

FITZGERALD MAKES HIS MOVE FOR MORE TIME; BLAGO AGREES!

✘ Just a few hours ago Marcy hypothesized on Illinois Governor Rod Blagojevich's next move. Well, he has made the move. In a pleading just filed and encaptioned: GOVERNMENT'S UNOPPOSED FIRST MOTION FOR AN EXTENSION OF TIME TO RETURN INDICTMENT PURSUANT TO 18 U.S.C. § 3161(h), Fitzgerald relates:

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully moves this Court, pursuant to 18 U.S.C. § 3161(h)(8), for a 90-day extension of time, to and including April 7, 2009, in which to seek the return of an indictment against the defendant...

As Marcy thought, the real meat of the motion is sealed, but the operative language that is public is as follows:

A number of factors have led to the government's request for an extension and the length of the extension being sought. One factor that affects the length of the requested extension is that federal holidays have limited the dates and times that the government will be able to present evidence to the Grand Jury. The federal grand juries are not sitting during the week of December 22nd (Christmas week) or the week of December 29th (New Years Day week). The remaining factors that have led to the government's request for an extension are stated in the Attachment hereto, which the government respectfully requests be placed under seal. The government is requesting that this

Attachment be sealed so as not to compromise its ongoing investigation and so as not to reveal matters occurring before the Grand Jury.

But the Key language that I think any lawyer would find fascinating here is at the very end of the document:

Following telephone calls and/or meetings over the past week, counsel for both Blagojevich and Harris have represented that they do not object to this motion. (emphasis added)

As Marcy noted, this is in the face of the Senate Democrats trying to make the legally touchy case that they can avoid seating Burris and adds to the pressure on the legislative impeachment committee.

So why did Fitzgerald do it? Easy, he needs more time to get all the evidence, especially the most recently acquired material (which is still coming in on the Senate seat portion of the case) organized to his meticulous satisfaction.

The much better question is why the defendants *both* agreed to the delay with no opposition whatsoever. From a political perspective, you could say the longer Blago stays in office and it's "business as usual" the more he legitimizes himself, he is just extending out the clock and trying to make things look normal. But, from the legal, criminal defense, perspective this does not make sense at all for Blago. If I am Blago's lawyer, and if we were truly going to fight the charges; I would want to get on with it. I would want to force prosecutor Fitzgerald's hand, especially so if I thought the US Atty couldn't make his case – I'd force the timeline to make him put up his goods or dismiss in order to refile it later. And I would want the public to see me demanding a timely opportunity to fight the charges and prove my innocence and would relish the thought of putting the adversary on

their heels.

Now, some may argue that the defense did this because they knew the court would grant an opposed motion, and did not want to get on the dark side of the judge. I don't buy this as a solid explanation, no defendant under these circumstances is going to get in any hot water for demanding speedy trial rights.

The only explanation that comes easily to the discussion is that both defendants wish to curry favor with, and appear reasonable to, the prosecution. This could be in the form of pure comity, the necessity of time to negotiate a plea, or both. My money is on both.