely with Rod for years—were the witnesses the government intended to use to supplement the tapes. Some would be offered legal immunity in exchange for their testimony against Blagojevich, some would start talking right away to save their own skin, and one would be sent back to the Blagojevich campaign headquarters to spy.

Dropped into this maelstrom and soon to become an important part of this story was Robert Blagojevich, the conservative Republican businessman from Tennessee who, to many observers, always seemed to be an innocent in a den of predators. The governor had asked Robert to raise funds for four months before the 2010 off-year elections. Robert had no political experience, didn’t really know anybody in Illinois, didn’t have a very good relationship with his brother, and didn’t like his brother’s “too liberal and fiscally irresponsible” politics, but, nonetheless, said he would do it. Why? This is a question he continues to ask himself. Because Rod needed somebody he could trust? Because he hoped to repair a strained relationship? Because, as a businessman, he knew about money and could keep the accounts? In any event, he left behind his wife, home, and business in Tennessee to come to Chicago to do something he had never done before—fundraise for a politician.

Why Robert agreed to step into a campaign already known to be under investigation is another judgment for the reader to make. Conventional wisdom would mandate treating the governor at a very long arm’s length. But this was his brother. And for the next year Robert was at the heart of the biggest corruption case in many years. Now, with this book, we find out all the behind-the-scenes action. As he notes in his trial journal, “As a citizen, I can’t believe this is still happening to me, and no one in power cares—unchecked unrestricted power.”

Robert Blagojevich was surprisingly naïve about the FBI, the federal prosecutors, and the criminal justice system. He thought he could just

sit down with the FBI and clear this whole thing up and be back on his way. Didn't they know that it was just Rod talking and talking? It never crossed his mind that the feds might attempt to use him, to make him flip and testify against his brother. It never occurred to him that maybe he and the governor would plead guilty to something in a "package" deal. It never occurred to him that nobody in the government really cared that he was innocent. This case was too big for that. Luckily, Robert found the right criminal defense lawyer who told him, in no uncertain terms, that this trial is not about "clearing anything up." It's a war, led by "self-righteous, zealot extremists," and, Robert, you're in it.

This is what happens to almost everybody who enters the criminal justice system for the first time—guilty or innocent. The government speaks, and everything changes. The government uses its vast power and unlimited resources, and the defendant bleeds. Financial ruin is almost a certainty. Robert Blagojevich spent over three-quarters of a million dollars on his defense. As he said, while describing the loss of his business and his home, "we were essentially in the process of dismantling thirty years of hard work." He's lucky he had the money.

Most defendants can't make bond like Robert did. Most lose their jobs, possessions, and sometimes their families into the black abyss of seeking justice. Many eventually go to prison—African Americans more than others—where they face so much more than tangible loss. The loss of dignity and freedom, the utter humiliation, the loss of self-respect. Robert was spared that disaster, but he tells us how it was constantly on his mind and how his brother never seemed to think about it.

Robert learned more than he ever wanted to know about the criminal justice system. He learned that more than 95 percent (depending on the jurisdiction) of all defendants plead guilty. Only an infinitesimal 4–5 percent choose to fight back. He was shocked to learn that in no way was it to be a fair fight. The government decides whom to charge and what the charges will be. The prosecutors have the FBI, the DEA, the crime laboratories, and all the resources of the federal government. They have the power of the investigatory subpoena, which usually means that they get to examine and threaten all witnesses, whether or not before a grand jury, and long before the defense even has a chance to talk with them. He learned that the government can take as long as they want to investigate, and that, even if they decide not to prosecute, they can change their mind and keep the case open for a very long time. He learned that, even

when a case is dropped, the government doesn't say "you're innocent," and certainly not "we're sorry we did this to your life."

He learned that a jury of peers is a group of people with whom you have little in common, who are placed in judgment of you by a judge who asks most of the questions and then tells them about law they probably can't understand. He learned that, while the Supreme Court was considering whether a "theft of honest services" charge (one of the charges pending in this case) is unconstitutionally vague, the prosecutor can just strike preemptively and file more charges in a superseding indictment so that whatever the Supreme Court ultimately decides, it won't make any difference.

He learned that when something good for the defense showed up in the tapes, his lawyers couldn't use it unless the judge said they could, and the judge was prosecution-minded. People don't realize that the judge who presides over a case—the largest percentage of whom are former prosecutors themselves—effectively decides how the case will progress. Robert tells us of how perturbed he was about many of the judge's rulings, in addition to the judge's habit of usually being forty-five minutes late for the start of court, which Robert estimates cost him \$15,000 in attorney time.

One of the biggest surprises to Robert was that the criminal trial is a shell game. Neither side knows what the other is going to do. Are they going to call this particular witness, and, if so, when, to say what, and what will the judge allow on cross-examination? To be fair, the defense plays the same game—not telling the government if the defendant will testify or even if there will be a defense. And Robert watched, often comparing the process to his life in business. If he had gone to business meetings with as little definite information about what would be on the agenda, he would have considered himself woefully unprepared.

Robert's layman's eye gives us a fresh, honest, and forthright perspective on the inner workings of one of the most complex and high-profile criminal cases in recent memory. That's what is so refreshing about this book. I have since met Robert on more than one occasion. He has lectured to my classes. He is an utterly believable but now thoroughly angry citizen who wants nothing more now than to tell America how unfairly he was treated by a system that allows such brutal treatment as a matter of course.

The subtext to the book, of course, is Robert's relationship with his brother. The press tried constantly to use the thinness of their relationship to turn the trial into a long-running soap opera. Were the brothers close? Were they even speaking to each other? Or was this relationship one more casualty of the stupid, wasteful, and useless prosecution against Robert—a broken family relationship. Another example of the adversarial system gone bad.

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