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Identities of Blagojevich jurors could be made public

Appeals court says media's request for names was not too late

July 02, 2010 | By John Chase, Tribune reporter

A federal appeals court ruled the judge overseeing former Illinois Gov. Rod Blagojevich's corruption trial acted too hastily when he decided to keep secret the identities of jurors.

The three-judge panel ordered U.S. District Judge James Zagel to hold a "prompt" hearing and allow members of the media, including the Tribune, to argue why the jurors' names should be made public before the trial's conclusion.

Zagel had previously ruled the media's request was "untimely" because it came just days before the trial was scheduled to start but before the judge had told jurors their names would be disclosed only after the trial ended. Prosecutors argued that in mid-2009, Zagel had mentioned he was considering keeping the juror names private and that the media should have objected sooner.

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But the appellate court agreed with attorneys for the Tribune, The New York Times, The Associated Press and other media outlets that Zagel was wrong to find the Tribune's motion untimely because he never made an official ruling on when jurors' names would be released until after the news media filed their motion.

"People need not intervene in response to musings," wrote Chief Judge Frank Easterbrook, who was joined by Judges Diane Wood and John Daniel Tinder in Friday's opinion. "Had the Tribune moved to intervene in mid-2009, the district court likely would have rejected the motion as premature and told the newspaper to bide its time."

While the appellate court decided in the media's favor, it didn't rule that the jurors' names should necessarily be made public. Indeed, the names are remaining confidential until the hearing is held and a decision is rendered.

Still, throughout the opinion, the judges said that under the common law, there is a presumption of access to the names of jurors as soon as they are seated and that any effort to keep those names secret must be backed by actual evidence.

In keeping the names confidential, Zagel said jurors serving in a high-profile case, especially in the Internet age, were susceptible to jury-tampering from bloggers contacting them during the trial, which would be a violation of the law.

"A judge must find some unusual risk to justify keeping jurors' names confidential; it is not enough to point to possibilities that are present in every criminal prosecution," the court ruled.

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