

Trial location might have been important to verdict, lawyer says

Photos



Former Illinois Gov. Rod Blagojevich, second from left, and his wife Patti leave the Federal Court building with his attorneys Sheldon Sorosky, left, Sam Adam, right, and Sam Adam Jr, rear second from right, Tuesday, Aug. 17, 2010, in Chicago. A federal jury found former Illinois Gov. Rod Blagojevich guilty on Tuesday of one count of lying to federal agents, and the judge said he intended to declare a mistrial on the more serious remaining 23 counts. (AP Photo/Kiichiro Sato)

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Rod Blagojevich might be in a whole lot more trouble today if his trial had been held in Springfield instead of Chicago, according to a local criminal defense attorney.

“I just think you get a different type of person in Chicago than you do in central Illinois,” said attorney Jon Gray Noll, who professed surprise at Blagojevich being convicted on just one of 24 counts. “People are much more conservative. Quite often, they get acquittals in federal court in Chicago.”

Bill Roberts, former U.S. attorney for the central district of Illinois, disagreed. Blagojevich might have been convicted of more charges if the jurors had all been from Sangamon County, he conceded. But if they’d been picked from throughout the central district, which includes 46 counties, the result would have been the same, said Roberts.

As it is, Noll said, federal sentencing guidelines suggest Blagojevich will get a sentence of between eight and 14 months.

“If I was his attorney, I’d be popping some champagne corks,” Noll said.

Noll said a hung jury after 14 days of deliberations is unusual. Normally, he said, jurors who can’t agree realize that fairly early.

“I’ve never seen a jury act like this,” Noll said. “These people just had no idea what they were doing. It was a complex case—you had an indictment that was 110 pages long. But it wasn’t that complex.”

Arrested too early?

Roberts and other attorneys experienced with criminal law said that prosecutors may have arrested the former governor too soon.

Although one juror told The Associated Press that the jury deadlocked 11-1 in favor of convicting Blagojevich for trying to sell the U.S. Senate seat once held by President Barack Obama, Roberts said he doesn’t think the government proved it. In part, he said, that’s because prosecutors were forced to arrest the former governor before he could consummate the scheme.

“I always scratched my head,” Roberts said. “If that pie had been totally baked, maybe he was (guilty of selling the seat). “But I don’t think it was.”

Roberts and defense attorney Mark Wykoff said Blagojevich’s failure to testify was either a stroke of genius by the defense or a lucky break. Both said they believed that Stuart Levine, a former Blagojevich donor who pleaded guilty to corruption charges in 2006, or Tony Rezko, a former Blagojevich fundraiser who has been convicted of corruption charges, didn’t testify because prosecutors wanted to use the men as witnesses to rebut the former governor’s expected testimony.

But the former governor never took the stand, as he had promised to do, and his defense attorneys didn’t present a single witness.

“If it was a calculated strategy, it was very smart,” said Roberts, adding that he believed that Blagojevich wanted to testify, but his attorneys determined he wouldn’t be able to withstand cross-examination. “When I was a prosecutor, I tried to keep an arrow or two in my quiver. I don’t know that I ever ran into a situation where a defense completely folded.”

Wykoff said he believed prosecutors were duped into believing the governor would take the stand and had planned to make Levine and Rezko the final witnesses.

“That would have been the last thing that the jury heard and saw, and it would have resonated,” Wykoff said. “The government totally prepared that case around the rebuttal instead of the case in chief.

“The defense ... pulled the wool over the government’s eyes. That’s not going to happen the next time.”

Fewer charges possible next time

Roberts said he doesn't believe that Robert Blagojevich, the governor's brother, is a criminal, but he believes he will be re-tried.

"I see no criminal intent there," Roberts said.

Roberts and other lawyers also said prosecutors should pare down the charges.

"I wouldn't have charged it the way it was charged in the first place," Roberts said. "I'd go through and I'd try to find the things that are most demonstrable and most understandable.

"Jurors in Illinois are not all rocket scientists," he said. "They worked hard and did the best they could."

Stuart Shiffman, a retired judge who now handles criminal defense cases, said he thinks prosecutors should dump the charge of attempting to sell the U.S. Senate seat.

"Politicians make deals all the time," Shiffman said. "He (Blagojevich) never got any money. In most cases, jurors like to see a smoking gun. They (prosecutors) just never had a real, concrete something that they could hang their hats on there, and it made it a more difficult case. ... I'd keep all the other charges."

Noll, however, said the Senate seat charge has glamour.

"I'd keep that one," Noll said.

Shiffman and Noll also said prosecutors need to talk to the Blagojevich jurors about the case's strengths and weaknesses. Those interviews will be important to determining strategy for the re-trial prosecutors have promised.

"It's going to take a few days to sort this out," Shiffman said.

Wykoff said new prosecutors might be assigned to a second trial. He also predicted that Blagojevich will have a new set of attorneys, in part because he has little money left to pay his current lawyers and in part because the former governor has little chance of prevailing in a second trial.

"Why not bail on this thing with, essentially, a victory?" Wykoff said. "It was a hollow victory. It's going to be one that is short-lived."

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