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The curious case of Rod R. Blagojevich – part II

Back in May, this column offered some opinions on the upcoming federal trial of former Gov. Rod R. Blagojevich. Those pre-trial musings were inspired by the former governor's counterintuitive defense strategy of talking wherever and whenever possible.

Using Homer's "The Iliad" (the story of the decade-long Trojan War) as a guide, we opined that the governor was campaigning to convince the world, or at least the jury pool, that he was brave and noble, like the Iliad's greatest character, Hector; and not self-absorbed, selfish and egocentric, like Hector's brother, Paris, the Trojan War's instigator. Either way, the column defined the trial as an epic battle with the mighty warrior Achilles — U.S. Attorney Patrick J. Fitzgerald — and his army.

These theories prompted a number of responses, the most delightful of which came from a prominent Chicago lawyer. This writer postulated that if Blagojevich were acquitted, he would be neither Hector nor Paris, but Odysseus himself, who he called "the smartest and purest of all Greeks." One thing for sure is that Blagojevich is in the midst of an odyssey. But whether he is Odysseus is yet to be seen.

Well, what happened at trial? Surely, we all know that the jury, after weeks of deliberation, found Blagojevich guilty on only one of 24 counts, and a mistrial declared on the rest. And that lone guilty count was not the gem of the government's case (the claimed attempt to "sell" a U.S. Senate seat) but a seemingly lucky throw-in, a claim Blagojevich lied to federal investigators about fundraising some five years before.

Was Blagojevich's pre-trial strategy successful? In this lawyer's view, yes and no. First the yes: By campaigning as he did, Blagojevich was able to sing his innocence on every imaginable media outlet and likely got his message of victimhood to every juror at least once before voir dire. Consider that on the CBS jumbotron that overlooks Daley Plaza alone, we have been watching (but not hearing) for months, in a commercial for David Letterman's show, Blagojevich sharing a lighthearted laugh with the self-effacing comedian.

Second, and more to the point, the government failed to convict him on 23 counts, so at least in that way, the strategy worked. Beating the government is no small feat. And that includes a hung jury.

Third, the strategy ended up assisting Blagojevich's brother, Robert, a seemingly thoughtful and serious man who stood in stark contrast to the loquacious former governor. Although it



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Law & Politics

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was Robert's brother that got him into this mess, Robert was not publicly critical of Rod; he didn't sell him out, grumble or complain, but soldiered on with dignity. And, unlike Rod, Robert entered the battle and testified while the former governor remained safely behind Troy's walls. If anyone is Hector in this saga, it can only be Robert. And in the end, the government apparently agreed and dropped its case against him, citing the "the disparity in the roles" of the two brothers and "the interests of justice."

Where did the former governor's strategy fail? His claims of nobility stood in stark contrast to the taped conversations played in court. Indeed, while the tapes of him never provided the highly coveted but elusive "smoking gun," they did offer a rough insight into some of the hidden corners of the former governor's heart and solidified him as the personification of Paris. Although there were a number of bothersome exchanges, here is one of the more disturbing ones:

"I f***ing busted my ass and pissed people off and gave your grandmother a free f***ing ride on a bus. OK? I gave your f***ing baby a chance to have health care. I fought every one of those assh***s. ... And what do I get for that? Only 13 percent of you all out there think I'm doing a good job. So f*** all of you. ..."

Sure, Blagojevich may have been merely venting unimaginable frustrations in this conversation, and life can be difficult for all of us at times. But there is something about the tone of this exchange in particular that makes your molars hurt, even if somewhere in our hearts we know that Blagojevich is only one of many elected officials who talks and feels this way.

So what of the mighty Achilles-Fitzgerald? Did he suffer any wounds, mortal or otherwise, at the hands of Paris-Blagojevich? Remember in "The Iliad," it was Paris' arrow that pierced

Achilles' ankle and brought about his demise. There is little doubt that Fitzgerald has been wounded, even if he gets his conviction the next time around.

First, Fitzgerald oversold the case. While he might have been understandably adrenaline-filled at his news conference on the day of Blagojevich's arrest, it is hard to disagree with former U.S. Attorney Anton R. Valukas' recent comments on "Chicago Tonight," that Fitzgerald's performance was "intemperate" and a "little over the top." Some of Fitzgerald's more inflammatory comments at the news conference (which sounded at times like a closing argument) included: "Gov. Blagojevich has taken us to a truly new low;" "Gov. Blagojevich has been arrested in the middle of what we can only describe as a political corruption crime spree;" and "the conduct would make Lincoln roll over in his grave." I counted the use of the word "appalling" that day at least six times to characterize Blagojevich's conduct.

Second, it appears (admittedly in 20/20 hindsight) that Fitzgerald pulled the trigger too soon, arresting Blagojevich before any bag of money (or other lucre) changed hands. It's hard to imagine harsher words for Fitzgerald (who I have always admired) than those of the Wall Street Journal after the verdict. That newspaper described him as "another unaccountable federal prosecutor run amok;" his method as designed "to abuse the legal process to poison media and public opinions against high-profile, unsympathetic political targets;" and opined that if Blagojevich is found guilty the second time around, that "incompetence alone is grounds for Mr. Fitzgerald's removal." Although heavy-handed to be sure, this sort of talk can't possibly be welcomed by any prosecutor. Indeed, that publication seemed to have much harsher words for Fitzgerald than it did for Blagojevich. So Fitzgerald has taken a few hits of his own.

And if his office fails to get a conviction the second time around, it may be the end of his tenure. What does all this mean? Perhaps that we find ourselves in the midst of an epic drama that still has a long way to go. Or perhaps as Homer himself might say, it doesn't matter because it is all for naught, because when this saga is over, there will surely be another:

"Like the generations of leaves, the lives of mortal men. Now the wind scatters the old leaves across the earth, now the living timber bursts with the new buds and spring comes round again. And so with men: as one generation comes to life, another dies away."