UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 05 CR 691-4
v.	)	Judge Amy J. St. Eve
	)	
ANTOIN REZKO	)	

GOVERNMENT'S EVIDENTIARY PROFFER SUPPORTING THE ADMISSIBILITY OF CO-SCHEMER STATEMENTS

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully submits this written proffer, pursuant to the provisions of Federal Rule of Evidence 801, including Federal Rule of Evidence 801(d)(2)(E), and *United States v. Santiago,* 582 F.2d 1128 (7th Cir. 1987), of the government's evidence supporting the admission of certain joint venturers or co-schemers' statements at trial. More specifically, this proffer sets forth a summary of the evidence that the government will offer at trial relating to a joint venture or scheme among defendant Antoin Rezko, Stuart Levine, and others, who acted together to deprive the beneficiaries of the Teacher's Retirement System ("TRS") and the people of the State of Illinois of the honest services of Stuart Levine. This proffer also summarizes the statements that furthered these criminal offenses. Although the offenses were not formally charged as a conspiracy, the legal principles governing admissibility of the statement of a co-conspirator or joint venturer apply to the charged offenses *See, e.g., United States v. Godinez,* 110 F.3d 448, 454 (7th Cir. 1997)(government need not charge conspiracy in order for a co-conspirator statement to be admitted); *Santiago,* 582 F.2d at 1130 (establishing law concerning *Santiago* proffers in a one-count case with no conspiracy charge).

This proffer begins by briefly discussing the joint venture or scheme in the charged offenses. It then discusses in considerable detail the law governing the admissibility of the joint venturer or

co-schemer statements under Federal Rule of Evidence 801(d)(2)(E). Next, this proffer summarizes some of the evidence supporting the admission of co-schemers' statements. In this manner, the government will establish to the Court the existence of the evidence available to complete the necessary foundation at trial, the roles of certain witnesses, and the bases for admission.[1/]

I. OVERVIEW OF THE CHARGED OFFENSES

Defendant Antoin Rezko is charged in the superseding indictment with devising and participating in a scheme to defraud by depriving the beneficiaries of the Teacher's Retirement System ("TRS") and the people of the State of Illinois of Stuart Levine's duty of honest services. As part of this fraud, Rezko used Levine's position on the TRS Board and the Illinois Health Facilities Planning Board ("Planning Board") to obtain financial benefits for himself and his nominees and associates. During the course of the fraud scheme Rezko and Levine solicited, demanded, and received hundreds of thousands of dollars in undisclosed kickbacks and payments for themselves and their nominees and associates from, among others, investment firms seeking to do business with TRS and from a contractor seeking to obtain a contract to build a hospital. In addition, Rezko and Levine attempted to establish a company to serve as an asset manager for TRS so that they or their nominees could participate and benefit financially in the operation of the asset manager without that participation being disclosed to TRS. As Rezko knew, Levine intentionally concealed from and failed to disclose to the TRS Board and the Planning Board material facts concerning the financial benefits that Rezko and Levine sought to obtain for themselves and their nominees from official actions taken by those Boards and their staff members, as well as *ex parte*

[1/] The government is not detailing all of its evidence showing the existence of the joint venture or scheme or all of the statements that were made in furtherance of the scheme but is providing sufficient information for the Court to evaluate the admissibility of the statements.

communications in which Levine had engaged with third parties concerning these official actions and related matters pending before the Boards.

As a result of those actions, Rezko has been charged with fifteen counts of mail or wire fraud under 18 U.S.C. §§ 1341, 1343, and 1346, one count of attempted extortion under 18 U.S.C. § 1951, six counts of corrupt solicitation of funds under 18 U.S.C. § 666(a)(1)(B), and two counts of money laundering under 18 U.S.C. §1956(a)(1)(B)(i).

II. THE LAW GOVERNING THE ADMISSIBILITY OF CO-SCHEMERS' STATEMENTS

Rule 801(d)(2)(E) of the Federal Rules of Evidence provides that a "statement" is not hearsay if it "is offered against a party" and is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." The admission of a co-conspirator statement against a defendant is proper where the government establishes by a preponderance of evidence that: (1) a conspiracy or scheme existed; (2) the defendant and the declarant were members of that particular conspiracy or scheme; and (3) the statement was made during the course and in furtherance of the conspiracy or scheme. *See, e.g., Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *United States v. Westmoreland*, 312 F.3d 302, 309 (7th Cir. 2002).

A. The *Santiago* Proffer is the Approved Method of Proffering Co-Schemer Statements

In this Circuit, the preferred way for the government to makes its preliminary factual showing as to the admissibility of such statements is by filing a pretrial written proffer of the government's evidence. *See, e.g., United States v. Hoover*, 246 F.3d 1054, 1060 (7th Cir. 2001);

United States v. Irorere, 228 F.3d 816, 824 (7th Cir. 2000).[2/] In making its preliminary factual determinations, the Court must consider the statements themselves as evidence of a joint scheme and whether the statements the government seeks to admit were made in furtherance of that scheme. *United States v. Brookins*, 52 F.3d 615, 623 (7th Cir. 1995); *United States v. Maholias*, 985 F.2d 869, 877 (7th Cir. 1993). Indeed, the Court may consider all non-privileged evidence. *United States v. Lindemann*, 85 F.3d 1232, 1238 (7th Cir. 1996).

B. **Co-Schemers' Statements Are Admissible as Nonhearsay Despite the Absence of a Formal Conspiracy Charge**

As noted above, statements may be admitted under Rule 801(d)(2)(E) notwithstanding the lack of any formal conspiracy charge. *See, e.g., Godinez*, 110 F.3d at 454; *Santiago*, 582 F.2d at 1130.[3/] In addition, there is no requirement that each member of the venture share a criminal intent for the co-schemer rule to apply to statements that members made in furtherance of the scheme. These two rules are based on the very nature of the co-conspirator doctrine:

> The distinction should be noted between "conspiracy" as a crime and the co-conspirator exception to the hearsay rule. Conspiracy as a crime comprehends more than mere joint enterprise. It also includes other elements, such as a meeting of the minds, criminal intent and, where required by statute, an overt act. . . . The co-conspirator exception to the hearsay rule, on the other hand, is merely a rule of evidence founded, to some extent, on concepts of agency law. It may be applied in both civil and criminal cases. . . . Its rationale is the common sense appreciation that a person who has authorized another to speak or to act to some joint end will be held responsible for what is later said or done by his agent, whether in his presence or not.

[2/] *Accord, e.g.,United States v. Haynie*, 179 F.3d 1048, 1050 (7th Cir.1999); *United States v. Rodriguez*, 975 F.2d 404, 406 (7th Cir. 1992); *Hassan*, 1998 U.S. Dist. LEXIS 17538, at **5-6.

[3/] *See also, e.g., United States v. Cox*, 923 F.2d 519, 526 (7th Cir. 1991)(conspiracy charge not a condition for admitting statements under Rule 801(d)(2)(E)). *Accord, United States v. Reynolds*, 919 F.2d 435, 439 (7th Cir. 1990); *United States v. Kelley*, 864 F.2d 569, 573 (7th Cir. 1989); *United States v. LeFevour*, 798 F.2d 977, 983 (7th Cir. 1986).

* * *

> The substantive criminal law of conspiracy, though it obviously overlaps in many areas, simply has no application to this evidentiary principle. Thus, once the existence of a joint venture for an illegal purpose, or for a legal purpose using illegal means, and a statement made in the course of and in furtherance of that venture have been demonstrated by a preponderance of the evidence, it makes no difference whether the declarant or any other "partner in crime" could actually be tried, convicted and punished for the crime of conspiracy.

United States v. Gil, 604 F.2d 546, 549-550 (7th Cir. 1979)(citations omitted)(emphasis added).

This distinction was explored in *United States v. Coe*, 718 F.2d 830 (7th Cir. 1983). In *Coe*, the court explained that a so-called co-conspirator statement's admissibility does not depend on the substantive law of conspiracy:

> Conspiracy as an evidentiary rule differs from conspiracy as a crime. The crime of conspiracy comprehends much more than just a joint venture or concerted action, whereas the evidentiary rule of conspiracy is founded on concepts of agency law. . . . Recognizing this, some courts refer to the coconspirator exception as the "joint venture" or "concert of action" exception. . . . A charge of criminal conspiracy is not a prerequisite for the invocation of this evidentiary rule. . . . Indeed, it may be invoked in civil as well as criminal cases. . . .
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> The proposition that the government did have to establish by a preponderance of independent evidence was that [the individuals] . . . were engaged in a joint venture--that there was a "combination between them . . . ."

Coe, 718 F.2d at 835 (citations omitted).[4/]

C. The Supreme Court's *Crawford* Decision Has Not Changed the Admissibility of Co-Schemer Statements

The Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004), changed much of the law concerning out-of-court testimonial statements, but it did not affect the admissibility

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[4/] *See also Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 249 (1917)(explaining origin of the co-conspirator rule in the law of partnership)("the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible as primary and original evidence against them.").

of co-schemer statements. In *Crawford*, the prosecution introduced a tape-recorded statement made before trial by the defendant's wife to law enforcement. *Id.* at 38. At trial, however, the wife was unavailable as a witness due to the state's spousal privilege law, and thus the defendant did not have an opportunity to cross-examine her. *Id.* at 40. The Court ruled that admission of the statement violated the Confrontation Clause, holding that where the government offers an unavailable declarant's hearsay that is "testimonial" in nature, the Confrontation Clause requires actual confrontation, that is, cross-examination, regardless of how reliable the statement may be. *Id.* at 51-52. As examples of "testimonial" statements, the Court listed prior testimony at a preliminary hearing, before a grand jury, or at a former trial, and to police interrogations. *Id.* at 68.

The rule in *Crawford* does not apply, however, to statements that are not hearsay.[5/] Thus, the Seventh Circuit has squarely held that *Crawford* does not apply to – and did not change the law relating to – co-schemer statements. In *United States v. Jenkins*, 419 F.3d 614 (7th Cir.), *cert. denied*, 126 S. Ct. 782 (2005), the Seventh Circuit noted:

> As to the Confrontation Clause argument, *Crawford* does not apply. The recordings featured the statements of co-conspirators. These statements, by definition, are not hearsay. *Crawford* did not change the rules as to the admissibility of co-conspirator statements.

419 F.3d at 618. *Accord*, *United States v. Bailey*, No. 05 CR 8, 2005 U.S. Dist. LEXIS 28070 at *5 (N.D. Ill. Nov. 14, 2005)(Shadur, J.)(following *Jenkins*). Because co-schemer statements are not

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[5/]The rule in *Crawford* also does *not* apply where: (1) a statement, though testimonial in nature, is not offered for the truth of the matter asserted, 541 U.S. at 59 n.9; (2) the declarant testifies at trial and is subject to cross-examination regarding the prior statement, *id.* at 59 n.9; (3) the statement is non-testimonial, *id.* at 60; or (4) the declarant is unavailable to testify and the defendant had a prior opportunity for cross-examination, *id.* at 59. Another exception to the confrontation requirement applies where the defendant procured the declarant's unavailability, that is, "forfeiture by wrong-doing," *see id.* at 62; Fed. R. Evid. 804(b)(6).

"testimonial" hearsay statements, *Crawford* is not implicated, and those statements may be admitted without offending the Sixth Amendment.

D. The Proper Standard for Admissibility Is Preponderance of the Evidence

A district court's preliminary determination of admissibility for purposes of Rule 801(d)(2)(E) is distinct from the standard required in determining on appeal whether sufficient evidence exists to uphold a jury verdict. The standard to be applied in the context of admissibility under Rule 801(d)(2)(E) is a preponderance-of-the-evidence standard. *Lindemann*, 85 F.3d at 1238 (*citing Bourjaily*, 438 U.S. at 175-76); *Hassan*, 1998 U.S. Dist. LEXIS 17538 at *7 (quoting *Godinez*, 110 F.3d at 454).

E. Principles for Determining Membership in and Existence of the Criminal Scheme

1. The Court May Consider the Proffered Statements Themselves

A district court may consider the proffered statements themselves in determining the existence of a scheme, and a defendant's participation in it. *Bourjaily*, 483 U.S. at 180; *United States v. de Ortiz*, 907 F.2d 629, 633 (7th Cir. 1990); *United States v. Kapp*, 02 CR 418-1, 2003 U.S. Dist. LEXIS 3989 (N.D. Ill. March 17, 2003)(Manning, J.).

2. Both Direct and Circumstantial Evidence Can Be Considered

Once the scheme is established, the evidence may be either direct or circumstantial. *Irorere*, 228 F.3d at 823; *United States v. Patterson*, 213 F. Supp. 2d 900, 910-11 (N.D. Ill. 2002)(Bucklo, J.), *aff'd*, 348 F.3d 218, 225-26 (7th Cir. 2003).[6/] Indeed, "[b]ecause of the secretive character of

[6/]Even though the government need not prove the crime of conspiracy for the co-conspirator doctrine to apply, criminal conspiracy cases are helpful in stating the types of evidence that are sufficient to show conspiracy. If the government meets the higher standard for criminal conspiracy, *a fortiorari*, the evidentiary standard is met.

conspiracies, direct evidence is elusive, and hence the existence and the defendants' participation can usually be established only by circumstantial evidence." *United States v. Redwine*, 715 F.2d 315, 319 (7th Cir. 1983). *See also Lindemann*, 85 F.3d at 1238 (secretive nature of conspiracies one reason for conspirator exception to hearsay rule).

3. Requirements for Determining if a Person has Joined the Scheme

A defendant joins a criminal scheme if he agrees with another person to one or more of the common objectives of the scheme; it is immaterial whether the defendant knows, has met or has agreed with every co-schemer. *United States v. Boucher*, 796 F.2d 972, 975 (7th Cir. 1986); *United States v. Balistrieri*, 779 F.2d 1191, 1225 (7th Cir. 1985); *see also Rodriguez*, 975 F.2d at 411 (defendant must have intended to join and associate himself with the conspiracy's criminal design and purpose). The government need not prove, however, that a defendant knew each and every detail of the scheme or played more than a minor role in the scheme. *United States v. Sims*, 808 F. Supp. 620, 623 (N.D. Ill. 1992)(Alesia, J.). As the Supreme Court has said:

> A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. . . . The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other. . . . If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.

Salinas v. United States, 522 U.S. 52, 63-4 (1997)(citations omitted).[7/] A defendant may be found to have participated in a scheme even if he joined or terminated his relationship with others at a different time than another defendant or co-schemer. *United States v. Ramirez*, 796 F.2d 212, 215

[7/] *See also United States v. Liefer*, 778 F.2d 1236, 1247 n.9 (7th Cir. 1985); *United States v. Towers*, 775 F.2d 184, 189 (7th Cir. 1985); *United States v. Morrow*, 971 F. Supp. 1254, 1256-57 (N.D. Ill. 1997)(Alesia, J.).

(7th Cir. 1986); *United States v. Noble*, 754 F.2d 1324, 1329 (7th Cir.1985).[8/] A district court may consider the conduct, knowledge, and statements of the defendant and others in establishing participation in a scheme. A single act or conversation, for example, can suffice to connect the defendant to the scheme if that act leads to the reasonable inference of intent to participate in an unlawful enterprise. *See, e.g., Sims*, 808 F. Supp. at 623.[9/] Statements made during the course of and in furtherance of a scheme, even in its embryonic stages, are admissible against those who arrive late to join a going concern. *United States v. Potts*, 840 F.2d 368, 372 (7th Cir. 1987). A schemer who has become inactive in the scheme nevertheless is liable for his co-schemers' further statements unless he openly disavows the scheme or reports it to the police. *United States v. Feldman*, 825 F.2d 124, 129 (7th Cir. 1987). *See also United States v. Andrus*, 775 F.2d 825, 850 (7th Cir. 1985).

F. Statements Made in Furtherance of the Scheme

In determining whether a statement was made "in furtherance" of the scheme, courts look for a reasonable basis upon which to conclude that the statement furthered the scheme's goals. *United States v. Johnson*, 200 F.3d 529, 533 (7th Cir. 2000). Under the reasonable-basis standard, a statement may be susceptible to alternative interpretations and still be "in furtherance" of the scheme; the statement need not have been exclusively, or even primarily, made to further the scheme

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[8/] A defendant, even if not an "agreeing" member of a conspiracy, may nonetheless be found guilty of conspiracy if he knew of the conspiracy's existence at the time of his acts, and his acts knowingly aided and abetted the business of the conspiracy, *see United States v. Scroggins*, 939 F.2d 416, 421 (7th Cir. 1991); *Sims*, 808 F. Supp. at 623 n.1, even if the defendant was not charged with aiding and abetting, *see United States v. Kasvin*, 757 F.2d 887, 890-91 (7th Cir.1985).

[9/] Similarly, efforts by an alleged co-schemer to conceal a scheme may support an inference that he joined the scheme while it was still in operation. *See Redwine;* 715 F.2d at 321; *United States v. Robertson*, 659 F.2d 652, 657 (5th Cir. 1981).

in order to be admissible under the co-schemer exception. *See, e.g., Johnson*, 200 F.3d at 533 (citing *United States v. Stephenson*, 53 F.3d 836, 845 (7th Cir. 1995)).

The Seventh Circuit has found a wide range of statements to satisfy the "in furtherance" requirement. *See, e.g., United States v. Cozzo*, No. 02 CR 400, 2004 U.S. Dist. LEXIS 7391 (N.D. Ill. April 16, 2004)(Zagel, J.)(collecting cases). In general, a statement that is "part of the information flow between conspirators intended to help each perform his role" is admissible under Rule 801(d)(2)(E). *United States v. Santos*, 20 F.3d 280, 286 (7th Cir. 1994) (*quoting United States v. Johnson*, 927 F.2d 999, 1001 (7th Cir. 1991)); *accord, United States v. Gajo*, 290 F.3d 922, 929 (7th Cir. 2002). These include statements made: (1) to identify other members of the scheme and their roles, *United States v. Roldan-Zapata*, 916 F.2d 795, 803 (2d Cir. 1990); *United States v. Magee*, 821 F.2d 234, 244 (5th Cir. 1987); (2) to recruit potential co-schemers, *United States v. Curry*, 187 F.3d 762, 766 (7th Cir. 1999); (3) to control damage to an ongoing scheme, *United States v. Van Daal Wyk*, 840 F.2d 494, 499 (7th Cir. 1988); *Kapp*, 2003 U.S. Dist. LEXIS 3989, at *3; (4) to keep co-schemers advised as to the progress of the scheme, *Potts*, 840 F.2d at 371; *Kapp*, 2003 U.S. Dist. LEXIS 3989, at *3; (5) to conceal the criminal objectives of the scheme, *United States v. Kaden*, 819 F.2d 813, 820 (7th Cir. 1987); (6) to plan or to review a co-schemer's exploits, *United States v. Molt*, 772 F.2d 366, 368-69 (7th Cir. 1985); or (7) as an assurance that a co-schemer can be trusted to perform his role. *United States v. Pallais*, 921 F.2d 684, 688 (7th Cir. 1990); *Van Daal Wyck*, 840 F.2d at 499. The Seventh Circuit has also said that "[s]tatements made to keep coconspirators informed about the progress of the conspiracy, to recruit others, or to control damage to the conspiracy are made in furtherance of the conspiracy." *Stephenson*, 53 F.3d at 845. *Accord, United States v. Curtis*, 37 F.3d 301, 307 (7th Cir. 1994); *United States v. McCarroll*, No. 95 CR 48,

1996 U.S. Dist. LEXIS 2540 (N.D. Ill. Jan. 22, 1996)(Coar, J.).

1. Statements Made to Execute the Scheme

Statements made by co-schemers to conduct the business of the scheme and to accomplish its goals are "classic examples of statements made to conduct and further" a scheme. *Cox*, 923 F.2d at 527. Statements such as these, which are "intended to promote the conspiratorial objectives," should be admitted pursuant to Rule 801(D)(2)(E).[10/] Statements that prompt the listener to act in a manner that facilitates the carrying out of the scheme are also made "in furtherance" of the scheme.[11/] Whether a particular statement tends to advance the objectives of the scheme or to induce the listener's assistance is determined by an examination of the context in which it is made. *See Garlington v. O'Leary*, 879 F.2d 277, 284 (7th Cir. 1989).

2. Statements Regarding the Scheme's Activities.

Statements "describing the purpose, method, or criminality of the conspiracy," are made in furtherance of the scheme because co-schemers make such statements to guide each other toward achievement of the objectives of the scheme. *United States v. Ashman*, 979 F.2d 469, 489 (7th Cir. 1992). Similarly, statements that are part of the information flow between co-schemers made in order to help each co-schemer perform his role are "in furtherance" of the scheme. *See, e.g., Godinez,* 110 F.3d at 454; *Garlington*, 879 F.2d at 283-84; *Van Daal Wyk*, 840 F.2d at 499. Statements to assure that a co-schemer can be trusted to perform his role also satisfy the "in furtherance" requirement. *See, e.g., United States v. Romo*, 914 F.2d 889, 897 (7th Cir. 1990); *de*

[10/] *United States v. Sinclair*, 109 F.3d 1527, 1534 (10th Cir. 1997); *accord, United States v. Shores*, 33 F.3d 438, 444 (4th Cir. 1994).

[11/] *United States v. Monus*, 128 F.3d 376, 392 (6th Cir. 1997); *United States v. Simmons*, 923 F.2d 934, 945 (2d Cir. 1991); *United States v. Smith*, 833 F.2d 213, 219 (10th Cir. 1987).

Ortiz, 907 F.2d at 635-36 (7th Cir. 1990).

3. Statements to Recruit Co-schemers

Statements made to recruit potential members of the scheme are made "in furtherance" of the scheme. *Curry*, 187 F.3d at 766; *Godinez*, 110 F.3d at 454.[12/]

4. Statements Regarding the Activities of Other Co-schemers Designed to Inform or Reassure the Listener

Statements made by schemers to other individuals who participate in, or interact with, the scheme contribute to the scheme. *See Van Daal Wyk*, 840 F.2d at 499 (wholesaler instructed his courier not to deliver any additional quantities of cocaine to the defendant, a dealer).

> The exchange of information is the lifeblood of a conspiracy, as it is of any cooperative activity, legal or illegal. Even commenting on a failed operation is in furtherance of the conspiracy, because people learn from their mistakes. Even identification of a coconspirator by an informative nickname. . . is in furtherance of the conspiracy, because it helps to establish, communicate, and thus confirm the lines of command in the organization. Such statements are "part of the information flow between conspirators intended to help each perform his role," and no more is required to make them admissible.

Pallais, 921 F.2d at 688. The same logic dictates that discussions concerning a scheme's successes are admissible as statements in furtherance of the scheme. *See id.; Van Daal Wyk*, 840 F.2d at 499.

Statements intended to reassure the listener regarding the progress or stability of the scheme also further the scheme. *United States v. Sophie*, 900 F.2d 1064, 1073 (7th Cir. 1990) (description of past drug deals). Likewise, statements made to reassure and calm the listener may further the scheme, *see Garlington*, 879 F.2d at 284 ; *United States v. Molinaro*, 877 F.2d 1341, 1343-44 (7th

[12/] *See also, e.g., United States v. Doerr*, 886 F.2d 944, 951 (7th Cir. 1989); *Garlington*, 879 F.2d at 283.

Cir. 1989)(upholding admission of statements designed to iron out disputed details of the conspiracy and to control the damage apparently done to the conspiracy).

5. Statements Relating to the Progress and Past Accomplishments of the Scheme

Statements made by co-schemers concerning past exploits by members of the scheme are in furtherance of the scheme when made to assist in managing and updating other members of the scheme. *Potts*, 840 F.2d at 371; *Molt*, 772 F.2d at 368-69. Similarly, statements regarding a co-schemer's failure to fully accomplish the objective of the scheme are admissible "as updates on the status of the conspiracy" and how that status affected the future of the scheme. *United States v. Doyle*, 771 F.2d 250, 256 (7th Cir. 1985).

6. Statements to Conceal the Criminal Objectives of the Scheme

Finally, statements made to conceal the criminal objectives of the scheme are made "in furtherance" of the scheme where, as here, ongoing concealment is one of its purposes. *See, e.g.*, *United States v. Maloney*, 71 F.3d 645, 660 (7th Cir. 1995); *Kaden*, 819 F.2d at 820; *United States v. Bouzanis*, No. 00 CR 1065, 2003 U.S. Dist. LEXIS 16218, at *21 n.5 (N.D. Ill. Sept. 15, 2003)(Lefkow, J.). "Avoiding detection by law enforcement officials clearly furthers the aims of a conspiracy." *United States v. Troop*, 890 F.2d 1393, 1404 (7th Cir. 1989). Statements made to control damage to an ongoing scheme have also been found to have been made in furtherance of the scheme. *See Stephenson*, 53 F.3d at 845; *Van Daal Wyk*, 840 F.2d at 499.

G. Alternative Bases for Admissibility of Statements

The government believes that the statements of co-schemers set forth in this proffer should be admitted as non-hearsay under the co-schemer doctrine. There are alternative bases, however, for admission of many of the statements. These bases do not require a Rule 801(d)(2)(E) analysis.

1. Defendant's Own Statements

A defendant's own admissions are admissible against him pursuant to Fed. R. Evid. 801(d)(2)(A), without reliance on the co-schemer-statement rule.[13/] *Maholias*, 985 F.2d at 877. A defendant's own admissions, moreover, are relevant to establishing the factual predicates for the admission of co-schemer statements against him. *See, e.g.*, *Godinez*, 110 F.3d at 455; *Potts*, 840 F.2d at 371-72.[14/]

2. Statements by a Person Authorized by Defendant to Make the Statement or Statements Made by an Agent of the Defendant

Pursuant to Federal Rule of Evidence 801(d)(2)(C), a statement made by a person specifically authorized to speak for the defendant is equivalent to an admission by the defendant. Further, pursuant to Federal Rule of Evidence 801(d)(2)(D), a statement made by an agent of the defendant is a vicarious admission of the defendant if the statement is made within the scope of the agency and during the course of the relationship.

[13/] Rule 801(d)(2)(A) provides in pertinent part that a "statement" is not hearsay if "[t]he statement is offered against a party and is . . . the party's own statement, in either an individual or a representative capacity."

[14/] Other sections of Rule 801(d)(2) provide alternative bases of admissibility that may apply. Rule 801(d)(2)(B), for example, provides for the admissibility of "adopted" statements.

3. Non-hearsay Statements

The co-schemer statement analysis also is not triggered when the relevant verbal declaration is not a "statement" within the meaning of Federal Rule of Evidence 801(a) and when it is not hearsay. This rule defines "statement" as "an oral or written assertion" or "nonverbal conduct of a person, if it is intended by the person as an assertion."

Thus, a statement that is incapable of verification, such as an order or a mere suggestion, is not hearsay and does not invoke a Rule 801(d)(2)(E) analysis. *See, e.g., United States v. Tuchow*, 768 F.2d 855, 868 n.18 (7th Cir. 1985). Accordingly, statements by alleged co-schemers may be admitted into evidence without establishing the *Bourjaily* factual predicates, but with corresponding limiting instructions, when such statements are offered simply to show, for example, the existence, illegality, or nature and scope of the charged scheme.[15/] In addition, when words are being introduced as a verbal act, or as background for an alleged statement, they are not admitted for the truth of the matter asserted. For that reason, they are not hearsay, and may be admitted. *See, e.g., United States v. Robinzine*, 80 F.3d246, 252 (7th Cir. 1996).

III. THE GOVERNMENT'S PROFFER REGARDING THE EXISTENCE OF A JOINT VENTURE OR SCHEME

As charged in the superseding indictment, Rezko, Levine, and others schemed to defraud the State of Illinois of the honest services of Levine relating to his service on two different Illinois state boards: (1) the Teacher's Retirement System ("TRS"); and (2) the Illinois Health Facilities Planning Board (the "Planning Board"). In each instance, Rezko, Levine, and others schemed to use their

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[15/] *See, e.g., United States v. Herrera-Medina*, 853 F.2d 564, 565-66 (7th Cir. 1988); *Van Daal Wyk*, 840 F.2d at 497-98; *Tuchow*, 768 F.2d at 867-69. In some cases, statements by an alleged co-schemer will include a combination of declarations offered for the truth of the matters asserted and declarations offered for other non-hearsay purposes.

influence and Levine's position on those Boards to obtain illegal kickbacks and payments for the benefit of Levine and Rezko, without disclosing Levine's true interest in those transactions to the relevant Board. The government submits the following summary of evidence:[16/]

A. Teacher's Retirement System

One major aspect of the charged fraud scheme relates to Levine and Rezko's fraudulent use of Levine's position and influence with TRS. TRS is a public pension plan created by Illinois law for the purpose of providing pension, survivor, and disability benefits for teachers and administrators employed in Illinois public schools except in the City of Chicago. TRS manages over $30 billion in assets on behalf of those individuals and the State of Illinois.

The activities of TRS were directed by an 11-member Board of Trustees. Certain of those trustees were appointed by statute by the Governor of the State of Illinois, while other trustees were elected by teachers and annuitants. Among its other responsibilities, the Board of Trustees reviewed and voted to approve or reject proposals by private investment management companies to manage funds on behalf of TRS. At any given time, TRS assets were managed by numerous different investment management companies. These companies were compensated by TRS for their activities, typically through fees calculated as a percentage of the TRS assets they managed.

In carrying out all of their duties, including reviewing and deciding whether to approve or reject proposals by private investment management firms to manage TRS assets, members of the

[16/]This summary is based on information contained in various interview reports, documents, and grand jury statements obtained or created during the investigation, as well as transcripts of recorded phone calls and meetings. Some of the communications described below took place through written means, and there were additional co-conspirator statements made in the form of emails, faxes, written contracts (including drafts), calendars, and other written forms not all of which are described in detail below.

TRS Board of Trustees owed a fiduciary duty to the beneficiaries of TRS and were required to act solely for the benefit of the beneficiaries of TRS. In order to assist members of the TRS Board of Trustees in evaluating proposals to manage TRS assets, TRS required an investment firm to disclose, before TRS decided whether to authorize it to manage TRS assets, all finder's fees, placement fees, and commissions (hereafter collectively referred to as "finder's fees") to be paid by that investment firm in connection with its TRS business. Such fees at times were paid by investment firms to individuals or entities in exchange for bringing the investment firm to the attention of TRS or facilitating the communications between the investment firm and TRS.

Levine was a TRS trustee at the beginning of the scheme, and Rezko and other co-schemers helped Levine become re-appointed to the TRS Board to further the scheme in May 2004. Levine and Rezko devised a scheme where they would use Levine's position and influence on the TRS Board, as well as other members of the TRS Board, to obtain financial benefits for Rezko, Levine, and their nominees and associates. Levine and Rezko enlisted other individuals to help the TRS aspect of the scheme, including Steven Loren, Joseph Cari, Co-Schemer A,[17/] Co-Schemer B, Co-

[17/] Throughout this motion, the government will refer to uncharged individuals and to certain entities by labels instead of their identities. The government will use the same labels for these individuals and entities that were used in the superseding indictment and Stuart Levine's plea agreement, with the exception that if an individual is considered a co-schemer of Rezko's, the individual will be referred to in this motion as "Co-Schemer __" instead of "Individual __." However, the government will use the same letter to refer to the person as in the prior documents, so that Co-Schemer A refers to the same person that was referred to as Individual A in the superseding indictment and/or Levine's plea agreement. Two individuals referred to in Levine's plea agreement (Individuals K and L) and one entity (Investment Firm 8) were not referred to in this filing. To avoid confusion, the government has identified additional people who were not in either the superseding indictment or Levine's plea agreement beginning with the designation "Individual M" and continuing alphabetically, and an additional investment firm as "Investment Firm 10."

The government will provide the true identity of the names of individuals and companies who are not disclosed in this motion to the Court and to counsel for Rezko.

Schemer C, Co-Schemer E, Co-Schemer F, and Co-Schemer I.[18/] As described further below, each of those individuals joined the scheme and knowingly participated in different aspects of it. In the course of the scheme, Rezko, Levine, and the other co-schemers solicited and demanded millions of dollars in undisclosed kickbacks and payments, and received and directed hundreds of thousands of dollars in actual undisclosed kickbacks and payments, for the benefit of Rezko, Levine, and their nominees and associates, from investment firms seeking to do business with TRS.

1. History of Control Over TRS

Levine was originally appointed to the TRS Board in 2000. By the summer of 2001, Levine, working in concert with Co-Schemer A, who had a significant interest in a real estate asset management firm that had a long–standing business relationship with TRS, ad established effective control over the TRS board by forming and maintaining a group of TRS trustees that consistently voted together on matters important to Co-Schemer A and Levine. As part of their control of the TRS Board, Levine and Co-Schemer A arranged to appoint a trustee to the TRS Board who would vote with their bloc and to arrange the appointment of an executive director who they believed would be sympathetic to their aim to control the TRS Board. At times, Levine and Co-Schemer A used their influence on the TRS Board for their personal benefit.

2. The Accommodation with Rezko and Co-Schemer B

In approximately the spring of 2003, a threat arose towards Levine's and Co-Schemer A's control over the TRS Board. At that time, there were indications that the state administration was going to attempt to pass legislation that would consolidate three of the main Illinois state pension

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[18/] The government reserves the right to amend its list of co-schemers, including to add additional co-schemers, and simply provides the above list in furtherance of its proffer of evidence to demonstrate a conspiracy existed.

boards, namely TRS, the State Board of Investments ("ISBI") (which invested the pension funds for state employees), and the State University Retirement System ("SURS") (which invested pension funds for state university workers).

Levine and Co-Schemer A were opposed to the proposal to consolidate the pension boards because it might cause them to lose their control at TRS. In the spring of 2003, Co-Schemer A told Levine that Co-Schemer A would talk to Rezko and Co-Schemer B about trying to stop the pension consolidation plan. Co-Schemer B was a business associate of Rezko's who was also heavily involved in Illinois state politics as a fundraiser for Public Official A. Co-Schemer A later told Levine that he had spoken with Rezko and Co-Schemer B, and offered an accommodation to them. In exchange for their help in stopping the consolidation proposal, Co-Schemer A said that Co-Schemer A and Levine would use their influence on the TRS Board to help investment funds that Rezko or Co-Schemer B recommended receive investments from TRS. Co-Schemer A said that Rezko and Co-Schemer B agreed to the arrangement. Levine understood from Co-Schemer A's description that Rezko and Co-Schemer B would ask Levine and Co-Schemer A to help investment firms receive TRS money because those investment firms had and would make political contributions to Public Official A.

On April 12, 2004 (Call #16),[19/] Levine described this arrangement to Individual M, who was a lawyer for TRS and an associate of Co-Schemer A. Individual M had a close relationship with Co-

[19/] Any reference to a call number means that the conversation was recorded in the course of a court-authorized wiretap on one of three phone lines used by Levine. All those interceptions occurred in 2004, and the government, as a general rule, will seek to introduce the entire recorded conversation instead of simply the portions that are described or quoted. At times, the government has provided in brackets interpretations of those calls which it expects will be introduced at trial by participants in the call. Not every call the government will seek to introduce at trial is included in this filing.

Schemer A, and had assisted Co-Schemer A and Levine in maintaining control at TRS in the past. In the call, Levine and Individual M discussed the membership of the TRS Board and how two new trustees who were friendly to their interests would be appointed. Levine and Individual M also talked about the possible replacement of the Executive Director of TRS, and how they would arrange to control whatever search firm was chosen to find a replacement for that position. Levine also described the accommodation involving Rezko, Co-Schemer A, and Co-Schemer B, saying "you know I sat down talked [Co-Schemer A] long time ago I said if you can convince those guys [Rezko and Co-Schemer B] to let us stay in place. . . We got a great machinery and if there's an accommodation you know we'll certainly try to accommodate but if they just wanna stick things in you know I'm gonna leave that's no way to do that."

Co-Schemer A told Levine that Rezko had informed Co-Schemer A that Rezko and Co-Schemer B had met with Public Official A and other senior Illinois state officials regarding the consolidation proposal. Co-Schemer A said that Rezko related that Public Official A was skeptical as to why he should take the advice of Co-Schemer B over a senior state official on this topic. Rezko asked Co-Schemer A, who asked Levine, to get some talking points as to why the consolidation idea was a bad one.

Levine then talked to Loren, who was outside counsel at TRS, about putting together talking points on the issue. Levine explained to Loren that Rezko and Co-Schemer B were going to help oppose the consolidation proposal. Levine and Loren had a business relationship that involved a number of different boards, including TRS, the Planning Board, and other private institutions. Levine had used his influence to assist Loren in gaining business with these entities, and Loren

assisted Levine in what Levine sought to accomplish. Levine arranged to pass the talking points to Co-Schemer A so that Co-Schemer A could give them to Rezko.

Ultimately, the proposal to consolidate the state pension boards was not advanced in the spring 2003 legislative session. In the fall of 2003, there was some concern that the pension fund merger idea might be introduced again. Levine told Loren that Co-Schemer B and Rezko had assured him that the administration was going to leave TRS alone. Levine further told Loren that in exchange for Rezko and Co-Schemer B's support on the pension issue, Levine had agreed with Rezko and Co-Schemer B that from time to time Rezko and Co-Schemer B would be allowed to direct the payment of placement fees in TRS transactions. Loren understood this to mean that Rezko and Co-Schemer B would use these placement fees as an incentive or reward to those who contributed to Public Official A. Loren further understood that Rezko and Co-Schemer B would be able to steer free money to the people whom they selected, and those people would get money without providing any services in relation to the TRS transaction.

There were occasions when Rezko or Co-Schemer B provided names of funds or individuals to Levine. Levine brought those funds or individuals to the attention of TRS staff and otherwise tried to help those funds or individuals. There were times, however, where Levine was unable to arrange for TRS to invest in an entity suggested by Rezko or Co-Schemer B because the recommendations did not meet the basic TRS investment criteria (e.g., TRS did not invest in hedge funds at that time, so if Rezko or Co-Schemer B recommended a hedge fund, Levine could not help that entity).

In about the summer of 2003, Levine talked with Rezko about how TRS would have funds available to invest with investment funds and real estate asset managers. Levine told Rezko that Co-

Schemer A and Levine had control of TRS at that point but that Levine and Co-Schemer A recognized that Rezko would eventually get control of TRS because of his ability to dictate who would be appointed to the TRS Board in the future. Levine and Rezko discussed how Co-Schemer A and Levine could use their current influence at TRS to help investment funds and asset managers that Rezko picked receive investments from TRS. Levine told Rezko that TRS had hundreds of millions of dollars available in private equity and real estate that TRS would need to invest. Rezko and Levine then agreed that if Levine helped Rezko at TRS, Rezko would share the profits with Levine. Levine and Rezko also agreed that there would be times that Rezko or Public Official A needed to repay political contributors by helping those people get investments from TRS, and that Levine would not necessarily receive any money on those deals.

After that conversation, Levine and Rezko arranged to help several investment firms seeking TRS money, including Investment Firm 1 and Investment Firm 5, so that Levine and Rezko could control the finder's fees that those firms would pay. On April 14, 2004, Levine and Rezko had a meeting at the Standard Club in Chicago, Illinois (the "April 14 Standard Club meeting"). On April 12 (Call #12), Levine directed his secretary to reserve a room at the Standard Club on April 14 for a meeting with Rezko, and Standard Club records show that Levine was at the Standard Club on April 14.

At the April 14 Standard Club meeting, Levine told Rezko about all the potential finder's fees from companies seeking investments from TRS and ISBI that Levine expected to share with Rezko. Up until that point, Rezko was not aware of all the different fees that Levine had arranged

to get from various investment firms seeking investments at TRS and ISBI.[20/] Levine prepared a chart with the names of funds and how much money Rezko, Levine, and the finder (if applicable) would get from the investment fund. Levine's list included potential TRS investments involving Investment Firm 2, Investment Firm 3, Investment Firm 4, Investment Firm 6, and Investment Firm 7, a potential ISBI investment in Investment Firm 10, and the Mercy Hospital kickback from Jacob Kiferbaum (all discussed below in more detail). Levine and Rezko agreed that they would share evenly the finder's fees from the scheme. Rezko also promised to use his influence to help funds looking to invest in ISBI and SURS. Levine calculated that Levine and Rezko would each receive $3.9 million from the fees that Levine expected would be paid by the various investment firms and Mercy.

Levine subsequently spoke about the April 14 Standard Club meeting with other co-schemers, including Co-Schemer E. Co-Schemer E was Levine's long-time business partner and friend. While Levine expected to profit from the finder's fees and kickbacks he discussed with Rezko, Levine recognized that he could not receive payments directly from the finders because of his position at TRS. Levine, Loren, Co-Schemer C, and Co-Schemer E discussed this issue at different times. Co-Schemer C was a businessman who had a relationship with several investment firms seeking investments from TRS and ISBI. Levine arranged with Co-Schemer C and Co-Schemer E that Co-Schemer C and Co-Schemer E would form a business that would take in the finder's fees that Co-Schemer C received from investment companies. Levine and Co-Schemer E agreed that Co-Schemer E would keep track of how much money he received from the business, and

[20/] Co-Schemer B later told Levine that Co-Schemer B was impressed that Levine had told Rezko about those fees even though Rezko had not known about them previously.

arrange to give Levine half of that amount, including on fees produced by investments in TRS. Similarly, Levine and Co-Schemer E agreed that Co-Schemer E would receive payments on Levine's behalf with respect to the Investment Firm 4 fee and the Mercy Hospital kickback, and Levine directed Loren to make contracts that would make it appear that Co-Schemer E had earned the money that he would receive from those arrangement.

On April 15 (Call #25), Levine told Co-Schemer E that he had a "great meeting last night [with Rezko]" where "I got everything all, ah, laid out and um, full steam ahead, and we're . . . a fair and equitable where everybody participates [Levine and Rezko would share the finder's fees] and ah, full steam ahead and whatever I want."

On April 17 (Call #196), Levine talked in more detail with Co-Schemer E about the April 14 Standard Club meeting with Rezko. In that conversation, Levine told Co-Schemer E how much money Levine expected to make from his corrupt deals with Rezko ($3.9 million), that the fees would be routed to Co-Schemer E first, and that Co-Schemer E would then share the fees with Levine:

LEVINE:	Um, yeah I want, I wanna, I had, I met with ah, Steve Loren this morning I went over ah, ah, everything that I talked to Tony about.
CO-SCHEMER E:	Mm hm.
LEVINE:	Ah, and um, ah, (chuckles) I've got ah, assuming that everything falls into place and that this, and I'd, I'd say that it's a pretty good ah, ah, a shot of that ah, of that, that it will because ah, Tony's fine with all of it and it's just a question of, of ah, and I will have control. I, I think, I think it's all doable [Co-Schemer E]. I think that um, ah, taking a, a 2 year payment plan for a variety of deals and this includes ah, Jacob [the kickback Levine expected to receive from Kiferbaum relating to the Mercy Hospital project].
CO-SCHEMER E:	Mm hm.

LEVINE: Um, ah, $3,900,000 your end.

CO-SCHEMER E: I don't want that much.

LEVINE: Yeah, well good. Because, because I have high hopes (laughs) that you're of generous nature. (laughs)

CO-SCHEMER E: Well, here's the thing, Jacob [Kiferbaum] is a side that, that's, that's unrel-, well it is related to Tony.

LEVINE: No, no, no, no I'm just, I'm just talking about,...

CO-SCHEMER E: Okay (UI).

LEVINE: ...I'm just talking about, with the (UI).

CO-SCHEMER E: My, my only, my only issue with you is on the stuff that comes out of Illinois...

LEVINE: The only, the only thing that's in, in this 3 million 9 ah, ah, is $330,000 ah, for ah, the [Investment Firm 3] deal ah, the rest is all ah, non ah, teachers.

CO-SCHEMER E: Mm hm. That's perfect.

LEVINE: Yeah. Um, a big piece of it is this, is the mortgage company deal [a large portion of the $3.9 million comes from fees associated with Investment Firm 6]. Ah,...

CO-SCHEMER E: It's like they, they can come to [Co-Schemer E's company] and every month they can just distribute half to you [Levine would get half of the fees that Levine arranged to send to Co-Schemer E's company].

LEVINE: Oh, oh yeah this, this is a, this is...

CO-SCHEMER E: No it's fine, but you, you, 'cause you know where this stuff is.

LEVINE: Well what I've done is um, ah, um, you know first of all of course this is, this is all very important to Steve [Loren] because I guarantee his interests ah, you know and all that and it can expand them ah, ah, too. I made um, ah, I told Tony about ah, ah, the fact that I told him about stuff that he knew nothing about and that I could of succeeded without him, but of course only for a limited period of time. Ah, you know it was, I think probably impressed the hell out of him and ah,

and he t-, it's, it's like find us whatever you can, ah, and just, and just do it, make it happen Stuart. These are all things, of course, that were all put together already. Tony said to me on the ah, on the mortgage thing [Investment Firm 6], he said, he said well what do you, what do you, what do you need to do to proceed. I said um, your permission. Fuckin' loved that.

CO-SCHEMER E: Mm hm. But you know what? It's much better to be...

LEVINE: Yeah.

CO-SCHEMER E: ...up front with him because he, he doesn't appear to be somebody that you have to be...

LEVINE: No.

CO-SCHEMER E: ...duplicitous with.

LEVINE: No, that, that's, that's exactly right...but you know what [Co-Schemer E], there's things that he's asked for [funds that Rezko asked Levine to help even though Levine would not directly profit from them]...

CO-SCHEMER E: Mm hm.

LEVINE: ...here and I said to him, you know I know there's a lot of people that you have to take care of.

CO-SCHEMER E: Mm hm.

LEVINE: So I said ah, ah, I'm only uh, um interested in um, ah, in ah, uh, my pursuing, ah, things that will be for both of our mutual interests.

CO-SCHEMER E: Mm hm.

LEVINE: What you bring in here and ask me to do for you I, is, is, is not my business.

CO-SCHEMER E: Mm hm.

LEVINE: And I thought that that was an important point to make.

Later, in the context of talking about how Rezko agreed that Investment Firm 7 would have to pay $2 million fee to get $220 million in TRS money, Levine said that:

LEVINE: I told him [Rezko] that [Individual J] then called ah, ah, and I said the fact of the matter is that ah, there's $220 million there that should be worth over $2 million in fees. And I said . . . I want you to be aware of this and ah, and he said, well he said you know do whatever you want here. Of course then I, I said that, that 220 I would include him [Rezko would share in the $2 million in fees].

On April 21 (Call #328), Levine talked further with Co-Schemer E about his relationship with Rezko and TRS, and how they were making money together. After discussing how some of the money from "closing" deals would go to Co-Schemer E, the pair talked about Rezko:

LEVINE: This stuff [the finder's fees being paid to Levine nominees] is just to start because ah, he want, ah, he ah, he [Rezko] got no problem making money with me. Nobody knows that we're makin' money and they wanna do it.

CO-SCHEMER E: He, he, he, you know just from what you described in the thing. He's smart and understands to have you as a player he has, he has to share in a fair and meaningful way.

LEVINE: Well yeah but, but look at it this way [Co-Schemer E]. He, he, he could knock me out [Rezko could ensure that Levine was not re-appointed to the TRS Board] and I need his, us, and I need his people to get the stuff done. But I brought him stuff that he didn't know existed and he's makin' money.

CO-SCHEMER E: No, it's even more than that is if he, if he were to knock you out and he put someone in there...

LEVINE: He'd have no money, no ability to do it.

CO-SCHEMER E: Right, I mean you, you, you, you, you paid for your education you got your degree already so, you know, and he doesn't know if he's there for 3 more years or 8 more, you know he doesn't know what his time frame is. So, right now for him to do something like that even he's gotta say, you know I could, I could be stumbling around for the next 2 years.

* * * * *

CO-SCHEMER E: He [Rezko] doesn't know how long he's gonna be there.

LEVINE: No abs-, of, of course not and he wants to make as much as he can while he can.

3. Levine's Ability To Exert Influence at TRS

Levine used his position and status at TRS to exert influence over TRS staff and TRS' outside counsel, Loren. The TRS Board relied heavily on the recommendations of TRS staff with respect to TRS investments. Only rarely would the TRS Board reject an investment approved by the TRS staff, and if TRS staff did not approve of an investment, it would be unlikely to be even presented to the TRS Board.

One of the important ways in which Levine was able to help favored investment funds was by using his influence to ensure that the fund had access to TRS staff. Levine also put pressure on TRS staff members, particularly Individual N, to ensure that TRS staff approved the funds that Levine sought to help. Levine also relied upon Loren to help resolve any legal issues that arose in the application process for favored investment funds.

Levine had influence with TRS staff in a variety of ways. First, as discussed in additional detail below, Levine, Rezko, Co-Schemer A, and Co-Schemer B took steps to ensure that there was a majority of TRS trustees on the TRS Board who would vote with their interests on important matters. That control of the TRS Board meant that the co-schemers could arrange to hire or fire TRS staffers, such as Individual N. The co-schemers used that power at TRS as they felt necessary to further the goals of the scheme.

The co-schemers also used their influence and power over other TRS trustees to ensure that Levine was the Chair of the TRS Personnel Committee. In that role, Levine had significant influence over the pay of Individual N, and Levine used that ability to both pressure and reward him.

Levine and Co-Schemer A recognized that they had influence over TRS staffers, particularly

Individual N, such that Levine and Co-Schemer A were treated with deference. For example, on May 7, 2004 (Call #736), Co-Schemer A described to Levine how he pressured Individual J as part of the scheme by describing how Individual N called Levine the "Rabbi" and Co-Schemer A the "Pope," which reflected the influence that they had with Individual N.

Due to the influence of the co-schemers, TRS staff treated certain investment firms that the co-schemers wanted to help more favorably than was the norm. For example, TRS Staffer A, who reviewed potential TRS investments in private equity investments was directed by Individual N to give, and did give, more favorable treatment to investment firms that the co-schemers wanted to help. That favorable treatment included expedited reviews on the potential investments and written assessments on the merits of the investment firms that were more favorable towards the investment than was warranted.

4. Rezko's Role in TRS Appointments

As part of the scheme, the co-schemers ensured that they retained control over the TRS Board, which in part required that the co-schemers ensured that they maintain a voting majority on the TRS Board at critical time periods. Rezko used his influence to help ensure that Levine was re-appointed to the TRS Board and otherwise ensure that he and Levine had a majority of votes on the TRS Board.

Levine's appointment to the TRS Board was due to expire in about July 2004. Levine discussed with Rezko and Co-Schemer A the need to ensure that Levine was re-appointed to the TRS Board prior to the expiration of his term. For example, on May 7, 2004 (Call # 736), Levine and Co-Schemer A talked about Levine's re-appointment to TRS. Levine related that he had been talking with Rezko about the appointment. Co-Schemer A related that he had been talking to Co-

Schemer B, and that, "I said to him [Co-Schemer B] are you aware that ah, that Stuart needs to be re-appointed. And he said, well there is sure as hell wouldn't be any problem with that." Co-Schemer A then went on to say that Co-Schemer B continued by asking, "[H]asn't Tony? I said I, I don't know I'm asking you. And he said give, give me that sheet you know I, I had put it on the yellow sheet ... I put TRS appointment and then I put Stuart. ... but you're right it's very important, but I don't know if anybody's addressed it." Levine then responded that "you know Tony says that he has and that the paperwork is goin' through ... when he [Rezko] gets back I'm going to, to go there I'm gonna say, you know Tony may be unless you go and carry the papers through yourself it's just not happening."

Rezko did use his influence with the Illinois state government to help Levine's re-appointment to the TRS Board. Rezko called Individual O, a high-ranking individual in the state's Office of Boards and Commissions to check on the status of Levine's re-appointment to the TRS Board. Rezko told Individual O to move Levine's re-appointment along and said that he had already talked to Individual P. Individual O understood that Individual P was the individual who implemented decisions about which individuals were appointed to which boards and commissions. Individual O spoke to Individual P about Levine's re-appointment and informed Individual P that Rezko had claimed to have spoken with him already. Individual P gave Individual O the approval to re-appoint Levine to the TRS Board, and Individual O took care of making sure that Levine was, in fact, re-appointed to the TRS Board prior to the May 2004 TRS Board meeting.

It was also important to the co-schemers' control over the TRS Board that two additional trustees who would vote with the co-schemers' voting bloc be appointed to the TRS Board prior to the May 2004 TRS Board meeting. By the spring of 2004, the co-schemers' voting bloc no longer

had a majority of votes on the TRS Board because several friendly trustees had quit the Board and had not been replaced. According to statute, the Governor of the State of Illinois had the right to appoint two individuals to fill the two open trustee positions. Rezko and Levine discussed the need for Rezko to exercise his influence to ensure that those two trustee positions were filled by individuals who would vote as Rezko and Levine directed, and that both positions needed to be filled if the co-schemer's voting bloc were to have a majority of votes on the TRS Board. Levine also explained to Rezko that it was important to have the two positions filled in advance of the May 2004 TRS Board meeting because that was when the TRS Board had elections for various positions on the TRS Board, including the Chairs of the Investment Committee and the Personnel Committee. As it was important to the success of the scheme that those positions be filled by Levine or allied trustees, Rezko agreed to use his influence to ensure that the appointments were made.

Levine was re-appointed to the TRS Board on May 14, 2004. Two new TRS trustees, Individual Q and Individual R, were appointed to the TRS Board by the Governor of Illinois on May 14, 2004, and May 21, 2004, respectively. On May 18 (Call #1011), Rezko and Levine discussed the appointment of Individual Q to the TRS Board. Levine was concerned about Individual Q's appointment because he had learned that there was a potential problem with Individual Q's appointment to the TRS Board because Individual Q had been a registered lobbyist (registered lobbyists are not allowed to sit on certain Illinois boards, including TRS). In the call, Rezko said he had talked with Individual O about Individual Q and that Individual Q had resigned as a lobbyist, so it shouldn't be a problem. Rezko also said he had to talk with Individual O because "we are running out of time" (the TRS Board elections were slated for May 25).

Levine had no prior relationship with Individual Q or Individual R, but arranged to fly down to Springfield with them to the May TRS Board meeting on his private plane. Both Individual Q and Individual R confirmed to Levine that Rezko had told them to do as Levine directed. Levine instructed Individual Q and Individual R how they needed to vote for the various Committee Chair positions in the Board elections, including that Individual S, another trustee who was allied with Levine and Co-Schemer A, should be elected as Chair of the Investment Committee and that Levine should be elected as Chair of the Personnel Committee.

At the May 25, 2004, TRS Board elections, Individual Q and Individual R voted with Levine and the other members of the co-schemer's voting bloc on the various committee elections. Individual S was elected Chair of the Investment Chair by a 6-5 vote, with the co-schemer's voting bloc in the majority by one vote. Levine was elected Chair of the Personnel Committee, but Individual Q actually seconded the motion that made Levine chair of the Personnel Committee.

5. Investment Firm 1

The first time that Levine agreed to help use his influence and position at TRS in exchange for benefitting Rezko and himself involved a $50 million investment that the TRS Board agreed to make with Investment Firm 1 in August 2003. Co-Schemer C received a $375,000 finder's fee from Investment Firm 1, and gave $250,000 of that money to Individual D at the direction of Levine and Rezko. In turn, Individual D, used that money for the benefit of Rezko.

The idea of steering a finder's fee for the benefit of the co-schemers was first discussed by Levine and Co-Schemer A in early 2003. Co-Schemer A told Levine that Individual T, a local politician and close political ally of Public Official A's, had put pressure on Rezko to allow Individual T to make money in some way from the state administration. Levine told Co-Schemer

A that he might have something where they could help Rezko by getting some fees to Individual T. Levine thought that he could arrange for Individual T to receive a portion of a finder's fee.

Levine was already aware that Investment Firm 1, a private equity firm, wanted TRS to make a significant investment in a private equity fund that Investment Firm 1 wanted to create. Levine had learned about Investment Firm 1 from Co-Schemer C, who had a business relationship with the principals of Investment Firm 1, and Levine had spoken with individuals from Investment Firm 1 about their prospective fund. Levine approached Co-Schemer C and asked whether Co-Schemer C would be willing to split any finder's fee that Co-Schemer C would earn from Investment Firm 1 for arranging an investment with TRS. Co-Schemer C agreed to split his fee, understanding that Levine would use his influence at TRS to ensure that Investment Firm 1 subsequently received an investment. After Co-Schemer C agreed to split his fee, Levine discussed the idea explicitly with Co-Schemer A and Co-Schemer A agreed to discuss the matter with Rezko.

Co-Schemer A eventually told Levine that Rezko wanted Levine to direct that Co-Schemer C share the prospective fee with Individual T. Levine subsequently told Co-Schemer C that he would share his finder's fee with Individual T, which is what Co-Schemer C subsequently suggested in a conversation with a principle at Investment Firm 1. In anticipation that he would share his finder's fee with Individual T, Co-Schemer C arranged for a law firm to draft a contract that contemplated that Co-Schemer C would share his fee with an unnamed individual, although this contract was never executed. Rezko later told Levine that Individual T would not be involved, but that Levine should go ahead with the deal because someone else could be chosen to split the finder's fee with Co-Schemer C. Levine subsequently informed Co-Schemer C that he would not share his

fee with Individual T, but that he would share his fee with another person once Co-Schemer C received the money.

Levine did use his influence to ensure that TRS invested money with Investment Firm 1, and TRS Staffer A confirms that his review of the potential TRS investment was shaped by direction he received to make a favorable review of Investment Firm 1. Levine did not disclose to the TRS Board that he expected to direct how the finder's fee that Co-Schemer C was to receive from Investment Firm 1 would be shared. The TRS Board approved a $50 million investment in Investment Firm 1 at its meeting on August 15, 2003.

Some months after Investment Firm 1 received the TRS Board approval, Rezko supplied Levine with the name of Individual D as the person who would share Co-Schemer C's fee. Individual D had no involvement with the TRS investment in Investment Firm 1. Levine gave Individual D's name and phone number to Co-Schemer C, and Co-Schemer C contacted Individual D.

Co-Schemer C was supposed to receive a payment of $375,000 from Investment Firm 1 for his assistance on arranging the TRS investment with Investment Firm 1. Co-Schemer C eventually agreed with Levine that he would pay two-thirds of that fee, or $250,000, as Levine directed. Co-Schemer C arranged to meet Individual D and made two separate payments of $125,000 to Individual D. Individual D never did work to justify any payment from Co-Schemer C to Individual D. To conceal the nature of the transaction, Levine arranged for Loren to draw up a sham contract to make it appear like Co-Schemer C and Individual D had a legitimate business relationship that

would justify the payment of the $250,000 to Individual D.[21/] Co-Schemer C gave the sham contract to Individual D, who signed it. Co-Schemer C did not discuss or negotiate any of the terms of the contract with Individual D, and Individual D did not try to negotiate any of the terms with Co-Schemer C.

Co-Schemer C and Individual D originally agreed that Co-Schemer C would pay Individual D in two installments: the first in March 2004, and the second in July 2004. On March 4, 2004, Co-Schemer C took Individual D to lunch at the Standard Club in Chicago. Co-Schemer C met with Individual D at Co-Schemer C's office before lunch. At Co-Schemer C's office, Co-Schemer C asked Individual D to complete and sign a W-9 tax form for the fees that he was to receive. Individual D completed the information on the W-9 form, signed it, and gave it back to Co-Schemer C.

After Individual D signed the W-9, Co-Schemer C gave Individual D a check for $125,000 drawn on Co-Schemer C's personal account. Co-Schemer C also went over the sham consulting agreement with Individual D at Co-Schemer C's office before lunch. Individual D and Co-Schemer C both signed a revised copy of the consulting agreement. After the meeting, Individual D and Co-Schemer C went to lunch, where Individual D described how he and his family were very close friends with Rezko.

Bank records demonstrate that Individual D deposited the $125,000 check from Co-Schemer C into a personal bank account on about March 4, 2004. The next day, Individual D transferred about $112,000 in two installments into a bank account of a company that ran pizza restaurants.

[21/] Loren knew that the contract was a sham, and just made up terms in the contract to make them seem realistic. Loren did not know the names of the parties involved, so the draft contract he prepared used "X" and "Y" to designate the parties.

While that company was ostensibly owned by Individual D, Rezko had sold the pizza restaurants to Individual D. Some of the $112,000 appears to have been used to run the pizza company.

At least approximately $60,000 of the money transferred was subsequently used to make payments on Rezko's behalf. Five days after the transfer to the business account, Individual D wrote two checks totaling $50,000 to Individual U (a $40,000 check that cleared and a $10,000 check that originally bounced, but which was re-issued a few weeks later). Individual U's brother is close to Rezko, and had left the country after being indicted for tax fraud. Bank records show that Rezko arranged to pay Individual U approximately $25,000 a month from a variety of sources, including the $50,000 that Individual U got from Individual D in March 2004.

Another $10,000 of the $112,000 transferred into the pizza company's bank account was used to make a political contribution in Individual D's name to a political candidate. Rezko was a fundraiser for that political candidate and directed at least one other individual to make a political contribution to that same candidate, which Rezko then paid back.

In approximately late April of 2004, Individual D called Co-Schemer C and said that another payment was due. Co-Schemer C knew that he had discussed with Individual D that the second payment was not due until July 1, but Individual D said that he had been told that the money would be paid shortly. Individual D seemed apologetic about making the request for the money. In response, Co-Schemer C said words to the effect, "Is Christmas coming early." Co-Schemer C said that the next payment was not due until July 1st and refused to make the payment early.

Shortly after that call, Co-Schemer C spoke with Levine. Levine asked why Co-Schemer C was not paying Individual D and pressured Co-Schemer C to make the payment. On April 26, 2004 (Call #411), Levine and Co-Schemer C spoke again by phone. In the call, Levine asked Co-

Schemer C if he had talked to Individual V, a principal at Investment Firm 1, about getting Investment Firm 1 to pay Co-Schemer C some of his money early. Levine said it was critical that Co-Schemer C talk to Individual V that day, and if Co-Schemer C did not talk to Individual V, that "we won't be able to do business with them [Rezko and Individual D] anymore" and that "if we don't get it finished today [the payment of the remaining $125,000] ... Tony's not gonna do business anymore like that." Co-Schemer C then agreed that he would pay Individual D that day without waiting for Investment Firm 1 to pay Co-Schemer C any additional money.

After Co-Schemer C spoke with Levine, Co-Schemer C called Individual D and indicated that he would have a check for Individual D that day. Individual D agreed to come to Co-Schemer C's office that day to pick up the check. Co-Schemer C then called Levine (Call #43). Co-Schemer C told Levine that he had spoken with Individual D, and that Individual D was getting the payment that day. Co-Schemer C and Levine then discussed how Co-Schemer C thought that the original due date for the second payment was in July. Co-Schemer C said that Individual D knew that the payment was now being made early because Individual D "called me [Co-Schemer C] sheepishly because he [Individual D] said, I don't think money was due, but Tony asked me to call." In response, Levine indicated that the earlier request might be his fault, saying that " I did tell Tony it was April 'cause I thought it was April [when the second payment was due]." Within minutes of the end of Call #43, Levine called Rezko's office two times (Calls #45 and #412) and left a message for Rezko to call him.

Later on April 26, Individual D came to Co-Schemer C's office and Co-Schemer C gave Individual D a second check for $125,000. Co-Schemer C's check was deposited and the proceeds transferred into the same pizza company bank account as the first check.

7. Investment Firm 2 and Investment Firm 3

Levine and Rezko also tried to help two other investment companies, Investment Firm 2 and Investment Firm 3, receive a TRS investment so that Levine and Rezko would benefit from the finder's fees that Co-Schemer C would receive from those two companies. Due in part to Levine's influence, Investment Firm 2 was originally recommended by TRS staff to receive a $25 million investment at the May 24-25, 2004 TRS Board meeting. That recommendation was changed shortly before the meeting, however, after Investment Firm 2 failed to timely disclose the finder's fee to Co-Schemer C. At that point, Levine did not further assist Investment Firm 2 because the FBI had confronted Levine on the evening of May 20, 2004.

Co-Schemer C had also arranged to receive a finder's fee from Investment Firm 3 if it received investment money from TRS, which Co-Schemer C was going to share as directed by Levine and Rezko. As a result, Levine tried to help Investment Firm 3 receive a TRS investment. Investment Firm 3's application, however, was still being reviewed by TRS staff when Levine was confronted by the FBI, so Levine took no further action to help Investment Firm 3 received TRS funds.

Co-Schemer C originally brought Investment Firm 2 to Levine's attention in about the end of 2003. Investment Firm 2 was looking for institutional investors for a private equity buy-out fund. Co-Schemer C arranged to receive a finder's fee from Investment Firm 2 for any investments that he was able to help Investment Firm 2 receive, and shared the details of his fee arrangement with Levine. Co-Schemer C and Levine understood that Co-Schemer C would again share any finder's fee that he received from Investment Firm 2 as directed in exchange for Levine's help getting Investment Firm 2 an investment from TRS.

Investment Firm 3 was a fund that was managed by the same holding company that operated the Investment Firm 1 fund. After Levine and Co-Schemer C had helped Investment Firm 1 receive its $50 million investment, Individual V spoke with Co-Schemer C, Loren, and Levine about the possibility that TRS might also invest with Investment Firm 3. Individual V agreed to pay Co-Schemer C a finder's fee if TRS were to invest with Investment Firm 3. From his conversations with Levine and Co-Schemer C about Investment Firm 3 and Co-Schemer C's fee, Individual V understood that Levine was interested in the fee that Co-Schemer C was going to receive from Investment Firm 3 for any investment. Levine also indicated to Individual V that he should feel comfortable charging TRS higher fees for investing in Investment Firm 3 because Co-Schemer C was involved in the proposal. Because of Levine's comments, Individual V then raised the fees that Investment Firm 3 proposed to charge TRS.

Individual V also talked to Co-Schemer C and Levine about the possibility that other state pension funds, such as Illinois State Board of Investment ("ISBI"), would invest in Investment Firm 1 or Investment Firm 3. Co-Schemer C agreed to try to facilitate ISBI investments with Investment Firm 1 and Investment Firm 3, and arranged meetings between ISBI staff and individuals on behalf of Investment Firm 1 and Investment Firm 3. Individual V and Co-Schemer C understood that Co-Schemer C would earn a finder's fee if he were able to help Investment Firm 1 or Investment Firm 3 get investments from ISBI or another state pension fund.

Levine used his influence with TRS staff to help Investment Firm 2 and Investment Firm 3 get investment funds from TRS. In particular, Levine arranged access for Investment Firm 2 and Investment Firm 3 representatives with TRS and put pressure on TRS staff to approve investments in those firms. Levine did not disclose his true interest in those investments while doing so.

On April 12, 2004 (Call #9), Levine and Co-Schemer C spoke about Investment Firm 2 and Investment Firm 3. In that call, Levine directed Co-Schemer C to share the fees that he would receive from Investment Firm 2 and Investment Firm 3 with Co-Schemer E, who was Levine's long-time business partner, and Co-Schemer C agreed to do so. Levine and Co-Schemer E had agreed that Co-Schemer E would collect fees from Co-Schemer C for Levine's benefit. Co-Schemer C subsequently confirmed with Co-Schemer E that Co-Schemer E would share Co-Schemer C's fees from Investment Firm 2 and Investment Firm 3.

At the April 14 Standard Club meeting, Levine and Rezko agreed that Rezko would receive half of the money that Levine expected to receive from Co-Schemer C for the investments TRS would make in Investment Firm 2 and Investment Firm 3. At that time, Levine expected that Co-Schemer C would receive a finder's fee of approximately $250,000 from Investment Firm 2 (from a $25 million investment by TRS), and that Levine and Rezko would each get 1/3 of that fee. Levine also expected that Co-Schemer C would receive a finders' fee of approximately $1 million from Investment Firm 3 (from a $100 million investment by TRS), and that again, Levine and Rezko would each get 1/3 of that fee. Levine told Rezko that he would like Rezko to use his influence with ISBI so that Investment Firm 3 would receive an investment there as well, and Rezko agreed to that plan.

TRS staff initially recommended that TRS make a $25 million investment in Investment Firm 2. The potential Investment Firm 2 investment was placed on the agenda for consideration by the TRS Board at its May 24-25, 2004 meeting. Approximately one week before the meeting, TRS staff learned from Investment Firm 2 that it planned to pay a finder's fee to Co-Schemer C. This was of concern to TRS staff because Investment Firm 2 had not disclosed this fee in its original application

to TRS, even though there was a question specifically designed to elicit such information on the application.

On about May 20, 2004, Co-Schemer C talked with Levine about the situation. Co-Schemer C was concerned that the TRS staff would pull its recommendation of Investment Firm 2 because of the failure to disclose his fee. Levine authorized Co-Schemer C to tell Investment Firm 2 representatives that they could tell TRS that Investment Firm 2 had disclosed the fee to Levine. Levine also tried to help Investment Firm 2 by telling Individual N that day that he believed that Investment Firm 2 simply misunderstood the TRS questionnaire.

On the evening of May 20, 2004, FBI agents confronted Levine about his potential illegal activity. After that point, Levine no longer tried to help Investment Firm 2. TRS staff ultimately decided to change the recommendation on the Investment Firm 2 investment because of Investment Firm 2's failure to disclose the fee to Co-Schemer C, and Investment Firm 2 was not approved for any investment by TRS.

TRS staff was still in the process of reviewing Investment Firm 3 as of May 20, 2004. On about February 18, 2004, a TRS staff member had written an internal memo suggesting that TRS should not invest in Investment Firm 3. After discussing Investment Firm 3 with Individual N, however, the staff member had revised the memo on about April 23, 2004, to reflect a recommendation that TRS invest in Investment Firm 3. Investment Firm 3 was eventually rejected by TRS staff subsequent to the TRS Board meeting in May 2004.

7. Investment Firm 4 and Investment Firm 10

Levine and Cari tried to force a prospective TRS applicant, Investment Firm 4, to pay a finder's fee to a consultant, Co-Schemer F, who had done no work for Investment Firm 4. Levine

and Rezko expected to share the money that Co-Schemer F would get from Investment Firm 4. Ultimately, Investment Firm 4 received a $85 million investment from TRS, in part because Levine was interviewed by law enforcement agents shortly before the May 24-25 TRS Board meeting where Investment Firm 4 received its commitment from TRS. Levine and Rezko also tried to help Investment Firm 10, another investment firm, receive an investment from ISBI after Cari promised to arrange for Investment Firm 10 to pay a finder's fee to a consultant chosen by Levine.

Levine first learned about Investment Firm 10 when that company sought and received funds from TRS in early 2003. Levine met Cari, who represented Investment Firm 10, in the course of Investment Firm 10's attempt to get TRS funds, and Levine eventually helped Investment Firm 10 get an investment from TRS.

After they met, Levine and Cari discussed Cari's political ties at length. Cari had been the national finance chair for the Al Gore presidential campaign in 2000 and had many national contacts. In some of those discussions, Levine described to Cari how Levine had a close relationship with Rezko and that Rezko had a close relationship with Co-Schemer B and Public Official A. Levine also told Cari that Rezko and Co-Schemer B had an interest in rewarding people who raised money for Public Official A by getting them consulting contracts with companies that needed help from the state of Illinois. In particular, Levine told Cari that Co-Schemer B and Rezko were steering state work to lawyers, consultants, and investment bankers in exchange for donations to the causes or campaign of Public Official A. Levine explained that new appointees were being placed on all of the public pension boards. Once Co-Schemer B, Rezko and Public Official A had control of the various boards, they would implement this fundraising and consulting strategy as to the public pension boards.

At one point, Cari had a conversation with Public Official A. Among other things, Public Official A asked about Cari's fund-raising experience. Public Official A stated he had a lot of ways of helping his friends and that Rezko and Co-Schemer B were his point people in helping his friends and coordinating fundraising. Public Official A also informed Cari that he could award contracts, legal work, and investment banking to help with fund-raising. Public Official A ended the conversation with Cari by noting that he wanted to continue the dialogue with Cari about fundraising and that Rezko and Co-Schemer B would follow up with Cari.

On one occasion, Cari met with Rezko and Levine in Rezko's offices. Prior to that meeting, Levine had talked with Rezko and Co-Schemer B about Cari and noted that that Cari could be a valuable fundraiser for Public Official A and that Cari wanted to get money for Investment Firm 10 from the State pension systems, including ISBI and SURS. During the meeting, Rezko told Cari that he was the one that made the decisions on who would get certain contracts, investment banking and legal work from the State, and Individual P was the one who made sure it happened. In extending Cari an offer to become national finance chairman for Public Official A, Rezko stated to Cari that he could be very helpful to Cari and any of the people Cari would suggest. For a variety of reasons, Cari turned down the offer and the meeting with Rezko ended.

Cari also met with Co-Schemer B. Co-Schemer B told Cari that he was following up on Cari's meetings with Public Official A and Rezko. Co-Schemer B also asked Cari if he would serve as national Finance Chairman for Public Official A. Co-Schemer B said they really needed Cari to do it, that there were a lot of things that could be done to help Cari, and that Cari could have any contract or state appointment he wanted if he agreed. Cari said he was not in a position to do what Co-Schemer B wanted him to do, and refused.

In early 2004, Levine and Cari talked about an investment that Investment Firm 10 hoped to get from ISBI. Investment Firm 10 had been seeking a $30 million investment from ISBI for some time at that point. Levine told Cari that Rezko had control over what happened at ISBI, so he could arrange for ISBI to make an investment with Investment Firm 10. Levine and Cari agreed that Investment Firm 10 would hire a consultant that Levine named, and that the consultant would be paid a 2% fee on whatever investment ISBI made with Investment Firm 10. At that point, Levine did not have the name of the consultant to give to Cari.

Levine and Rezko agreed to help Investment Firm 10 receive an ISBI investment at the April 14 Standard Club meeting. Rezko had told Levine earlier that he was close with the Executive Director at ISBI and the Chairman of the ISBI Board, and that therefore he had control at ISBI. Rezko and Levine talked about how they would use Rezko's influence at ISBI to ensure that favored investment firms would get investments there. Rezko did not have similar control of the State University Retirement System ("SURS") because too many of the board members had been appointed by prior administrations, but Rezko expected that he would get control once Public Official A was able to appoint more trustees. Rezko and Levine had agreed that they would bring investment companies to SURS as well once Rezko had control.

At the Standard Club meeting, Rezko agreed to use his influence with ISBI in exchange for a share of the fee that Cari had agreed to pay to a consultant that Levine choose. At that point, Levine told Rezko that Investment Firm 10 would get a $30 million investment from ISBI, so that the finder's fee that they would control would be $700,000. Later than night, Levine told Cari (Call #138) "I can get the other stuff done for Investment Firm 10 [Levine was going to be able to help Investment Firm 10 obtain additional funds from ISBI]."

Levine first learned of Investment Firm 4, which was a firm that specialized in real estate investments, from Individual W, who was a long-time friend and associate of Cari's. Levine and Cari subsequently talked about Investment Firm 4, and Levine agreed to help Investment Firm 4 seek money from TRS. Levine and Cari discussed how it would be important for Investment Firm 4 to hire a consultant as directed, and Cari arranged to send that message to Investment Firm 4 through Individual W in early March 2004.

At the April 14 Standard Club meeting, Levine and Rezko discussed Investment Firm 4, and agreed that they would split the fee that they expected that Investment Firm 4 would pay to a consultant of their choice. At that time, Levine believed that Investment Firm 4 would get a $75 million investment, so that the consultant's fee would be $750,000, which Rezko and Levine would split evenly. Rezko agreed with Levine to provide the name of the consultant who would accept the fee from Investment Firm 4.

Later that night, Cari and Levine spoke by phone (Call #138), and discussed Investment Firm 4. Levine indicated to Cari that Levine needed to give Individual W the name of the finder that Investment Firm 4 should contact, and Cari agreed to pass on the information. On April 26, 2004 (Call #42), Levine told Cari that Levine had still not received the name of the consultant that Investment Firm 4 would have to use, but confirmed with Cari that Investment Firm 4 knew that they would have to hire a consultant.

After that April 26 call, Rezko told Levine that Co-Schemer F would be the person who would receive the fee from Investment Firm 4. Rezko told Levine that Co-Schemer F was a good man and would do what Rezko wanted him to do. Rezko and Levine agreed that Levine would contact Co-Schemer F to work out the details of the finder's arrangement with Investment Firm 4.

At that time, Rezko owed Co-Schemer F and Co-Schemer F's wife, Individual Y, millions of dollars, which Co-Schemer F and Individual Y were trying to collect from Rezko.[22/] Co-Schemer F and Rezko had previously had several discussions related to finder's fees and consulting work for the State of Illinois. Rezko told Co-Schemer F that when Illinois placed funds with a money manager, the finder who introduced the money manager to Illinois receives a finder's fee. Co-Schemer F told Rezko he was interested in such work and Rezko had indicated that he would have Levine contact Co-Schemer F about such an opportunity.

Levine and Co-Schemer F then discussed the potential finder's fee and Co-Schemer F said that he wanted to be involved. Over the course of further conversations, Levine indicated to Co-Schemer F the name of the investment firm, the approximate amount of money that Investment Firm 4 was to receive from TRS, that Co-Schemer F's fee would be 1% of the money that TRS invested in Investment Firm 4, and that Levine had influence as to who would receive money from TRS. Levine also said that Co-Schemer F would arrange to send 50% of the finder's money that Co-Schemer F received to Co-Schemer E. Co-Schemer F knew he would be doing nothing to earn the money from Investment Firm 4 and that Co-Schemer E would be doing nothing to earn the money from him.

Co-Schemer F continually gave updates to Rezko about what was happening with him being a finder and his conversations with Levine. At one point, Rezko told Co-Schemer F that Co-Schemer F would be entitled to keep $80,000 of the finder's fee for himself. It was Co-Schemer F's

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[22/] As will be described in more detail below, Rezko had helped appoint Individual Y to the Planning Board and Individual Y was a member of Rezko's voting bloc on the Planning Board.

impression that the remaining money that he did not send to Co-Schemer E or keep would go to Rezko.

Co-Schemer F arranged with an associate of his who lived in the Turks and Caicos Islands, Individual X, to receive the payment that he expected to come from Investment Firm 4. Co-Schemer F described the situation to Individual X in correspondence, which set forth significant detail about the Investment Firm 4 transaction and detailed how the transaction was to work. Co-Schemer F passed Individual X's name to Levine, who in turn gave it to Cari or Individual W so that they could provide it to Investment Firm 4.

On April 30, 2004, Levine spoke with Loren (Call #522). In that call, Levine directed Loren to prepare a contract that would be used as an agreement between Investment Firm 4 and the entity in the Turks and Caicos Islands. Levine then sent the contract to Co-Schemer F, who sent it to Individual X. Levine also directed Loren to do a second contract that would be between Co-Schemer E and Co-Schemer F's entity, which would be used to paper the share of the Investment Firm 4 fee that Co-Schemer F would later send to Co-Schemer E. Levine told Co-Schemer F that he would later execute another contract to account for Levine's share of the Investment Firm 4 finder's fee.

Separately, Levine arranged with Co-Schemer E that Co-Schemer E would receive the fee from Co-Schemer F. On May 1, 2004, Levine spoke with Co-Schemer E (Call #557) about the Investment Firm 4 fee that Levine expected to share. Levine told Co-Schemer E, "Let me tell you what, and what else I got. You know there's a commingled fund that is closing in, in, in May [Investment Firm 4] that there's a $750,000 fee that's going to one of Tony's guys [Co-Schemer F] and then ah, ah, and then half of it to a contract with you." Later in the call, Levine talked about

how he expected to get $700,000 from Cari for helping Investment Firm 10 with ISBI, which money was also to go directly to Co-Schemer E. Levine then discussed the possibility with Co-Schemer E that "we won't even have to mix the two contracts. I'm gonna tell Tony he keeps that one [the $750,000 Investment Firm 4 money] and you take the $700,000 on Investment Firm 10."

Levine knew that TRS staff was going to recommend that TRS invest with Investment Firm 4 at the May 2004 TRS Board. As a result, Levine increased his efforts to ensure that Investment Firm 4 agreed to sign a contract with Co-Schemer F prior to the board vote, including during calls with Co-Schemer F on May 11 (Call #152), with Cari on May 6 (Calls #134, 136, and 137) and with Cari on May 19 (Call #1040). In Call #152, Co-Schemer F and Levine discussed the urgency to get Investment Firm 4 to sign the consulting contract with Individual X. Co-Schemer F also said that "Tony" [Rezko] did not want Co-Schemer F's wife, Individual Y, to know anything about the arrangement.

Levine informed Cari that Rezko had picked the consultant for Investment Firm 4 to hire. Levine also indicated to Cari that he might block Investment Firm 4's investment if Investment Firm 4 did not sign the contract. For example, on May 6 (Call #136), Levine told Cari that while Investment Firm 4 had an $80 million commitment and was on the "May schedule," Levine could "change that [Levine would block the investment if Investment Firm 4 did not hire the consultant]." Levine further indicated to Cari that "this is the kind of thing that, that could um, can um, ah, you know how upset people can get the political powers [Rezko and his political allies] that be. Ah, so that's why I wanna wrap it up." Cari communicated what Levine said about the consequences for Investment Firm 4 if it did not hire the consultant to Individual W, with the expectation that Individual W would communicate this to Investment Firm 4.

In early May, Individual X had begun trying to contact Investment Firm 4 to get the consulting contract signed. On May 19, 2004, Individual X faxed a contract to Investment Firm 4 that required Investment Firm 4 to pay the consultant 1% of the money that they got from TRS.

On May 20, 2004, Cari made a series of phone calls to different individuals at Investment Firm 4 to try to force Investment Firm 4 to sign the consulting contract that Individual X had sent. Cari repeatedly threatened that if the contract was not signed, Investment Firm 4 would not receive its allocation from TRS. Cari told Investment Firm 4 representatives that the situation was a political one and that this was how Public Official A handled patronage. Cari understood that the consultant had not actually done any work for Investment Firm 4, but that the consultant had been chosen to help Rezko and his political allies. Levine and Cari also arranged for Loren to speak with representatives from Investment Firm 4 to try to convince them that Investment Firm 4 should sign the consulting contract. Investment Firm 4 representatives, however, refused to sign the consulting contract.

In the afternoon of May 20, 2004, Levine told Individual N that he thought that Investment Firm 4 should be taken off the agenda for the May 2004 TRS Board meeting because Cari was trying to work something out with Investment Firm 4 and all the parties needed more time to work on the issue. After the FBI interviewed Levine that night, Levine made no further attempt to interfere with Investment Firm 4's investment, and the TRS Board (including Levine) ultimately approved an investment of $85 million on May 25, 2004. Levine never disclosed to the TRS Board his true interest in the Investment Firm 4 investment.

8. Investment Firm 5

Levine and Rezko tried to help Investment Firm 5 receive an investment from TRS so that Rezko and his designees could receive a finder's fee from Investment Firm 5. Levine did not expect to share in any fee from Investment Firm 5, but agreed to help Investment Firm 5 in order to maintain and develop his relationship with Rezko. Investment Firm 5 originally was going to be placed on the TRS agenda for the May 2004 TRS Board meeting due to the pressure exerted by Levine and Rezko. Shortly before the May meeting, however, Investment Firm 5 disclosed to TRS that it was going to pay a consultant, Individual H, who had done nothing in relation to Investment Firm 5's transaction with TRS and this caused a problem with TRS staff. As a result of the FBI confrontation of Levine on May 20, 2004, Levine did not try to help Investment Firm 5, and Investment Firm 5 was not placed on the agenda for the May meeting.

Levine originally learned about Investment Firm 5 from Individual G, who was a close business associate of Rezko's. Rezko introduced Individual G to Levine so that Individual G could learn about what TRS looked for in investments. Rezko approached Individual G in about late Spring 2003 and gave him a detailed explanation of TRS, ISBI, and SURS, including the makeup of the various Boards, a description of who Public Official A appointed to the Boards, and a description of who Rezko's friends on the Boards were. Rezko told Individual G that Levine controlled the TRS Board, that the Executive Director at TRS was friendly, and that there was the opportunity to have TRS invest $500-700 million in various funds. Rezko wanted Individual G to act as a finder of funds to invest with TRS, ISBI, and SURS.

Rezko, Individual G, Levine, and Loren talked at different times about how Individual G could find investment companies that TRS would invest in. Individual G located Investment Firm 5, which was looking for investors in a new private equity fund, and eventually made an

arrangement where Individual G would receive a finder's fee if Investment Firm 5 received an investment from TRS. As Investment Firm 5 looked like a promising investment, Individual G met with Rezko and Individual Z, who was Rezko's business partner, to discuss the financial arrangement. They talked about splitting the fees 1/3 apiece, but Rezko said that he should get more because he had to take care of other people, including Co-Schemer B.

Rezko also talked independently with Individual Z about Investment Firm 5, Individual G, and Levine. Rezko told Individual Z that Levine approached Rezko about third parties getting fees for commissions from TRS. Rezko said that the company Rezko and Individual Z owned could get fees for sending qualified investment firms to TRS. Rezko later told Individual Z that $500 million of TRS money was being earmarked for their company, of which Investment Firm 5 would get some portion.

Individual G arranged for Investment Firm 5 personnel to meet with TRS staffers and Loren. In addition, Levine put pressure on TRS staff to approve Investment Firm 5's proposed investment. Levine understood from Rezko that Levine was not going to share in any fee that Investment Firm 5 paid. Levine agreed to help anyway because he wanted to ingratiate himself with Rezko.

Investment Firm 5's application moved unusually quickly through the TRS staff review process. Investment Firm 5 did not meet the standards of the investments that TRS usually made, but pressure was put on TRS Staffer A to hurry the Investment Firm 5 application review process and to approve it. Days before the May 2004 TRS Board meeting, Investment Firm 5 was told that it would be a "walk-on" at the board meeting, which meant that the TRS Board would be asked to approve a $25 million investment in Investment Firm 5 even though Investment Firm 5 was not on the original agenda that had been prepared for the meeting.

About two weeks before the May 2004 TRS Board meeting, Individual G told Investment Firm 5 that they should disclose Individual H's law firm as the entity that would receive a finder's fee from Investment Firm 5 for the TRS investment. Shortly prior to that, Individual G had met with Co-Schemer B and Rezko. Co-Schemer B said that Individual G could not be named as the consultant for Investment Firm 5 because he shared an office with Rezko and because of Rezko's relationship with the Public Official A. Individual G suggested that Individual H's name be used instead of his, and Co-Schemer B and Rezko agreed to this arrangement. Rezko and Individual G also told Individual Z that Individual H's name would be used because Individual G was too close to Rezko.

On the afternoon of May 20, 2004, Individual N raised with Levine the fact that Individual H had been disclosed as a finder by Investment Firm 5 even though Individual H had not had any role in helping Investment Firm 5 get the TRS investment. Levine attempted to help Investment Firm 5 initially, but stopped after the FBI interviewed him that evening. Investment Firm 5 was not placed on the TRS agenda for the May Board meeting, and TRS never invested money with Investment Firm 5.

9. Investment Firm 6

Investment Firm 6 was an Arizona company that specialized in making short-term bridge loans to developers and builders. Investment Firm 6 made its money through the income generated by the interest payments and origination fees, and paid its investors a steady stream of income. Levine and Rezko agreed that they would use their influence to get Investment Firm 6 investments at TRS, ISBI, and SURS, and expected that Investment Firm 6 would receive hundreds of millions in investments. Levine arranged with Co-Schemer I, who had arranged to receive a finder's fee from

Investment Firm 6 for investments in Illinois state pension funds, that Co-Schemer I would share 2/3 of the fees that he received as Levine directed. The FBI interview of Levine occurred before Investment Firm 6 actually applied for TRS funds, and Investment Firm 6 never actually received any investments.

Levine initially heard about Investment Firm 6 from Individual AA and they discussed using Levine's influence at TRS to help Investment Firm 6 receive an investment. Levine agreed to meet with Investment Firm 6 representatives on February 17, 2004. Individual AA and Co-Schemer I were business associates, and eventually Levine learned that Co-Schemer I would act as a finder on behalf of Investment Firm 6. Among others, Levine met with Co-Schemer I and two principals of Investment Firm 6 at the Dupage Country Club. Levine was introduced as a TRS trustee who could help Investment Firm 6. At that meeting, Levine asked if Investment Firm 6 would pay a finder's fee of 2%, which the Investment Firm 6 principals agreed to do.

Levine then arranged for the Investment Firm 6 principals to meet with Loren so that Loren could decide whether this was the kind of investment that TRS might make. On March 15, 2004, Levine, Loren, Co-Schemer I, and the Investment Firm 6 principals met at Levine's office. At Levine's request, Investment Firm 6 provided materials to Loren to allow him to assess their investment proposal. On May 6 (Call #112), Loren and Levine discussed the proposal and talked about how Investment Firm 6 could get as much as a $200 million investment from TRS.

Levine and Co-Schemer I agreed that Co-Schemer I would split any finders fees he got from Investment Firm 6 for TRS investments as directed by Levine. Levine and Co-Schemer I agreed that the fee would be split three ways – with equal shares for Levine, Co-Schemer I, and the third for Levine's political patron, which was Rezko. Co-Schemer I further suggested that Investment Firm

6 be told that in addition to Co-Schemer I's finder's fee, Co-Schemer I would also require a portion of the ongoing management fee that Investment Firm 6 would charge to TRS. Levine explained to Co-Schemer I that Co-Schemer E would be the person who would directly receive the money that Co-Schemer I would pay.

Levine and Rezko discussed Investment Firm 6 at their April 14 Standard Club meeting. At that point, Levine believed that TRS would invest $200 million with Investment Firm 6, that this would result in a $4 million fee to Co-Schemer I, and that Levine and Rezko would each receive 1/3 of that $4 million.

On April 15 (Call #24), Levine spoke with Individual AA. In that call, Individual AA said that Co-Schemer I's meeting the night before with the Investment Firm 6 principals went "absolutely perfect" and that Investment Firm 6 was more than comfortable [Investment Firm 6 was willing to hire Co-Schemer I as a finder]. Levine responded that his meeting the night before also went "absolutely perfect" and that they were "full steam ahead." Levine also said that they could "do more than just the one I'm on" [get money for Investment Firm 6 from ISBI and SURS]. Levine and Individual AA agreed that they would meet with Co-Schemer I when he came back to town.

On April 21 (Call #93), Levine spoke with Co-Schemer E about the Investment Firm 6 deal. In that call, Levine told Co-Schemer E that he got the "deals worked out with the mortgage guys [Investment Firm 6]" and that it would be 2 points on $200 million [the finder's fee would be 2% of the expected $200 million investment]. Levine also talked about the ongoing management fee that Co-Schemer I had agreed to share with Levine and Rezko, saying "for every year that they have the account, they pay 25 points. But that's divided up, but [Co-Schemer I] threw that in."

On May 6 (Call #112), Levine talked about the Investment Firm 6 deal with Loren. By this point, Loren had received paperwork from Co-Schemer I that detailed the business terms of Investment Firm 6's deal with TRS. Loren pointed out an issue with Investment Firm 6's proposal, namely that the proposed management fees were much too high. Loren subsequently talked with the Investment Firm 6 principals by phone. When Loren raised the issue that the management fees were too high, he was told that the fees were necessary because of the arrangement with Co-Schemer I and Levine.

On May 12 (Call #159), Levine talked to Co-Schemer I about their arrangement to split the Investment Firm 6 finder's fee. In the call, Co-Schemer I asked if "on the residual . . . is that to go to 2 or 3?" [will the management fee from Investment Firm 6 be split with just Levine or with Levine and his political patron?]" Levine responded that, "it's the same deal for everybody" and that, "the deal we talked about is really one deal being split 3 ways [Rezko would also require a share of the ongoing management fee as well as the finder's fee]." Co-Schemer I replied that, "I thought it was gonna be but I didn't know" and "that's for everything." Levine and Co-Schemer I later discussed how Levine would help Investment Firm 6 deal with a damaging report on Investment Firm 6 done by another consultant by having Loren review it. Co-Schemer I said that the report was supposed to be confidential, but that he would send a copy to Loren.

On May 19 (Call #167), Levine and Co-Schemer I talked further about Investment Firm 6, primarily about the consultant's report. In the course of the discussion, Levine promised to shepherd the Investment Firm 6 proposal through TRS and said that he would get started on this "internally [with Individual N]" after the May TRS Board meeting. As the FBI approached Levine the next

night, Levine never talked with anyone else at TRS about Investment Firm 6, and Investment Firm 6 never made a formal application to TRS.

10. Investment Firm 7

Investment Firm 7 was a real estate investment management firm that had a long-standing relationship with TRS. In February 2004, Investment Firm 7 was supposed to receive $220 million from TRS to manage. Levine acted to stall the allocation, and planned with Rezko to approach Individual J, a principal of Investment Firm 7, with a choice: if Individual J wanted to get the $220 million for Investment Firm 7, he was either going to have to make a $1.5 million donation to Public Official A or pay Levine a 1 % fee (which would be shared with Rezko). Rezko and Levine enlisted Co-Schemer A's help to demonstrate to Individual J that he needed Levine's help to get the $220 million. In the course of Co-Schemer A's efforts to prepare Individual J for Levine's approach, Individual J realized that he was going to be extorted and threatened to expose the scheme. In light of this threat, Levine, Rezko, Co-Schemer B, and Co-Schemer A spoke on May 10 and decided that Individual J would get his $220 million without being asked for any contribution, but that Individual J would never again get any money from the state of Illinois. Investment Firm 7 did in fact receive a $220 million allocation at the May 2004 TRS Board meeting.

Before the February 2004 TRS Board meeting, all the TRS real estate management companies, which included Investment Firm 7, were slated to get millions of dollars in additional TRS money because TRS had significant funds that needed to be invested in real estate investments. Before the February meeting, however, Levine learned that Individual V had been in confidential negotiations to buy Investment Firm 7 from Individual J and his partner. Levine also knew that Investment Firm 7 had not disclosed that it was looking to sell to the TRS staff and that a potential

sale of the company would be taken seriously by TRS staff because of the potential change in management. Accordingly, Levine told Individual N about Investment Firm 7's potential sale so that Investment Firm 7 would not get its $220 million from TRS. Levine told Individual N to stall the allocation, rather than reject it outright, so that Levine could try to extort money from Individual J to allow Investment Firm 7 to still get its money. At the February 2004 TRS Board meeting, the four other TRS real estate management firms got allocations, but Investment Firm 7's allocation was postponed because of the information about the potential sale of Investment Firm 7.

Levine discussed the Investment Firm 7 situation with Rezko at the April 14 Standard Club meeting. Levine told Rezko about how Individual J's company wanted to get the $220 million. Rezko already knew at that point that Individual J had not contributed any significant money to Public Official A. Rezko agreed that Levine should extort a fee out of Individual J to allow Investment Firm 7 to receive its money, and that Levine would give Rezko half of what he received, which Levine expected would be $2 million.

On April 17 (Call #196), Levine discussed the Investment Firm 7 situation with Co-Schemer E. In that call, Levine recounted how he told Rezko that "there's $220 million there that should be worth over $2 million in fees," that Rezko told him to "do whatever you want here," and "[o]f course, I said that, that 220 I would include him [Rezko]."

Levine then had a meeting with Rezko and Co-Schemer B at Rezko's office when Rezko described how he was approached by Individual BB. Individual BB had a long-standing relationship with Rezko and also knew Individual J. Rezko told Levine that Individual BB had approached Rezko, apparently on behalf of Individual J, and said that Individual J would like to get involved in raising money for Public Official A and also that Individual J had matters pending before TRS.

Rezko, Levine, and Co-Schemer B decided that Individual J would be presented with a choice. In order to get the $220 million, Individual J would be told that he could either raise $1.5 million for Public Official A or pay a $2 million fee to a consultant chosen by Levine and Rezko.

On May 1 (Call #557), Levine told Co-Schemer E about his more recent meeting with Rezko and Co-Schemer B. Levine described how Rezko said that Individual J would "have a choice. . . . you can raise a million and a half dollars for the fund raiser in June [for Public Official A] . . . or you can work out somethin' with [Individual CC] [which Levine earlier in the call said would be a $2 million consulting payment]."

After talking with Rezko and Co-Schemer B, Levine talked to Co-Schemer A. Levine told Co-Schemer A about how Individual BB had approached Rezko, and that Rezko wanted Individual J to make a significant political donation before Investment Firm 7 would get its money. Co-Schemer A agreed to help by talking to Individual J and convincing Individual J that he needed to talk with Levine (because Levine had the power to decide this issue) in order to get Investment Firm 7's $220 million. Levine indicated to Co-Schemer A that Levine would then demand that Individual J make the political contribution. Levine did not tell Co-Schemer A about the alternative that Individual J would be allowed to hire a consultant because Levine did not want to have to share that money with Co-Schemer A. Co-Schemer A also agreed to tell Individual J that Individual BB had approached Rezko, so that Individual J would understand that the situation was outside of Co-Schemer A's control because Rezko was involved, and that Individual J would have to deal with Levine.

On May 6 (Call #113), Levine talked to Individual N. In that call, Levine told Individual N that Co-Schemer A was going to call Individual J to tell him that Individual J had sent someone to

see Rezko; that "Tony" was "aghast" when he realized the "magnitude" of what Individual J wanted to get "without doing anything for anybody all these years;" and that Individual J's "gonna have a problem, you gotta deal with him."

On May 7 (Call #736), Levine and Co-Schemer A spoke about a conversation that Co-Schemer A had "just had" with Individual J. Co-Schemer A, several times during the conversation, informed Levine that he tried to steer Individual J towards talking with Levine about Investment Firm 7's $220 million allocation by falsely stating that Levine was the true decision-maker. Co-Schemer A also said that he told Individual J that Individual BB had apparently approached Rezko on behalf of Individual J seeking help getting TRS money, and that this inquiry caused Rezko to realize that Individual J wasn't donating anything to Public Official A. Co-Schemer A reported that Individual J denied doing this, and promised to look into it. Levine and Co-Schemer A concluded that Individual J's denial was a lie, and Levine said that "if [Individual J] feels that he'd rather walk away from the money then deal with Tony, then there it is."

Individual J did, in fact, talk with Co-Schemer A as Co-Schemer A had suggested to Levine. Individual J had asked Co-Schemer A to look into why Investment Firm 7 had not received its $220 million allocation sometime after early April of 2004. Co-Schemer A subsequently called Individual J and said that there had been a meeting between Rezko, Co-Schemer B, and a third person, who Individual J recognized as Individual BB from Co-Schemer A's physical description, where they discussed fundraising issues related to Public Official A and various pension fund managers. Co-Schemer A told Individual J that Individual J's name and Investment Firm 7 were mentioned during the meeting. Individual J understood from what Co-Schemer A said that Investment Firm 7 got no allocation because he had not contributed to Public Official A.

Individual J confronted Individual BB, who eventually admitted to Individual J that he had met with Rezko and Co-Schemer B, that the topic of raising political contributions from firms doing business with the state pension funds was discussed at the meeting, and that Individual J and Investment Firm 7 were discussed in the meeting as possible contributors. After that conversation, Individual J went back to Co-Schemer A and threatened to expose what had happened. Individual J intentionally appeared angry so that Co-Schemer A would send a message back to Rezko and Co-Schemer B that Individual J should not be interfered with in regards to the TRS allocation.

On May 8 (Call #754), Co-Schemer A told Levine about his conversation with Individual J. Co-Schemer A said that Individual J had just told him that he had spoken with Individual BB, that Individual BB had admitted that he had been asked by Rezko and Co-Schemer B about who could raise funds for Public Official A from the state pension systems, and that Individual BB had volunteered Individual J's name. Co-Schemer A said that Individual J was furious and threatened to blow the whistle on the shakedown. Co-Schemer A told Levine about how Rezko and Co-Schemer B had been "essentially hammerin' people for contracts ah, with with contracts for fundraising [Rezko and Co-Schemer B had been forcing individuals to make political contributions in order to win State of Illinois contracts]," how Co-Schemer A was a "nervous wreck" about it, and how Co-Schemer A and Levine needed to talk with Rezko and Co-Schemer B about Individual J's threats. Co-Schemer A said that it was a good thing that Levine and Individual J "didn't connect [that Levine had not yet demanded Individual J make the political contribution]" given Individual J's state of mind.

On May 10 (Call #146), Co-Schemer B called Levine and set up a meeting at Rezko's offices for that afternoon. Levine immediately called Co-Schemer A (Calls #790 and #148), and learned

that Co-Schemer A had been talking to Co-Schemer B on a different phone line when Co-Schemer B called Levine. Co-Schemer A told Levine that the reason that Co-Schemer B wanted to meet was because Co-Schemer A had started to tell Co-Schemer B about Individual J's complaints about getting hammered.

Levine, Co-Schemer B, Rezko, and Co-Schemer A all spoke that afternoon. Levine laid out the history of what had happened with Investment Firm 7 and Individual J. After the factual recital, Rezko decided, and everyone else agreed, that Individual J would get his $220 million and would not be approached for any money because Individual J was too powerful and dangerous. Rezko later told Levine that Individual J would never again get any state business as the consequence of his threat.

On the evening of May 10, Levine and Co-Schemer A talked again (Call #805). Levine complained that he did not want Individual J to think that he could "squeeze" Levine [because Individual J was going to get what he wanted]. Levine and Co-Schemer A discussed how Co-Schemer A could talk with Individual J so that so that Individual J would not take further advantage of the situation.

Co-Schemer A did talk again with Individual J. Co-Schemer A said that Rezko and Co-Schemer B had no problem with Individual J and denied that they were the cause of any problem. Co-Schemer A did, however, suggest that Levine might have had a problem with Investment Firm 7 and Individual J and volunteered to check it out.

On May 12 (Call #863), Co-Schemer A talked to Levine again. Co-Schemer A and Levine first talked about a TRS staff proposal that would affect how the TRS real estate managers would be paid. Co-Schemer A confirmed with Levine that this was not a subject that was of interest to the

"Bobbsey Twins [Rezko and Co-Schemer B]," saying it was "strictly a policy decision [instead of a decision decided by politics]." Co-Schemer A and Levine then discussed another conversation that Co-Schemer A had with Individual J. Co-Schemer A related that he talked to Individual J as Levine instructed. Levine said that he had met with Rezko and Co-Schemer B that day because they "want something on one of the other Boards" and that "we talked again [about Individual J]." Levine said that Rezko said to solve the Individual J problem "with your head, not your heart." Co-Schemer A said, "I think their position is, or at least Tony's is, okay so he may have to get something here, but he ain't gonna get anything more [Individual J would not get any more business from the State of Illinois or TRS]." Levine agreed. Co-Schemer A also confirmed that Rezko had told Co-Schemer A that the "big guy [Public Official A] said Individual J means nothing to him."

After the decision was made that Investment Firm 7 would get its allocation, Levine went back to Individual N and made sure that Investment Firm 7 got on the May 2004 agenda. Investment Firm 7 received its $220 million allocation at the May 2004 TRS Board agenda. Levine did not disclose his true interest in that allocation to the TRS Board.

11. Investment Firm 9

Levine, Co-Schemer A, and Co-Schemer C also tried to help Investment Firm 9 receive TRS investment money because Co-Schemer C was going to receive a finder's fee, which he would share with Levine, if TRS invested with Investment Firm 9. Levine talked with Co-Schemer A about this plan because Levine wanted Co-Schemer A's real estate management firm to receive the TRS money, which that firm would use to invest in Investment Firm 9 projects.

In about 2003, Levine learned from Co-Schemer C that Investment Firm 9 was looking for institutional investors to invest in Investment Firm 9's senior living facilities. Levine agreed to help

Investment Firm 9 and expected Co-Schemer C to share the finder's fee he would receive from Investment Firm 9 with Levine if Levine arranged for TRS money to be invested with Investment Firm 9.

Levine encouraged Co-Schemer A to arrange for his real estate asset management firm, which invested hundreds of millions of dollars in TRS funds, to invest in Investment Firm 9. Levine explained to Co-Schemer A that Levine and Co-Schemer E (again, Levine planned to split his share of Co-Schemer C's finder's fee with Co-Schemer E) would make money if Co-Schemer A's firm invested in Investment Firm 9. Co-Schemer A agreed to investigate Investment Firm 9 to determine if he wanted his firm to make such an investment.

Levine, Loren, Co-Schemer A, and Individual N met in about early 2004 to discuss the amount of money that Co-Schemer A's firm would receive in TRS funds at the February 2004 TRS Board meeting. At that meeting, Co-Schemer A indicated that he wanted his real estate asset management firm to receive a larger allocation of money from TRS if his firm was going to invest money with Investment Firm 9. It was agreed by the participants that TRS would increase the amount of money that it was going to allocate to Co-Schemer A's firm so that Co-Schemer A could make an investment in Investment Firm 9. Levine and the others expected that the investment in Investment Firm 9 would be in the tens of millions of dollars.

Co-Schemer A's firm received a total allocation of $220 million from TRS at the February 2004 TRS Board meeting. Co-Schemer A's firm had not invested any money in Investment Firm 9 when the FBI approached Levine, and no investment was made after that point.

12. Real Estate Asset Management Company

Levine, Rezko and Co-Schemer B also talked about the idea of creating a real estate asset management company that they would control, although the business would appear to be owned by others, and that they would use their influence at TRS to ensure that the company would manage TRS real estate investments. They anticipated that they could cause TRS to invest hundreds of millions of dollars in that company. On May 1 (Call #557), Levine and Co-Schemer E discussed the idea for the business and Levine's discussions with Rezko about it. As Levine said, "I said to Tony when I found out, I says you know these fees are great. But what the fuck is a fee. I said we should make a business out of this like [Co-Schemer A] or [Individual J] had. . . . he [Rezko] said to me orchestrate the whole thing Stuart just, just, just do it let me know what I gotta do." Levine and Co-Schemer E then discussed various people affiliated with either them or Rezko who might be associated with the potential business. Levine said, "I can with no difficulty get $500 million dollars put into this ah, asset manager," to which Co-Schemer E replied, "How 'bout just directly into my bank account." Levine also spoke with Loren about the idea, including the concept that Rezko was interested in doing business with the state pension funds but wanted to use a place holder so as not to be directly involved. The plan to create the asset management company did not progress further before the FBI confronted Levine.

B. Illinois Health Facilities Planning Board

A second major aspect of the fraud scheme involved Levine's position on the Planning Board. The Planning Board was a commission of the State of Illinois, established by statute, whose members were appointed by the Governor of the State of Illinois. At the relevant time period, the Planning Board consisted of nine individuals. State law required an entity seeking to build a

hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction.

Pursuant to the Illinois Health Facilities Planning Act (the "Planning Act"), and the Planning Board Rules, members of the Planning Board were required to base their decision on an application for a CON on a reasonable and objective application of the pertinent standards set forth in the Planning Act and the Planning Board Rules. In carrying out all of their duties, including reviewing and deciding whether to approve or reject an application for a CON, members on the Planning Board owed a fiduciary duty to the people of the State of Illinois, and were required to act solely for the benefit of the people of the State of Illinois.

Prior to each meeting of the Planning Board, the staff of the Planning Board reviewed each CON application to be presented at that meeting and prepared a written analysis of whether the application was consistent with the standards for the issuance of a CON. The Planning Board could approve, deny, or defer an application, or it could issue an "intent-to-deny," and the application ordinarily would be reconsidered by the Planning Board within a specified time period.

Levine was a member of the Planning Board in 2003 and 2004. Beginning in 2003, Mercy Hospital sought a CON to construct a hospital in Crystal Lake, Illinois. After learning that they could receive a kickback of at least $1 million from Kiferbaum, Rezko and Levine helped Mercy Hospital receive its CON. Rezko and Levine also looked for opportunities to receive kickbacks from other hospitals that needed a CON. Again, Levine and Rezko relied upon other individuals to help the scheme, including Jacob Kiferbaum, P. Nicholas Hurtgen, and Loren. As described further below, each of those individuals joined the scheme and knowingly participated in different aspects of it.

1. Mercy Hospital

Levine and Rezko agreed that they would use their influence over the Planning Board to ensure that Mercy Hospital received its CON. Levine and Rezko decided to help Mercy Hospital because Kiferbaum agreed to pay a kickback to them from the money that he expected to make building the hospital. Rezko and Levine were able to arrange for Mercy Hospital to receive its CON at the April 2004 Planning Board meeting. However, the scheme was interrupted when the FBI interviewed Levine on May 20, 2004, and no kickback was ever paid.

Levine's term on the Planning Board was due to expire in 2003. Levine talked to Co-Schemer A about arranging for Levine to be re-appointed. Levine told Co-Schemer A that he would be happy to be part of their team, meaning that Levine would vote on the Planning Board as he was asked by the administration or its political allies. Co-Schemer A and Co-Schemer B later indicated to Levine that he would be reappointed, and he was re-appointed in the Fall of 2003.

After Levine was reappointed, he shared a private plane ride from New York to Chicago with Public Official A and Co-Schemer B. Levine, Public Official A, and Co-Schemer B were the only passengers on the flight. At the beginning of the flight, Levine thanked Public Official A for reappointing him to the Planning Board. Public Official A responded that Levine should only talk with "Tony" [Rezko] or [Co-Schemer B] about the board, "but you stick with us and you will do very well for yourself." Public Official A said this in front of Co-Schemer B. Levine understood from Public Official A's manner of speaking and words that Public Official A did not want Levine to talk to Public Official A directly about anything to do with the boards, but that Levine should talk to Rezko or Co-Schemer B. Levine also understood that Public Official A meant that Levine could make a lot of money working with Public Official A's administration. Public Official A did not

seem to expect a response from Levine, and Co-Schemer B then shifted the conversation to something else.

Around the time that Levine was reappointed, Rezko told Levine that he expected to control the Planning Board. Rezko said that he had discussed the makeup of the Planning Board with Individual DD, who was the Chairman of the Planning Board. Before one of the Planning Board meetings, Individual DD talked to Levine about how there were five members of the Planning Board who were Rezko's people, including Levine and Individual DD. The other three individuals who would vote as Rezko wished were Individual Y, Individual EE, and Individual FF. Documents and testimony from individuals who helped select candidates for boards and commissions positions, including the Planning Board, in Illinois state government confirms that Rezko was the individual responsible for selecting those five individuals to be appointed to the Planning Board.

Since it took five votes to approve any CON, Rezko's people effectively controlled what the Planning Board did. Individual DD also described how he talked to Rezko about how the Planning Board should vote on certain projects, and that Individual DD would tell the other four members of Rezko's bloc how Rezko wanted them to vote. Individual DD typically indicated to Levine and the other three members of Rezko's voting bloc the items on the Planning Board agenda that Rezko cared about and how Rezko wanted them to vote. On occasion, Individual DD gave Levine and other Planning Board members a card reflecting the projects on the agenda and the votes that Rezko wanted cast for those projects.

Levine first focused his attention on Mercy Hospital in late 2003 after he learned from Kiferbaum that Kiferbaum had the opportunity to receive a contract from Mercy Hospital to build their new hospital if they received permission to build. Kiferbaum and Levine discussed Mercy's

application for the CON. Levine and Kiferbaum agreed that Kiferbaum would pay a kickback to Levine if Levine were able to help Mercy Hospital receive its CON. Levine knew that Kiferbaum would be willing to pay a kickback because Kiferbaum had paid Levine kickbacks for projects that Kiferbaum had built at the Chicago Medical School ("CMS") after Levine had helped Kiferbaum get the contracts.

After talking with Kiferbaum, Levine spoke with Individual DD about Mercy's CON. Individual DD told Levine that Mercy was not going to get a CON because its application was bad and Rezko was against it. Levine then went to Rezko and Rezko initially said that Mercy would not get a CON because a promise had been made not to grant Mercy a CON. Rezko changed his attitude after Levine indicated that Rezko and Levine could make a significant amount of money through Kiferbaum and that Kiferbaum also would made a contribution to Public Official A if Mercy received its CON. Rezko and Levine discussed what an appropriate kickback from Kiferbaum would be, and Rezko thought that an appropriate fee would be about 5% of the gross that Kiferbaum was paid. Levine agreed and Rezko said he would make sure Mercy got the CON.

Levine subsequently told Kiferbaum that he would help Mercy get its CON. At times, Levine provided information to Kiferbaum about the status of Mercy's CON application, and met with Mercy representatives on Kiferbaum's behalf to demonstrate Kiferbaum's clout. Kiferbaum signed a contract with Mercy in about January 2004, which called for Kiferbaum to build the hospital for Mercy. Kiferbaum and Levine agreed that Kiferbaum would pay the kickback to Co-Schemer E, and Levine arranged with Loren to draft a contract that would make it appear that Kiferbaum was going to pay Co-Schemer E for consulting services provided by Co-Schemer E.

Levine and Rezko also periodically discussed the status of Mercy's CON application,

including at the April 14 Standard Club meeting. There, Levine included the Mercy kickback from Kiferbaum among the projects that he expected would produce money for Levine and Rezko. At the time, Kiferbaum and Levine had not decided on the final amount of the bribe, but Levine believed that it would be at least $1 million, which he would split evenly with Rezko. Rezko assured Levine at the meeting that Rezko would use his influence to ensure that Mercy received its CON.

On April 19, 2004, Levine and Individual DD had a series of calls about the Mercy application (Call ## 257, 261, and 277). In the first call, Individual DD said, among other things, that "I've got the marching orders [from Rezko]," that "I think you may be able to help us, ah, on [Mercy] [meaning that Mercy would get its CON]," and "our boy [Rezko] wants us to help." Individual DD and Levine then discussed how to handle the problem that Mercy's application was not a good one, and Levine agreed to talk with Loren, who had been hired to represent Mercy at Levine's urging, about the situation. Levine spoke repeatedly with Loren about Mercy's CON (Call ## 34 and 271) and passed the information he received from Loren back to Individual DD.

The next day, April 20, Levine spoke further with Individual DD (Call #84) about Mercy's CON application. In that call, Individual DD indicated that Mercy's application would be approved. Levine also told Individual DD that it would be important for Individual DD to communicate to the "five," meaning Individual DD, Levine, and the other three Planning Board members in Rezko's voting bloc, what the votes should be at the meeting. Levine described to Individual DD how Rezko had helped Levine get reappointed to the Planning Board, describing how "Tony" called on the people responsible and said "we gotta get that going."

Levine also spoke with Kiferbaum on April 20 (Call #303). Kiferbaum told Levine that the

head of Mercy was "panicking" about the upcoming vote. Levine reassured Kiferbaum that Mercy would get its CON, saying that "things are fine."

On the morning of the April 21, 2004 Planning Board meeting, Levine and Individual DD had additional conversations about the Mercy CON. Before the meeting started, Individual DD told Levine that he could not support Mercy's CON. Levine contacted Rezko by phone, and Individual DD spoke with Rezko. Individual DD originally told Rezko words to the effect that "I won't do this. You can't do this to me," but eventually indicated that he would vote as Rezko wished. Rezko and Levine then spoke, and Rezko confirmed to Levine that he told Individual DD that he wanted Mercy's application done, and suggested that Individual DD could resign if he did not vote for Mercy.

Individual DD then explained to Levine that his "cousin" had been hired on behalf of a competitor of Mercy's to make sure that Mercy's application was denied. Individual DD said that promises were made and money was paid to make sure it did not happen. Individual DD added that his cousin had promised an individual that the deal would not happen and that his cousin would have no credibility now as a consultant.

The Planning Board did vote on Mercy's CON application at the April 21 meeting. Despite the recommendation of the Planning Board staff against the Mercy CON, the Planning Board approved the CON application. Levine intervened during the vote to ensure that Mercy's CON was approved. Based on the Planning Board rules, Mercy needed five yes votes to get its application approved. Initially, three Planning Board members voted yes: Levine, Individual Y, and Individual FF. Individual EE, however, passed, and no other Planning Board member other than Rezko's bloc voted in favor of the project. Individual DD voted last. Prior to Individual DD's vote, Levine spoke

with both Individual DD and Individual EE about the votes and told Individual EE that he had to vote in favor of the application because of Rezko's wishes. Individual EE than changed his vote to a yes, and Individual DD also voted in favor of the application, so Mercy received its CON.

After the April 21 meeting, Levine and Individual DD went to Rezko's offices because Individual DD was still upset. There, Rezko indicated that "we'll" make it up to Individual DD's cousin. That night, Levine spoke with Co-Schemer E, Kiferbaum, and Loren about the Mercy vote. With Co-Schemer E (Call#328), Levine recounted the details of the Mercy vote and talked about "Tony" and the five votes that he controlled. Levine also described how Individual DD threatened to resign and that "none of them know that it's Tony and me. They know that Tony's giving the orders." Later, Levine said that "Individual DD had one of his relatives that had been hired to prevent from this happening. Tony had him do it." Levine also recounted that he told Individual EE at the critical moment that "Tony wants this today."

In Call #329, Levine talked to Loren about the Mercy vote as well. Again, Levine discussed how Individual DD wanted to resign, that "nobody knows that it's Tony [that orchestrated the Mercy vote]," that Levine took Individual DD over to Rezko's, and that Rezko was grateful that the Mercy vote got done. In a later conversation, Levine told Loren that Mercy was originally going to be turned down, but that Levine asked Rezko if a political contribution would make a difference, and that Rezko said that a contribution might change his perspective.

The circumstances of the Mercy vote caused publicity, and also caused a lawyer for the Planning Board send a letter the Planning Board members outlining various ethical rules that applied to members. Levine and Individual DD discussed the letter in a call on May 17 (Call #995) and how

they could respond to it. They were concerned, and Individual DD indicated that "Tony's gotta do somethin' [to help protect Levine and Individual DD]."

Ultimately, while Mercy's CON was approved, Kiferbaum and Levine did not finalize the kickback arrangement prior to the FBI's interview of Levine. As a result, Kiferbaum never paid Levine any portion of the kickback.

2. Continued Control of the Planning Board

Levine and Rezko continued to talk about how the Planning Board was to be run after the Mercy vote. On May 18 (Call #1011), Rezko and Levine talked about a sixth Planning Board member, Individual GG, who they wanted to vote with the rest of Rezko's voting bloc. Levine told Rezko that Levine had spoken with Co-Schemer B and that Levine was willing to talk to Individual GG. Rezko, however, indicated that "I rather keep it through Individual DD" [Rezko wanted Individual DD to talk with Individual GG, not Levine] and that "it should be [Individual DD] communicating with the others [Individual DD should talk with the Rezko voting bloc, not Levine]." Rezko said that he wanted the focus of the Planning Board to be on Individual DD, not Levine, although "you and I will still do what we need to do [Rezko and Levine would continue to make money through kickbacks at the Planning Board]." Rezko explained that Individual GG had been told to "take directions" from Levine, but Rezko wanted Levine to call Individual GG to tell her to take direction from Individual DD. Levine agreed to tell Individual GG to follow Individual DD's lead, saying that "we'll do it the way we have been handling it in the last couple of months." On May 19, Levine spoke with Individual GG (Call #166). In that call, Individual GG explained that she wanted to talk with Levine about the upcoming Planning Board session, when Levine interrupted to suggest that she should call Individual DD instead.

3. Edward Hospital

Levine, Kiferbaum, and Hurtgen also sought to use Levine and Rezko's influence at the Planning Board to force Edward Hospital to hire Kiferbaum to build a planned hospital. Kiferbaum and Hurtgen had extensive negotiations with representatives from Edward Hospital as to whether they could deliver Edward Hospital its CON if Kiferbaum was hired. Kiferbaum was going to pay Levine another kickback if Edward Hospital hired Kiferbaum's firm to build the hospital and Edward Hospital received its CON. Levine did not discuss this plan with Rezko because Edward Hospital never agreed to hire Kiferbaum. Because Edward Hospital refused to hire Kiferbaum, Levine refused to help them receive a CON, and Edward Hospital's application for a CON was eventually denied.

Beginning in 2003, Edward Hospital sought two CONs from the Planning Board to construct a hospital and a medical office building in Plainfield, Illinois. Edward Hospital's CON application for its medical office building CON was first heard by the Planning Board in December 2003, and the Planning Board issued an intent-to-deny on the project.

After that hearing, Edward Hospital representatives met with Hurtgen. Hurtgen had spoken with Levine and asked if Edward Hospital's chances of getting a CON for their hospital would be better if they hired Kiferbaum to build it. Levine agreed that they would be better, and suggested that Hurtgen recommend to Edward Hospital that they hire Kiferbaum.

Both Levine and Kiferbaum understood, based on their prior relationship, that Kiferbaum would pay Levine a kickback if Kiferbaum were able to get the contract to build the Edward Hospital, although they did not discuss the precise terms.

Beginning in December 2003, and extending into April 2004, Kiferbaum and Hurtgen met repeatedly with Edward Hospital representatives about Edward Hospital's CON and Kiferbaum. The Edward Hospital representatives constantly pressed Kiferbaum and Hurtgen for assurances that hiring Kiferbaum would ensure that Edward Hospital would receive its CONs. In the course of those discussions, Hurtgen and Kiferbaum each indicated that Rezko and Levine controlled five votes on the Planning Board. Hurtgen and Kiferbaum also indicated to the Edward Hospital representatives that they would not receive their CONs if they did not hire Kiferbaum.

Hurtgen and Kiferbaum understood Rezko's and Levine's control over the Planning Board through discussions with Levine. Levine explained that Levine was close with Rezko and that Rezko had the power to approve or deny things on the Planning Board because Rezko had five Planning Board members, including Levine, who would vote as Rezko wished.

Levine, Hurtgen, and Kiferbaum decided to demonstrate the clout that Hurtgen and Kiferbaum had with Levine by arranging a meeting between the Edward Hospital representatives and Levine. As the Planning Board rules forbid *ex parte* contacts, they arranged the meeting to look like a chance encounter at a restaurant. Levine planned the meeting with Hurtgen and Levine in phone calls on April 17 (Call ## 205, 62, and 218), and then discussed the actual meeting with Kiferbaum after in happened on April 18 (Call #221). During the meeting with the Edward Hospital representatives, Levine signaled that he was close to Kiferbaum in an effort to convince the Edward Hospital representatives to hire Kiferbaum.

On April 20, 2004, Kiferbaum was told by an Edward Hospital representative that Kiferbaum was not going to be hired. Kiferbaum subsequently told Levine about this, and Levine decided that he would not attempt to help Edward Hospital get its CON. Levine had never told Rezko about the

possibility of Kiferbaum paying them a kickback for helping Edward Hospital get its CON because Edward Hospital had never suggested that they were going to hire Kiferbaum.

Edward Hospital's CON application for the hospital received an intent-to-deny at the April 21, 2004 Planning Board meeting. Levine subsequently discussed Edward's failure to get its CON at the hearing with Kiferbaum, Loren, and Co-Schemer E.

4. Other Hospitals

It was also part of the scheme that Levine looked for hospital projects where he and Rezko might be able to trade their influence on the Planning Board for money. On April 24 (Call #389), Levine and Hurtgen spoke about a hospital that might be willing to pay money in exchange for the influence that Levine and Rezko had with the Planning Board. At the time, Hurtgen was involved in a fundraising board for Hospital A, which was contemplating whether to make a major renovation of its existing hospital in Chicago, or to build a new hospital. In that call, Hurtgen and Levine discussed the possibility of arranging for Kiferbaum to do the construction work on the project and of using Rezko and Co-Schemer A's influence to help the project:

LEVINE: You know I, I, I think, you know but, you know it, it, it strikes me. I, it's a $500 million dollar job, right?

HURTGEN: Right.

LEVINE: Jacob's never done anything like that.

HURTGEN: Yeah, but you know what?

LEVINE: What?

HURTGEN: Um, (sighs) the, the thing that intrigues me about it is we're talkin', they're talking about a number of different options.

LEVINE: Uh huh.

HURTGEN: Okay. Including replacing the facility at a different location.

LEVINE: Uh huh.

HURTGEN: This is made for Tony [Rezko] and [Co-Schemer A].

* * * *

HURTGEN: Not just this and not this, this kind of came along. But see this is 500 million and another thing about it is they are dumb enough to think they're gonna raise 500 million from the community.

LEVINE: Well they're not gonna do that.

HURTGEN: Yeah they're gonna need you know a handout from a lot of people we all know.

LEVINE: Mm hm. Well we def-, we definitely have to ah, (clears throat) um, as a matter of fact I'm going to ah, ah, that's gonna be a top priority of business to talk to Tony with this week. And you and I, yeah. Give me a call later today.

Within minutes of the call from Hurtgen, Levine called Rezko (Call #391). In that call, Levine said that "some stuff that happened I think needs to be done and maybe a giant opportunity also [referring to the Hospital A project]."

On May 6 (Call #133), Levine talked with Individual HH, who worked as a publicist for a number of hospitals seeking to obtain CONs. When Individual HH indicated that he worked on behalf of Hospital B, which was looking to get a CON for a project in Waukegan, Levine described that as "very interesting." Levine cited Mercy's success getting a CON, and encouraged Individual HH to talk with Hurtgen and Kiferbaum. Levine intended that Individual HH tell his client that they should hire Hurtgen and Kiferbaum to get their CON. Levine said that Individual HH might be "in a position to ah, to ah, become very important and powerful to them [Hospital B] [because he could connect Hospital B with Levine and his allies who could ensure that Hospital B received a CON]"

and that Levine could give Individual HH a "little direction . . . that could be of, of , of, ah, the keys to the kingdom."

The FBI's interview of Levine on May 20, 2004 prevented Levine from taking any further steps to seek a kickback from either Hospital A or Hospital B.

IV. CONCLUSION

The above is an outline of the evidence that the government will introduce to establish that a joint venture or scheme existed involving defendant Antoin Rezko, Stuart Levine, Steven Lore, Joseph Cari, Jacob Kiferbaum, P. Nicholas Hurtgen, Co-Schemer A, Co-Schemer B, Co-Schemer C, Co-Schemer E, Co-Schemer F, and Co-Schemer I, and that joint venture allowed Rezko to commit the charged offenses. This Court should find, based upon this proffer, that co-schemers' statements are admissible pending the introduction of evidence to support this proffer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Government's Evidentiary Proffer Supporting the Admissibility of Co-Schemers' Statements

were served on December 21, 2007, 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.

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