UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 08 CR 888-4
	)	
WILLIAM F. CELLINI, SR.	)	Hon. James B. Zagel

GOVERNMENT'S MOTION *IN LIMINE*

The indictment in this case charges defendant with conspiring to commit fraud, conspiring to commit extortion, attempted extortion, and solicitation of funds. These charges arose from defendant's agreement with others to extort a campaign contribution for then-Governor Rod Blagojevich from a company that sought to do business with the State of Illinois. In summary:[1]

Defendant William F. Cellini, Sr. was associated with a company called Commonwealth Realty Advisors that managed hundreds of millions of dollars of pension money for the Teachers' Retirement System of Illinois, also known as TRS. For years, defendant, a prominent Republican fundraiser in Illinois, built his influence at TRS. In approximately 2002, for the first time in 26 years, a Democrat became governor. To maintain his influence at the state, and in particular at TRS, defendant shifted his alliance, agreeing secretly to raise money for Blagojevich. Defendant formed relationships with two of Blagojevich's closest advisers, Antoin "Tony" Rezko and Chris Kelly, and made a deal with them. In exchange for Rezko and Kelly's help in defeating a proposal that promised to reduce defendant's influence at TRS, defendant and his close ally, TRS trustee Stuart Levine, agreed that defendant would use his power at TRS, and Levine would use his position on the TRS board, to ensure that TRS invested money with, and hired firms chosen by, Rezko and

---

[1] The government refers the Court to its *Santiago* proffer, filed today, which provides more detail about evidence the government intends to elicit at trial.

Kelly.

Capri Capital, like Commonwealth, managed hundreds of millions of pension dollars for TRS. In spring 2004, Rezko and Kelly learned that Capri and one of its owners, Thomas Rosenberg, were managing millions of dollars of TRS pension money but had not given any campaign contributions to Blagojevich. Rezko and Kelly wanted Rosenberg to pay, or Capri would not receive a planned allocation of $220 million in TRS money to invest. Levine informed defendant that Rezko and Kelly wanted a political contribution from Rosenberg, and, consistent with the agreement he had earlier reached with Rezko and Kelly, defendant committed to help.

Defendant and Levine agreed to a two-part approach. Defendant would call Rosenberg to let him know that Capri had a problem: Rezko and Kelly had become aware that Capri was receiving a significant amount of state business without having contributed to Blagojevich, and Capri's business with TRS was therefore on hold. Defendant would direct Rosenberg to Levine, who would deliver part two of the extortionate message: pay up.

Defendant, knowing that Rezko and Kelly were attempting to shake Rosenberg down for a campaign contribution to Blagojevich, took action. He spoke with Rosenberg, telling him, in substance, that Rosenberg and Capri were now on Rezko and Kelly's radar screen, and Capri's state business was on hold because Rosenberg had not contributed to the campaign. The next part, however, did not go as expected. Rosenberg was outraged at the extortion attempt, and threatened to expose the plot. Defendant was shaken and concerned. He and Levine strategized together, and with Rezko and Kelly, about how best to calm Rosenberg down. Ultimately, in an attempt to quiet Rosenberg and protect the conspiracy, defendant, Levine, Rezko, and Kelly agreed that Capri should receive the money it expected from TRS, although the four also agreed that would be the end of

Capri's state business.

ARGUMENT

As described in the *Santiago* proffer, the government intends to prove its case against defendant largely through recorded conversations intercepted during the conspiracy. The evidence described in this motion consists of statements defendant made on those recordings, and witness testimony that explains defendant's statements on the recordings. Such evidence directly proves defendant's participation in the charged conduct, defendant's agreement with his co-conspirators, and defendant's criminal intent. Nevertheless, to be extra careful, the government gives notice that the evidence described in this motion is also admissible under Rule 404(b), to show defendant's motive, opportunity, intent, preparation, plan, knowledge, and absence of mistake or accident in the commission of the charged offenses. Although the government seeks admission of the evidence described in this motion as direct evidence of the crimes charged in the indictment, the government moves, alternatively, that the Court admit the evidence under Rule 404(b) for the reasons specified below. If the Court elects to admit any of this evidence under Rule 404(b), the government will ask the Court to provide appropriate limiting instructions.

I. Overview of Applicable Law

Evidence of other acts is admissible without regard to Fed. R. Evid. 404(b) if such evidence constitutes direct evidence of the charged offense. *E.g., United States v. Adams*, 628 F.3d 407, 414 (7th Cir. 2010). In such circumstances, "Rule 404(b) is not applicable." *Id.* For example, "evidence directly pertaining to the defendant's role in a charged conspiracy is not excluded by Rule 404(b)." *Id.; see also United States v. Tanner*, 628 F.3d 890, 903 (7th Cir. 2010) (upholding admission of evidence of defendant's gang membership as directly relevant and admissible to show his

participation in a criminal conspiracy with members of that very gang). Evidence of conduct that establishes a necessary element of the charged offense likewise is admissible without resort to Rule 404(b). *See, e.g.*, *United States v. Blandina*, 895 F.2d 293, 298-99 (7th Cir. 1988) (holding that Rule 404(b) was not applicable to evidence of defendant's purchases of resale-quantities of marijuana on credit in a net worth tax evasion prosecution, where the evidence was directly relevant to the tax evasion charges because it showed a likely source of taxable income) (citations omitted). Similarly, evidence of conduct necessarily underlying the charged offense is admissible without regard to Rule 404(b). *See*, *e.g.*, *United States v. McKibbins*, 2011 WL 3890450, *3-5 (7th Cir. 2011) (affirming district court's conclusion that pornographic images possessed by defendant and cached on his computer were admissible as direct evidence of the charged offense of attempting to obstruct justice by concealing computer and other evidence); *United States v. Gorman*, 613 F.3d 711, 719 (7th Cir. 2010) (upholding admission of evidence of defendant's theft of a car and removal of money from inside the car as direct evidence of perjury where defendant denied having the car in his garage).

Under Rule 404(b), evidence of other acts not admissible as direct evidence may be admitted for purposes other than to show a defendant's propensity to commit crimes.

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .

Fed. R. Evid. 404(b). The Seventh Circuit has repeatedly stressed that, under this rule, evidence of other acts is generally admissible so long as the evidence is not introduced to show the defendant's bad character. In explaining the scope of Rule 404(b), the Seventh Circuit has emphasized that the rule's purpose "is simply to keep from the jury evidence that the defendant is prone to commit crimes or is otherwise a bad person . . . . No other use of prior crimes or other bad acts is forbidden

by the rule, and the draftsmen did not try to list every possible other use." *United States v. Taylor*, 522 F.3d 731, 735-36 (7th Cir. 2008). Thus, Rule 404(b) permits evidence of other acts to be introduced not only for the explicitly listed purposes, but also for any other relevant purpose. *Id.* at 736. Moreover, the government may introduce Rule 404(b) evidence in its case in chief if the evidence is relevant to rebut a reasonably anticipated defense. *See United States v. Lewis*, 759 F.2d 1316, 1349 n.14 (7th Cir. 1985).

For example, the Seventh Circuit has approved the admission of evidence of other acts under Rule 404(b) based on"the need to avoid confusing the jury." *Taylor*, 522 F.3d at 735-36. The court has also approved the admission of evidence of other acts to show the origin and nature of the relationship between co-schemers. *See*, *e.g.*, *United States v. Foster*, __ F.3d __, 2011 WL 2909455, at *6 (7th Cir. 2011) (upholding admission of evidence of prior check-cashing scheme with co-schemer because it "showed the origin of [defendant's] relationship with [co-schemer]" and "helped explain his trust of her in carrying out the robbery and the evolution of their relationship from check fraud to armed robbery"); *United States v. Taylor*, 522 F.3d 731, 734 (7th Cir. 2008) (noting that the fact that a defendant's criminal associates "had dealt with him previously could explain how they were able to identify him . . . and why he was willing to deal with them").

Recently, the Seventh Circuit has disapproved the "inextricably intertwined" doctrine as a basis for admitting evidence of other crimes without regard to Rule 404(b). *Gorman*, 613 F.3d at 719. However, the Court has noted that almost all evidence admissible under that doctrine would also be admissible under Rule 404(b), and the cases indicate that evidence admitted as inextricably intertwined is often directly relevant to the charged offense. *See, e.g., Taylor*, 522 F.3d at 735; *United States v. Canady*, 578 F.3d 665, 672 (7th Cir. 2009) (holding evidence of defendant's

possession of firearm on earlier occasion admissible to show possession on date charged, and noting that "almost all evidence that is admissible under this doctrine would fall within one of the exceptions in Rule 404(b), and this case is no different"); *Gorman*, 613 F.3d at 71 (determining that evidence admitted as inextricably intertwined was direct evidence of offense). As the Seventh Circuit has reasoned, applying Rule 404(b) has the virtue of focusing the analysis on non-propensity purposes and avoiding the vice of the jury considering the other-crimes evidence without a proper limiting instruction. *United States v. Conner*, 583 F.3d 1011, 1024 (7th Cir. 2009).

In determining whether to admit evidence under Rule 404(b), the Seventh Circuit has adopted the following test:

> When determining whether evidence is admissible for another purpose, we ask whether (1) the evidence was offered for some purpose other than to show the defendant's criminal propensities; (2) the other act is similar enough and close enough in time to the charged crime to be relevant to that stated purpose; (3) the evidence presented was sufficient to support a finding that the defendant committed the prior act; and (4) the probative value of the proffered evidence is not substantially outweighed by the danger of unfair prejudice.

Foster, __ F.3d __, 2011 WL 2909455, at *6. The second element of the applicable test, similarity, applies differently in different contexts. As the Seventh Circuit has explained,

> "[Q]uestions about 'how similar is similar enough' ... do not have uniform answers; these answers ... *depend on the theory that makes the evidence admissible*, and must be reached on a case-by-case basis. Thus, similarity means more than sharing some common characteristics; the common characteristics *must relate to the purpose for which the evidence is offered*."

Id. at *6-7 (quoting *United States v. Torres*, 977 F.2d 321, 326 (7th Cir.1992)) (emphasis in original). Accordingly, the court has held that, while "a high degree of similarity is required when Rule 404(b) evidence is offered to prove modus operandi . . . less similarity is required when such evidence is offered for other purposes." *Id.* at *7. For example, where evidence is admitted to show

a prior "criminal relationship . . . that eventually gave rise to the [charged conduct], Rule 404(b) requires little similarity." *Id.* In addition, the court has held that similarity is not an appropriate requirement where other acts evidence is admitted to show motive "because the similarity between the act and the charged offense is not related to the quality of the evidence of a defendant's motive." *United States v. Shriver*, 842 F.2d 968, 974 -975 (7th Cir. 1988) (holding that evidence of a prior default was relevant to show financial pressure providing defendant with a powerful incentive to make charged false statements and thus was admissible under Rule 404(b), despite lack of similarity between default and charged false statements). Essentially, the question for the Court is whether the lack of similarity undermines the relevance of the evidence. *See Foster*, 2011 WL 2909455, at *7.

With respect to the fourth requirement, "to warrant exclusion under Rule 403, the 'probative value [of evidence] must be insignificant compared to its inflammatory nature so that the evidence unfairly prejudices the defendant.'" *Gorman*, 613 F.3d at 720-21. Under this test, the balance is generally struck in favor of admission.[2] *United States v. Hughes*, 310 F.3d 557, 565 (7th Cir. 2002).

II. Defendant's Involvement In TRS Matters And Influence With Several TRS Staff Members And Trustees.

A. Overview of Evidence

The government intends to offer testimony from Keith Bozarth and Stuart Levine regarding defendant's interest and involvement in TRS matters and defendant's influence on several TRS staff members and trustees.

Keith Bozarth became TRS's executive director in 1998 and remained in that position

---

[2] If the defense raises a Rule 403 objection to any of the evidence discussed in this motion, the government will respond to these arguments accordingly.

through 2001. Bozarth will testify regarding multiple conversations with defendant regarding Bozarth's conduct of TRS business. First, Bozarth will testify that, within weeks of Bozarth's appointment, defendant invited him to lunch at the Renaissance Hotel in Springfield. During that lunch, the two discussed, among other things, Bozarth's handling of pension funds in his previous position with a Missouri pension fund and his views concerning real estate investments. During this conversation, Bozarth mentioned that the Missouri pension fund had no funds invested in real estate. Defendant responded by asking whether Bozarth had a "bias" against real estate. Bozarth told defendant that he came to TRS with an open mind, but TRS's current real estate allocation seemed high. Defendant commented that it had been a "brilliant" move on the part of Bozarth's predecessor, Bob Daniels, to cover his "political bases" by hiring Commonwealth, a Republican real-estate investment manager; Thomas Rosenberg's firm, a Democratic investment manager; and a third firm connected to the teacher's union. Bozarth responded that TRS was a "fiduciary" and investment decisions should be made based on potential risk and reward, not politics. During the course of this conversation, defendant made a point of informing Bozarth that he had connections to a lot of state boards and access to then-Governor George Ryan, and that he had let Governor Ryan know that TRS was of particular significance to him.

Bozarth will also testify regarding calls defendant made to him to express concern regarding a proposal, in approximately 2000, to decrease TRS's real estate allocation (thereby lowering fees paid by TRS to Commonwealth), and to make recommendations regarding TRS staffing, including recommending Individual A for chief investment officer, and recommending a particular TRS trustee for chair of the board's investment committee.

Finally, Bozarth will testify regarding a second lunch meeting that occurred after TRS had

decreased its real estate allocation, in which defendant told Bozarth about the executive director of another state agency who was removed after he "got out of step politically," a story Bozarth understood as conveying that he too could be removed.

Stuart Levine will testify that, after Bozarth had decreased TRS's real estate investments, he and defendant sought to encourage Bozarth's departure and later orchestrated the appointment of a new executive director who was loyal to defendant. Specifically, Levine will testify that, in approximately October 2000, shortly after Levine joined the TRS board, defendant informed him (based on information provided by Individual A) that TRS's general counsel, whom Bozarth had hired, was not licensed to practice law in Illinois. Levine took this information to Bozarth and the board and demanded the general counsel's resignation. In order to conceal defendant's role in seeking the general counsel's ouster, Levine lied to Bozarth and the board about his source of information, stating that he had learned of the general counsel's licensing problem from the Illinois Attorney General, rather than from defendant. Ultimately, the general counsel was forced to resign, and Bozarth left TRS soon thereafter.

Levine will testify that, shortly after Bozarth left, defendant and Levine orchestrated the installation of Individual A as executive director of TRS by getting a close friend of defendant appointed to fill a new TRS board position. This created a break in a longstanding deadlock[3] between two factions of voting board members on the TRS board.[4] Acting at the defendant's

---

[3] The first faction was composed of trustees appointed by the governor, and the second was composed of trustees elected by current and retired teachers. Defendant's influence was limited to the first of these factions.

[4] Additional background surrounding this maneuver by defendant and Levine is in the government's *Santiago* proffer at pp. 17-19.

direction, as soon as the new trustee joined the board, Levine moved to install Individual A as TRS executive director. Defendant had recommended Individual A, telling Levine that defendant had a close relationship with Individual A and that Individual A would take direction from defendant. Levine will also testify that defendant had a relationship with at least three trustees, in addition to defendant's relationship with Levine. Levine will testify that, from September 2001 forward, defendant and Levine exercised control over TRS matters through Individual A and the TRS trustees with whom defendant and Levine had relationships.[5]

B. Analysis

The evidence set forth above is direct evidence of the conspiracy charged in Count One. The indictment charges that defendant "had longstanding relationships and influence with TRS trustees, including Stuart Levine, and TRS staff members." R.1, Ct. 1 ¶ 1(e). The indictment further charges that "[defendant], Levine, Rezko and Co-Conspirator A [Kelly] agreed to and did use their influence at TRS and Levine's position at TRS to arrange for TRS to invest with and hire firms that made contributions for the benefit of Public Official A [Blagojevich]." R.1, Ct. 1 ¶ 3. All of the evidence discussed above directly proves these allegations in the indictment. Thus, the evidence is admissible without consideration of Rule 404(b).

This evidence is also admissible under Rule 404(b). First, evidence of defendant's involvement and influence in TRS matters shows his opportunity to enter into the charged conspiracy. If defendant did not have such influence, Rezko and Kelly would not have asked defendant to "use his influence at TRS . . . to ensure that TRS invested money with and hired . . .

---

[5] Other witnesses, including Steve Loren and a current TRS trustee, will also testify about the 2001 TRS board and executive director changes.

[investment managers] chosen by Rezko and Co-Conspirator A [Kelly]," (R.1, Ct. 1, ¶¶ 7-8), as charged in the indictment. Accord *Foster*, __ F.3d __, 2011 WL 2909455, at *6 (admitting evidence of prior criminal relationship to show why defendant approached co-schemer). Thus, defendant's involvement in TRS matters is important to understanding the genesis of the charged criminal deal that defendant and Levine struck with Rezko and Kelly in spring 2003, and to appreciating defendant's ability to secure the outcome that Rezko and Kelly intended when the conspirators agreed to hold up Capri's TRS allocation unless and until Capri made a campaign contribution.

Moreover, this evidence demonstrates defendant's motive, plan, preparation, and intent, as well as the absence of mistake. In light of evidence showing the influence Rezko and Kelly had within the Blagojevich administration – including appointments to state agencies, like TRS – evidence of defendant's involvement and interest in TRS matters shows that one of defendant's motives in committing the charged offenses was to maintain his longstanding influence over TRS matters, and shows that he attempted to maintain his influence by ingratiating himself with Rezko and Kelly by assisting them as necessary. The events of 2000 and 2001, as explained by Bozarth, Levine, and other witnesses, likewise show defendant's plan and preparation in securing and maintaining control at TRS (so that defendant could influence TRS's actions), his intent (to maintain that control), and absence of mistake.

For all of these reasons, defendant's interest and involvement in TRS matters and defendant's influence on several TRS staff members and trustees is admissible both as direct evidence of the charged crimes and under Rule 404(b).

III. Rosenberg's Understanding Of Defendant's Influence At TRS.

A. Overview of Evidence

The government intends to introduce the testimony of Thomas Rosenberg regarding his knowledge of defendant's influence on TRS, and the impact that knowledge had on his understanding of defendant's later extortionate message.

Specifically, Rosenberg will testify that defendant told him that Individual A was defendant's "guy" and the person defendant wanted to be appointed as executive director of TRS. Rosenberg will also testify that defendant explained at some point in 2003 that defendant and Individual A had figured out a way to circumvent new ethical rules so that they could continue to speak with one another about TRS business.

Rosenberg will also testify about an occasion on which he believed defendant used his influence at TRS to adversely affect Rosenberg's ongoing relationship with TRS. Specifically, Rosenberg will testify that, in the 1990s, Rosenberg and a partner had a property management business that competed with a company owned by defendant. After Rosenberg's partner began soliciting business from some of defendant's clients, TRS staff members stopped returning the partner's calls. Rosenberg addressed the problem by going to defendant, apologizing for his partner's conduct, and promising that he and his partner would cease all efforts to solicit defendant's property management business. Thereafter, TRS staff members resumed returning Rosenberg's partner's calls.

B. Analysis

Rosenberg's state of mind is directly relevant to the conspiracy and attempted extortion charges in Counts Two and Three, which require that the government prove the wrongful use of

threatened fear of economic harm. In proving these charges, the government must show that Rosenberg's fear of economic harm was reasonable. *United States v. Mitov*, 460 F.3d 901, 907 (7th Cir. 2006). Further, evidence of Rosenberg's understanding of defendant's extortionate message is also relevant and admissible to show defendant's intent. *See United States v. Tuchow*, 768 F.2d 855, 866 n.13 (7th Cir. 1985); *United States v. Goodoak*, 836 F.2d 708, 712 (1st Cir. 1988) (in context of attempted extortion). Rosenberg will testify that he understood defendant's message that a "brick" had been placed on Capri's $220 million allocation was part of an extortion, in part, because of his knowledge of defendant's significant and longstanding relationships with TRS staff and TRS trustees and his belief that defendant had the influence to prevent Capri from receiving its $220 million allocation if defendant chose to do so. Rosenberg will testify this understanding was informed, in part, by Rosenberg's earlier dealings with the defendant and TRS, following Rosenberg and his partner's attempts to solicit defendant's clients. Thus, this evidence provides context for the jury to properly understand Rosenberg's view of the extortionate message, and is, therefore, also relevant to prove defendant's intent.

For the same reasons, this evidence is relevant to show defendant's knowledge, intent, and absence of mistake in conveying the extortionate message to Rosenberg and, therefore, is also admissible pursuant to Rule 404(b). Specifically, the evidence shows that, viewed in light of Rosenberg's earlier dealings with defendant, defendant knew in 2004 that he was using and intended to use his influence at TRS adversely to affect Capri's business, if Rosenberg did not comply with Rezko and Kelly's demands. It also shows absence of mistake, *i.e.*, defendant's message to Rosenberg was no accident. Defendant was not innocently chatting with Rosenberg about the ups and downs of TRS business; his message to Rosenberg in 2004 was planned and focused, designed

to intimidate Rosenberg into paying a campaign contribution so that Capri would receive its allocation.

IV. Defendant's Two Statements Regarding His Prior Involvement In Exchanging State Action for Campaign Contributions, Made In The Context Of Describing His Participation In The Charged Conduct.

A. Overview of Evidence

The government intends to admit limited evidence of two statements defendant made regarding his past involvement in exchanging state action for campaign contributions, made in the context of discussing the charged conduct. First, Steve Loren will testify that during a February 2004 meeting with the defendant, Levine, and Individual A, defendant described a recent meeting with Rezko and Kelly. In describing the meeting, defendant stated that Rezko and Kelly were "moving too fast" in pushing to place Blagojevich contributors at TRS (pursuant to the accommodation defendant had previously agreed to, as charged in Count One). Defendant stated he had been "doing this for 30 years and had always stayed above the fray." Second, and similarly, during a recorded conversation with Levine regarding the Rosenberg shakedown, defendant expressed concern that the methods employed by Rezko and Kelly in attempting to obtain campaign contributions for Blagojevich in exchange for state contracts were too brazen and risked detection. Defendant expressly connected the risks Rezko and Kelly were taking with defendant's own exposure on the Rosenberg shakedown. Specifically, during the May 8, 2004 recorded call between the defendant and Levine, defendant stated:

LEVINE: . . . whether what they're doing is legal or legal I have no idea.

* * *

CELLINI: I know that their mode of operandi is different that what ours was.

LEVINE: Mm hm.

CELLINI: Uh, I know that uh, we would not call somebody after they got something or before they were gonna get something.

LEVINE: Mm hm.

CELLINI: Again it may be somewhat of a coincidence but as a general rule we would not.

LEVINE: Mm hm.

CELLINI: As the general rule they do. That will set up a pattern that could be used and then all they gotta do is ask some of these people and these guys will cave in like a herd of turtles.

* * *

CELLINI: But, but see that thing. I mean now all of us have done that for years when you know somebody is gonna get somethin' or you, maybe, maybe even help somebody get somethin' and you call to let 'em know...

LEVINE: Mm hm.

CELLINI: It, you know you're gonna be okay.

LEVINE: Mm hm.

CELLINI: You're gonna be okay.

LEVINE: Yeah.

CELLINI Uh, you know it's like gettin' credit. Now, I suppose there's a fine line there.

* * *

LEVINE: Well I mean is, is, is the question do you stop dealing with these guys?

(PAUSE)

CELLINI: Phew, you know neither one of us wanna do that, you know.

B. Analysis

Defendant's two statements criticizing the methods used by Rezko and Kelly, and comparing those methods to his own prior involvement in exchanging state action for campaign contributions, constitute direct evidence of the offenses charged in the indictment. The indictment charges that "[defendant], Levine, Rezko and Co-Conspirator A [Kelly] agreed to and did use their influence at TRS and Levine's position at TRS to arrange for TRS to invest with and hire firms that made contributions for the benefit of Public Official A [Blagojevich]." R.1 ¶ 3. Moreover, the indictment alleges that defendant and others "conceal[ed] and hid[], and cause[d] to be misrepresented, concealed, and hidden, the acts done in furtherance of the conspiracy and the purposes of those acts." R.1 ¶ 16. Defendant's expressed concerns that Rezko and Kelly were "moving too fast" to place firms at TRS reflect defendant's consciousness that scrutiny drawn to Rezko and Kelly would harm him as well, and tend to show that defendant had knowingly joined a conspiracy that was at risk of being exposed by the imprudent conduct of defendant's co-conspirators. Further, defendant's statement that he had been "doing this for 30 years and had always stayed above the fray" places defendant's criticisms in context, making it clear that defendant's beef with Rezko and Kelly was not that they were engaged in exchanging state action for campaign contributions, but, rather, that their methods were too obvious. Defendant's expressed concern therefore demonstrates the criminal nature of the conspiracy and defendant's knowing participation in it.

The same holds true for defendant's recorded statements regarding Rezko and Kelly. Defendant's criticism of Rezko and Kelly's methods, and his comparison of those methods to those he had previously employed successfully – *i.e.*, without detection – evince defendant's consciousness of guilt which, in turn, shows defendant's participation in the conspiracy (otherwise,

the tactics of Rezko and Kelly would not be a cause of concern for defendant). The statements are thus relevant to show the criminal nature of the conspiracy and defendant's knowing participation therein.

For similar reasons, this evidence is also admissible under Rule 404(b). First, defendant's statements regarding his prior awareness and participation in the practice of exchanging state action for campaign contributions demonstrate defendant's opportunity to participate in the conspiracy; in particular, this evidence explains why Rezko and Kelly were willing to ask defendant for assistance in placing firms at TRS, as charged in Count One. Second, defendant's contrasting his own prior conduct against the methods employed by Rezko and Kelly – and his palpable worry about law enforcement's interest and the potential consequences – shows that defendant realized what both he and his co-conspirators were doing, that he was aware of the criminal nature of his conduct, and that of his co-conspirators, see Seventh Circuit Pattern Jury Instruction 4.06, and that he feared that the recklessness of his co-conspirators would put them all in jeopardy.

For all of these reasons, defendant's admissions regarding his past involvement in pay-to-play are relevant and admissible as direct evidence, as well as pursuant to Rule 404(b).

V. Defendant's Statements Regarding His Assistance To Rezko And Kelly In Attempting To Obtain A Campaign Contribution In Exchange For A State Contract Outside The TRS Context, Made During A Conversation With Levine Regarding The Rosenberg Shakedown.

A. Overview of Evidence

During another portion of the May 8, 2004 recorded call, in the context of discussing the Rosenberg shakedown, defendant and Levine discussed the fact that Rosenberg had complained about Rezko and Kelly's seeking contributions for state contracts outside the context of TRS. After relating Rosenberg's complaint, defendant told Levine he knew Rezko and Kelly were doing this

and described another, contemporaneous instance in which he was attempting to help Rezko and Kelly obtain a campaign contribution in exchange for a state contract:

CELLINI: He's [Rosenberg] talkin' about these guys Tony and Chris because they are out uh, according to him . . . essentially hammerin' people for contracts uh, with contracts for fundraising.

* * *

CELLINI: And, and I gotta tell you I'm a nervous wreck over it myself.

LEVINE: You think they are?

CELLINI: Oh, oh . . .

LEVINE: Oh you know they are?

CELLINI: I know they are.

Defendant then told Levine that he had recently recommended a firm to receive a state contract and promised Kelly that, in exchange, the firm would host a fundraising luncheon for Blagojevich. According to defendant, the firm backed out after looking at public records relating to IDOT contracts and observing a pattern between firms that contributed and firms that received state contracts. Because the firm backed out after defendant had already vouched for the firm and secured the state contract with Kelly, defendant told Levine, "You know now I got egg on my face."

B. Analysis

Defendant's statements regarding Rezko and Kelly's involvement in pay-to-play outside the context of TRS, and regarding his own knowing participation in that conduct, all in the context of discussing how to manage Rosenberg, constitute direct evidence of the criminal nature of the charged conspiracy, and defendant's knowing and intentional participation. Defendant's statements demonstrate that the extortion of Rosenberg was part of an overarching scheme to trade state

contracts for campaign contributions and that defendant was knowingly participating in that scheme. As was the case with defendant's expressions of concern regarding Rezko and Kelly's conduct discussed above, defendant's statement that he was a "nervous wreck" regarding Rezko and Kelly's actions in non-TRS matters demonstrates defendant's awareness of the criminal nature of the charged offenses, as well as his own participation, by establishing defendant's fear that Rezko and Kelly's actions would ultimately harm him.

These statements are also admissible pursuant to Rule 404(b). First, evidence of defendant's efforts to assist Rezko and Kelly in a non-TRS matter demonstrates the relationship of trust among defendant, Rezko, and Kelly, and helps to explain why Rezko and Kelly were willing to ask defendant for assistance in placing firms at TRS, as charged in Count One, as well as ask defendant to deliver the extortionate message to Rosenberg, as charged in the remaining counts. Second, defendant's statements demonstrate his motive for committing the charged crimes, specifically, to ingratiate himself with Rezko and Kelly in order to secure their assistance in maintaining defendant's influence at TRS. Defendant's efforts to assist Rezko and Kelly in a non-TRS matter – despite being a "nervous wreck" about it – are highly probative of the extent of defendant's motivation to help Rezko and Kelly. Third, defendant's explanation of his assistance to Rezko and Kelly in this non-TRS matter helps provide context for other statements defendant made regarding the charged conduct. For example, during the May 10, 2004 call between defendant and Levine, defendant explained that he had told Kelly about the firm backing out of the fundraising event. During the same conversation with Kelly, defendant alluded to the Rosenberg situation, telling Kelly he had to talk to him about a second issue involving the "same kind of stuff . . . it has to do with a guy who . . . thinks that he uh, is getting hammered for something." Defendant's description of

Kelly and Rezko "hammerin' people for contracts" during the May 8, 2004 call helps explain and provide context for defendant's statements during the May 10, 2004 call. Accord *Taylor*, 522 F.3d at 734-36 (among other examples, prior drug sales admissible to explain coded term). For all of these reasons, defendant's statements regarding his involvement in helping Rezko and Kelly obtain a campaign contribution in exchange for a state contract, made in the context of describing the Rosenberg shakedown, are admissible both as direct evidence and under Rule 404(b).

VI. Defendant's Republican Ties, Including Defendant's Fundraising For Republican Governors.

A. Overview of Evidence

The government intends to introduce limited testimony of one or more witnesses regarding defendant's ties to the Republican party and prior fundraising in support of Republican governors through the Illinois Asphalt Pavement Association and his contacts in the transportation industry.

B. Analysis

Evidence of defendant's Republican ties provides context to and helps explain certain statements made by defendant during recorded conversations. For example, during the May 8, 2004 call, defendant talks about a conversation between defendant and Kelly, in which the two discussed the need for a cover story if law enforcement asked Kelly about the many phone calls between the two. According to defendant, Kelly said, "well it's fundraising, you know you helped me with money" and defendant responded, "I don't know that I even want that to be in the paper." Defendant then made a comment about being a Republican. Absent evidence of the extent of defendant's Republican ties, and the significance of fundraising behind the scenes for a Democrat and developing close ties to Blagojevich's closest allies, defendant's response would be potentially confusing to the jury.

Further, the government intends to offer evidence that defendant was involved in a September 2002 fundraising event that raised over $400,000 for Blagojevich. One or more former employees from Blagojevich's campaign office will testify that Kelly instructed them that the campaign's records should not identify defendant as being involved with the September 2002 event. Defendant's prior Republican ties, including his prior fundraising efforts for Republican gubernatorial candidates, helps to explain why defendant's name was kept out of the Blagojevich campaign records.

This evidence also provides context that helps to explain defendant's motive for committing the charged crimes. Evidence of defendant's Republican ties – coupled with his desire to maintain his influence at TRS – shows why the defendant would engage in criminal conduct with Rezko and Kelly. Blagojevich was the first Democratic governor in 26 years, and Rezko and Kelly had great influence within the Blagojevich administration, including controlling appointments to state boards like TRS. Thus, defendant had an incentive to ingratiate himself with Rezko and Kelly, who otherwise would not be inclined to allow him to maintain his influence at TRS or the rewards he received as a result of that influence. All of this evidence, taken together, shows that defendant's fundraising for Blagojevich was an effort to ingratiate himself with Rezko and Kelly, rather than a reflection of ideological support for Blagojevich. It further explains why defendant agreed to join and participate in the charged conspiracy.

For all of these reasons, limited evidence of defendant's ties to the Republican party, including prior fundraising for Republican candidates, is relevant and admissible as direct evidence of the charged offenses, as well as pursuant to Rule 404(b), as evidence of defendant's motive and opportunity, and as a means of placing other relevant evidence in context in order to avoid juror

confusion.

VII. Defendant's Fundraising For Blagojevich.

A. Overview of Evidence

At trial, the government anticipates offering evidence that defendant helped raise funds for Blagojevich from 2002 through 2005. Specifically, through witnesses and internal Blagojevich campaign records, the government will prove that defendant was involved in raising approximately $400,000 for Blagojevich in September 2002 and additional significant amounts in July 2003, June 2004, February 2005, and June 2005.

B. Analysis

Evidence of defendant's fundraising on behalf of Blagojevich is direct evidence of defendant's knowing participation in the charged crimes in that it shows that defendant was motivated to, and did, go to significant lengths to ingratiate himself with the Blagojevich administration in order to maintain his influence at TRS.

Moreover, this evidence also provides the necessary background for demonstrating that defendant misrepresented to Rosenberg the nature and extent of his relationship with Rezko and Kelly, in order to conceal his involvement in the charged extortion conspiracy. See R.1, Ct. 2 ¶ 16 (charging that defendant "concealed . . . the acts done in furtherance of the conspiracy and the purposes of those acts."). Specifically, in communicating with Rosenberg regarding the hold on Capri's $220 million allocation, as defendant recounted in the May 7, 2004 recorded call between defendant and Levine, defendant told Rosenberg that Individual E's approach to Rezko "may have . . . caused . . . us both some problems." Similarly, as defendant recounted in his May 8, 2004 recorded call with Levine, defendant approached Rosenberg, acting "like [he] was an innocent . .

. know nothing . . . guy on the sideline who was worried that this maneuver may be harmful to me and what I was doing." In other words, defendant advised Levine that he "acted" as though he were innocent, and as though he was on the "sidelines" of what Rezko and Kelly were doing, and that, just like the "brick" that had been placed on Capri's allocation, he feared that Rezko and Kelly might cause him problems as well. In reality, however, the defendant had a close relationship with Rezko and Kelly as demonstrated, in part[6], by the fact that defendant had helped raise significant funds for Blagojevich. Thus, proof of defendant's fundraising for Blagojevich is direct evidence that defendant lied to Rosenberg in an effort to conceal his participation in the conspiracy, as charged in the indictment.

This evidence is admissible pursuant to Rule 404(b) as well. First, it is relevant to show the nature and extent of the relationship among the defendant, Rezko, and Kelly, thereby explaining why Rezko and Kelly included defendant in their inner circle and trusted defendant to participate in the charged crimes. Second, and similarly, this evidence shows the lengths to which defendant went in an effort to solidify his relationship with Rezko and Kelly, which underscores defendant's motive and intent to assist Kelly and Rezko in the charged crimes.

In sum, evidence of defendant's fundraising for Blagojevich is admissible as direct evidence of the charged offenses, as well as pursuant to Rule 404(b), to show defendant's motive and intent in participating in the charged conspiracy.

---

[6] Other evidence will show that defendant had a close relationship with Rezko and Kelly as well. Beyond the fact that defendant helped raise significant funds for Blagojevich, in January 2003, defendant held a dinner for Blagojevich staffers at his house in Springfield during the inauguration. In December 2003, defendant, Rezko and Levine, together with their spouses, attended a White House function. Further, the defendant was in frequent contact with Rezko and Kelly – both in-person and by phone – about TRS and other matters.

CONCLUSION

Based on the foregoing, the government respectfully requests that the Court grant the government's motions *in limine*.

Respectfully submitted,
PATRICK J. FITZGERALD
United States Attorney

By: s/ J. Gregory Deis
CHRISTOPHER NIEWOEHNER
JULIE PORTER
J. GREGORY DEIS
Assistant U.S. Attorneys
219 South Dearborn Street, Room 500
Chicago, Illinois 60604
(312) 353-5300

Dated: September 7, 2011

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following documents:

GOVERNMENT'S MOTION *IN LIMINE*

were served on September 7, 2011 in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

s/ J. Gregory Deis
J. GREGORY DEIS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois
(312) 886-7625