

5. On December 19, 2009, the defense filed a Motion for Discovery. In that motion, the defense requested all notes, transcripts, and reports generated from the government's interview of President Barack Obama.
6. As of today's date, the defense has not received any notes, transcripts, or reports from President Obama's interview with the government.
7. The government alleges that Defendant Rod Blagojevich met "with a labor union official who he believed to be in contact with the President-elect in regard to the vacant Senate seat, and suggested to the labor union official that Rod Blagojevich would appoint Senate Candidate B to the vacant Senate seat in exchange for Rod Blagojevich being named Secretary of Health and Human Services." (Indictment p. 101, para. 10(c)).
8. President Obama has stated publicly that he was "confident that no representatives of mine would have any part of any deals³ related to this seat."⁴
9. Yet, despite President Obama stating that no representatives of his had any part of any deals, labor union president told the FBI and the United States Attorneys [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
10. Labor union official told the FBI and the United States Attorneys [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³ Deal is defined as a "transaction; bargain; contract; an arrangement for mutual advantage." *Merriam-Webster Online Dictionary*. A deal requires two willing participants.

⁴ President-elect Barack Obama press conference, December 11, 2008.

11. According to Senate Candidate B, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
12. On November 5, 2008, Blagojevich told John Harris that labor union official [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
13. A supporter of Presidential Candidate Obama [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
14. President Obama has direct knowledge to allegations made in the indictment. In addition, President Obama's public statements contradict other witness statements, specifically those made by labor union official and Senate Candidate B. It is anticipated that labor union official will be a witness for the government. His accounts of events directly related to the charges in the indictment are contradicted by President Obama's public statement.
15. Even the prosecutor in this case indicated "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."⁵
16. There are two conflicting stories and the defense has the right to admit evidence that contradicts the government's claims. Only President Obama can do this.
17. President-elect Obama also [REDACTED]
[REDACTED]
[REDACTED]

⁵ "Fitzgerald Press Conference on Blagojevich. Transcript." *Chicago Sun Times*, Lynn Sweet, December 9, 2008.

██████████ The government claims a conspiracy existed from October 22, 2008 continuing through December 9, 2008.⁶ ██████████ is relevant to the defense of the government's theory of an ongoing conspiracy. Only Rod Blagojevich and President Obama can testify ██████████. The defense is allowed to present evidence that corroborates the defendant's testimony.⁷

18. President-elect Obama ██████████ Senate Candidate A to Governor Blagojevich. John Harris told the FBI and the United States Attorneys ██████████

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19. President-elect Obama ██████████

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⁶ See, Paragraph 38, Indictment entitled "Efforts to Obtain Personal Financial Benefits for ROD BLAGOJEVICH in Return for his Appointment of a United States Senator." The paragraph states: "Beginning in or about October 2008, and continuing until on or about December 9, 2008 . . ."

⁷ See, *Wisconsin ex rel. Monsoor v. Gagnan*, 497 F.2d 1126 (7th Cir. 1974) (holding that the state trial court committed reversible error and violated the defendant's Sixth Amendment right to a fair trial and compulsory process by striking the testimony of the only corroborating witness to a phone call that related directly to the defendant's defense), citing *Braswell v. Wainwright*, 463 F.2d 1148, 1155-56 (5th Cir. 1972) (holding that "Closely related to [the defendant's] Sixth Amendment right is his right to a fair trial - - to due process. [The defendant] had a right to at least present the testimony of his sole corroborating witness to the jury. That the jury might still have returned a guilty verdict is beside the point; judgment of the credibility of witnesses is for the trier of fact.")

[REDACTED]

20. President Barack Obama has direct knowledge of the Senate seat allegation. President Obama's testimony is relevant to three fundamental issues of that allegation. First, President Obama contradicts the testimony of an important government witness. Second, President Obama's testimony is relevant to the necessary element of intent of the defendant. Third, President Obama is the only one who can say if emissaries were sent on his behalf, who those emissaries were, and what, if anything, those emissaries were instructed to do on his behalf. All of these issues are relevant and necessary for the defense of Rod Blagojevich.

21. Tony Rezko is one of the government's main witnesses.⁸ Mr. Rezko's credibility is extremely relevant in this trial. In many instances, Mr. Rezko is the government's crucial witness to prove up their allegations.⁹ Mr. Rezko wrote a letter to a federal judge stating "the prosecutors have been overzealous in pursuing a crime that never happened. They are pressuring me to tell them the "wrong" things that I supposedly know about Governor Blagojevich and Senator Obama. I have never been a party to any wrongdoing that involved the Governor or the Senator. I will never fabricate lies about anyone else for selfish purposes." (Exhibit A)

22. However, the defense has a good faith belief that Mr. Rezko, President Obama's former friend, fund-raiser, and neighbor told the FBI and the United States Attorneys

[REDACTED]

⁸ The defense has requested that the government provide a witness list. To date, the government has not provided a list of witnesses.

⁹ See, Counts 1, 2, and 3 of the Indictment. The Pension Obligation Bond Deal (p. 9 (para. 7), p. 48 (para. 6)); The Solicitation of Ali Ata (p. 9 (para. 9)), Benefits Given to Rod Blagojevich (Rezko directed or provided payments to Rod Blagojevich's wife) (p. 53 (para. 9 (a.), (b.), (c.))), Blagojevich used the power of the Office of the Governor to give Rezko substantial influence over appointments to boards and commissions (p. 8 (para. 5)) (p. 13 (para. 18)) (p. 42 (para. 4-5)) (p. 47 (para. 4)) (p. 53 (para. 17)).

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰

23. President Obama is the only one who can testify as to the veracity [REDACTED]
[REDACTED]

24. President Obama has pertinent information as to the character of Mr. Rezko. President Obama can testify to Mr. Rezko's reputation for truthfulness as well as his own opinion of Mr. Rezko's character. *See*, Fed. R. Evid. 405(a) and 608. Mr. Rezko and President Obama became friends in 1990. According to President Obama, Mr. Rezko raised as much as \$60,000 in campaign contributions for Obama.¹¹

25. Based on the relationship that President Obama and Mr. Rezko had, President Obama can provide important information as to Mr. Rezko's plan, intent, opportunity, habit and modus operandi. *See*, Fed. R. Evid. 404(b) and 406. For example, in June 2005, President Obama purchased a house for \$1.65 million, \$300,000 below the asking price. On the same day Tony Rezko's wife, Rita, paid full price -- \$625,000 -- for the adjoining land. In January 2006, Obama paid Mr. Rezko \$104,500 for a strip of the adjoining land. The transaction took place when it was widely known that Mr. Rezko was under investigation.¹² President Obama's relationship with Tony Rezko is relevant and necessary Fed. R. Evid. 404(b) and 406 evidence.

26. Regarding a Presidential subpoena, the Supreme Court has held that:

“The right to the production of all evidence at a criminal trial . . . has constitutional dimensions. The Sixth Amendment explicitly confers upon

¹⁰ [REDACTED] *See*, “Obama on Rezko deal: It was a mistake”, Dave McKinney, Chris Fusco, and Mark Brown, *Chicago Sun Times*, November 5, 2006. Senator Barack Obama was asked: “Did Rezko or his companies ever solicit your support on any matter involving state or federal government? Did Al Johnson, who was trying to get a casino license along with Tony Rezko, or Rezko himself ever discuss casino matters with you?” Senator Obama answered: “No, I have never been asked to do anything to advance his business interest. In 1999, when I was a State Senator, I opposed legislation to bring a casino to Rosemont and allow casino gambling at docked riverboats which news reports said Al Johnson and Tony Rezko were interested in being part of. I never discussed a casino license with either of them. I was a vocal opponent of the legislation.” [REDACTED]
[REDACTED]

¹¹ “Obama on Rezko deal: It was a mistake”, Dave McKinney, Chris Fusco, and Mark Brown, *Chicago Sun Times*, November 5, 2006.

¹² “8 Things you need to know about Obama and Rezko”, Tim Novak, *Chicago Sun Times*, January 24, 2008.

every defendant in a criminal trial the right ‘to be confronted with the witnesses against him’ and ‘to have compulsory process for obtaining witnesses in his favor.’ Moreover, the Fifth Amendment also guarantees that no person shall be deprived of liberty without due process of law. It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced.” *United States v. Nixon*, 418 US 683, 711 (1974).

27. Although it is not commonplace to subpoena a sitting President, the Supreme Court has noted that sitting Presidents have been subpoenaed by federal courts with “sufficient frequency that such interactions between the Judicial and Executive branches can scarcely be thought a novelty.” *Clinton v. Jones*, 520 US 681, 704, 137 L.Ed. 2d 945, 967 (1997).
28. Indeed, history is replete with cases in which Presidents have been subpoenaed or have provided evidence in federal cases.¹³
29. In addition to criminal trials, Theodore Roosevelt, Harry Truman and John F. Kennedy were defendants in civil cases involving actions prior to taking office. *Clinton v. Jones*, 520 US at 692, citing *People ex rel. Hurley v. Roosevelt*, 179 N.Y. 544, 71 N.E. 1137 (1904); *DeVault v. Truman*, 354 Mo. 1193, 194 S.W.2d 29 (1946); *Bailey v. Kennedy*, No. 757,200 (Cal. Super. Ct. 1960); *Hills v. Kennedy*, No. 757,201 (Cal. Super. Ct. 1960). President Nixon was deposed in several civil actions and

¹³ See, *United States v. Burr*, 25 F. Cas. 30 (No. 14,692d) (CC Va. 1807) (President Thomas Jefferson ordered to comply with a subpoena *duces tecum* in the trial of Aaron Burr); Rotunda, *Presidents and Ex-Presidents as Witnesses: A Brief Historical Footnote*, 1975 U. Ill. L. F. 1, 5-6 (referencing President Monroe’s answers to interrogatories in the trial of an appointee, whose meetings with the President were cited as contributing factors to accusations he received his job appointment under “intrigue and misconduct” and also references a lengthy deposition given by President Grant in a criminal case); *United States v. Nixon*, 418 US 683, 41 L.Ed. 2d 1039 (1974) (The Supreme Court held that President Nixon was obligated to comply with a subpoena *duces tecum* in a criminal trial); *United States v. Poindexter*, 732 F. Supp. 142, 145, citing to *United States v. Mitchell*, 385 F.Supp 1190 (D.D.C. 1974) and *United States v. Haldeman*, 559 F.Supp.2d 31, 80-81 (D.C. Cir. 1976) (where President Nixon was subpoenaed by the Government and defendants in criminal trials of his appointees resulting from the Watergate scandal); *United States v. Fromme*, 405 F.Supp. 578 (ED Cal. 1975) (where President Ford was subpoenaed and deposed as a defense witness in the criminal trial of the woman accused of attempting to assassinate him); *United States v. Poindexter*, 732 F.Supp. at 145 (D.D.C. 1990) (referring to President Carter’s videotaped deposition in a criminal trial and a separate grand jury investigation); *Id.*, at 144-46, 159-60 (where President Reagan was ordered to testify via videotaped deposition in the criminal trial resulting from the Iran-Contra affair); and *Clinton v. Jones*, 520 US at 705, citing *United States v. McDougal*, 934 F. Supp. 296 (ED Ark. 1996) and *United States v. Branscum*, No. LRP-CR-96-49 (ED Ark., June 7, 1996) (referencing President Clinton’s compelled testimony via videotaped deposition in two criminal proceedings, including as an impeachment witness for the defense in the *McDougal* case).

Presidents Lincoln, T. Roosevelt, Tyler and Adams were compelled to appear before congressional committees. *United States v. Poindexter*, 732 F. Supp at 145.

30. It is well settled that the Federal Courts have subpoena power over a sitting President. Chief Justice Marshall's early opinion from the *Burr* case has been "unequivocally and emphatically endorsed" by the Supreme Court and other federal courts. *See, United States v. Nixon*, 418 US at 706; *Clinton v. Jones*, 520 US at 704.

"Whatever difference may exist with respect to the power to compel the same obedience to the process, as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it. ... The guard, furnished to this high officer, to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a court after those subpoenas have issued; not in any circumstance which is to precede their being issued." *United States v. Fromme*, 405 F. Supp. At 582, citing *United States v. Burr*, at p.30.

31. The Supreme Court has consistently ruled that "the twofold aim [of criminal justice] is that guilt shall not escape or innocence suffer." *United States v. Nixon*, *supra*, citing *Berger v. United States*, 295 US 78, 88 (1935). The Court continued, in *Nixon*, that "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 at 709. In sum,

[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. *Similarly, where the President himself is a percipient witness to an alleged criminal act, the President must be amenable to subpoena as any other person would be. United States v. Fromme*, 405 F. Supp. at 582 (emphasis added).

32. Here, President Obama is a critical witness. All of President Obama's testimony would entail evidence he witnessed *before* he became president and does not involve Executive Privilege. As the District Court ruled in *Fromme*:

“Notwithstanding the burden which is imposed on the person of the President if he is called to testify as a witness in a criminal trial, *this court has an even heavier burden to ensure a fair and a speedy trial to the accused, with total regard for all the rights and protections afforded an accused under the law of this land.*

‘[The] allowance of the [Executive] privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts.’” *United States v. Fromme*, 405 F.Supp. at 583 (emphasis added)(citations omitted), citing *United States v. Nixon*, 418 US at 712.

33. President Obama has direct and intimate knowledge of facts alleged in the indictment. Indeed, the President is a percipient witness. *United States v. Fromme*, 405 F.Supp. at 581. President Obama is a witness to the conduct alleged as well as an impeachment witness to at least two of the government’s critical witnesses.¹⁴
34. The defense does not take lightly the overwhelming schedule the President has and the security constraints surrounding his testimony. A videotape deposition will remedy both of those legitimate concerns. *See*, Fed. R. Crim. Pro. 15 and *see also*, *United States v. Fromme*, 405 F.Supp. at 582 (videotape deposition “protect[s] the accused’s rights under the Sixth Amendment of the United States Constitution while at the same time imposing the least onerous burden on the person and the office of the President of the United States.”).
35. The defense requests that, if this court grants a videotape deposition in lieu of in-court testimony, defense counsel be permitted to conduct the examination of President Obama after the government’s case in chief. *See*, *United States v. McDougal*, 103 F.3d 651 (ED Ark. 1996) and 943 F.Supp. 296 (ED Ark. 1996) (videotaped deposition of President Clinton which took place at the White House, and because President Clinton was called as a defense witness to impeach David Hale, the Court ordered that President Clinton not testify until after the in-court testimony of David Hale.).
36. The defendant has a right to put on a case and challenge the allegations the government attempts to prove. President Obama is relevant and necessary to the

¹⁴ Joseph Aramanda is another government witness that President Obama can testify to as well. Joseph Aramanda’s son, John Aramanda, received an internship with then-Senator Obama. Joseph Aramanda contributed \$11,500 to Obama since 2000 and John Aramanda was recommended by Tony Rezko. *Internship also links Obama, Rezko*, Frank Main, *Chicago Sun-Times*, December 24, 2006. President Obama will be able to provide relevant information as to Joseph Aramanda. *See*, para. 24 and 25, *supra*.

defendant's case. The defense understands that the President of the United States of America is not a routine witness and would not request his appearance if it did not think he was critical to the liberty of Rod Blagojevich. Whatever security or scheduling concerns can be reduced by arranging for the most convenient presentation of testimony. The President can testify via video conference or can be deposed outside of court at an evidence deposition. These options would satisfy the defendant's fundamental right to a fair trial and security and scheduling concerns.

37. The defense requests this court grant this motion not because Rod Blagojevich was the Governor of Illinois, but because he is a defendant in a criminal case where his liberty and freedom are at stake. Likewise, the defense requests this court grant this motion to issue a subpoena *ad testificandum* to President Obama, not because he is the President of the United States, but rather because he is a witness necessary to Rod Blagojevich's Constitutional right to a fair trial. Justice requires no more and no less.

“it would be inconceivable -- in a Republic that subscribes neither to the ancient doctrine of the divine right of kings nor to the more modern conceit of dictators that they are not accountable to the people whom they claim to represent or to their courts of law -- to exempt [the President] from the duty of every citizen to give evidence that will permit the reaching of a just outcome of this criminal prosecution. Defendant has shown that the evidence of the . . . President is needed to protect his right to a fair trial, and he will be given the opportunity to secure that evidence.” *United States v. Poindexter*, 732 F. Supp at 159.

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 and issue a subpoena *ad testificandum* for President Obama to appear at the trial of United States v. Rod Blagojevich.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Defendant's MOTION FOR THE COURT TO ISSUE A TRIAL SUBPOENA TO PRESIDENT BARACK OBAMA was served on April 22, 2010, in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

/s/ Sam Adam

One of the attorneys for Rod Blagojevich