APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, *v.* Alexander SITTENFELD aka P.G. Sittenfeld, *Defendant-Appellant*.	No. 23-3840

Appeal from the United States District Court for the Southern District of Ohio at Cincinnati.

No. 1:20-cr-00142-1—Douglas Russell Cole, District Judge.

Argued: May 9, 2024

Decided and Filed: February 11, 2025

Before: BUSH, NALBANDIAN, and MURPHY, Circuit Judges.

COUNSEL

ARGUED: Yaakov M. Roth, JONES DAY, Washington, D.C., for Appellant. Matthew Singer, UNITED STATES ATTORNEY'S OFFICE, Cincinnati, Ohio, for Appellee. ON BRIEF: Yaakov M.

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NALBANDIAN, J., delivered the opinion of the court in which MURPHY, J., concurred. MURPHY, J. (pp. 786–96), delivered a separate concurring opinion. BUSH, J. (pp. 796–809), delivered a separate dissenting opinion.

OPINION

NALBANDIAN, Circuit Judge.

Every day in this country, politicians solicit donations to finance their campaigns. And every day, those same politicians make statements about what they believe in, what they've done, and what they promise to do once elected. Sometimes, even often, these solicitations and promises occur in the same place, at the same time. But though this speech and

conduct are generally protected by the First Amendment, bribery remains illegal.[1] When the bribery involves money flowing to a politician for his personal use, the crime is straightforward. But when a politician is accused of accepting campaign funds in exchange for the promise of official action, the line becomes blurrier. Still, the Supreme Court tells us there is a line. And Congress and the Court have entrusted juries with discerning between legitimate campaign donations and illegitimate bribes. We must respect that line even in hard cases.

This is one such case. A jury convicted former Cincinnati council member Alexander "P.G." Sittenfeld of attempted Hobbs Act extortion and federal-program bribery. But this case comes with twists. All the major players, except for Sittenfeld, were working for or with the government—that is, these were paid actors working to incriminate Sittenfeld. And despite nearly every relevant conversation being recorded, the investigation didn't yield overwhelming evidence. Still, a jury found that Sittenfeld solicited or accepted campaign donations in exchange for his promise to support a property development project. On appeal, Sittenfeld challenges

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[1] The Supreme Court has recently offered helpful context about how illegal bribes arise.

> Federal and state law distinguish between two kinds of payments to public officials—bribes and gratuities. As a general matter, bribes are payments made or agreed to *before* an official act in order to influence the official with respect to that future official act. American law generally treats bribes as inherently corrupt and unlawful.

Snyder v. United States, 144 S. Ct. 1947, 1951 (2024).

the sufficiency of the evidence against him and argues that his indictment was constructively amended. But neither challenge succeeds, so we AFFIRM.

I.

A.

In 2018, Sittenfeld was a Cincinnati city council member who planned to run for mayor. Chinedum Ndukwe was a local developer who sometimes discussed his development projects with Sittenfeld. In September 2018, Sittenfeld called Ndukwe and let him know that "the majority of the developers in Cincinnati [we]re going to be giving [him] ten grand." R. 266, Trial Tr. Day 6, pp. 59–60, PageID 6242–43. Sittenfeld then asked Ndukwe, "[C]an I count on you for ten?" *Id.* Although Ndukwe had known Sittenfeld since 2010, and had consistently donated to Sittenfeld's past campaigns, Ndukwe claimed that this fundraising request was "jarring." *Id.* at 60–61, PageID 6243–44. And what Sittenfeld didn't know was that Ndukwe was working for the FBI at the time of that conversation.

Earlier in January 2018, the FBI had flagged Ndukwe as a possible source for some of their ongoing public-corruption cases. Ndukwe had previously given "money orders and cashier's checks to local politicians in other individuals' names," so FBI agent Nathan Holbrook pursued Ndukwe as an asset. R. 264, Trial Tr. Day 4, p. 84, PageID 5888. By mid-March 2018, Ndukwe had agreed to provide information to the FBI in exchange for a commitment by the government not to pursue a criminal investigation against him. From there, Ndukwe began informing on Sittenfeld to Holbrook, starting with his September conversation

with Sittenfeld. At that point, Holbrook told Ndukwe to record all his calls with Sittenfeld.

To catch Sittenfeld taking a bribe, the FBI introduced undercover agents, "Rob" and "Brian," who pretended to be investors in Ndukwe's real estate development project at 435 Elm Street in downtown Cincinnati. As it stood, the 435 Elm property was dilapidated, costing Cincinnati taxpayers hundreds of thousands of dollars each year to maintain. Ndukwe wanted to create a mixed-use development project on the site and had bought a leasehold mortgage note from the bank and air rights for it. But Sittenfeld already had 435 Elm on his radar because Ndukwe had discussed the project with him earlier in 2018. And separately in 2017, someone else had asked Sittenfeld about 435 Elm and he had directed them to the City of Cincinnati.

Early in the investigation, Ndukwe had three important conversations with Sittenfeld, each recorded. The first call was on October 26, 2018, when Ndukwe told Sittenfeld that Rob and Brian would be a source of capital for 435 Elm. They discussed setting up a meeting with Sittenfeld so Rob and Brian could donate to the campaign before campaign-finance rules changed on November 6, 2018. Ndukwe agreed to try to schedule something before that date.

A second, more pivotal conversation took place on October 30, 2018. Ndukwe broke some bad news—Rob wouldn't be in town until November 7, 2018. Instead, Ndukwe said he could try to "get some of [his] friends up in Columbus" to support Sittenfeld. R. 312, Appeal Exs., p. 8, PageID 7551. Ndukwe explained that he was trying not to donate in his own name, and

Sittenfeld encouraged him to round up donations from others:

> Sittenfeld: Just so, just so you know like, look I have, you know I, I love what you do as someone revitalizing our city creating jobs. I am fond of you as a friend. I also have like you know obligations to do the things I need to do to be a successful candidate so.
>
> Ndukwe: Absolutely.
>
> Sittenfeld: So, but what that means is I don't really get like, if if you say look I don't want to support you in the name of Chinedum Ndukwe, but some guy I've never met from Columbus is going to use a coup, you know, you know [your] network are going to a, round up a bunch of LLC checks. Like that's great. I actually don't care. But I mean the one thing I will say is like, you know I mean, you don't want me to like be like '*hey Chin like love you but can't*' you know like, you know, I mean like, you know like. I, I, I want people to support me, that's like …
>
> Ndukwe: Absolutely.
>
> Sittenfeld: … if a candidate doesn't want people to support them, they're a shitty dumb candidate …
>
> Ndukwe: Yeah, right, yeah, right.
>
> Sittenfeld: … and you know I've been (UI [unintelligible]) a lot of people have come through in a really big way that's been awesome so far and I would love, I would love for you to be one of those people too.
>
> Ndukwe: I hear ya. I hear ya. So we'll, we'll figure, we'll, we'll make sure, trust me, we'll, we'll, we'll

make something happen sooner than later too. Um (UI).

Sittenfeld: Well can you (UI), Can you even do it before the LLC thing?

Ndukwe: I don't know, let me, let me, let me, let me touch base with Jay again and see how, how we can make it work. Uhm I mean honestly just with, with everybody I've been trying to, you know, the other thing is these guys have a ton of LLCs. But I, I know that he's not going to be in town … so when is the drop dead date? Is it the sixth?

Sittenfeld: They can't, those guys can't use more than one LLC for each of them after, after the sixth, yeah. That's why, so just to let you know North American has done twelve in LLCs, Uptown has done ten, Medpace has done ten, Model has done eight. Uhm I, I need to go down like the whole list.

Ndukwe: Yeah, yeah, yeah.

Sittenfeld: You know Eli has done five. So because people are like, you know, we got to get this done before this (UI) option goes away.

Ndukwe: Yeah, yeah, yeah, for sure, for sure. Well let me, let me see—

Sittenfeld: Even, even if you were able to like, you know, Columbus people, these guys round up five LLCs before next Tuesday it'd be big.

Ndukwe: Yeah, okay, okay. All right, let me, let go to work on that. Let me go to work on that.

Id. at 8–9, PageID 7551–52 (ellipses in original) (emphasis added). Ndukwe and Sittenfeld then set up

a time to meet with Rob. Just before the end of the call, Sittenfeld reiterated, "[Y]ou're gonna deliver the goods before next Tuesday," and Ndukwe responded, "All right, let me go to work on that." *Id.* at 10, PageID 7553.

At trial, witnesses offered different interpretations of the "love you but can't" comment. Ndukwe testified that he understood it to mean "that whether you donate or don't donate," it would "have an impact on" Sittenfeld's "advocacy" for him. R. 266, Trial Tr. Day 6, p. 64, PageID 6247. In other words, Ndukwe thought it "was very clear that if I donated, he was going to support and be supportive in my efforts, and if I didn't, he wasn't going to be supportive." *Id.* Sittenfeld, however, claimed that he was explaining, "I'm only going to be around here if I'm successful in this race." R. 269, Trial Tr. Day 10, p. 110, PageID 6746. Due to term limits, Sittenfeld was in his last city council term, so to continue "advanc[ing] projects that were good for the city" he had to become mayor. *Id.*

After reviewing that call, the FBI instructed Ndukwe to talk with Sittenfeld again and "make a very clear and obvious offer of money in exchange for votes by Mr. Sittenfeld on 435 Elm." R. 263, Trial Tr. Day 3, p. 55, PageID 5700. Ndukwe followed that advice in a third call on November 2, 2018. Ndukwe told Sittenfeld that the November 6 deadline would impact the donations he could solicit, but he could provide "close to twenty thousand" in "the next couple of weeks." R. 312, Appeal Exs., p. 13, PageID 7556. Ndukwe then asked Sittenfeld to agree to a quid pro quo:

> Ndukwe: … so and then for, for, and then for this meeting with Rob next week, I'm pretty sure he can get you ten this week. You know the biggest thing is, you know, if we do the ten, I mean, they're gonna want to know that when it comes time to vote on 435 Elm, like whenever that, I don't know if it's next year, two years, three years, that *it's gonna be a yes vote, you know, without, without a doubt*. I've shared that with them, that hey [I've] known PG for years, all this stuff, but they're like all right we'll get his attention.
>
> Sittenfeld: I mean, obv-, as you know, obviously nothing can be illegal like … illegally *nothing can be a quid, quid quo pro* [sic]. And I know that's not what you're saying either. But what I …
>
> Ndukwe: Yeah.
>
> Sittenfeld: … can say is that I'm always super pro-development and revitalization of especially our urban core.
>
> Ndukwe: Okay, no, I hear ya. I hear ya. And so they're, he'll probably come out—
>
> Sittenfeld: And we can, we, we, we can discuss that more in person.
>
> Ndukwe: Okay, okay. My guy, perfect, perfect.
>
> Sittenfeld: But I'm not, I'm not sure, I'm not they're, I, in seven years I have voted in favor of every single development deal that's ever been put in front of me so.

Id. at 13–14, PageID 7556–57 (ellipses in original) (emphasis added).

At trial, Sittenfeld described this conversation as surprising, because he "had never once known [Ndukwe] to do something" that "sounded untoward or unethical." R. 269, Trial Tr. Day 10, p. 111, PageID 6747. After Sittenfeld expressed his confidence that Ndukwe did not mean to propose a quid pro quo and Ndukwe agreed, Sittenfeld "thought that put the issue to bed." *Id.* at 112, PageID 6748. Sittenfeld also claimed he thought Ndukwe "was probably misrepresenting" Rob. *Id.* Regardless, Ndukwe testified that he still thought that Sittenfeld's "true intentions" involved bribery. *See* R. 266, Trial Tr. Day 6, p. 106, PageID 6289.

On November 7, 2018, Sittenfeld met with Rob and Ndukwe at Nada, a Cincinnati restaurant. There, Rob spoke about the investment group he represented. Ndukwe talked about his plans for 435 Elm and his idea of getting it from the city for a dollar or "a minimal amount." R. 312, Appeal Exs., pp. 21–23, PageID 7564–66. Sittenfeld said he could "certainly shepherd the votes" and "promise the votes." *Id.* at 24, 30, PageID 7567, 7573. Sittenfeld described the project as "a strategic development," given that it was across the street from the convention center and "easy to support." *Id.* at 27, 30, PageID 7570, 7573.

Later, still at Nada, Sittenfeld transitioned to fundraising. He noted that Rob would be "making good bets and good investments" by supporting him. *Id.* at 35, PageID 7578. Sittenfeld showed Rob three slides on his laptop, illustrating his broad support in Cincinnati. And Sittenfeld claimed that successful developers and business leaders had "already placed their bet with [him]," so "if anyone d[id] that going

forward, they're in good company." *Id.* at 37, PageID 7580.

After hearing Sittenfeld's pitch, Rob transitioned back to 435 Elm and explained that "we wanna try to set 435 up being veto-proof you know." *Id.* at 38, PageID 7581. Sittenfeld responded that he could "move more votes than any single other person," even the mayor, but he did not think the mayor would oppose the deal. *Id.* at 38–39, PageID 7581–82.

Sittenfeld and Rob then headed to Rob's nearby apartment. Rob explained that his investors liked to donate anonymously and so tried to set up a bribe:

> UC Rob: So [Chin] doesn't want his name on anything.
>
> Sittenfeld: Right.
>
> UC Rob: Um you know we usually try to figure out a creative way to do something.
>
> Sittenfeld: Right, understood.
>
> UC Rob: Um, but at the same time, like we want to help, we want to make sure, we want to really get this thing, [Mayor] Cranley, I would feel comfortable tellin' my guys like hey we're we're in …
>
> Sittenfeld: Right.
>
> UC Rob: … this deal with Chin [Ndukwe] if I know we're Cranley-proof.
>
> Sittenfeld: Yeah.
>
> UC Rob: Um and so with that like Chin told me like hey you know I want to try to get uh P.G. 20,000 …
>
> Sittenfeld: Right.

> UC Rob: … and I'm like, hey man I I'm I'm if if if we can get this deal done, like fuckin' let's do it.
>
> Sittenfeld: Yeah.
>
> UC Rob: You know and so.
>
> Sittenfeld: Do you guys …
>
> UC Rob: What is the best way, what's the best way for us to get that to you, to get that deal? You know what I mean, like …
>
> Sittenfeld: Yeah yeah yeah. I'm just, do you guys know that he's gonna try and veto it?

Id. at 44, PageID 7587 (ellipses in original). Rob said Cranley was fine with the project so long as Ndukwe was not the face of it. Sittenfeld replied, "Honestly … I can sit here and say I can deliver the votes." *Id.* at 45, PageID 7588. He said, "I can get it done." *Id.*

Rob then jumped back to money. He said he had $10,000 cash on him and it would be easiest to just give it to Sittenfeld. So the two talked about the best way for Sittenfeld to accept the donation. At one point, Sittenfeld asked, "[W]hose name can stuff be in?" *Id.* at p. 46, PageID 7589. Rob said, "[W]e can come up with some names." *Id.* Later, Sittenfeld talked about the "technicality" of attributing a donation to an individual and having that person "agree that that's where it came from." *Id.* at 47, PageID 7590.[2] Sittenfeld did not want to "send up signals," so he got advice from his political consultant who was helping

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[2] Despite those cavalier statements, Sittenfeld testified at trial that he would expect fundraisers and donors to tell the truth about the actual source of a donation.

him with fundraising at the time. *Id.* at 48–49, PageID 7591–92.

In the end, Sittenfeld decided not to take the cash. Instead, he and Rob arranged to transfer the funds through money orders. Sittenfeld explained that he did not want to "cause a headache" and preferred "to proceed" in this way "out of an abundance of caution." *Id.* at 50, PageID 7593. Rob offered to mail the money orders to Ndukwe instead of directly to Sittenfeld. At the end of their meeting Rob said, "If you can pull those votes together that's awesome," and Sittenfeld responded, "Yeah … we definitely can." *Id.* at 53, PageID 7596.

But Sittenfeld changed his mind. On November 21, 2018, Sittenfeld told Rob he could not take the donation through money orders. As an alternative, Sittenfeld proposed that Rob give to his political action committee (PAC) since "no one [wa]s going to be poking around … to find your names on it." *Id.* at 55, PageID 7598.[3]

Sittenfeld, Rob, and Brian met a week later. Sittenfeld asked about 435 Elm and expressed his readiness "to shepherd the votes as soon as it gets to us at Council." *Id.* at 59, PageID 7602. The FBI agents gave Sittenfeld two checks worth $5,000, payable to the PAC. Sittenfeld assured Rob that Sittenfeld's "name [wa]s not connected to [the PAC] in any way" and that "[n]o one w[ould] ever know [about] this." *Id.* at 60, PageID 7603. But on December 3, 2018, Sittenfeld spoke with Rob on the phone and alerted

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[3] Sittenfeld mainly used the PAC to donate to candidates and organizations that he believed in.

him to the fact that the PAC couldn't accept the checks he'd sent because they were from corporations. The PAC could only accept checks from LLCs.

Money finally changed hands when Sittenfeld met with Rob and Brian on December 17, 2018. Rob gave Sittenfeld four checks in total worth $20,000. Each was from a different LLC. Those checks were later deposited into Sittenfeld's PAC. At the same meeting, Sittenfeld again talked about 435 Elm. He expressed confidence that it would "happen" and emphasized his influence: "[D]on't let these be my famous last words, but, um, I can always get a vote to my left or a vote to my right." *Id.* at 70, PageID 7613. That same day Sittenfeld left a voicemail message for Ndukwe; he was "looking forward to doing what [he could] to help get 435 across the finish line, so never hesitate to reach out." R. 263, Trial Tr. Day 3, p. 135, PageID 5780.

Sittenfeld, Rob, and Brian stayed in touch during 2019 and talked about 435 Elm several more times.[4] Sittenfeld continued to accept more money from Rob. To justify his engagement with Rob and Brian, Sittenfeld said at trial that he engaged with people "from all walks of life." R. 269, Trial Tr. Day 10, p. 121, PageID 6757. He saw Brian and Rob as "backing something that was good for the city," and he trusted Ndukwe. *Id.*

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[4] Sittenfeld's 2019 meetings were relevant to other charges against him, but we do not describe them in detail here because his convictions were based on the 2018 quid pro quo.

B.

In November 2020, a grand jury indicted Sittenfeld on six counts. Counts 1 and 2 charged honest-services wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346. Counts 3 and 5 alleged bribery concerning a program receiving federal funds, in violation of 18 U.S.C. § 666. And counts 4 and 6 charged attempted Hobbs Act extortion, in violation of 18 U.S.C. § 1951. Each charge was tied to a date range, with counts 3 and 4 limited to activities between "about September 21, 2018, and December 17, 2018."[5]

Count 3 of the indictment charged Sittenfeld with obtaining money from Rob: "[T]o wit, the defendant … corruptly solicited and demanded, and accepted and agreed to accept, payments to PAC for his benefit from UCE-1 …." R. 3, Indictment, pp. 16–17, PageID 41–42. Count 4 had similar language: "[T]o wit, the defendant … solicited, obtained, agreed to accept, accepted, and received payments to PAC from UCE-1 …." *Id.* at p. 17, PageID 42. The parties agree that UCE-1 was Rob. Counts 3 and 4 incorporated by reference Sittenfeld's calls with Ndukwe on October 26, October 30, and November 2, 2018.

The case went to trial in June 2022. Over the next two weeks, the government played audio and video recordings alongside testimony from Rob, Brian, Ndukwe, Sittenfeld, and other witnesses. For each

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[5] Counts 1 and 2 concerned conduct between about September 21, 2018, and February 4, 2020, and specific phone calls on November 21, 2018, and September 25, 2019. And counts 5 and 6 concerned conduct between about July 8, 2019, and February 5, 2020. The jury instructions repeated these date ranges.

count, the jury was told that the government had to prove an explicit (but not express) quid pro quo.

For the federal-program bribery counts, the instruction required the jury to find "that Mr. Sittenfeld solicited, demanded, accepted, or agreed to accept a thing of value from another person." R. 251, Trial Tr. Day 11, pp. 34, 51–52, PageID 4974, 4991–92. And the Hobbs Act instruction required the jury to find "that Mr. Sittenfeld obtained, accepted, agreed to accept, or received property that he was not lawfully entitled to from another person with that person's consent." *Id.* at 38, PageID 4978.

On July 8, 2022, the jury returned a mixed verdict. It convicted Sittenfeld of counts 3 and 4 but acquitted him of the remaining charges. Sittenfeld moved for a judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure and for a new trial under Rule 33. On the motion for judgment of acquittal, he claimed the government had not proven the existence of a "quid pro quo," or an "agreed-upon official act," and that the two statutes under which he was convicted were unconstitutional. R. 283, Op. & Order, pp. 2–3, PageID 7137–38. The court denied each claim.

The court also denied Sittenfeld's motion for a new trial. He argued that the verdict was against the manifest weight of the evidence, that the government constructively amended his indictment, and that the district judge had issued erroneous jury instructions. The court again rejected each claim. This was the first time Sittenfeld had argued that the government exceeded the scope of the indictment. It was also the first time Sittenfeld argued that the jury instructions were erroneous because they suggested counts 3 and 4

could rest on a solicitation of "another person," not just Rob, as the indictment required.

Ultimately, the district court sentenced Sittenfeld to sixteen months' imprisonment.[6] He timely appealed. Now he makes two arguments. First, he claims the government did not present sufficient evidence for the jury to find an explicit quid pro quo. Second, he argues that the government constructively amended the indictment. We address each in turn.

II.

We evaluate sufficiency claims de novo, asking "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Emmons*, 8 F.4th 454, 477–78 (6th Cir. 2021) (internal quotation marks omitted). The evidence "need not remove every reasonable hypothesis except that of guilt." *United States v. Sadler*, 24 F.4th 515, 539 (6th Cir. 2022) (internal quotation marks omitted). And this court may not "reevaluate the credibility of witnesses." *Id.* (internal quotation marks omitted).

A.

Two Supreme Court cases guide our understanding of what the government must prove to show Hobbs Act extortion and federal-program bribery in the campaign-contribution context: *McCormick v. United States*, 500 U.S. 257 (1991), and *Evans v. United States*, 504 U.S. 255 (1992). Combined with controlling precedent from our circuit, it's clear that the

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[6] We granted Sittenfeld release pending appeal on May 15, 2024, after he had begun serving his sentence.

government must show that an elected official received campaign donations "in return for an explicit promise or undertaking." *McCormick*, 500 U.S. at 273 (Hobbs Act); *United States v. Inman*, 39 F.4th 357, 365 (6th Cir. 2022) (federal-program bribery). That is, we ask whether the government presented sufficient evidence to show an *explicit* quid pro quo. Resolving that query turns on the form of the government's evidence.

First, *McCormick* explained that proof of a quid pro quo was a prerequisite to a conviction for extortion under the Hobbs Act. In the early 1980s, a member of the West Virginia House of Delegates was convicted for violating the Hobbs Act. He had accepted cash payments, which he claimed were campaign contributions, in exchange for sponsoring legislation. 500 U.S. at 259–60, 268. The court of appeals affirmed his conviction by distinguishing between legal and illegal campaign contributions. Importantly, the appellate court concluded that a contribution could violate the law even without an explicit quid pro quo, so long as they "were never intended to be *legitimate* campaign contributions." *Id.* at 271 (internal quotation marks omitted).

The Supreme Court reversed. It started by acknowledging the practical realities of campaigning: a legislator must finance his race while also engaging in the "everyday business of a legislator," like supporting legislation and serving his constituents. *Id.* at 272. "Money is constantly being solicited on behalf of candidates, who run on platforms and who claim support on the basis of their views and what they intend to do or have done." *Id.* Given this close relationship between campaign promises and

financing campaigns, the Court made clear that legislators do not commit extortion merely by "act[ing] for the benefit of [their] constituents" shortly before or after soliciting or receiving campaign contributions. *Id.*

But the Court was unwilling to say that it was "impossible for an elected official to commit extortion in the course of financing" his election. *Id.* at 273. Instead, he can commit extortion "under color of official right, but *only if*" he receives payments in exchange for an "*explicit* promise or undertaking" to "perform or not to perform an official act." *Id.* (emphasis added). In such a case, the official effectively asserts that "his official conduct *will be controlled by* the terms of the promise or undertaking." *Id.* (emphasis added). Thus "proof of a *quid pro quo* [is] essential" to a conviction. *Id.* (internal quotation marks omitted).

The Supreme Court clarified *McCormick* the next year in *Evans*. 504 U.S. 255. At issue were alleged bribes paid to a member of the Board of Commissioners of DeKalb County, Georgia, in exchange for favorable zoning policies. An FBI agent, posing as a real estate developer, sought the commissioner's help in rezoning a 25-acre tract of land for high-density residential use. *Id.* at 257. At a meeting, the FBI agent handed the commissioner $7,000 in cash and a check for $1,000 payable to his campaign—though there was no evidence that the commissioner had initiated the transaction. The commissioner reported the check on his campaign-finance disclosure forms but not the cash. For these actions, a jury convicted him of violating the Hobbs Act. *Id.*

Evans directly answered whether "passive acceptance" of a benefit—rather than an affirmative step toward fulfillment of the quid pro quo—sufficed for a Hobbs Act extortion conviction. *Id.* at 266–67. The Court answered yes for someone acting "under color of official right," at least where there was evidence that the official knew that the payment was in exchange for some official action. *Id.* at 261, 265.

Importantly, we have understood *Evans* to clarify that *McCormick*'s quid pro quo is "satisfied by something short of a formalized and thoroughly articulated contractual arrangement," so "merely knowing the payment was made in return for official acts is enough." *United States v. Blandford*, 33 F.3d 685, 696 (6th Cir. 1994). This clarification "gave content to what the *McCormick quid pro quo* entails." *Id.*

To synthesize *Evans* and *McCormick*, *Blandford* relied on Justice Kennedy's *Evans* concurrence. He provided a crucial fifth vote and reiterated that the quid pro quo was an "essential element of the offense." *Evans*, 504 U.S. at 275 (Kennedy, J., concurring in part and concurring in the judgment). But the form of the quid pro quo is not dispositive. The official need only "intend[ ] the payor to believe that absent payment the official is likely … to give the prospective payor less favorable treatment if the *quid pro quo* is not satisfied." *Id.* at 274. Thus "the official and the payor need not state the *quid pro quo* in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods." *Id.* Instead, the "inducement from the official is criminal if it is express or it is implied from his words and actions, so long as

he intends it to be so and the payor so interprets it." *Id.*

We interpreted Justice Kennedy's concurrence as a "gloss on the *McCormick* Court's use of the word 'explicit' to qualify [the] *quid pro quo* requirement." *Blandford*, 33 F.3d at 696. Explicit "speaks not to the form of the agreement," but to the "degree to which the payor and payee were aware of its terms." *Id.* Thus, we read *Evans* to mean that "by 'explicit' *McCormick* did not mean 'express,' " *id.*, and therefore we do not require unambiguous evidence, so long as the jury can infer the content of the quid pro quo. *See United States v. Terry*, 707 F.3d 607, 612–13 (6th Cir. 2013) ("[T]he question is one of inferences taken from what the participants say, mean and do, all matters that juries are fully equipped to assess."). It's for this reason that " '[m]otives and consequences, not formalities,' are the keys for determining whether a public official entered an agreement to accept a bribe." *Id.* at 613 (quoting *Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment)). It's also for this reason that circumstantial evidence can prove a quid pro quo. Illegal inducement can be "implied from [an official's] words and actions." *Blandford*, 33 F.3d at 696 (quoting *Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment)); *see also United States v. Benjamin*, 95 F.4th 60, 68–69 (2d Cir. 2024) (collecting cases holding that a quid pro quo can be implied). So it is enough "if the public official understood that he or she was expected to exercise some influence on the payor's behalf as opportunities arose." *Terry*, 707 F.3d at 612 (internal quotation marks omitted). In other words, there must

be a meeting of the minds and specific, agreed-upon terms that could be reduced to writing.

But the government need not prove that the parties ever spoke about or wrote down those terms. "What is needed is an agreement, full stop, which can be formal or informal, written or oral." *Id.* at 613. To be sure, like an ordinary contract, there must be an exchange—payment "in return for an explicit promise." *McCormick*, 500 U.S. at 273. The bribe payor must give a gift to obtain the promise, and the bribe recipient must make the promise to obtain that gift. But a corrupt quid pro quo requires more. For a donation to become a bribe, the parties must understand that "official conduct will be controlled by" the bribe. *Id.*; *Terry*, 707 F.3d at 613 ("On the other hand, if a donor … makes a contribution so that an elected official will 'do what I asked him to do,' and the official … accepts the payment with the same understanding, the donor and the official have formed a corrupt bargain." (citation omitted)).

As with any contract, the public official must bind himself with some additional promise that the gift has induced. And as with any contract, that means the public official must receive some consideration for his promise. *See* Oliver Wendell Holmes, *The Common Law* 293–94 (1881); *Terry*, 707 F.3d at 612 (quoting *McCormick*, 500 U.S. at 273). That consideration may simply be "because of this gift I will now be sure to keep my campaign-trail promise." But if the donor delivers a gift not expecting the public official to "alter his position in any way," then consideration is lacking. *See* Holmes, *supra*, at 294. A donor who walks away with vague hopes has not paid a bribe, even if those hopes later come to fruition. *Terry*, 707 F.3d at 613.

Thus, state of mind is at the heart of the inquiry and we rely on objective manifestations of intent to show a defendant's subjective mindset. Restatement (2d) of Contracts § 71 cmt. b; *see also Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment). This means first, undercover agents can enter into bribery agreements even if they disguise their true motives, and second, a quid pro quo may exist even if the official does not uphold his end of the bargain. *United States v. Carmichael*, 232 F.3d 510, 520 (6th Cir. 2000); *see also Terry*, 707 F.3d at 613. It is bribery to knowingly accept a bribe even if the official does not intend to be influenced by the bribe in any official act despite the claimed promise to the contrary. *See United States v. Abbey*, 560 F.3d 513, 517–19 (6th Cir. 2009), *abrogated on other grounds by Snyder*, 144 S. Ct. 1947. So Sittenfeld ended up in a kind of Truman Show, accepting bogus bribes from pretend investors to aid a speculative development. But a jury could still convict him if he played along. *See Evans*, 504 U.S. at 268 ("[T]he offense is complete[ ] at the time when the public official receives a payment in return for his agreement to perform specific official acts….").

B.

Sittenfeld attempts to recast *McCormick* and *Evans* to require explicit evidence of an agreement and unambiguous evidence of the quid pro quo. According to Sittenfeld, the evidence is insufficient as a matter of law if it is susceptible to a "legitimate explanation"; holding otherwise would conflict with "the *entire point*" behind *McCormick*. Appellant Br. at 18. He doesn't believe a jury can handle the responsibility of

deciphering the "common sense" understanding of a remark's "implication." *Id.* at 18, 28.

But Sittenfeld's view of *McCormick* is too limited. Campaign contributions will almost always have an inherent "legitimate alternative explanation." *Terry*, 707 F.3d at 613. As the Supreme Court has already recognized,

> to hold that legislators commit … extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents … is an unrealistic assessment of what Congress could have meant by making it a crime to obtain property from another … "under color of official right."

McCormick, 500 U.S. at 272 (quoting 18 U.S.C. § 1951(b)(2)). This is also why "matters of intent are for the jury to consider." *Inman*, 39 F.4th at 365 (quoting *McCormick*, 500 U.S. at 270). And we have held that the factfinder can parse words and actions to discern the intent behind them, even with respect to campaign contributions. *Terry*, 707 F.3d at 613. The Supreme Court has held the same. *See, e.g.*, *McCormick*, 500 U.S. at 270 ("It goes without saying that matters of intent are for the jury to consider." (quoting *Cheek v. United States*, 498 U.S. 192, 203 (1991))); *see also Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment) ("[T]he trier of fact is quite capable of deciding the intent with which words were spoken or actions taken as well as the reasonable construction given to them by the official and the payor."). We may not deviate now. Contrary to Sittenfeld's arguments, after *McCormick*, the general rule remains unchanged: the

government's evidence need not rule out all reasonable, alternative hypotheses to guilt. *Sadler*, 24 F.4th at 539.

And explicit evidence is also not a requirement. "Explicit" relates to the quid pro quo, not the evidence. Granted, "explicit" means "[n]ot obscure or ambiguous, having no disguised meaning or reservation. *Clear in understanding*." *Blandford*, 33 F.3d at 696 n.13 (quoting Black's Law Dictionary 579 (6th ed. 1990) (alteration in original)). This means that the government must prove a meeting of the minds between the parties and that the agreement must be unambiguous from their perspective. But the *existence* of that agreement is governed by the reasonable doubt standard and can be proved with circumstantial evidence.[7]

Sittenfeld's attempts to recast *McCormick* and *Evans* also have no foundation in the law. One of Sittenfeld's own citations confirms the point. He relies on *United States v. Benjamin*—a district court

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[7] Sittenfeld and the amici invoke the First Amendment and Due Process Clause. But Sittenfeld frames constitutional concerns as justifying the *McCormick* standard, not as making any statute unconstitutional. And the *McCormick* standard, as interpreted by the Sixth Circuit and others, permits the jury to infer a quid pro quo from circumstantial and less-than-conclusive evidence.

The district judge acknowledged this important boundary between bribery and protected First Amendment activity. He expressly charged the jury to distinguish payments which would qualify as bribery (those made as "part of an explicit promise or understanding by the public official") and those protected by the First Amendment ("contributions to public officials, or to PACs with which a public official is associated"). R. 251, Trial Tr. Day 11, pp. 43–44, PageID 4983–84.

opinion—as a "prime example" where the government lacked sufficient evidence because the connection between the quid and the quo "must be shown by something more than mere implication." No. 21-CR-706, 2022 WL 17417038, at *12 (S.D.N.Y. Dec. 5, 2022). But the Second Circuit reversed. *Benjamin*, 95 F.4th at 64. The panel held that a quid pro quo can be *implied*, relying on our decision in *Terry* and other circuits holding the same. *Id.* at 68–69 (citing *Terry*, 707 F.3d at 613). So we apply *McCormick* and *Evans* as they stand: unambiguous evidence is not required, circumstantial evidence can prove an agreement, and though an explicit agreement must be present, it need not be express.[8]

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[8] As we see it, one way to understand whether the explicit quid pro quo requirement has been satisfied is to ask what the proposed arrangement is, describing the terms that both parties would have understood as binding, in plain English. And we can. Based on the circumstantial evidence, there are two possible agreements in this case. The first option, arising out of the October 30, 2018 conversation, is straightforward: "If you give me campaign donations, I will support your projects" or "If you don't give me campaign donations, I won't support your projects." The second, based on Sittenfeld's interactions with Rob, is just as clear: "If you give me $20,000 in campaign donations, I will deliver a veto-proof majority for your project." There's nothing ambiguous about these proposed agreements.

That a jury can infer the existence of these agreements even if the evidence falls short of a smoking gun or an express statement is not unusual in our criminal justice system. Juries retain "broad discretion" to draw inferences from the evidence at trial. *United States v. Cox*, 871 F.3d 479, 490 (6th Cir. 2017) (quoting *Coleman v. Johnson*, 566 U.S. 650, 655 (2012) (per curiam)). The dissent's proposed standard—although perhaps wise, or even one we might adopt if we were writing on a blank slate—is simply the heightened standard that we have already rejected.

C.

We hold that the evidence construed in the government's favor was enough to convict Sittenfeld of federal-program bribery and attempted Hobbs Act extortion. Two conversations, in context, support the jury's verdict on both counts.

First, Sittenfeld arguably solicited a bribe on October 30, 2018, when he said, "[Y]ou don't want me to like be like 'hey Chin like love you but can't.' " R. 312, Appeal Exs., pp. 8–9, PageID 7551–52. Sittenfeld may have had an innocent explanation for that conversation—but the jury could reject it if it found Ndukwe's explanation more persuasive. "[L]ove you but can't" could have reasonably implied, as Ndukwe testified, that Sittenfeld would advocate for Ndukwe's development projects only if he rounded up campaign donations. Seen in that light, Sittenfeld offered a corrupt bargain, and Ndukwe accepted. Ndukwe's response to the solicitation was "trust me … we'll make something happen sooner than later too." *Id.* at 9, PageID 7552. And at the end of the call Sittenfeld said, "And then you're gonna deliver the goods before next Tuesday," and Ndukwe agreed: "All right, let me go to work on that." *Id.* at 10, PageID 7553.

We must apply the law as it exists. For the same reason, whether we ought to require more of the government given the First Amendment interests and the realities of our political system is a question for the Supreme Court. At this point, *McCormick* and *Evans* are nearly 35 years old and it may be time for the Court to revisit or refine the doctrine. But for now "[a]s an intermediary appellate court, we must follow Supreme Court decisions until directed otherwise." *Witham v. United States*, 97 F.4th 1027, 1035 (6th Cir. 2024).

A reasonable juror perhaps could have seen this conversation as sufficient to convict on its own—at least with respect to count 3, which required only proof of solicitation. Even if they didn't reach a bargain, Sittenfeld plainly asked for money and implied that negative consequences could result if Ndukwe didn't come through for him. Viewing this call in the light most favorable to the government, Sittenfeld was threatening to use his office against Ndukwe.

But we need not decide whether the call alone sufficed because this evidence doesn't stand alone. The government had even stronger evidence to support the convictions for both counts 3 and 4. It argues that Sittenfeld agreed to accept donations on November 7, 2018, when he knew that Rob was offering him a bribe. Rob said that Ndukwe wanted "to get [Sittenfeld $]20,000" and Rob had agreed—"if we can get this deal done, like fuckin' let's do it." *Id.* at p. 44, PageID 7587. Rob then asked explicitly, "[W]hat's the best way for us to get that to you, to get that deal? You know what I mean." *Id.* Sittenfeld didn't answer the question—saying only "[y]eah yeah yeah." *Id.* Instead, Sittenfeld pivoted to ask whether Mayor Cranley would veto the 435 Elm project. He claims that he "missed the corrupt pitch." Appellant Br. at 31.[9] But the jury could have concluded otherwise. Video damningly shows Sittenfeld nodding along as he listened to Rob, and he responded to Rob's question "[y]eah yeah yeah." R.

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[9] Sittenfeld argues that Rob's trial testimony confirms this explanation. Rob simply acknowledged that he did not use the precise words "quid pro quo" and that Sittenfeld asked about the mayor vetoing the development deal. *See* R. 265, Trial Tr. Day 5, p. 230, PageID 6157. Rob's testimony does little to clarify Sittenfeld's state of mind.

312, Appeal Exs., p. 44, PageID 7587. Nor did Sittenfeld dodge Rob's question about the "best way" to "get that deal." A little later in the conversation, Sittenfeld assured Rob, "I can sit here and say I can deliver the votes." *Id.* at 45, PageID 7588. And he reiterated: "I can get it done." *Id.* Rob responded, "Okay" and explained that he had "brought 10,000 cash with [him]." *Id.* And then the two talked at length about how Sittenfeld could accept the donation.

When we look at the surrounding circumstantial evidence, three more points lead us to conclude that a jury could have reasonably believed that Sittenfeld understood Rob's intentions for a quid pro quo and still agreed to accept the money. First, construed in the government's favor, Sittenfeld's earlier conversations with Ndukwe laid important groundwork and offered significant context for Sittenfeld's later interactions with Rob. Second, Sittenfeld obsessed over the form of Rob's donation yet demonstrated none of the same concern for its substance. And finally, Rob and Sittenfeld worked hard to keep the donations secret.

Start first with the groundwork Ndukwe laid with Sittenfeld in their phone calls. On October 30, Sittenfeld arguably agreed to accept a bribe. Then on November 2, Ndukwe presented Rob as someone who wanted to trade money for a "yes vote" on 435 Elm. Sittenfeld understood that Ndukwe's words, at least at face value, asked for a quid pro quo. So Sittenfeld had reason to believe that at the November 7 meeting, Rob might bribe him—a bribe Sittenfeld later worked hard to, and did, accept.

This context also helps explain why Sittenfeld could promise support for 435 Elm before making his

fundraising pitch. Based on the October 30 call, Sittenfeld knew that Ndukwe would pay him a bribe. And based on the November 2 call, he knew that Rob would provide the funds. A reasonable jury could conclude that "reciprocity was understood" when he promised to shepherd votes for 435 Elm. *See United States v. Inzunza*, 638 F.3d 1006, 1015–16 (9th Cir. 2011).

And during the November 7 meeting, Sittenfeld and Rob showed apparent disregard for the true source of the donations. Sittenfeld asked, "[W]hose name can stuff be in?" and Rob replied, "[W]e can come up with some names." R. 312, Appeal Exs., p. 46, PageID 7589. Later, Sittenfeld talked about the "technicality" of attributing a donation to an individual and having that person "agree that that's where it came from." *Id.* at 47, PageID 7590. At the same time, Sittenfeld wanted to avoid "signals" of impropriety. *See id.* at 48, PageID 7591. And though he insisted that donations take the correct form, he did not care whether Rob used straw donors.

And finally, Rob and Sittenfeld wanted to keep the donation secret. Rob made it clear that in general Ndukwe did not "want his name on anything." *Id.* at 44, PageID 7587. Rob wanted to avoid mailing money orders directly to Sittenfeld. And Sittenfeld later assured Rob and Brian that "[n]o one w[ould] ever know" about their PAC donation. *Id.* at 60, PageID 7603. Legal efforts to hide the source of a campaign donation represent fairly weak evidence alone, but they offer some probative value as to the participant's intent. Criminals "rarely seek to perpetrate felonies before larger-than-necessary audiences." *United States v. Correia*, 55 F.4th 12, 32 (1st Cir. 2022)

(quoting *United States v. Patch*, 9 F.4th 43, 47 (1st Cir. 2021)).

The three cases Sittenfeld cites also do not persuade us. We can distinguish two on their facts. In *United States v. Menendez*, the best evidence for a quid pro quo was mere closeness in time between a contribution and an official action. 291 F. Supp. 3d 606, 629–32 (D. N.J. 2018). And in *Inzunza*, there was no evidence about the contents of a meeting between a public official and political donor, so it was unclear what the public official knew about the donor's expectations of the official. 638 F.3d at 1025–26. Here, by contrast, a reasonable jury could interpret the video evidence and recordings as showing that Sittenfeld asked Ndukwe for a bribe and he heard both Ndukwe and Rob use language that strongly suggested bribery. And as we've explained, the district court's decision in *Benjamin* is not an accurate description of prevailing law. 95 F.4th at 74– 75.

Based on all the evidence, a reasonable juror could conclude that Sittenfeld understood exactly what Rob was offering and agreed to accept a bribe on November 7. Even if some juries might disagree, that does not change the fact that Sittenfeld's conviction was not unreasonable. So Sittenfeld's sufficiency-of-the-evidence claim fails.

III.

Sittenfeld also alleges his indictment was constructively amended. He argues that given the trial evidence, jury instructions, and closing arguments, the jury could have convicted him on both counts 3 and 4 based solely on the October 30, 2018, call with Ndukwe. But because both counts specify the bribe

came from *Rob*, not "another person" (like Ndukwe) as the jury instructions allowed, Sittenfeld argues reliance on this call was impermissible. The government counters that the October 30 call was featured in the indictment within the overall charged bribery scheme and therefore poses no constructive-amendment problem. Since Sittenfeld failed to timely object, the government also maintains that we should review for plain error. Although we agree that the jury instructions, standing alone, were problematic, Sittenfeld must show more to establish a constructive amendment, which he hasn't done.

A.

The Fifth Amendment ensures that "[n]o person shall be held to answer for a … crime, unless on a presentment or indictment of a Grand Jury." U.S. Const. amend V. So a defendant has a right to be "heard on the specific charges of which he is accused" in the indictment. *Dunn v. United States*, 442 U.S. 100, 106 (1979). Inherent in this constitutional protection is a limitation that only the grand jury that first issued an indictment can later amend it. *Stirone v. United States*, 361 U.S. 212, 215–16 (1960) ("[A]fter an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself."). Any change to the indictment outside of this process implicates other, related constitutional concerns—the defendant's Fifth Amendment protection from double jeopardy and Sixth Amendment right to notice of the charges against him. 1 Wharton's Crim. Proc., Constructive Amend. § 5:17, Westlaw (14th ed., database updated June 2023).

Whether an indictment has been amended is a flexible inquiry dependent upon how an alteration arises: actual amendment, constructive amendment, or variance. Actual amendments arise when the prosecutor "actually changes the text of the indictment." *United States v. Budd*, 496 F.3d 517, 521 (6th Cir. 2007). By contrast, if the indictment remains literally unchanged but "the evidence at trial proves facts materially different from those alleged in the indictment," a variance occurs. *Id.* (quoting *United States v. Prince*, 214 F.3d 740, 756 (6th Cir. 2000)). A variance, however, is reversible only if the defendant can show his substantial rights were prejudiced by it. *Id.*

More complicated are constructive amendments. Here the indictment remains unchanged, but the terms of the indictment are "in effect altered" because events at trial raise a "substantial likelihood that the defendant may have been convicted of an offense other than the one charged in the indictment." *Id.* (quoting *United States v. Smith*, 320 F.3d 647, 656 (6th Cir. 2003)). The typical case arises because of the combined effect of the "presentation of evidence and jury instructions." *Id.*; *see also Stirone*, 361 U.S. 212; *United States v. Cusmano*, 659 F.2d 714, 717–19 (6th Cir. 1981).

But we have also recognized the possibility of a constructive amendment "where jury instructions differ from an indictment, even in the absence of varied evidence," such that the effect was to charge the jury on a "separate offense that was not listed in [the] indictment." *United States v. Kuehne*, 547 F.3d 667, 685 (6th Cir. 2008) (citing *United States v. Combs*, 369 F.3d 925 (6th Cir. 2004)). When the jury instructions

alone differ from the indictment to charge a different *means* for committing the same crime, "a mere variance occurs and a defendant must demonstrate prejudice." *Id.*[10]

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[10] Our cases regularly describe the overarching question for whether a constructive amendment happened as whether the jury could have convicted the defendant of a separate "offense." *United States v. Smith*, 320 F.3d 647, 656 (6th Cir. 2003); *United States v. Budd*, 496 F.3d 517, 521 (6th Cir. 2007); *United States v. Prince*, 214 F.3d 740, 757 (6th Cir. 2000); *United States v. Kuehne*, 547 F.3d 667, 683 (6th Cir. 2008). But it isn't entirely clear what separate "offense" refers to. It could mean a separate "crime" or it could mean the same "crime" committed with different means.

This imprecision, however, manifests in only some cases. When we have broad jury instructions but no varied evidence, the question is whether the defendant was injured because the jury was charged with another *crime*. As we noted, if the problem with the jury instructions is that they allowed guilt based on different means, the defendant must show prejudice.

But when there is both varied evidence and overly broad jury instructions, that same line doesn't hold. Both *Stirone* and *Cusmano* involved varied evidence and overly broad jury instructions. Both cases contemplated whether the defendant's indictment had been constructively amended. And both cases answer that question "yes." But in neither case was the defendant found guilty of a new "crime" based on the alterations at trial. Instead, both men were found guilty based on a change to the "means" alleged versus the "means" proved at trial.

Take *Stirone*. The indictment charged interference with commerce through the importation of *sand*. But the proof at trial and the instructions charged the jury with the interference through the importation of *steel*. Both seem to involve the "means" of satisfying the same essential element: interference with interstate commerce. Still, the Court explained that the "crucial question" was whether the defendant had been "convicted of an *offense* not charged in the indictment." *Stirone*, 361 U.S. at 213 (emphasis added). And found that it had. *See also*

In sum, the defendant carries a heavy burden to prove a constructive amendment. First, we look at whether the jury instructions broaden the indictment, and if so, we must ask whether the evidence also varied from the indictment. If it did, we have a constructive amendment. But if it didn't, we must ask separately whether those jury instructions were so broad as to have allowed the jury to convict on a different crime—rather than a different means to commit the same crime. That answer, in turn, determines whether the defendant must prove prejudice. With the law clarified, we pivot briefly to determine the appropriate standard of review before addressing the merits of Sittenfeld's case.

B.

We typically review a challenge based on a constructive amendment de novo. *United States v. Hynes*, 467 F.3d 951, 961 (6th Cir. 2006). But when the challenging party fails to timely object before the district court, we review for plain error. *Budd*, 496 F.3d at 528. The government contends that plain error applies here.

A party preserves a claim of error by objecting "when the court ruling or order is made or sought."

United States v. Cusmano, 659 F.2d 714, 719 (6th Cir. 1981) (alleging the essential element of "extortion" through "threats of economic loss" and proving the alternative means at trial through "wrongful use of force and fear").

Thus, the precise difference between "means" and "offense" is not as crucial where there is both varied evidence and overly broad jury instructions. Although this generally helps defendants arguing for constructive amendments, none of this helps Sittenfeld because, as we explain, even under the broadest readings of *Stirone* and *Cusmano*, he doesn't prevail.

Fed. R. Crim. P. 51(b); *see also United States v. Margarita Garcia*, 906 F.3d 1255, 1268–69 (11th Cir. 2018). And the objection must include an indication of the "true basis for his objection." *United States v. Bostic*, 371 F.3d 865, 871 (6th Cir. 2004) (quoting *United States v. LeBlanc*, 612 F.2d 1012, 1014 (6th Cir. 1980)). "A specific objection provides the district court with an opportunity to address the error in the first instance and allows this court to engage in more meaningful review." *Id.*

Although there may be different ways for a defendant to raise a timely, constructive-amendment objection, Sittenfeld's post-trial motion was not enough. Thus, plain-error review applies. As we've discussed, a constructive amendment typically occurs based on a confluence of events. But whether it's the combined effect of varied evidence and broad jury instructions or the jury instructions themselves that allow the jury to convict on an unindicted crime, the constructive amendment is apparent once the parties agree on the appropriate instructions. So, at a minimum, the defendant must raise a constructive-amendment claim at the time the jury instructions are agreed upon and on grounds that they would permit the jury to convict based on a constructively amended indictment.[11]

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[11] It's possible that earlier objections may be appropriate. If the constructive amendment is based on varied evidence, objecting at the time that such evidence is admitted on the grounds that the evidence is irrelevant and might result in a constructive amendment is another time to raise the issue. *See, e.g.*, *Cusmano*, 659 F.2d at 715–16 (objecting to evidence on relevance grounds, which the trial court construed and addressed as presenting a constructive amendment issue); *see also* 3 Charles Alan Wright

Thus, the jury-instruction conference is a point of no return for the parties. By then, the parties and the court know exactly what evidence has been admitted. So the defendant can spell out whether the proposed instructions themselves or their combined effect with the admitted evidence will permit the jury to convict for something not in the indictment. *See, e.g.*, *Cusmano*, 659 F.2d at 717, 717 n.5. For this reason, courts have repeatedly applied plain error when a defendant fails to object to the jury instructions and argues on appeal that his indictment was constructively amended as a result. *See e.g.*, *United States v. Leon*, 841 F.3d 1187, 1190, 1192 (11th Cir. 2016) ("At no time during trial did [the defendant] challenge the government's theory of prosecution or object to the jury instructions given by the district court …. Because [she] did not raise her constructive

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& Arthur R. Miller, Fed. Prac. & Proc. Crim. § 516, Westlaw (5th ed., database updated June 2014) (collecting cases).

A defendant could also bring the problem to the trial court's attention in a motion for acquittal before the case is submitted to the jury. 3 Wright & Miller § 516 (collecting cases). But the "*grounds* for th[e] objection," are especially important here. Fed. R. Crim. P. 51(b) (emphasis added). That the insufficiency rests on an impermissible amendment to the indictment is a substantively different claim from a general sufficiency-of-the-evidence claim.

It's for this reason that, although Sittenfeld made a Rule 29 motion for judgment of acquittal, renewed the motion once the defense rested, and renewed the motion again after the jury returned a guilty verdict, he still did not preserve the constructive-amendment claim. At no point did he suggest that the indictment had been constructively amended. Instead, he repeated the more general theory that the government failed to meet its burden of proof on all six counts.

amendment argument in the district court, our review is for plain error."); *United States v. Brandao*, 539 F.3d 44, 57 (1st Cir. 2008) ("The district court distributed its draft jury instructions to counsel more than a week before the jury was charged and held two conferences on the instructions in the interim, yet [the defendant] did not object …. As an unpreserved objection, [the] constructive amendment claim is subject to plain error review."); *United States v. Remsza*, 77 F.3d 1039, 1043 (7th Cir. 1996) ("[B]ecause [the defendant] objected to neither the evidence nor the jury instruction in question, he waived the objection on appeal. Therefore, we review for plain error." (footnote omitted)).

Here Sittenfeld could have raised his constructive-amendment claim at the time that the instructions were being finalized but didn't—a point he doesn't dispute. Instead, Sittenfeld relies on his objection to the government's proposed instruction for count 3 in a pretrial filing (and that the same objection was understood to apply to count 4). But that objection argued vagueness, not a possible constructive amendment. These are two distinct grounds. If Sittenfeld intended to preserve both, he had an obligation to specify as much before the trial court. *Bostic*, 371 F.3d at 871; R. 98, Prop. Jury Instrs., p. 20, PageID 1043.

The defense also did not raise any objection at the charging conference, which was intended to "allow the parties to make any objections" to the instructions "for the record." R. 272, Trial Tr. Day 9, pp. 2, 7–8, PageID 6931, 6936–37; *United States v. Semrau*, 693 F.3d 510, 527–28 (6th Cir. 2012) (reviewing instructions for plain error when defendant failed to object after "the

court made clear that objections would be 'sought' and its ruling would be 'made,' or after the jury was charged"); *United States v. Blood*, 435 F.3d 612, 625–26 (6th Cir. 2006) (reviewing objection to jury instruction for plain error when defendant failed to renew it despite district court's warning).

That Sittenfeld raised the constructive-amendment question in a post-trial motion does not change our plain-error conclusion. A post-trial motion is too little, too late. *Margarita Garcia*, 906 F.3d at 1268–69 (applying plain error on appeal when defendant raised constructive-amendment claim for the first time when she moved for a new trial); *Brandao*, 539 F.3d at 57 (applying plain error on appeal when defendant "first raised the constructive amendment issue in a post-trial motion, which the district court denied").

Applying plain-error review in these situations encourages contemporaneous objection, which ensures that the trial court has an opportunity to "remediate or cure the errors." *Margarita Garcia*, 906 F.3d at 1269; *Puckett v. United States*, 556 U.S. 129, 134 (2009) ("[Plain error] limit[s] appellate-court authority [and] serves to induce the timely raising of claims and objections, which gives the district court the opportunity to consider and resolve them…. In the case of an actual or invited procedural error, the district court can often correct or avoid the mistake so that it cannot possibly affect the ultimate outcome."); *United States v. Jackson*, 877 F.3d 231, 236 (6th Cir. 2017) ("Where a defendant has failed to preserve [an] objection by first giving the district court the opportunity to address and remedy it, we review only for plain error." (internal quotation marks omitted)). After trial, the district judge was no longer able to

rectify any problem, so the post-trial motion did not preserve the objection.

Sittenfeld's other arguments for de novo review also do not persuade us. It's true we have said that "there can be no forfeiture where the district court nevertheless addressed the merits of the issue." *Cartwright v. United States*, 12 F.4th 572, 580 n.6 (6th Cir. 2021) (quoting *United States v. Clariot*, 655 F.3d 550, 556 (6th Cir. 2011)). But that rule applies when the district judge raises an issue in a ruling that was not previously raised by the parties—not when the court addresses a forfeited argument *after* a criminal trial.[12]

Finally, on count 4 only, the government claims Sittenfeld invited the jury-instruction error that is the crux of his constructive-amendment claim. It's true that we may forgo appellate review if the defendant invites an error based on his proposed instructions. *United States v. Howard*, 947 F.3d 936, 944–45 (6th

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[12] *See, e.g.*, *Heyward v. Cooper*, 88 F.4th 648, 655 (6th Cir. 2023) (motion to dismiss); *Hudak v. Elmcroft of Sagamore Hills*, 58 F.4th 845, 857–58 nn.4–5 (6th Cir. 2023) (motion to remand); *Bledsoe v. Tenn. Valley Auth. Bd. of Dirs.*, 42 F.4th 568, 588 n.4 (6th Cir. 2022) (summary judgment); *Cartwright v. United States*, 12 F.4th 572, 580 n.6 (6th Cir. 2021) (habeas petition); *Owens v. Parris*, 932 F.3d 456, 458 (6th Cir. 2019) (habeas petition); *Raines v. United States*, 898 F.3d 680, 687 (6th Cir. 2018) (habeas petition); *United States v. Clariot*, 655 F.3d 550, 556 (6th Cir. 2011) (suppression motion). *But see United States v. Hofstetter*, 31 F.4th 396, 412 (6th Cir. 2022) (forfeited issue considered by district court in denying motion for acquittal), *cert. granted, judgment vacated on other grounds*, —— U.S. ——, 143 S. Ct. 351 (2022); *Bavelis v. Doukas*, 835 F. App'x 798, 810 n.6 (6th Cir. 2020) (issue raised by district court in reviewing bankruptcy court decision).

Cir. 2020). And according to the government, because Sittenfeld contributed to the alleged constructive-amendment problem by suggesting "another person" instead of Rob's name in the count 4 instructions, appellate review should be entirely foreclosed. We decline this invitation. Even when a defendant invites error, "the interests of justice will typically favor reviewing an argument where the government and the defendant are equally at fault and the defendant claims a violation of his constitutional rights." *United States v. Montgomery*, 998 F.3d 693, 699 (6th Cir. 2021). Because the government *also* proposed using "another person," and the claimed error implicates Sittenfeld's Fifth and Sixth Amendment rights, the interests of justice favor reviewing the claimed error. Yet, as with count 3, our review is deferential because of Sittenfeld's failure to object. *Howard*, 947 F.3d at 945.

The defendant bears the burden of proving whether a constructive amendment or variance has occurred. *Kuehne*, 547 F.3d at 683. And to succeed on plain error, the defendant must show (1) an error, (2) that is plain, (3) that affects substantial rights, and (4) that "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (internal quotation marks omitted). For the error to be "plain," it must be "clear or obvious, rather than subject to reasonable dispute." *Puckett*, 556 U.S. at 135. With this standard in mind, we turn to the merits of Sittenfeld's claim.

C.

To avoid a constructive amendment, Sittenfeld must have been convicted for the specific crimes alleged in

the indictment. The government did not rely on varied evidence in the way *Cusmano* or *Stirone* discuss, and though the jury instructions were broader than the indictment, this alone is not reversible error. Sittenfeld cannot plainly show that the overly broad instructions resulted in a conviction for another, unindicted crime rather than another means of committing the same crime. So Sittenfeld's challenge fails.

1.

We start with the indictment, which begins by describing Sittenfeld's "scheme" through quotes from transcripts of phone calls like the one on October 30, 2018. It also alludes to a series of solicitations beyond the ones listed in the to-wit clauses of each count. That said, the to-wit clauses make clear that Sittenfeld's innocence or guilt was tied to *specific* solicitations. Sittenfeld was charged in count 3:

> *to wit*, [Sittenfeld] while a member of Cincinnati City Council, corruptly solicited and demanded, and accepted and agreed to accept, payments to PAC for his benefit from [*Rob*], who was posing as a businessman supporting [435 Elm], while intending to be influenced and rewarded in connection with business, transactions, and series of transactions involving the City of Cincinnati and [435 Elm].

R. 3, Indictment, pp. 16–17, PageID 41–42 (emphasis added). And in count 4:

> *to wit*, [Sittenfeld] solicited, obtained, agreed to accept, accepted, and received payments to PAC from [*Rob*], with [*Rob's*] consent, knowing the payments were made in exchanged for the

> defendant's specific official action in his role as a member of the Cincinnati City Council to further [435 Elm], under color of official right.

Id. at 17, PageID 42 (emphasis added). Emphasizing these clauses, Sittenfeld contends that he can only be validly convicted based on the payments *Rob* made to his *PAC* to secure his favor in the 435 Elm project. A conviction based on any phone call or solicitation with *Ndukwe* is legally insufficient. And he says this is what happened here.

In *Cusmano*, we interpreted a to-wit clause as alleging "only one means of extortion" and creating a constructive-amendment problem when a different means of extortion was raised at trial. 659 F.2d at 715, 719.[13] There, the indictment alleged extortion through *economic* harm. *Id.* at 715, 717 nn.5–6. But the evidence at trial varied from that to-wit clause because it suggested extortion through *physical* harm. We reversed because there was a substantial likelihood that the conviction rested on an unindicted crime—

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[13] We have also said that a "general expression in an indictment may be restricted and confined to a precise and definite fact by a description under a videlicet," preventing an indictment from being duplicitous. *Beauchamp v. United States*, 154 F.2d 413, 415 (6th Cir. 1946). The term "videlicet" is abbreviated "viz.," Black's Law Dictionary (11th ed. 2019), and it is used to describe phrases like "to wit," "that is to say," and "namely." *See State v. Sudrala*, 79 S.D. 587, 116 N.W.2d 243, 244 (1962); *see also People v. Hartfield*, 463 Ill.Dec. 155, 208 N.E.3d 1223, 1229 (Ill. App. Ct. 2022) ("Where an alleged fact is preceded by 'to-wit,' it is said to be laid under a *videlicet*." (quoting *People v. Wilson*, 24 Ill.2d 598, 182 N.E.2d 683, 684 (1962))); *Commonwealth v. Hart*, 76 Mass. 465, 468 1858 (recognizing that "to wit" acted as a videlicet that served "to isolate, to distinguish, and to fix with certainty, that which was before general").

extortion based on physical harm. *Kuehne*, 547 F.3d at 685 (citing *Cusmano*, 659 F.2d at 718). And other circuits have similarly reversed convictions when admitted evidence differed from the to-wit clause.[14]

Under *Cusmano*, the to-wit clauses in Sittenfeld's indictment restricted and confined the charges against him. The government fights the limiting effect of the to-wit clause, theorizing that it can rely on any evidence that appeared earlier in the indictment if it was incorporated into the charged count. But an indictment does not charge everything it describes. An indictment may include significant background information and circumstantial evidence, yet a defendant may justifiably rely on a to-wit clause to particularize the crime. So we reject the government's contention that we can, in effect, view the entire indictment as one big to-wit clause.[15]

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[14] *See, e.g.*, *United States v. Davis*, 854 F.3d 601, 604–06 (9th Cir. 2017); *United States v. Chambers, 408 F.3d 237, 240–41, 247* (5th Cir. 2005); *United States v. Willoughby*, 27 F.3d 263, 266–67 (7th Cir. 1994); *United States v. Weissman*, 899 F.2d 1111, 1115–16 (11th Cir. 1990). The Second Circuit illustrates a notable exception of this trend, viewing to-wit clauses instead as merely "illustrative." *See, e.g.*, *United States v. Agrawal*, 726 F.3d 235, 261 (2d Cir. 2013); *United States v. Khan*, 726 F. App'x 73, 75 (2d Cir. 2018) (applying *Agrawal*). We find the reasoning of the other circuits more persuasive and reject *Agrawal* as inconsistent with our caselaw.

[15] Because a to-wit clause limits the scope of a defendant's charge, we also reject the view that Sittenfeld's conviction could stand based on a "conduit theory." Any theory of liability that relies on the transitive property to tie Sittenfeld to Rob improperly broadens the scope of the defendant's liability. Treating a bribe from Ndukwe as if it had come from Rob fundamentally misreads these to-wit clauses. If the government

This means that despite the indictment's description of the conversation with Ndukwe, the to-wit clause only charged Sittenfeld with accepting a bribe from Rob—not Ndukwe—and he could reasonably expect that counts 3 and 4 were so limited. Thus, we agree with Sittenfeld that the to-wit clauses in his indictment require his conviction to rest on payments from *Rob* in exchange for favor on 435 Elm.

2.

Next, we consider the jury instructions. We ask whether they could be read to permit a conviction on grounds broader than what was alleged in the indictment. As we previewed above, the answer is yes.

The court instructed the jury that it could find Sittenfeld guilty on count 3 if it found "that Mr. Sittenfeld solicited, demanded, accepted, or agreed to accept a thing of value from *another person*." R. 251, Trial Tr. Day 11, p. 34, PageID 4974 (emphasis added). And the instruction for count 4 required the jury to similarly find "that Mr. Sittenfeld obtained, accepted, agreed to accept, or received property that he was not lawfully entitled to from *another person* with that person's consent." *Id.* at 38, 51, PageID 4978, 4991 (emphasis added). By referring to "another person" and not specifying Rob—in a case that involved several personalities and several solicitations—the jury instructions failed to clarify that the jury could not convict based on any perceived agreement between Sittenfeld and *Ndukwe*.

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chooses to charge a defendant using a to-wit clause, the government must be prepared to demonstrate the defendant's guilt accordingly.

3.

But as we noted above, whether the instructions permit the jury to convict on grounds beyond the indictment does not end the analysis. We still must compare the government's evidence to the scope of the indictment to see if there was a variance. Though we rejected the government's theory that the general scheme alleged in the indictment can broaden the scope of a to-wit clause, that question is distinct from whether the trial evidence varied from the indictment.

On this latter point, we read indictments "as a whole," *United States v. McAuliffe*, 490 F.3d 526, 531 (6th Cir. 2007), and can consider the "full scope of [the] indictment" to analyze whether the trial evidence varied from the indictment, *United States v. Bradley*, 917 F.3d 493, 503 (6th Cir. 2019). This includes the indictment's description of the scheme which details Sittenfeld's (and others') "specific involvement" in the events related to each count. *Id.* The "manner and means," the "overt acts," and the "scheme" are the government's "specification of the ways in which the defendant[ ] sought to accomplish" his crime. *United States v. Mubayyid*, 658 F.3d 35, 53–54 (1st Cir. 2011). The facts alleged in this portion inform the defendant of the "specific offence … with which he is charged." *Hamling v. United States,* 418 U.S. 87, 117–18 (1974).

For example, in *Stirone*, the government did not rely on a to-wit clause to cabin the scope of the indictment, but it described specific acts that violated the Hobbs Act. The indictment alleged that the defendant "caused supplies and materials (sand) to move in interstate commerce," and did "unlawfully obstruct, delay (and) affect interstate commerce between the

several states … by extortion." *Stirone*, 361 U.S. at 213–14. Then, at trial, the district judge allowed the government to admit evidence and to include in the jury instructions reference to the defendant's interference with *steel* shipments. *Id.* at 218–19. The extortion was an essential element of the crime and proving it with an entirely different set of facts (steel vs. sand) effectively allowed the defendant to be convicted of an unindicted crime. *Cusmano*, 659 F.2d at 719 (alleging the essential element of "extortion" through "threats of economic loss" and proving the alternative means at trial through "wrongful use of force and fear").

Sittenfeld theorizes that his case is like *Stirone* and *Cusmano*. On his view, these cases demonstrate that the government improperly admits varied evidence whenever its evidence is not expressly listed in the to-wit clause. But this represents too limited a view of indictments and Sittenfeld's case overall. It's true that once the government describes the "factual basis for an element of the crime, the prosecution may *not* rest its proof of that element at trial on *other* facts." *Budd*, 496 F.3d at 522 (emphasis added) (internal quotation marks omitted). This still leaves the government with room to make its case before the judge or jury by relying on the specific (relevant) facts it alleges in the indictment's background about how the defendant committed his crime.

In both *Cusmano* and *Stirone*, the government proved facts beyond those alleged in the indictment. That's not what happened here. Under the indictment's scheme and alleged manner and means, a series of events between Sittenfeld and Ndukwe resulted in the corrupt solicitation between Sittenfeld

and Rob and ended with the transfer of $20,000. It was this latter crime for which Sittenfeld was indicted in the to-wit clause, but that did not foreclose the government from admitting evidence that explained how Sittenfeld and Rob got together—consistent with the indictment. A look to the government's closing arguments shows how the government hewed to the scheme it alleged in counts 3 and 4.

Start with count 3. The indictment alleged that Sittenfeld solicited, demanded, or agreed to accept a thing of value from Rob. The October 30 phone call may well have provided sufficient evidence for a conviction on count 3. And we acknowledge that when the government discussed count 3 in its closing,[16] it

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[16] We have repeatedly acknowledged in several contexts that counsel's closing arguments are not evidence, but they are essential to the trial through which the parties can "argue reasonable inferences from the evidence" to the jury. *United States v. Crosgrove*, 637 F.3d 646, 663–64 (6th Cir. 2011).

It's for this reason that courts regularly look to closing arguments in constructive-amendment claims to see how the government conceptualized the evidence and the indictment, and how the evidence was presented to the jury. *See, e.g.*, *United States v. Jaimez*, 45 F.4th 1118, 1127 (9th Cir. 2022) ("While the government's closing argument is not evidence, it is useful to consider in evaluating both the permissible inferences that can be drawn from the evidence and how the government built its money laundering conspiracy case against [the defendant]." (citation omitted)); *United States v. Miller*, 891 F.3d 1220, 1236 (10th Cir. 2018) (finding a constructive amendment where the trial evidence, jury instructions, and prosecution's closing argument revealed the jury could find guilt based on an unindicted false statement); *United States v. Mariano*, 729 F.3d 874, 882–83 (8th Cir. 2013) (concluding that the combined effect of the jury instructions and the government's closing arguments

explicitly said that Sittenfeld "corruptly solicited Mr. Ndukwe on October 30th." R. 251, Trial Tr. Day 11, p. 97, PageID 5037. Clearly the October 30 call was central to the case overall—the relationship between Sittenfeld and Ndukwe set the stage for how Sittenfeld and Rob were connected, as the "scheme" alleged in the indictment suggests.

But talking about the October 30 call wasn't the government's final word on count 3. And the indictment reflects that. Instead, the government explained count 3 to the jury by relying on *three* separate "explicit quid pro quos," any one of which could sustain the conviction. First, the government cited the October 30 call, then, the November 7 exchange where Rob offered Sittenfeld $20,000 for his PAC, and finally, December 17, when Sittenfeld finally received the $20,000 in exchange for the promise to deliver votes. *Id.*

And the same is true of count 4. The indictment alleged that Sittenfeld had knowingly obtained or agreed to accept payments from Rob. Again, the October 30 call and its "love you but can't" were key to the government's narrative, a point the government acknowledges. And the district court pointed to the call (without distinguishing between counts 3 and 4) as "[p]erhaps the best example" of evidence that "could reasonably be interpreted to give rise to a finding of intent to enter an explicit deal." R. 283, Op. & Order, pp. 3–4, PageID 7140–41.

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did not create a substantial likelihood that the defendant was convicted of uncharged conduct).

But as the government explained the evidence to the jury, it never argued that the October 30 call alone constituted a completed agreement.[17] R. 251, Trial Tr. Day 11, pp. 60–72, PageID 5000–12. Far from relying only on the October 30 call as Sittenfeld suggests, the government explained count 4 to the jury by relying on two *other* conversations—on November 2 between *Ndukwe* and Sittenfeld and on November 7 between Sittenfeld and *Rob*. *Id.* at 60–72, PageID 5000–12. The government described "the second express quid pro quo in 5 days"—November 2 "money for votes," and November 7 getting "P.G. $20,000." *Id.* at 70, PageID 5010. As we've detailed, *supra* Part II.C., the November 7 interaction with Rob provided the strongest evidence for the government on *both* counts 3 and 4. Rob agreed to "get [Sittenfeld $]20,000" and promised "if we can get this deal done, like fuckin' let's do it." Rob asked Sittenfeld about the details of getting him the $20,000 and Sittenfeld—rather than offering a direct answer—nodded along to the discussion, saying "Yeah yeah yeah." As we've explained, that whole exchange led to a promise by Sittenfeld: "I can sit here and say I can deliver the votes…. I can get it done."[18]

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[17] The government asks, "how could Sittenfeld agree to anything based on Ndukwe's reply" to Sittenfeld's "love you but can't" solicitation. Appellee Br. at 68–69. We do not find this argument persuasive. Sittenfeld was the offeror. The jury could have believed that he solicited a bribe, and that Ndukwe agreed to provide one, thereby accepting Sittenfeld's offer.

[18] Finally, Sittenfeld argues that the jury acquitted on count 1 precisely because it was relying on the October 30 call with Ndukwe. But it's not clear or obvious that the jury made such a decision. That the jury resulted in a split verdict tells us nothing

The line between the indictment's allegations—in the scheme, the manner and means, and the substantive counts—and the government's evidence and arguments to the jury, is clear and direct. The government did not rely on varied evidence to prove the indicted crimes.

4.

Given that we have broad jury instructions but no varied evidence, neither *Cusmano* nor *Stirone* control. That said, the question remains whether a bribery agreement with Ndukwe amounted to a "separate offense" from a bribery agreement with Rob, or whether it represented another way to commit the same crime. *See Kuehne*, 547 F.3d at 685. If the former, the instructions may have caused a constructive amendment, but if the latter, they would only have caused a variance.[19] *Id.*

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of the jury's reasoning. *Cf. Bravo-Fernandez v. United States*, 580 U.S. 5, 13 (2016) ("When a jury returns irreconcilably inconsistent verdicts, … it is just as likely that 'the jury, convinced of guilt, properly reached its conclusion on [one count], and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the [related] offense.' " (quoting *United States v. Powell*, 469 U.S. 57, 65 (1984))).

[19] If a variance occurred, we could ask whether Sittenfeld was prejudiced. But he doesn't make this argument. Prejudice requires proof that the defendant's "substantial right[s]" were affected. *Kuehne*, 547 F.3d at 683. With a variance, the defendant's substantial rights refer to his "ability to defend himself at trial, to the general fairness of the trial, or to the indictment's sufficiency to bar subsequent prosecutions." *Id.* (quoting *United States v. Hynes*, 467 F.3d 951, 962 (6th Cir. 2006)).

Sittenfeld couldn't make that showing anyway. As we explained *supra* Part II.C and Part III.C.3, the convictions for

Determining whether a statute sets out multiple offenses or alternative *means* for committing the same offense is inherently one of statutory interpretation. *Combs*, 369 F.3d at 931 ("The statutory text, legislative history, and requisite proof argue for the … perspective that 18 U.S.C. § 924(c) criminalizes two separate offenses …."). We look to two bodies of law to cabin our inquiry. The first are cases that analyze whether an indictment is "duplicitous." Duplicitousness is similarly a search for distinct offenses, because, like constructive amendments, they threaten a defendant's Sixth Amendment right to notice of the charges against him and his Fifth Amendment right against double jeopardy.[20] *See United States v. Davis*, 306 F.3d 398, 415–17 (6th Cir. 2002) (citing 2 Charles Alan Wright & Arthur R. Miller, Fed. Prac. and Proc. § 142 (3d ed. 1999)); *see also Combs*, 369 F.3d at 935; *United States v. Aguilar*, 756 F.2d 1418, 1420 n.2 (9th Cir. 1985).

The second set of cases grapple with "individuating crimes" in an indictment based on the defendant's

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both counts 3 and 4 went beyond the October 30 call. And the detail of each phone call and meeting—dates, locations, participants, discussions, and excerpts—are all alleged chronologically and succinctly in the indictment, telling a larger story of the Ndukwe-Rob-Sittenfeld relationship and scheme. Sittenfeld was on notice of every detail that the government planned to (and did) prove at trial. Viewed in this light, Sittenfeld's Fifth and Sixth Amendment rights to fair notice and a fair trial were properly protected by the grand jury and subsequent indictment.

[20] Both issues also implicate a defendant's Sixth Amendment right to a unanimous jury verdict. *See United States v. Campbell*, 279 F.3d 392, 398 (6th Cir. 2002); *Ford*, 872 F.2d at 1236–37; *see also United States v. Lasley*, 917 F.3d 661, 664–65 (8th Cir. 2019).

victims.[21] Some contexts indicate that different victims constitute separate crimes. We count murders by "counting bodies." *United States v. Newell*, 658 F.3d 1, 24 (1st Cir. 2011). And we've suggested a constructive amendment could result if a conviction relied on a different overdose victim, *see United States v. Davis*, 970 F.3d 650, 659 (6th Cir. 2020), or a different defrauded financial institution, *see United States v. Nixon*, 694 F.3d 623, 638 (6th Cir. 2012).[22]

But a different victim does not always indicate a different crime. For example, the victim's identity was "irrelevant" to a conviction for transporting money obtained by fraud in interstate commerce. *United States v. Von Stoll*, 726 F.2d 584, 585, 587 (9th Cir. 1984) (finding no constructive amendment). And according to the Second Circuit, the government does not have to prove that a "particular person" was in fact defrauded by counterfeit bonds to convict a defendant of passing counterfeit bonds "with intent to defraud." *United States v. Mucciante*, 21 F.3d 1228, 1235 (2d Cir.

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[21] We recognize that Rob and Ndukwe were not victims in the traditional sense. But an extorted person may be considered a victim in at least some cases. *See United States v. Capo*, 817 F.2d 947, 954 (2d Cir. 1987) (en banc); *Evans v. United States*, 504 U.S. 255, 283 (1992) (Thomas, J., dissenting).

[22] Other examples abound. We have said in dicta that "[s]eparate allegedly false statements" under 18 U.S.C. § 1001 "are entirely separate offenses." *United States v. Dedman*, 527 F.3d 577, 600 n.10 (6th Cir. 2008). And we have asked whether assaults under 18 U.S.C. § 111 take place in "distinct successive criminal episodes, rather than two phases of a single assault," to determine whether distinct crimes were committed. *United States v. Shumpert Hood*, 210 F.3d 660, 663 (6th Cir. 2000) (quoting *United States v. Segien*, 114 F.3d 1014, 1022 (10th Cir. 1997)).

1994) (quoting 18 U.S.C. § 479) (finding no constructive amendment).

These cases highlight that whether a different victim constitutes a different crime is statute-specific and therefore crime-specific. As for Sittenfeld, we look to the two statutes (§ 666 and the Hobbs Act) to identify if different victims—or more specifically the corrupt counterparty—makes for different offenses or a different means to commit the same offense.

Start with § 666.[23] We permit the government to aggregate transactions to reach the $5,000 jurisdictional minimum when they are "part of a single scheme." *United States v. Sanderson*, 966 F.2d 184, 189 (6th Cir. 1992). And other circuits follow this logic for both § 666(a)(1)(A) and (B). *United States v. Hines*, 541 F.3d 833, 837 (8th Cir. 2008) (permitting aggregation to reach jurisdictional minimum); *United States v. Cruzado-Laureano*, 404 F.3d 470, 484 (1st Cir. 2005); *United States v. Yashar*, 166 F.3d 873, 876 (7th Cir. 1999); *United States v. Doty*, 832 F. App'x 174, 179, 180 n.4 (4th Cir. 2020).

But we have not found (and the parties do not point us to) any case invoking a similar "aggregation" principle when it comes to corrupt counterparties. The closest discussion of the relationship between these

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[23] Someone violates 18 U.S.C. § 666(a)(1)(B) when, acting as an agent of a local, state, or tribal government he "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more."

theories comes from the First Circuit. Though that court has permitted the government to aggregate transactions to reach the $5,000 minimum, *Cruzado-Laureano*, 404 F.3d at 484, it has not extended that reasoning to duplicitousness under § 666(a)(1)(A) when individual transactions exceeded $5,000, *Newell*, 658 F.3d at 26. Reasoning that the principles motivating a rule for aggregation did not dictate the outcome on duplicitousness, it concluded that an indictment that charged "distinct violations of § 666(a)(1)(A)" within the same count was duplicitous. *Newell*, 658 F.3d at 28. Retrieving funds from two agencies created different transactions to be charged separately. *See id.* at 26, 28.

If it's one bribery scheme between the same two people, the answer is straightforward. But what if, as here, multiple parties are involved? Sittenfeld's corrupt agreement with Ndukwe can be understood as part of the same general scheme that led to Sittenfeld accepting a bribe from Rob. Rob framed his donation as something that Ndukwe wanted. The parties also probably expected Rob's payments to satisfy Ndukwe's October 30 promise to funnel donations to Sittenfeld. And both corrupt agreements had 435 Elm in view.

But in the end, it's not clear that having two distinct corrupt counterparties gives rise to distinct crimes under our constructive-amendment caselaw, especially given our lack of relevant § 666 precedent. And we need not answer this difficult question directly because even if it were an error, it would not have been plain that the identity of the corrupt counterparty could constitute a conviction for a second, unindicted crime.

We come to the same conclusion on the Hobbs Act.[24] We again look to the First Circuit. That court has held that "the identity of the target is not an element of a robbery or conspiracy to commit robbery under the Hobbs Act." *United States v. Katana*, 93 F.4th 521, 533 (1st Cir. 2024). That court also noted that the defendant failed to identify precedent "suggesting that robbery of an individual is a different offense than robbery of that individual's home business." *Id.* at 535.

This case is similar. Sittenfeld does not point to precedent suggesting that extortion of a business owner (like Ndukwe) must be charged as a separate offense from the extortion of an investor in the same business (like Rob). Perhaps distinct instances of extortion should be charged separately, even if related. But our precedent does not require that, and the answer is unclear. So even if the identity of the target is an element of attempted Hobbs Act extortion, we see no plain error.

Thus it was not plain that the possibility of a conviction for the bribery agreement with Ndukwe constituted a separate offense (rather than a different means of committing the same crime) from the one he was indicted for. Because that distinction was not plain, we cannot find that a constructive amendment occurred based on the breadth in the jury instructions.

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[24] A violation of the Hobbs Act is established by demonstrating a person "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion [as defined in § 1951(b)(2)] … to any person or property in furtherance of a plan or purpose to do anything in violation of this section." 18 U.S.C. § 1951(a).

In the end, when we review the evidence, we can't conclude that Sittenfeld has shown— under plain-error review—that there is a substantial likelihood he was convicted of an offense not charged in the indictment. The absence of varied evidence forecloses any relief for Sittenfeld on his constructive-amendment claim. The jury instructions, though impermissibly broad, did not plainly result in a conviction for a different crime not alleged in the indictment.

IV.

We AFFIRM Sittenfeld's conviction.

CONCURRENCE

MURPHY, Circuit Judge, concurring.

Suppose that a local official decides to run for the U.S. Senate on a platform of repealing a well-known law—say, the Affordable Care Act from 2010 or the Tax Cuts and Jobs Act from 2017. Suppose further that the candidate's campaign literature solicits money from supporters by promoting the promise to repeal the law: "Donate to my campaign today because I will vote to repeal the Affordable Care Act if elected. Together we can overturn this law." If a supporter chooses to donate based on the candidate's pledge to take that official act, have the parties exchanged a bribe that violates the Hobbs Act (18 U.S.C. § 1951) and the federal bribery law governing state and local officials (18 U.S.C. § 666)? Treating that campaign donation as an illegal "quid pro quo" (the payment of money for the pledged repeal) would raise serious concerns under the First Amendment. In our republic, political candidates regularly make promises about what they will do if elected, and citizens who agree

with those promises regularly support the candidates with their votes, their time, and their money. *See McCutcheon v. FEC*, 572 U.S. 185, 191–92 (2014) (plurality opinion). The Free Speech Clause exists to protect this political speech and association. *See id.* at 203; *Buckley v. Valeo*, 424 U.S. 1, 14–23 (1976) (per curiam); Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 Ind. L. J. 1, 29 (1971). Thankfully, then, the government disavowed any intent to prosecute generic campaign donations tied to campaign pledges. Oral Argument 22:19–23:10.

But the government did not do the best of jobs distinguishing that hypothetical prosecution from this real one. While serving as a member of Cincinnati's city council, Alexander "P.G." Sittenfeld says he never saw a development project he didn't like. So when running for mayor, he used this pro-development platform to solicit campaign donations from developers, including those who (purportedly) sought to redevelop a specific property: 435 Elm Street. As he explained when asking for funds from this project's proponents (who turned out to be undercover agents): "in seven years I have voted in favor of every single development deal that's ever been put in front of me[.]" Tr., R.312, PageID 7557. Federal prosecutors nevertheless claimed that Sittenfeld's actions crossed the line from campaign fundraising to bribery soliciting. They asserted that he entered an illegal quid pro quo by requesting donations with the promise to support the 435 Elm project. Yet why is Sittenfeld's alleged pledge to vote on this project any different from the hypothetical pledge to repeal the Affordable Care Act? And why doesn't Sittenfeld's conduct implicate similar First Amendment concerns? I do not have good

answers to these questions because the Supreme Court has adopted a "vague" "line" to separate protected political speech from illegal bribery. *McCutcheon*, 572 U.S. at 209 (plurality opinion).

As I shall explain, however, I am not sure that either law in this case—when properly interpreted—would require courts to get close to this constitutional line. I nevertheless concur in Judge Nalbandian's excellent majority opinion because existing precedent seems to interpret these two statutes in a way that maximizes (rather than minimizes) the constitutional concerns.

I

A

Start with the Hobbs Act. This 1946 law makes it illegal for a person to "affect[ ] commerce" by "extortion" or attempted extortion. 18 U.S.C. § 1951(a). It defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." *Id.* § 1951(b)(2). A perceptive reader (and even a not-so-perceptive one) should notice that this text lacks "even a colorable allusion to campaign contributions or *quid pro quos*." *McCormick v. United States*, 500 U.S. 257, 277 (1991) (Scalia, J., concurring). So what does the Hobbs Act mean when it bars "the obtaining of property from another … under color of official right"? The prepositional phrase "under color of official right" modifies the gerund phrase "obtaining of property." This language suggests that public officials must "tak[e] … money by color of office" to violate the Hobbs Act. *Evans v. United States*, 504 U.S. 255, 284 n.4

(1992) (Thomas, J., dissenting). Police officers who have a duty to protect everyone, for example, might commit this type of extortion if they falsely claim that the law requires private parties to pay a fee for police protection. *See id.* at 279–82.

In contrast, I tend to agree with those who have read the Hobbs Act to exclude garden-variety bribery (paying money to influence an official act). *See id.* at 279–84 (Thomas, J., dissenting); *United States v. Cerilli*, 603 F.2d 415, 434–35 (3d Cir. 1979) (Aldisert, J., dissenting); *see also Ocasio v. United States*, 578 U.S. 282, 300 (2016) (Breyer, J., concurring); John T. Noonan, Jr., *Bribes* 585–86 (1984). Public actors who take bribes do not typically claim that their office gives them the right to the money. *See Evans*, 504 U.S. at 283 (Thomas, J., dissenting). Rather, bribed officials accept the money unofficially in exchange for taking some other "act" that is "by color of office." *Id.* at 284 n.4. But "under color of official right" in the Hobbs Act modifies "the obtaining of property"; it does not modify "the taking of an act" (a phrase nowhere to be found in the law). So the obtaining of money *itself* must be the claimed official act. That is why the common law distinguished extortion (in which the payor was a *victim*) from bribery (in which the payor was an *accomplice*). *See id.* at 284; *Cerilli*, 603 F.2d at 435 (Aldisert, J., dissenting).

Then how did an extortion law transmogrify into a bribery law? Like other dubious doctrines, this result arose "seemingly by accident." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 403 (2024) (Thomas, J., concurring). For decades, courts refused to extend the Hobbs Act to cover voluntary (if illegal) agreements to exchange a payment for an official act.

See McCormick, 500 U.S. at 279–80 (Scalia, J., concurring). It was not until the 1970s that a few (lightly reasoned) decisions included "classic bribery" within the Hobbs Act's scope. *United States v. Braasch*, 505 F.2d 139, 151 (7th Cir. 1974); *see United States v. Kenny*, 462 F.2d 1205, 1229 (3d Cir. 1972). This expansion soon spread to the other circuit courts. But these other courts merely cited the earlier decisions without providing any "reasoned elaboration" of their own. *Cerilli*, 603 F.2d at 427 & n.5 (Aldisert, J., dissenting); *see McCormick*, 500 U.S. at 277–78 (Scalia, J., concurring).

To make matters worse, when the Supreme Court got involved in *McCormick*, it granted certiorari on a *subsidiary* question that required it to assume that the Hobbs Act covered bribery (the "logically antecedent" issue). *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 374 (2024) (Gorsuch, J., dissenting); *see McCormick*, 500 U.S. at 276–77 (Scalia, J., concurring). By then, some courts had enlarged the Hobbs Act even further to cover campaign contributions even when a payor and public official did not agree to a quid-pro-quo exchange of a donation for an official act. *See McCormick*, 500 U.S. at 271. While assuming that the Hobbs Act could reach bribery, the Court rejected the view that an official violates the Act merely by accepting a campaign contribution knowing that the contributor expects to benefit from the payment. *Id.* at 268 n.6, 271–74. The Court instead held that campaign contributions can violate the Act "only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *Id.* at 273. The Court elsewhere suggested that the government must prove

an "explicit *quid pro quo*" or just a "*quid pro quo*" to show a violation. *Id.* at 271, 274.

It was not until *Evans* that the Court held (rather than assumed) that the Hobbs Act covered bribery. Yet the parties there did not even brief the issue. *See Ocasio*, 578 U.S. at 300 (Breyer, J., concurring). Rather, the Court granted certiorari over whether the verb "induced" in the statutory definition of extortion modified "under color of official right" and thus required public actors to ask payors for the property. 18 U.S.C. § 1951(b)(2); *Evans*, 504 U.S. at 256. *Evans* held that the Act did not require this inducement largely because common-law extortion did not require a "demand" for money. 504 U.S. at 260. In a later section, the Court rejected the dissent's narrower view that the Act required proof that public officials took money under the pretense that they had a right to it. *See id.* at 269–70. The Court instead held (in all of three paragraphs) that officials violate the Act whenever they receive a fee that they are not "entitled to" for their official duties. *Id.* at 270. In support, the Court noted that the defendant had not advocated for the dissent's interpretation and that no circuit court had accepted it. *Id.* at 270–71. All told, then, the Hobbs Act confirms that "unexamined assumptions" in judicial opinions "have a way of becoming, by force of usage, unsound law." *McCormick*, 500 U.S. at 280 (Scalia, J., concurring).

B

Sittenfeld accepts that the Hobbs Act covers bribery—as he must, given *Evans*. But he asks us to clarify what *McCormick* meant when it used the adjective "explicit" to describe the campaign donations

that might violate the Act. *See id.* at 271, 273 (majority opinion). Sittenfeld believes that *McCormick* sought to give breathing space to political speech when prosecutors argue that the "the purported *quid*" in a quid pro quo "is a campaign donation" (rather than a "stack of cash," a "Rolex," or another item for personal use). Appellant's Br. 21. He interprets the word "explicit" to require "objective evidence" that a public official agreed to exchange an official act for a campaign donation. *Id.* at 23. When ambiguous evidence would allow a jury to find either a legal donation or an illegal bribe, this argument goes, the "benefit of any doubt" should protect the First Amendment activity at the heart of most donations. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (lead opinion). I agree with the majority opinion that we have rejected Sittenfeld's reading that *McCormick* requires explicit evidence. *See United States v. Blandford*, 33 F.3d 685, 695–99 & nn.13, 16 (6th Cir. 1994). In fact, we have read *McCormick* to not even require an "express agreement" "in a campaign contribution case." *Id.* at 698 n.16.

But I see room for debate over the proper test. To start, *McCormick* is an opaque opinion that articulated the governing standard in different ways. The Court first used the phrase "explicit *quid pro quo*" to describe the test that the Fourth Circuit had rejected. *McCormick*, 500 U.S. at 271. Because the Court disagreed with the Fourth Circuit's view, perhaps its opinion could be read to adopt a requirement that the quid pro quo (that is, the *agreement*) be "explicit." Later, though, the Court suggested that the Hobbs Act might cover a campaign donation when made for a public actor's "explicit

promise" to take an official act. *Id.* at 273 (emphasis added). This second formulation might suggest that only part of the agreement (the "quo") must be "explicit." Still later, the Court did not use the word "explicit" at all and simply said that the lower court had erred by not requiring a "*quid pro quo*" for campaign contributions. *Id.* at 274. This third formulation might suggest that the statute lacks an "explicitness" element. In short, *McCormick* leaves unclear what (if anything) must be "explicit" for campaign contributions to violate the Hobbs Act.

And what did *McCormick* mean by the word "explicit" anyway? One might have read that adjective to mean that the alleged quid pro quo (or the alleged promise) could not be "implied" and instead had to be "plain in language," "clear," or "express." *Webster's New International Dictionary of the English Language* 897 (2d ed. 1934). Our caselaw, though, has not read the term that way. We have reasoned that, while an agreement must be "explicit," it need not be "express." *See Blandford*, 33 F.3d at 696. Given this law, the district court in Sittenfeld's case correctly instructed the jury that "while the government need not prove that the quid pro quo was *express*, the government must prove that the quid pro quo was *explicit*." Instr., R.202, PageID 3214, 3231. Yet these two words are synonyms. *See Webster's*, *supra*, at 897. So what divides an explicit agreement from an express one? I doubt many jurors would understand this subtle distinction. And I doubt even more that courts should be sending people to prison based on it.

Nor can we fall back on the text of the Hobbs Act to clarify *McCormick*'s ambiguities. *McCormick* did not even try to mesh its requirement of an (explicit?) quid

pro quo with the text: "the obtaining of property from another … under color of official right." 18 U.S.C. § 1951(b)(2). Rather, the Court "simply made up" the quid-pro-quo element to ensure that the Act did not have "substantial overbreadth." *Evans*, 504 U.S. at 286–87 (Thomas, J., dissenting). The Court worried that the Fourth Circuit's expansive reading (that the Hobbs Act barred a campaign donation if the contributor hoped to "benefit") would prohibit "conduct that has long been thought to be well within the law[.]" *McCormick*, 500 U.S. at 272. After all, legislators routinely seek to benefit constituents, and constituents routinely give donations hoping for these benefits. *See id.* The Court thus adopted the quid-pro-quo element for *policy* reasons to cut off liability for payments that it did not believe should be illegal. *Id.* at 272–73. As a result, nothing in the statutory language can help us decide whether the quid-pro-quo element must be "explicit," whether a public official's promise must be "explicit," or whether this "explicitness" element should exist at all.

To be sure, the Court in *Evans* later tried to ground *McCormick*'s quid-pro-quo element in the common-law definition of extortion. 504 U.S. at 260. *Evans* reasoned that extortion at common law was "the rough equivalent of what we would now describe as 'taking a bribe.'" *Id.* But this sentence conflicted with *Evans*'s broad view of the common-law crime. According to *Evans*, a public official committed extortion at common law whenever the official took "money that was not due to him for the performance of his official duties." *Id.* This definition would cover *far more* than quid-pro-quo bribery. *Evans*'s test, for example, would likely cover my original hypothetical: the political

candidate would have taken the campaign donation (money that was not due) for the promised vote to repeal the Affordable Care Act (the performance of official duties). Not only that, *Evans*'s definition would likely read the Hobbs Act to cover what the Court has since called mere "gratuities": payments made for official acts after the fact without a quid pro quo. *Snyder v. United States*, 603 U.S. 1, 5–6 (2024). If read literally, therefore, *Evans* would bar campaign donations paid to public officials whenever the officials took an official act with which a contributor agreed. So its expansive reading of the common-law crime also offers no help to resolve what *McCormick* meant with its narrower (atextual) view of the Hobbs Act.

All this said, I doubt that the Hobbs Act permits Sittenfeld's proposal to require explicit evidence of a quid pro quo. He would reserve this test for claims that public officials wrongly received campaign contributions (not personal gifts). Appellant's Br. 21–23. Like *McCormick*, however, this distinction between campaign donations and other "quids" rests on pure policy. Perhaps Sittenfeld means to invoke the canon of constitutional avoidance, given the First Amendment concerns with chilling ordinary campaign donations and speech requesting them. But that canon acts as a tiebreaker between two "*plausible* interpretations of a statutory text[.]" *Clark v. Martinez*, 543 U.S. 371, 381 (2005) (emphasis added). Sittenfeld identifies no plausible reading in which the Hobbs Act could mean one thing for campaign donations and another for personal items. And basic rules of interpretation bar us from turning the Act into "a chameleon" that takes "its meaning" based on "the presence or absence of constitutional concerns in each

individual case." *Id.* Either an "explicitness" element exists in all cases or it exists in none.

Regardless, Sittenfeld's proposed test may well not fix the First Amendment problems he identifies. Consider my hypothetical again. If a candidate pledges to repeal the Affordable Care Act in campaign literature requesting campaign contributions, and if contributors disclose that they have supported the candidate because of this promise, why wouldn't there be an explicit quid pro quo? Indeed, the district court's definition of "quid pro quo" here would seem to render that hypothetical campaign contribution illegal. The court defined that phrase to cover either "a public official's solicitations of things of value in exchange for performing or agreeing to perform specific official action," or "a public official's receipt of things of value when the public official knows that the person who gave the thing of value was doing so in return for the public official performing or agreeing to perform a specific official action." Instr., R.202, PageID 3213. Why hasn't the hypothetical candidate asked for funds "in exchange for performing" an official duty? *Id.*

Yet I have a hard time seeing how the First Amendment would allow the government to prosecute the political speech and association of the candidate. *See McCutcheon*, 572 U.S. at 203–04 (plurality opinion). To be sure, the Court has long recognized that the First Amendment allows the government to prohibit "the financial *quid pro quo*: dollars for political favors." *McCutcheon*, 572 U.S. at 192 (plurality opinion) (quoting *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985)). But dating back to *Buckley*, the Court has never defined what that Latin phrase requires with any precision.

See id. at 192, 207–09; *Citizens United v. FEC*, 558 U.S. 310, 359 (2010); *Buckley*, 424 U.S. at 26–28. The Court likely had in mind traditional bribery. That crime requires the government to prove that an official was "*influenced*" by the quid (the payment) to take the quo (the official act). 18 U.S.C. § 201(b)(2)(A) (emphasis added). Or, as Blackstone put it, an official commits bribery if the official takes "any undue reward to *influence* his behaviour in his office." 5 St. George Tucker, *Blackstone's Commentaries* 139 (1803) (emphasis added). This element is missing from my hypothetical because the candidate has promised to repeal the Affordable Care Act *whether or not* any contributor donates funds to the campaign. The donation did not influence that promised act, even if the contributor gave money "in return for" the promise. Instr., R.202, PageID 3213. But this narrowing element is also missing from the Hobbs Act's text or from *Evans*'s broad view of common-law extortion.

So where does this leave us? I agree with Sittenfeld that the current reading of the Hobbs Act raises First Amendment concerns. I disagree, though, that we are the right court to address the concerns. For one thing, the Supreme Court created this dilemma by adopting an ambiguous test seemingly tied to policy rather than text. Only that Court can resolve what it meant by its "*quid pro quo*" element, what it meant by "explicit," and how these elements comport with the Hobbs Act's text. *McCormick*, 500 U.S. at 271–74. Fittingly for present purposes, one of the earliest decisions about whether the federal judiciary has the power to create common-law crimes involved bribery. *See* Tucker, *supra*, at 140 n.26. Because the two judges split on

that question, the defendant stood convicted of trying to bribe Tench Coxe in the Treasury Department. *See United States v. Worrall*, 2 U.S. 384, 394–95 (C.C.D. Pa. 1798). Only later did the Supreme Court hold that federal courts lack "implied powers" to "exercise … criminal jurisdiction in common law cases[.]" *United States v. Hudson*, 11 U.S. 7, 34 (1812). But Sittenfeld's explicit-evidence test would take us one step more down the road of molding a forbidden common-law crime of bribery under the guise of "interpreting" the Hobbs Act. *See* Noonan, *supra*, at 585–86.

For another thing, I see only one reading that can eliminate the First Amendment concerns while adhering to a "plausible" view of the Hobbs Act's text: the view that the Act does not reach garden-variety bribery. *Clark*, 543 U.S. at 381; *see Evans*, 504 U.S. at 279–84 (Thomas, J., dissenting). Here again, however, only the Supreme Court can take that course. Nine years ago, Justice Breyer identified other "problems" that *Evans* created by conflating extortion and bribery. *Ocasio*, 578 U.S. at 300 (Breyer, J., concurring). Yet he could not address the problems because the parties accepted *Evans* as valid. *See id.* at 300–01. Sittenfeld likewise accepted *Evans* as valid in our court because "vertical *stare decisis*" represents an "absolute" mandate. *Ramos v. Louisiana*, 590 U.S. 83, 124 n.5 (2020) (Kavanaugh, J., concurring in part). But nothing prohibits him from asking the Supreme Court to reassess the Act's scope in light of three decades' worth of precedent finding campaign donations entitled to strong First Amendment protection.

II

Turn to the other federal law at issue in this appeal: 18 U.S.C. § 666. This law separately punishes a state or local official who "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions" of the state or local government that has a value of at least $5,000. 18 U.S.C. § 666(a)(1)(B). Both parties have assumed on appeal that *McCormick*'s quid-pro-quo test for the Hobbs Act (including whatever explicitness element it contains) applies in an identical way to § 666. Indeed, their briefs do not distinguish between these two laws at all. This assumption makes little sense to me. The two laws contain different language, and courts must respect their textual differences under ordinary interpretative rules. *See, e.g.*, *Loughrin v. United States*, 573 U.S. 351, 358 (2014).

We thus must ask again whether § 666's language supports Sittenfeld's *McCormick*-based claim that the law applies to campaign contributions only if explicit evidence shows that an official entered a quid-pro-quo agreement for the contributions. Here too, I agree with the majority opinion that our caselaw has already rejected this test for § 666. *See United States v. Porter*, 886 F.3d 562, 565–66 (6th Cir. 2018); *United States v. Abbey*, 560 F.3d 513, 520–21 (6th Cir. 2009), *abrogated on other grounds by Snyder*, 603 U.S. at 10–18. In all events, the test suffers from the same textual problems for § 666 as it does for the Hobbs Act. I see no "plausible" reading of § 666 that allows courts to adopt an explicit-evidence requirement for campaign contributions but not for other items "of value" that

fall within the law. *Clark*, 543 U.S. at 381; 18 U.S.C. § 666(a)(1)(B).

That said, I agree with Sittenfeld that § 666 may well raise First Amendment concerns like those raised by the Hobbs Act when prosecutors bring charges against state or local officials over campaign donations. Modifying my hypothetical slightly, I would find this law problematic if it prohibited a city councilmember's campaign literature from "solicit[ing]" campaign contributions (something "of value") with the pledge that the candidate plans to repeal an unpopular local ordinance if reelected ("business" of the local "government"). 18 U.S.C. § 666(a)(1)(B). Indeed, most political candidates likely find each citizen's vote "valuable" because candidates need those votes more than campaign cash to win the election. So one could read § 666 to bar candidates from soliciting citizens to give them their vote ("anything of value") with promises of official acts. *Id.* Yet the First Amendment allows political candidates to discuss the actions they will take if elected and to associate with others who share their goals. *See Citizens United*, 558 U.S. at 359.

Aside from Sittenfeld's proposed test, though, courts could avoid such problematic readings of § 666 in textually "plausible" ways. *Clark*, 543 U.S. at 381. Of most note, the Supreme Court recently clarified that the law reaches only bribes ("payments made or agreed to *before* an official act in order to influence the official with respect to that future official act")—not gratuities ("payments made to an official after an official act as a token of appreciation"). *Snyder*, 603 U.S. at 5, 19–20. And the hypothetical city councilmember's campaign literature would not have

been soliciting a bribe because the councilmember would have lacked the "corrupt state of mind" of "intending to be *influenced*" by the donation to repeal the ordinance. *Id.* at 11, 144 S. Ct. 1947, 1951 (emphasis added).

To be sure, *Snyder* may not eliminate all First Amendment concerns. Later in the opinion, the Court read the word "rewarded" in § 666 to eliminate the "defense that [an] official would have taken the same act anyway and therefore was not 'influenced' by the payment." 603 U.S. at 19. Might this reading eliminate the city councilmember's defense that he committed to repeal the ordinance with or without the donations? I am not sure. But § 666 can be read to contain other safeguards. For example, the law includes the following safe harbor: "This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business." 18 U.S.C. § 666(c). A properly documented campaign contribution permitted under state law might qualify as "bona fide … compensation paid … in the usual course of business." *Id.* That reading would take lawful campaign donations off the table for § 666 prosecutions and offer a "plausible" path to distinguish those contributions from, say, under-the-table cash payments or other gifts for an official's personal benefit. *Clark*, 543 U.S. at 381.

And even if one disagrees with this view, officials still violate § 666 only if they "corruptly" solicit or accept campaign contributions. 18 U.S.C. § 666(a)(1)(B). What does this adverb mean? Relying on *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005), the government in *Snyder* read it to be

" 'associated with wrongful, immoral, depraved, or evil' conduct." Brief for the United States at 38–39, *Snyder*, 603 U.S. 1 (No. 23-108) (quoting *Arthur Andersen*, 544 U.S. at 705). And since the adverb serves as the statutory mens rea, the government added that a defendant must have acted with "consciousness of wrongdoing" when soliciting or accepting the payment. *Id.* at 39 (quoting *Arthur Andersen*, 544 U.S. at 706). At the same time, the Court in *Snyder* relied on this adverb to support its holding that § 666's text reaches only quid-pro-quo agreements, not one-sided gratuities. 603 U.S. at 10–12, 18. Does *Snyder*'s holding leave room for "corruptly" to perform any additional work? I think so. The phrase "intending to be influenced or rewarded" independently conveys the need for the official to subjectively *intend* the quid pro quo. 18 U.S.C. § 666(a)(1)(B). And, as Judge Silberman suggested in a similar context, the adverb corruptly must add "*something*" on top of the other statutory elements. *United States v. North*, 910 F.2d 843, 940–41 (D.C. Cir. 1990) (Silberman, J., concurring in part and dissenting in part). While an ordinary bribe involving a stack of cash might be "inherently, that is, as a matter of law—corrupt," a campaign contribution for a campaign promise may well not be. *Id.* at 941. So perhaps federal prosecutors should have to show that an official knew that a particular solicitation of a campaign donation was wrongful (say, because state law prohibited it). *See id.*

To sum up, Sittenfeld rightly recognizes that § 666 can raise constitutional concerns as applied to campaign donations. But he wrongly relies on an atextual gloss to reduce the concerns.

That said, I disagree with the government that "[t]he jury instructions" for the § 666 charges in this case "required the government to meet *McCormick*'s" test. Appellee's Br. 35. Although the instructions comported with our existing caselaw, I doubt that caselaw adequately protected the First Amendment interests at stake. At the time of Sittenfeld's trial, we did not even read § 666 to require a quid pro quo. *See Abbey*, 560 F.3d at 520. *Snyder* overruled this view. 603 U.S. at 10, 19–20. And to the district court's credit, it *did* require the government to prove "that there was a *quid pro quo* agreement between the parties[.]" Instr., R.202, PageID 3224. So Sittenfeld has not asked us to reverse his § 666 conviction based on *Snyder* alone.

Yet I find our caselaw (and the jury instructions) problematic in other ways. We have not read § 666's text to require proof that a contributor gave money for *a specific act*. *See Abbey*, 560 F.3d at 520–21. Rather, we have said that officials can violate the law if they accept money "with the corrupt intent to use [their] official influence in [the contributor's] favor" at some unknown point. *Id.* at 521. Here, then, while the district court imposed a quid-pro-quo element, the court instructed the jury that it could find a nebulous "quo." That is, it explained that the jury need not find that an "agreement existed as to any specific official act" and that "the agreement could be something as nebulous as, 'If you contribute to me, I will use my official powers to take care of you once I am in office.' " Instr., R.202, PageID 3224. But the First Amendment does not allow the government to restrict campaign donations in order "to limit the general influence a

contributor may have over an elected official." *FEC v. Cruz*, 596 U.S. 289, 305 (2022).

Next, we have given the adverb "corruptly" an unclear definition. We have said that this adverb covers any "act done with an intent to give some advantage inconsistent with official duty and the rights of others." *Abbey*, 560 F.3d at 520 n.7 (quoting *United States v. Aguilar*, 515 U.S. 593, 616 (1995) (Scalia, J., concurring in part and dissenting in part)). Consistent with this law, the district court instructed the jury that it must find that "Sittenfeld intended to provide the contributor, in exchange for the contributions, some advantage inconsistent with official duty and the rights of others." Instr., R.202, PageID 3224. Although this opaque definition flows out of a dictionary definition of "corruptly," *see Ballentine's Law Dictionary* 276 (3d ed. 1969), I confess I have little idea what it requires (and I doubt the jury would have had much of an idea either).

For what it is worth, these instructions appear out of step with the government's current view of § 666. In *Snyder*, it told the Court that § 666's language contains a "parallel requirement" to the federal bribery statute's "official act" language. 18 U.S.C. § 201(b)(2)(A), (c)(1)(B); Brief for the United States, *supra*, at 37. The bribery statute requires prosecutors to connect a contributor's payment to a "specific 'official act' " of the official. *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 414 (1999). Likewise, § 666 requires the government to connect a payment to a specific "business, transaction, or series of transactions" of the official's employer. 18 U.S.C. § 666(a)(1)(B); Brief for the United States, *supra*, at 37–38. This reading conflicts with the notion that the

law reaches a "nebulous" agreement to exchange a payment for a generic "use" of "official powers[.]" Instr., R.202, PageID 3224.

As noted, moreover, the government in *Snyder* read the adverb "corruptly" to require " 'wrongful, immoral, depraved, or evil' conduct." Brief for the United States, *supra*, at 38–39 (quoting *Arthur Andersen*, 544 U.S. at 705). And the dictionary that led to our precedent's vague definition starts with a word— "[w]rongfully"— that this definition overlooked. *Ballentine's Law Dictionary*, *supra*, at 276. Yet this wrongfulness element also did not make its way into the jury instructions in this case. So the district court did not tell the jury that it could convict Sittenfeld only if it found that he recognized the wrongfulness of his campaign solicitations.

Sittenfeld did not raise these instructional issues in our court, so they give us no basis to reverse his single § 666 conviction. He instead rested his appeal of both counts on his explicit-evidence theory. That all-or-nothing strategy may have made sense because these § 666-specific issues would not have affected his separate Hobbs Act conviction. But the Supreme Court's evaluation of this theory's validity must begin with a proper reading of the statute at issue. The government in *Snyder* suggested that "if an appropriate case arose, the Court could make clear the boundaries of prosecutions for gratuities disguised as campaign contributions." Brief for the United States, *supra*, at 34. Although the Court rejected the government's view that the statute covered gratuities, this case shows that the need for these clear boundaries continues to exist.

* * *

All told, I share Judge Bush's concerns with Sittenfeld's prosecution in this case. Yet I part ways with the dissent's conclusion that courts should depart from their usually deferential sufficiency-of-the-evidence test to police the boundary between a protected campaign donation and an illegal bribe. I see no need to rely on "pragmatism" over "principle" because a principled reading of the laws could eliminate any First Amendment concerns. But only the Supreme Court can provide that reading. Under the law as it exists now, I concur in the majority opinion.

DISSENT

JOHN K. BUSH, Circuit Judge, dissenting.

Alexander Sittenfeld's aggressive campaign fundraising caught the attention of the FBI. Over the course of more than year, a sting operation tried to catch him saying or doing something that might serve as evidence of a bribe or extortion masked as a campaign contribution. Only a few words—the "love you but can't" remark—in his early conversation with an undercover informant created ambiguity as to his intent. But Sittenfeld's subsequent statements and dealings with both the informant and undercover FBI agents clarified that his aim was to obtain a legitimate contribution, not an improper payment. Viewed in its totality, the proof at trial was insufficient to sustain Sittenfeld's guilty verdict under *McCormick v. United States*, 500 U.S. 257 (1991).

The majority concludes otherwise. It finds that this single, ambiguous line—by a politician who refused contributions that did not comply with the law,

resisted frequent attempts by the FBI's pretend donors to cajole him with personal gifts, and repeatedly reminded these donors of how to contribute to his campaign legally—was sufficient to criminalize an otherwise lawful and constitutionally protected campaign contribution. Granted, the FBI agents and their informant, Chinedum Ndukwe, testified to their belief that there was a corrupt bargain. But all of the secret audio and video recordings of Sittenfeld after the "love you but can't" remark captured normal political activity. They reveal that Sittenfeld himself viewed the transaction as lawful and that he did what one would expect for a legal contribution.

The evidence, viewed in whole, fell short of the minimum required for a rational juror to find beyond a reasonable doubt that Sittenfeld had the corrupt intent for bribery or extortion. The proof cannot sustain the explicit quid pro quo that *McCormick* requires to convict. Indeed, one can only reasonably infer Sittenfeld viewed the payment as a campaign contribution and nothing else. I therefore respectfully dissent.[1]

I. The Court's Responsibility to Police the Line of Sufficiency

The government is correct that Sittenfeld "bears a very heavy burden" to show insufficiency of the evidence. *United States v. Emmons*, 8 F.4th 454, 478 (6th Cir. 2021) (citation omitted). But at least three aspects of this case distinguish it from the vast

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[1] Because the evidence is insufficient to uphold the verdict, it is not necessary to address Sittenfeld's argument that the prosecution constructively amended the indictment at trial.

majority of sufficiency challenges to bribery or extortion convictions. First, Sittenfeld's conviction involves *only* a campaign contribution and nothing that would directly benefit him financially or otherwise unambiguously show criminal intent. Second, Sittenfeld's conduct that the government calls proof of an illegal quid pro quo is equally consistent with lawful activity that one would expect for a legitimate campaign contribution. Third, most of the government's proof comes from audio and video recordings instead of testimony.

A. Unusualness of this Case

First, consider how unusual this case is among bribery or extortion cases that involve campaign contributions. Perhaps every such case at the federal appellate level that sustained a guilty verdict since *McCormick* has had at least one of the following characteristics: (1) the defendant received personal gifts (cash, vacations, dinners, etc.) in addition to campaign contributions, (2) the government proved that the campaign contributions were part of an independently criminal scheme, or (3) there was direct, unambiguous evidence of a quid pro quo. Sittenfeld's case has none of them.

In each of these circumstances, a sufficiency challenge faces an uphill battle because there is little risk of the jury mistakenly finding that the defendant had corrupt intent. For example, in the first scenario, money going directly into a politician's pocket does not parallel a legitimate campaign contribution, to say the least. *See, e.g., United States v. Ring*, 706 F.3d 460, 464 (D.C. Cir. 2013) ("Ring … relied heavily on campaign contributions to maintain relationships with elected

officials and promote [his] clients' political interests. *But it was Ring's other lobbying tactics that got him in trouble.* These tactics chiefly included treating congressional and executive branch officials to dinners, drinks, travel, concerts, and sporting events." (emphasis added)). As to the second scenario, one should not worry about jurors erroneously imputing corrupt intent to, say, a judge who decides a motion without reading the briefs, a legislator who encourages campaign contributions via illegal straw donors, or a local councilwoman who pressures a prosecutor to bring charges against an individual. *See United States v. Terry*, 707 F.3d 607 (6th Cir. 2013) (judge); *United States v. Benjamin*, 95 F.4th 60 (2d Cir. 2024) (legislator); *United States v. Lee*, 919 F.3d 340 (6th Cir. 2019) (local councilwoman). And as to the third, it is self-evident that direct and unambiguous evidence of a quid pro quo can prove the existence of the same. None of these fact patterns are present here.

Consequently, *Evans v. United States*, 504 U.S. 255 (1992) and *United States v. Blandford*, 33 F.3d 685 (6th Cir. 1994) prove less helpful than they may first appear. In *Evans*, an FBI agent gave the defendant not only $1,000 in campaign contributions but also $7,000 for personal use, thus placing the case squarely within the first scenario of a direct payment to the politician, as explained above. *See Evans*, 504 U.S. at 257. *Blandford* is less relevant still. It involved no campaign contributions at all, only a personal bribe—an even more obvious indicia of corrupt intent. It is also difficult to find authoritative the *Blandford* court's interpretation of *Evans* when that court denied that *Evans* applied to its case-at-hand. *See Blandford*, 33 F.3d at 696. Indeed, in *United States v. Abbey*, we

suggested *Blandford*'s reading of *Evans* only applies outside the campaign contribution context, and we have not cited *Blandford* in a campaign contribution case since. *See* 560 F.3d 513, 517–18 (6th Cir. 2009).

By contrast, consider the "thin legal ice" of a prosecution based on a campaign contribution alone, such as the one here. *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815, 825 (7th Cir. 2016). Citizens make campaign contributions to influence policymaking, and these contributions constitute political speech under the First Amendment. *See Citizens United v. FEC*, 558 U.S. 310, 359 (2010) ("a substantial … if not the only reason … to make a contribution to, one candidate … is that the candidate will respond by producing those political outcomes the supporter favors" (citation omitted)); *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (plurality op.). For this reason, it is particularly worrisome when, as here, a criminal conviction derives solely from a purported campaign contribution that, if legitimate, would be constitutionally protected.

A politician may take a legislative position, fundraise off it, and then fundraise more after successfully passing laws that advance it. An official does not break the law when he adopts a position that aligns with a donor's interest. *See Brown v. Hartlage*, 456 U.S. 45, 55–56 (1982). This happens all the time, and nobody doubts its legality. No case suggests a politician can express policy positions only when he wholeheartedly thinks they are good ideas. And no case suggests it is illegal for a politician to take a position because he believes his constituents will support it or because adopting it increases the likelihood that donors will contribute to his campaign.

To be sure, if a donor approaches a politician and makes a direct trade of dollars for official action, then it is illegal under *McCormick*. But bribery and extortion are extremely difficult to prove where, as here, a politician receives no direct payment into his pocket but only indirectly benefits from a contribution made to his campaign. *See Empress Casino*, 831 F.3d at 824–25.

We therefore need to consider Sittenfeld's prosecution in light of its unusual facts—a conviction based on an allegedly corrupt campaign contribution and not anything else. This case presents the most troubling context for application of the bribery and extortion laws: when conduct arguably protected by the Constitution is at issue. In these circumstances, a case will likely come close to the line of sufficiency, so we must police that line vigorously.

B. Evidence of Sittenfeld's Alleged Corrupt Intent Is Consistent with Lawful Motive

The second reason to zealously guard the line of sufficiency here is that the government's proof of Sittenfeld's alleged corrupt intent is entirely consistent with his having a lawful motive.

As the majority correctly says, "state of mind is at the heart of the inquiry." Majority Op. at 770. For bribery, the government must prove that Sittenfeld had a "corrupt state of mind and the intent to be influenced in [an] official act." *Snyder v. United States*, 603 U.S. 1, 12 (2024). Though "it goes without saying that matters of intent are for the jury to consider," *McCormick*, 500 U.S. at 270, the law does not give jurors full autonomy to decide corrupt intent. That is because it can be very difficult to distinguish a

legitimate contribution from a corrupt bargain. Thus, as an additional guardrail, the government must show an explicit quid pro quo to reach a jury. *Snyder*, 603 U.S. at 23 (Jackson, J., dissenting) (citing *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404 (1999)) (for federal programs bribery); *McCormick*, 500 U.S. at 273 (for Hobbs Act extortion). "A quid pro quo means a specific intent to give or receive something of value in exchange for an official act. So, for a payment to constitute a bribe, there must be an upfront agreement to exchange the payment for taking an official action." *Snyder*, 603 U.S. at 23–24 (Jackson, J., dissenting) (cleaned up) (quoting *Sun-Diamond Growers*, 526 U.S. at 404–05).

A helpful way to analyze a quid pro quo is through the lens of contract formation. After all, a quid pro quo is a contract: as the majority correctly notes, there must be "a meeting of the minds," Majority Op. at 770, and the official "must receive some consideration for his promise," *id.* An agreement becomes illegal only if there is mutual consent for a specific contribution to "control[ ]" the politician's vote or other official act. *McCormick*, 500 U.S. at 273. But to anyone other than the politician, it can be extremely difficult to answer when such mutuality exists, particularly when, as here and in *Evans*, the government has only circumstantial evidence to prove its case.

Not only is it difficult to discern whether there is an illegal bargain in a case like Sittenfeld's, but there is also a high cost to getting it wrong. "The right to participate in democracy through political contributions is protected by the First Amendment[.]" *McCutcheon*, 572 U.S. at 191. And this constitutional guarantee is of the highest caliber. *See FEC v. Cruz*,

596 U.S. 289, 302 (2022) ("The First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." (citation omitted)). Prosecution of campaign contributions therefore runs a substantial risk of chilling political speech. *See NAACP v. Button*, 371 U.S. 415, 433 (1963) ("The threat of sanctions may deter … almost as potently as the actual application of sanctions."); *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) ("[T]he threat of enforcement of an overbroad law may deter or 'chill' constitutionally protected speech—especially when the overbroad statute imposes criminal sanctions."); *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 618–19 (2021) ("[T]he protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough because First Amendment freedoms need breathing space to survive." (citation omitted)).

Consequently, we need to meaningfully enforce the line of sufficiency in cases such as this one, where a jury could mistake lawful—indeed, constitutionally protected—conduct for evidence of a crime. *See Counterman v. Colorado*, 600 U.S. 66, 75 (2023) ("A speaker … may worry that the legal system will err, and count speech that is permissible as instead not.") In this regard, an analogy from antitrust law, though imperfect, can guide us. Like bribery and extortion cases involving campaign contributions, caselaw concerning allegedly illegal restraints of trade can present facts capable of being viewed both ways as to whether an unlawful bargain was struck. As a result, the Supreme Court has articulated particular

doctrines for deciding which suits may proceed to discovery and which of those have sufficient evidence to reach a jury. When parties in those cases are accused of unlawful collusion, "it is of considerable importance that [legal] independent action … be distinguished from [illegal] … agreements." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 763 (1984). This task bears striking similarity to our job to discern the difference between politicians and donors engaged in lawful parallel acts (official acts and campaign contributions) that advance overlapping interests, on the one hand, and such actors when they strike corrupt bargains, on the other.

In restraint-of-trade cases, the former circumstance is known as conscious parallelism, a lawful "common reaction of firms in a concentrated market that recognize their shared economic interests and their interdependence." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553 (2007) (cleaned up). Parallel behavior can be evidence of an illegal bargain, but it may also simply reflect lawful, rational decisionmaking by the parties involved. This presents a deep problem in the field of antitrust:

> [J]udged from a distance, the conduct of the parties in the various situations can be indistinguishable. For example, the fact that a manufacturer and its distributors are in constant communication about prices and marketing strategy does not alone show that the distributors are not making independent pricing decisions. A manufacturer and its distributors have legitimate reasons to exchange information about the prices and the reception of their products in the market.

Monsanto, 465 U.S. at 762. Put succinctly, the problem is that actions suggesting illegal collusion are often "consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy." *Twombly*, 550 U.S. at 554.

Switch "political strategy" for "business strategy" and one can see *our* problem: it is perfectly normal—and legal—for politicians and their donors to have shared interests and act on them in parallel, yet it is illegal to make an unambiguous agreement exchanging official acts for campaign contributions. And just as "mistaken inferences in [restraint-of-trade] cases … are especially costly, because they chill the very conduct the antitrust laws are designed to protect," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986), so too are mistaken inferences in prosecutions of campaign contributions because they chill conduct the First Amendment protects.

In the face of such precarious challenges, the Supreme Court does not permit judges in restraint-of-trade cases to sit back and let juries decide right from wrong when there is a mere possibility of inferring illegality from circumstantial evidence. *Cf. Twombly*, 550 U.S. at 573 (Stevens, J., dissenting) ("[T]here is a risk that jurors may mistakenly conclude that evidence of parallel conduct has proved that the parties acted pursuant to an agreement when they in fact merely made similar independent decisions."). Instead, "antitrust law limits the range of permissible inferences from ambiguous evidence." *Matsushita*, 475 U.S. at 588. For a collusion allegation to succeed, there must be "evidence that tends to exclude the possibility that the" alleged conspirators "acted independently,"

which, as discussed above, cannot be the mere fact that the two parties talked about the subject at issue. *Monsanto*, 465 U.S. at 764. Therefore, "business behavior is admissible circumstantial evidence from which the fact finder may *infer* agreement. But this Court has never held that" conscious parallelism "*establishes* agreement." *Theatre Enters., Inc. v. Paramount Film Distrib. Corp.*, 346 U.S. 537, 540–41 (1954) (emphasis added) (citations omitted). In other words, "conduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy." *Matsushita*, 475 U.S. at 588. And just like *McCormick*'s quid pro quo requirement, these safeguards come from judicial construction of a broad text.

Consider *In re Text Messaging Antitrust Litigation*, 782 F.3d 867 (7th Cir. 2015), which is strikingly similar to our case. The plaintiffs there alleged that cellphone service providers illegally colluded to raise the price of text messages. Like the government in our case, "the plaintiffs presented circumstantial evidence consistent with an inference of collusion, but … equally consistent with independent parallel behavior." *Id.* at 879. And like the government in our case, the plaintiffs had an additional arguable "smoking gun": emails from a T-Mobile employee who worked on text message pricing saying "at the end of the day we know there is no higher cost associated with messaging. The move [the latest price increase by T–Mobile] was colusive [*sic*] and opportunistic." *Id.* at 871–72 (brackets in original). These ambiguous emails were of a type akin to the "love you but can't" line that the majority finds so damning to Sittenfeld. But it was

even worse than that. The T-Mobile employee also tried to delete the emails, *id.* at 873, which evinces a guilty mind far more than Sittenfeld trying to honor the FBI agents' request to keep their contributions anonymous.

The Seventh Circuit refused to let that case reach a jury. Using other evidence in the record to contextualize the emails, the court found that they "need not imply express collusion." *Id.* As for the alleged coverup, the court found no reason to characterize it as such because "there is … an equally plausible reason for the deletion of the emails in question," namely that the employee was afraid of "abusing one's corporate superiors." *Id.*

In re Text Messaging is one of many cases in which courts of appeals have held that evidence of an isolated, ambiguous "smoking gun" communication is not enough to create a triable issue of collusion when the totality of proof shows only conscious parallelism. *See also Anderson News, LLC v. Am. Media, Inc.*, 899 F.3d 87, 108 (2d Cir. 2018) (email said "we should start simultaneously using our collective resources and influence to direct business"); *Kleen Prods. LLC v. Georgia-Pac. LLC*, 910 F.3d 927, 932 (7th Cir. 2018) (emails encouraged purported colluders to avoid "anti-trust issues" and said "everybody needs to do the same thing"); *In re Citric Acid Litig.*, 191 F.3d 1090, 1098 (9th Cir. 1999) (handwritten note from a meeting of industry leaders said the "[u]ndertaking is a confidential agreement to maintain price" and meeting minutes suggested illegal collusion was plainly proposed and then immediately rejected). It is instructive that so many courts of appeals have found

insufficient evidence in collusion cases with facts similar to those here.

It is not far-fetched to import principles from antitrust law to other legal contexts such as the one here. Indeed, civil procedure syllabi routinely include *Twombly*, *Matsushita*, and *Monsanto* because they set standards for sufficiency to reach discovery (*Twombly*), trial (*Matsushita*), and verdict (*Monsanto*)—they are not outliers specific to antitrust. Their lesson in how to police the line of sufficiency is widely applicable. It is all the more urgent that our court in particular heed this lesson given the similarity of our case to those seminal civil cases and the greater consequences at stake in a criminal prosecution. Indeed, it would be strange to allow the government to imprison Sittenfeld on evidence that would not reach the jury in a civil lawsuit. And it would be stranger still to treat core political speech less carefully than common corporate activity.

In analogizing to antitrust, I do not seek to impose a foreign standard of review in this case. Instead, restraint-of-trade cases can prove useful in policing the sufficiency line because that field of law has more frequently faced Sittenfeld-like circumstances than the bribery/extortion field has. Under the standard of proof applicable here (beyond a reasonable doubt for any rational trier of fact), the government's case surely fails if it only produces evidence "consistent with permissible [political activity] as with illegal conspiracy," *Matsushita*, 475 U.S. at 588or does not "exclude the possibility that the" alleged conspirators "act[ed] independently," *Monsanto*, 465 U.S. at 764.

As the Supreme Court observed less than three years ago, "[t]o be sure, the line between quid pro quo corruption and general influence may seem vague at times, but the distinction must be respected to safeguard basic First Amendment rights. And in drawing that line, the First Amendment requires us to err on the side of protecting political speech rather than suppressing it." *Cruz*, 596 U.S. at 308 (citations omitted). Respectfully, while the majority hesitates to police that line, I believe that is precisely what the Constitution requires us to do.

C. Audio and Video Recordings Capture Sittenfeld's Communications

Finally, there is a third reason here to guard the sufficiency line that is not present in all appeals of a bribery or extortion conviction: namely, the FBI introduced evidence of its interactions with Sittenfeld through audio or video recordings rather than testimony alone. When witnesses testify about events that are not recorded, a jury can entirely credit or ignore the testimony. In that situation we, as the appellate court, must defer to the jury: we review a verdict by crediting testimony that incriminates and ignoring what exculpates. *See United States v. Osborne*, 886 F.3d 604, 608 (6th Cir. 2018) ("All reasonable inferences and resolutions of credibility are made in the jury's favor." (citation omitted)).

But when the evidence is recorded, the calculus changes. Like with the email smoking guns of *In re Text Messaging* and the other cases noted above, the court does not need a witness to know what was said. There is nobody's credibility to evaluate. The Supreme Court also made this point in *Scott v. Harris*, 550 U.S.

372 (2007). The question was whether a police officer used excessive force in a car chase when he forced the plaintiff's car to crash. On a summary judgment appeal for denial of qualified immunity, Justice Scalia, writing for eight justices, admonished the appeals court for uncritically accepting the plaintiff's interpretation of events (that he was driving responsibly and did not pose a threat to the public) when the video evidence blatantly contradicted it. *Id.* at 378–80.

In this case, therefore, when we construe evidence in a light most favorable to the verdict, we should "view[ ] the facts in the light depicted by the videotape," *id.* at 381, instead of through the subjective interpretation of the FBI-agents and their informant. And we should derive only "*reasonable* inferences" from the recordings in the verdict's favor, *Osborne*, 886 F.3d at 608 (emphasis added) (citation omitted).

II. The Government's Insufficient Evidence of an Explicit Quid Pro Quo

With these distinguishing aspects of the case in mind, consider the relevant facts. For the immense effort the FBI put into this sting, it found scant proof to support its case that Sittenfeld agreed to a corrupt bargain. The sting lasted over a year and involved two undercover FBI agents and one of Sittenfeld's friends, Chinedum Ndukwe, a former football player for the Cincinnati Bengals who had long contributed to Sittenfeld's political campaigns. The FBI recorded every discussion during the sting.

Prosecutors could only point to a single ambiguous remark in a single early phone call as standalone

evidence that Sittenfeld was doing anything out of the ordinary. This, as noted, was the "love you but can't" phrase prominently discussed in the parties' briefs and the majority opinion. According to the prosecution's interpretation, Sittenfeld used the October 30th call to threaten Ndukwe and, by proxy, Ndukwe's purported business partner, the undercover FBI agent named Rob: if Rob or his associates failed to contribute to the campaign, then Sittenfeld would refuse to help them as mayor. Appellee's Br. at 38–39. Remember, the government indicted Sittenfeld for extorting and receiving a bribe from Rob, not Ndukwe. So to be certain it did not constructively amend the indictment, the government must argue that any threat to Ndukwe was actually a threat to Rob. *See* Majority Op. at 785–86.

The majority believes the "love you but can't" line is sufficient to convict for bribery. It also believes Ndukwe approached Sittenfeld with a quid pro quo offer from Rob on a November 2nd phone call and that Sittenfeld agreed to it when he met Rob on November 7th at Nada restaurant. I disagree with both points.

Beginning with the supposed coercion of Ndukwe on the October 30th call, it is important to note how little we can glean from the cryptic words "love you but can't" themselves. Sure, Ndukwe testified that he took the line as a threat. Crediting that testimony only proves Ndukwe interpreted the remark that way. Even if one could ignore Ndukwe's natural bias as a government informant to interpret Sittenfeld's statement in the worst possible way, the recordings contradict his account. The other evidence at trial goes against Ndukwe's interpretation, so much so that to adopt his interpretation would be to make an

unreasonable inference. And a review for sufficiency of the evidence requires us to review the *entire* trial record, not just this single statement in isolation. *See United States v. Vichitvongsa*, 819 F.3d 260, 270 (6th Cir. 2016). That comprehensive review, I respectfully submit, the majority opinion fails adequately to do.

The complete context includes the recorded November 7th meeting with Rob at the aptly named restaurant, Nada. That conversation negates whatever value the government claims "love you but can't" says about Sittenfeld's intent. The recording demonstrates that Sittenfeld clearly did not think he had coerced Ndukwe (and Rob, by proxy) into a corrupt bargain by saying "love you but can't." Instead, he practically begged Rob for a campaign donation. Sittenfeld marshalled evidence that he was an influential legislator to convince Rob that he could get his 435 Elm plan enacted. He even brought a slideshow to make the point. Why would Sittenfeld make such effort to convince Rob to donate if had he bullied Ndukwe into promising a donation from Rob a week earlier?

Next consider the theory that, outside the context of "love you but can't," Sittenfeld agreed to a quid pro quo at Nada. The recording suggests nothing in the way of corrupt intent on Sittenfeld's part. He only tried to convince Rob to donate to him because he was an influential, pro-business politician—it is far from illegal for Sittenfeld to suggest his influence and positions could benefit Rob's interests. *See Citizens United*, 558 U.S. at 359; *Cruz*, 596 U.S. at 308 ("influence and access embody a central feature of democracy" (citation omitted)). When Rob tried to frame his potential contribution as an explicit bribe,

he flubbed. Even he admitted that Sittenfeld took his invocation of a "deal" to refer to the 435 Elm development deal he wanted with the city as opposed to a deal for a bribe. No rational juror could find that Sittenfeld evinced corrupt intent there when even Rob believed Sittenfeld did not take the conversation to be about bribery.

In fact, everything Sittenfeld said at the November 7th Nada meeting aligned with the terms of the legitimate campaign contribution that he had described to Ndukwe on the November 2nd phone call, captured by the FBI on audiotape. On that call, Ndukwe made the first and only clear request for a bribe, but Sittenfeld rebuffed him. Rather than accept the bribe, Sittenfeld avowed his pro-business bona fides like he later did with Rob. There is nothing illegal about that. Sittenfeld suggested that though a contribution could not *control* his action, his preconceived policy positions made him, to quote something he later told Rob, a "good bet[ ] and good investment[ ]." The benefit to Ndukwe and company would not be control over Sittenfeld's action or a guarantee per se, but instead having a reliably pro-business mayor in office who was not predisposed against them like Mayor Cranley supposedly was. In the context of the whole record then, neither the isolated and ambiguous "love you but can't" statement nor any subsequent conversation can prove extortion or bribery beyond a reasonable doubt, even under *Evans*'s permissive circumstantial evidence rule.

The majority cites other actions and words of Sittenfeld to suggest the existence of a quid pro quo, but they all suffer from the same flaw: each is "consistent with" what we would expect a law-abiding,

pro-business politician to do. *Twombly*, 550 U.S. at 554. They are emblematic, at most, of the conscious parallel conduct that the Supreme Court has said is insufficient to take an unlawful collusion case to a jury. *See id.* at 553–54.

First, the majority suggests Sittenfeld came to the Nada meeting ready to support 435 Elm because he knew from the November 2nd call that Rob was amenable to a bribe. *See* Majority Op. at 772–74. But any politician who plans a dinner with a potential donor will highlight the politician's support for the interests that drive the donor. And the clarity with which Sittenfeld laid out what a contribution would and would not accomplish diminishes the relevance of this argument to a point that it is an unreasonable inference. Next the majority finds it incriminating that Sittenfeld can be seen nodding along to Rob's points. But common experience teaches that one nods in a conversation to indicate one's attention and understanding to what is said, not necessarily agreement with it.

Sittenfeld also, according to the majority, "showed apparent disregard for the true source of the donations" while caring meticulously about the donation procedure at the Nada meeting. Majority Op. at 773. By this the majority implies that the potential for Rob to use straw donors did not bother Sittenfeld. The recording shows otherwise. Until the Nada meeting, Sittenfeld and Ndukwe only discussed donating through LLCs, which was unquestionably legal. Sittenfeld heard at Nada for the first time that Rob wanted to donate through perhaps eighteen personal checks or money orders because he was afraid LLC donations could be traced to him. As the

majority says, Sittenfeld responded by reminding Rob of the rules for attributing personal donations to donors. But because Rob told Sittenfeld earlier in the conversation that his investment group had more than twenty investors, it was obvious that Rob could round up eighteen checks without resorting to straw donors. A later piece of the conversation confirms Sittenfeld did not understand Rob to have proposed straw donors. When Rob mentioned giving Sittenfeld "money orders from you know John Doe," Sittenfeld stopped him to make sure he meant "a real real person … whose [*sic*] part of your guys' network." Appellate R. 23, p. 84. Rob affirmed that he did. Viewed in whole then, the conversation does not support a reasonable inference that Sittenfeld was fine with straw donors.

The majority also leaves out that earlier in the conversation Sittenfeld tried to convince Rob to stick with the original plan of LLC donations, but directed toward Sittenfeld's PAC instead of his campaign. That, according to Sittenfeld, would achieve Rob's goal of staying anonymous. And in the end, Rob did contribute legally to Sittenfeld's PAC via LLCs.

The majority sees the potential to fault Sittenfeld there, too. It finds "at least some probative value" in Sittenfeld's eagerness to help Rob and company stay anonymous. Majority Op. at 773–74. But that cannot possibly incriminate Sittenfeld. The right to donate anonymously to political organizations (like a political action committee, as here) is one of the strongest protections of the First Amendment's right to freely associate. That freedom applies whether the beneficiaries are black activists in 1950s Alabama, conservative activists in 2010s California, or make-believe real estate developers in present-day

Cincinnati. *See NAACP v. Alabama*, 357 U.S. 449 (1958); *Americans for Prosperity Found.* 594 U.S. at 595. It cannot possibly be that politicians must or even should ask their followers why they want to keep their contributions as hidden as the law allows.

And that is the full extent of what Sittenfeld offered to do for his donors. Each time Sittenfeld saw potential impropriety in how Rob wanted to contribute, he reminded Rob how to do so legally and refused a donation when it did not comply with the law.

To prove a quid pro quo, there must be evidence of an explicit agreement on *both* sides of the transaction, not just from the side conducting the sting operation. *See Blandford*, 33 F.3d at 696. Viewed in the light most favorable to the government, the evidence shows only a single ambiguous statement made by Sittenfeld to Ndukwe that could be read to suggest improper intent. But the totality of the evidence vitiates that statement's probative value. To be sure, Ndukwe and the FBI agents testified to their belief that there was a corrupt bargain. But there is no proof that Sittenfeld himself viewed the campaign contribution that way. In fact, the video and audio recordings show just the opposite—that at every turn he did what one would expect to ensure its legality.

Even though the government tried to get Sittenfeld to take the bribery bait, he never bit. No illegal agreement ever materialized. Sittenfeld accepted the campaign contribution for what he thought it was—a campaign contribution—and not the product of any explicit quid pro quo for official acts.

III. Reconsidering *McCormick*

Because the prosecuted conduct here is solely a purported campaign contribution, this case falls in the danger zone that surrounds the sufficiency line of bribery and extortion cases. Given that concern, and given post-*McCormick* caselaw that more strongly protects campaign contributions under the First Amendment, it would be helpful for the Supreme Court to provide guidance here. The lower courts need to know the extent of *McCormick*'s protections in cases where the only allegation of illegality relates to corrupt, but otherwise lawful, campaign contributions.

To understand the danger here, consider the majority's assertion that *McCormick* would condemn a politician who says, "because of this gift I will now be sure to keep my campaign-trail promise."[2] Majority Op. at 770. If a court can reach this conclusion based on the logic of *McCormick*, then perhaps the Supreme Court should clarify the reasoning of that decision.

This example is much like common political horse-trading. Legislators routinely promise to vote for a colleague's bill in consideration of a colleague's vote on their bill. Interest groups routinely promise the votes of their members if a politician pledges to take a certain policy position. And candidates for executive office routinely endorse their opponents, give flattering speeches at campaign events, and wind up with a cabinet post. Surely these are things of value. Under the majority's reading of *McCormick*, each of

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[2] One obvious critique of this claim is that necessarily the politician already made the promise, so reiterating it cannot qualify as contract-like consideration to complete the quid pro quo.

these examples contravenes the plain meaning of the bribery and extortion statutes. Further, campaign contributions are similar to each of these because "[they] are valuable only as a means to get votes …. A legislator who receives a contribution has increased her expected number of votes by a certain amount …. The legislator does not get anything more out of the contribution than that." David A. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 Colum. L. Rev. 1369, 1373 (1994). Indeed, Judge Murphy notes that *Evans*'s interpretation of the Hobbs Act appears to go at least this far. Concurring Op. at 790–91.

So what separates campaign contributions from the other items in the list? *McCormick*'s pragmatic explanation is that "a proposal to trade one public act for another, a form of logrolling," *United States v. Blagojevich*, 794 F.3d 729, 734 (7th Cir. 2015), is so common that Congress could not have meant to outlaw it. *See McCormick*, 500 U.S. at 272; *see also Blagojevich*, 794 F.3d at 735 ("It would be more than a little surprising to Members of Congress if the judiciary found in the Hobbs Act … a rule making everyday politics criminal.").[3] Indeed, the Court "did not purport to discern that requirement in the common law or statutory text, but imposed it to prevent the Hobbs Act from effecting a radical (and absurd) change in American political life. 'To hold otherwise would open to prosecution not only conduct

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[3] I agree with Judge Murphy and the three dissenting justices in *Evans* that the Hobbs Act, properly construed, should apply only to officials who tell people that their office entitles them to a payment. *See Evans*, 504 U.S. at 282–83 (Thomas, J., dissenting).

that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or expenditures, as they have been from the beginning of the Nation.' " *Evans*, 504 U.S. at 286–87 (Thomas, J. dissenting) (quoting *McCormick*, 500 U.S. at 272–73).

So, a reasonable inference from *McCormick* is that pragmatism rules this area of law much more so than principle. *Cf. Sun-Diamond Growers*, 526 U.S. at 412 (Regarding laws about bribery, "precisely targeted prohibitions are commonplace, and [ ] more general prohibitions have been qualified by numerous exceptions. Given that reality, a statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter.") This buttresses my belief that courts in cases like this one must firmly guard against interpretations of *McCormick* that allow a prosecutor to reach a jury merely by showing the combination of campaign contribution and an official act benefitting that contributor.

Judge Murphy believes the better move is to refrain from employing pragmatism when a principled approach would prove superior. Concurring Op. at 795–96. I agree that we should prefer a textualist interpretation to the policy-centric reasoning of *McCormick*. I also agree with Judge Murphy that, in lieu of such a change, further Supreme Court guidance would help lower courts, particularly for cases like this one where there is no unambiguous evidence of a quid pro quo and no independent indicia of corrupt intent, like personal gifts or a connection to an independently criminal scheme.

However, I respectfully disagree with Judge Murphy on one point. He recognizes as I do that the Court's vague doctrine in this field leaves the exercise of some First Amendment rights in a precarious position. Concurring Op. at 791–93. But I do not believe we must do nothing until the Court does something. To the contrary, courts routinely apply precedents that do not cleanly address the situation at hand. If we can choose to apply controlling precedent in one way that protects First Amendment rights or in another that imperils them, I believe our duty, both to the Constitution and the Court's precedent, compels us to choose the former.

We need not contradict *McCormick* or *Evans* to do so here. *McCormick* did not mark itself as the fullest extent of protection for campaign contributions against Hobbs Act prosecutions. In fact, it is more precise than many acknowledge. *McCormick* ultimately decided that "a quid pro quo is [ ] *necessary* for conviction under the Hobbs Act when an official receives a campaign contribution." 500 U.S. at 274. The Court also held that contributions violate the Hobbs Act "*only if* the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *Id.* at 273 (emphasis added). In other words, a quid pro quo, is necessary but not sufficient to convict. Therefore, the Court in *McCormick* did not explicitly settle the full extent of First Amendment protection for campaign contributions in the context of a bribery or extortion case. Judge Murphy's analysis suggests the *McCormick* Court saw this as a feature, not a bug; it only wanted to decide the narrow issue before the Court. Concurring Op. at 788–89. It did not *foreclose*

an interpretation of the Hobbs Act that includes additional safeguards to prevent convictions for common politicking. Neither did *Evans*, which in its most generous reading only explained *McCormick*'s quid pro quo requirement without purporting to modify it. And neither did Justice Kennedy's *Evans* concurrence that the majority cites.

The path of the caselaw after *McCormick* strongly suggests we should construe First Amendment principles broadly because they "treat the act of giving money as one of the central means by which citizens participate in politics." Deborah Hellman, *A Theory of Bribery*, 38 Cardozo L. Rev. 1947, 1988 (2017). In 2010, for example, the Court recognized that "a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors." *Citizens United*, 558 U.S. at 359 (citation omitted). In 2014, Chief Justice Roberts, for a plurality of the Court, wrote "[r]epresentatives are not to follow constituent orders, but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials." *McCutcheon*, 572 U.S. at 227. The Chief Justice also wrote that "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders" and among the methods of participating are voting and contributing to political campaigns. *Id.* at 191. The Court adopted much of the *McCutcheon* plurality's reasoning in *Cruz*, 596 U.S. at 289.

These cases that post-date *McCormick* and *Evans* reflect the strength with which the Constitution

guarantees the expression of speech through contributions to a campaign. These precedents "protect[ ] contributions because contributing is a form of political participation." Hellman, at 1987. Because that is the case, politicians and donors deserve more protection from prosecutors who seek to reach a jury merely by showing a donor's campaign contribution on one side and that donor's "self-interest reflected in a candidate's commitment" on the other. *See Brown*, 456 U.S. at 56.

IV. Conclusion

This case is unusual, but it is by no means an aberration. If Sittenfeld's verdict is allowed to stand, it may incentivize more prosecutions of campaign contributions in the future. The costs of not policing the sufficiency line may prove grievous. Writing for a unanimous court, the Chief Justice addressed the threat of overzealous corruption prosecutions:

> The basic compact underlying representative government assumes that public officials will hear from their constituents and act appropriately on their concerns—whether it is the union official worried about a plant closing or the homeowners who wonder why it took five days to restore power to their neighborhood after a storm. The Government's position could cast a pall of potential prosecution over these relationships if the union had given a campaign contribution in the past or the homeowners invited the official to join them on their annual outing to the ball game. Officials might wonder whether they could respond to even the most commonplace requests for assistance, and

> citizens with legitimate concerns might shrink from participating in democratic discourse.

McDonnell v. United States, 579 U.S. 550, 575 (2016) (emphasis omitted).

The majority decides that the best way to handle the task facing us—one with no precedent directly on point, a high chance of jury confusion as to what the First Amendment protects, and a high cost if the jury gets it wrong—is to do nothing. This should not come as a surprise: no caselaw has grappled with circumstances as close to the line as these, and sufficiency challenges are almost always losers to begin with. Faced with the very real possibility that Sittenfeld assented to only a "good investment" in his candidacy rather than an agreement that "control[ed]" his actions, the majority responds that "[c]ampaign contributions will almost always have an inherent legitimate alternative explanation" and that "[t]his is also why matters of intent are for the jury to consider." Majority Op. at 771 (citation omitted).

But this is exactly the wrong solution to the problem that the majority correctly identifies. That a jury could interpret a raft of legitimate actions against an official suggests a high likelihood that an innocent politician could be convicted. This should count as less reason, not more, to give such an issue to a jury because of the constitutional concerns at stake. Judges, not juries, decide when conduct falls within the protection of the Constitution. *See Sparf v. United States*, 156 U.S. 51, 87 (1895) ("[T]he law in criminal cases is to be determined by the court. In this way we have our liberties and rights determined … not by a tribunal ignorant of the law, but by a tribunal trained to and

disciplined by the law ….”). Consequently, judges bear the responsibility to overturn a verdict when, as in Sittenfeld’s prosecution, the risk of conviction for constitutionally protected conduct is too great.

Because I believe the government did not present evidence sufficient to convict Sittenfeld of federal programs bribery or Hobbs Act extortion, I respectfully dissent.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ALEXANDER SITTENFELD, aka P.G. Sittenfeld, Defendant-Appellant.	)	O R D E R

Filed May 15, 2024
Kelly L. Stephens, Clerk

Before: BUSH, NALBANDIAN, and MURPHY, Circuit Judges.

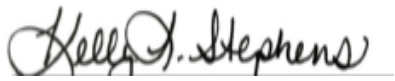
PER CURIAM. Defendant Alexander "P.G." Sittenfeld moved for release pending appeal. R. 295. The district court denied that motion at Sittenfeld's sentencing hearing. R. 302, Sent'g Tr., p. 117, PageID 7507. A motions panel of this court agreed. D. 21, Order. At oral argument, Sittenfeld's counsel renewed his request for release pending appeal.

We revisit Sittenfeld's motion in light of the full briefing and argument that were not available to the motions panel. 18 U.S.C. § 3143(b) permits release pending appeal when the court finds the defendant is not a flight risk, does not pose a danger to the safety of others, and raises an appeal that "is not for the purpose of delay and raises a substantial question of law or fact likely to result in" reversal or a new trial. The district court determined that Sittenfeld was not likely to flee or pose a threat, so "it all [came] down to" whether there was a substantial question on appeal. R. 302, pp. 115–16, PageID 7505–06. On that question, the district court seemed to think it was not "likely" to be reversed. *Id.* at 117, PageID 7507. We review the district court's evaluation of the legal merits de novo. *United States v. Freeman*, 42 F. App'x 808, 809 (6th Cir. 2002) (citing *United States v. Pollard*, 778 F.2d 1177, 1182 (6th Cir. 1985)).

The district court found that Sittenfeld failed to show that the court would likely be overturned on appeal. *See* R. 302, p. 117, PageID 7507. But section 3143(b) does not require a court to think reversal is probable or likely. *See Pollard*, 778 F.2d at 1181–82. Rather, it must be likely that success on appeal, on the substantial question that the defendant raises, would result in reversal or a new trial. *Id.* at 1182. As to the substantial question, the appeal has to present "a close question or one that could go either way." *United States v. Sutherlin*, 84 F. App'x 630, 631 (6th Cir. 2003) (quoting *Pollard*, 778 F.2d at 1182). After reviewing the briefs and hearing oral argument, we are persuaded that the standard for release pending appeal is met, though we express no opinion on the ultimate outcome of Sittenfeld's appeal.

We **GRANT** Sittenfeld's renewed motion for release pending appeal. Sittenfeld shall be released on his own recognizance forthwith under the conditions of release that the district court previously imposed. *See* R. 10, Order.

ENTERED BY ORDER OF
THE COURT



Kelly L. Stephens, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO,
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:20cr142

JUDGE DOUGLAS R. COLE

v.

ALEXANDER SITTENFELD,

Defendant.

OPINION AND ORDER

Defendant Alexander "P.G." Sittenfeld moves this Court for acquittal (Doc. 270) and for a new trial (Doc. 271) on multiple grounds. Some are a closer call than others. Ultimately, though, the Court concludes that none is meritorious. Accordingly, as explained below, the Court **DENIES** both Motions.

BACKGROUND[1]

Sittenfeld is a former Cincinnati City Council member. On November 18, 2020, the government indicted him on two counts each of honest services

[1] The Court has thoroughly summarized the record in this case many times and thus need not do so here. Record cites are included for facts the Court uses to explain its decisions.

wire fraud, bribery, and attempted extortion under color of official right in connection with political fundraising activities. Generally speaking, the government claimed that Sittenfeld solicited and accepted money in exchange for agreeing to vote for and otherwise support a real estate development project that would later come before the Council. (*See* Doc. 3). The matter went to trial on June 21, 2022. On July 8, a jury found Sittenfeld guilty of two of the six counts. On September 30, Sittenfeld filed the instant motions. (Docs. 270, 271). The Court heard argument on the motions on December 5, 2022.

LAW AND ANALYSIS

A. Motion for Acquittal

Federal Rule of Criminal Procedure 29 permits a court to enter a judgment of acquittal if it finds the evidence "insufficient to sustain a conviction." Fed. R. Crim. P. 29. The Court views the evidence "in the light most favorable to the prosecution," asking only whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Paulus*, 894 F.3d 267, 275 (6th Cir. 2018).

During its review, the Court will "not reweigh the evidence, re-evaluate the credibility of witnesses, or substitute [its] judgment for that of the jury." *Brown v. Konteh*, 567 F.3d 191, 205 (6th Cir. 2009). And the evidence before the Court need not "remove every reasonable hypothesis except that of guilt." *United States v. Lee*, 359 F.3d 412, 418 (6th Cir. 2004). In short, the Court cannot—and will not—substitute its

judgment for the jury's so long as a rational trier of fact could have reached the result that the jury did.

Against that backdrop, Sittenfeld contends the Court should grant his Motion for Acquittal for three main reasons. (*See generally* Doc. 270). First, he believes that the government did not adequately prove the existence of a quid pro quo. (*Id. at* #6875–90). Second, he believes that the government did not legally prove the existence of an agreed-upon official act. (*Id. at* #6890–91). And third, Sittenfeld believes that if 18 U.S.C. § 666 and § 1951 reach his conduct, each is unconstitutional. (*Id. at* #6891–92). The government, for its part, disagrees with each of Sittenfeld's points. (*See generally* Doc. 276).

1. A Rational Jury Could Have Found A Quid Pro Quo.

Start with Sittenfeld's argument that the government did not adequately prove that a quid pro quo existed. (Doc. 270, #6875–78). That requirement attaches to both counts on which the jury convicted him: Count 3 (federal funds bribery, in violation of 18 U.S.C. § 666(a)(1)(B)) and Count 4 (attempted extortion under color of official right, in violation of 18 U.S.C. § 1951). The Court's instructions made this quid pro quo requirement clear. (*See* Doc. 202, #3221–32).

A quid pro quo is adequately shown if Sittenfeld "obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans v. United States*, 504 U.S. 255, 268 (1992). That quid pro quo must be "explicit" but need not be express. *McCormick v. United States*, 500 U.S. 257, 273 (1991). Put differently, although the

government need not show that the parties exchanged a precise written or oral statement of the deal, Sittenfeld must have "assert[ed] that his official conduct [would] be controlled by the terms of the promise or undertaking." *Id.* The Motion spends several pages reviewing the law on quid pro quos. But neither party disagrees with the law here. As the government notes in its response and as Sittenfeld noted at trial, "[e]verything comes down to what P.G. [Sittenfeld] intended." (Doc. 276, #6974; Doc. 251, #5040). That is where the parties disagree.

More specifically, the parties disagree about whether an ambiguous statement provides an adequate basis for a jury to find intent. Sittenfeld claims that the explicitness requirement "is a demanding one," (Doc. 270, #6878), and that this means that the agreement "must be *unambiguous*," (*id.* at #6879). According to Sittenfeld, so long as the underlying statements and conduct are even "susceptible to an innocuous explanation," they cannot provide the basis for criminal liability. (*Id.*). The government takes a different view. Starting from the proposition that "matters of intent are for the jury to consider," *McCormick*, 500 U.S. at 270, the government claims that it falls to the jury to consider the allegedly ambiguous words and actions in context and determine whether they reflect an "explicit" deal. (Doc. 276, #6974).

The government has the better of this argument. According to the Sixth Circuit, "[t]he trier of fact is 'quite capable of deciding the intent with which words are spoken or actions taken as well as the reasonable construction given to them by the official and the payor." *United States v. Terry*, 707 F.3d 607, 614 (6th

Cir. 2013). In other words, faced with ambiguity, it is the jury's job to construe the language and conduct. Only if the jury's construction is "unreasonable" could this Court intervene. So long as the facts here could reasonably be interpreted to give rise to a finding of intent to enter an explicit deal, that is enough to support the verdict on this element.

The evidence here passes that test. Perhaps the best example relates to the $10,000 contribution that Sittenfeld solicited from Chinedum Ndukwe. (Doc. 266, #6242). In a later call between Sittenfeld and Ndukwe, in which the two were discussing Ndukwe raising funds from his "network," Sittenfeld told Ndukwe, "You don't want me to be like, sorry, Chin, love you but can't." (*Id*., #6247). Ndukwe testified that he understood that statement as conditioning Sittenfeld's support for his project on receipt of donations. (*Id. at* #6247). A reasonable jury could have reached the same conclusion. The government also showed that the project did not initially have the support of Cincinnati economic development officials but that Sittenfeld, after more than one explicitly corrupt offer had been made, would "shepherd the votes." (Exh. 20D). This is nowhere near all the evidence. The record backs up those statements with hours of recordings and testimony, which the jury also heard.

Sittenfeld argued at trial and continues to argue today that the evidence "falls short of the legal line." (Doc. 270, #6881). In other words, he contends that he never took part in any quid pro quo arrangement, rejected other corrupt offers, and never intended to act illegally. But none of these arguments persuade the Court to overturn the jury's decision. To start,

Sittenfeld uses the wrong standard. As noted above, he claims that, so long as there is a "plausible alternative explanation" he cannot be liable. Not so. The Court does not consider whether an alternative explanation exists or whether the jury reasonably could have acquitted on the evidence. Rather, the Court considers whether the jury's actual determination—here, that the evidence presented by the government showed Sittenfeld's guilt beyond a reasonable doubt—was a result that a rational jury could have reached. *Jackson*, 443 U.S. at 319. It was. So this argument fails.

Sittenfeld fares no better by pointing to his exchange with Ndukwe in which Ndukwe pressed for guarantees about the project. Sittenfeld said "nothing can be a quid, quid pro quo [sic]," and further observed that he "kn[e]w that's not what [Ndukwe's] saying either." (Doc. 270, #6883). But such a verbal denial does not matter; no magic words can redeem an illegal action. If a politician agrees to exchange an official act for money, it does not matter if the politician says, "Of course, this isn't a bribe and I know you don't intend it as one." The question is whether a quid pro quo exists, not whether the politician admits to—or conversely disclaims—its existence.

Finally, Sittenfeld argues that the bribe charged in the indictment relates to payments from "Rob" (an undercover FBI agent playing the role of an out-of-town developer), so Sittenfeld's comments to Ndukwe (mainly the "love you, but can't" line above) are irrelevant. Not so. The testimony at trial showed that Rob and Ndukwe were portraying Ndukwe as a sort of go-between for Rob and Sittenfeld. That is, Sittenfeld understood that Ndukwe and Rob were partnering in

the real estate development project and that Ndukwe would be raising money for Sittenfeld *from* Rob. Thus, the jury rationally could have concluded that Sittenfeld believed his statements to Ndukwe would also make their way to Rob and provide a basis for Rob contributing to Sittenfeld's campaign.

To reiterate, none of this was a foregone conclusion. Sittenfeld is correct that many of the statements are ambiguous, especially considered in isolation. And the Court agrees that a rational jury could have come out the other way on the existence of a quid pro quo. But that showing does not entitle Sittenfeld to acquittal. Rather, the sole question is whether a rational jury could have found that an explicit quid pro quo existed here. And the answer to that question is yes.

2. A Rational Jury Could Have Found An Official Act.

Sittenfeld next argues that he should be acquitted because the government failed to prove a specific "official act" as required by the statute. Relevant here, the Supreme Court has said that an "'official act' is a decision or action on a 'question, matter, cause, suit, proceeding or controversy.'" *McDonnell v. United States*, 579 U.S. 550, 574 (2016); 18 U.S.C. § 201(a)(3). The question, matter, cause, suit, proceeding, or controversy must involve a "formal exercise of governmental power," but "using [one's] official position to exert pressure on another official to perform an 'official act'" would suffice. *Id*.

The Sixth Circuit has distilled *McDonnell* into a two-part test for an "official act." *United States v. Dotson*, No. 21-2826, 2022 WL 6973397, at *8 (6th Cir.

Oct. 12, 2022).[2] First, the government must prove that the question, matter, or other item did (or could have) come before a public-official defendant. *Id*. And second, the government must prove that the defendant "made a decision or took action 'on'" that item. *Id*. (quoting § 201(a)(3)). As to this second element, though, the government need not prove beyond a reasonable doubt that Sittenfeld *took* official action or even exerted pressure on another official to do so. Rather, the question is whether a rational juror could conclude "beyond a reasonable doubt that [Sittenfeld] *agreed* to perform one of those actions in exchange for bribes." *United States v. Lee*, 919 F.3d 340, 356 (6th Cir. 2019) (emphasis added) (citation omitted).

The Court has addressed these arguments from Sittenfeld before. (*See* Doc. 53). Again, the Court concludes that Sittenfeld's arguments do not overcome the Supreme Court's instructions in *McDonnell*. That case precisely said that pressuring another official to perform an official act (or even advising an official to perform an official act when intending such advice to form the basis for it) is enough. *McDonnell*, 579 U.S. at 574.

Certainly, an agreement to vote to approve a development project or agreement would constitute an official act, as would an agreement to pressure other council members in that regard. That is the first element *Dotson* (via *McDonnell*) requires. The

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[2] The Sixth Circuit issued *Dotson* well after the trial had concluded and after some of the motions before the Court had been filed. But *Dotson* does not change any law, it merely deals with the standard set out by the relevant statutes and *McDonnell*.

question, then, is whether a rational juror could have found Sittenfeld's statements to reflect an agreement to perform that official act—essentially, whether Sittenfeld "made a decision or took action 'on'" it. And in the Court's view, a rational juror could conclude that Sittenfeld promising to "'deliver the votes' could be understood as a promise to pressure or advise other City Council members on how to vote . . . on the project at issue." (Doc. 53, #530). Could a rational juror have concluded otherwise? Perhaps so. But again, that is not the standard. *See Lee*, 919 F.3d at 356. So, like his quid pro quo argument, Sittenfeld's official act argument fails too.

3. 18 U.S.C. § 666 And § 1951 Are Constitutional.

Sittenfeld's final argument is that if 18 U.S.C. § 666 and § 1951 reach his conduct, each is unconstitutional. He believes this is so because (1) the First Amendment protects his behavior, and (2) the statutes are unconstitutionally vague as applied to him.

Sittenfeld's first argument is unpersuasive. The First Amendment does not protect all speech. *See Smith v. FirstEnergy Corp.*, 518 F. Supp. 3d 1118, 1134 (S.D. Ohio 2021). As broad as the First Amendment may be, our legal system still punishes language-based crimes all the time. *See United States v. Jeffries*, 692 F.3d 473, 478 (6th Cir. 2012). True, under cases like *NAACP v. Button*, 371 U.S. 415 (1963), and *Citizens United v. FEC*, 558 U.S. 310 (2010), courts must not endorse rules that chill protected political speech. But Sittenfeld exceeded the bounds of ordinary legal political speech. Here, the government showed evidence of not only monetary

donations but also Sittenfeld's statements to Ndukwe that a jury reasonably concluded evinced his corrupt intent. And more, Sittenfeld points to no authority indicating that *his* conduct in *this* case should be protected by the First Amendment, likely because there is none. The First Amendment does not protect bribery, and that is what the jury—after determining Sittenfeld's intent—concluded happened here. *See Smith*, 518 F. Supp. 3d at 1134; *see also United States v. Halloran*, 821 F.3d 321, 340 (2d Cir. 2016).

Sittenfeld's second argument is that a statute is void for vagueness (1) if it fails to give a person with ordinary intelligence notice that their conduct is prohibited, or (2) if it is so indefinite that it encourages arbitrary arrests and convictions. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Northland Fam. Plan. Clinic, Inc. v. Cox*, 487 F.3d 323, 341 (6th Cir. 2007). Sittenfeld offers no argument that either statute encourages arbitrary enforcement, so presumably his argument rests on notice.

That argument, though, falls short. Again, federal bribery law prohibits agreeing to undertake official action in exchange for campaign donations. (*See* Doc. 53, #535). No one debates this. Despite Sittenfeld's assertions, the statute and settled case law provide ample notice of what conduct is prohibited. True, the line may be fuzzier here than elsewhere. Or, perhaps more accurately, the conduct at issue—with criminality turning largely on intent—may be tougher to prove on objectively-verifiable bases. As a result, similar conduct *could* lead to different outcomes depending on how the jury in a given case assesses the public official's intent. But that does not render the

statute unconstitutionally vague.[3] Stated differently, the Constitution does not require that criminal statutes include safe harbor provisions.

All three of his arguments in this Motion thus lack merit, so the Court **DENIES** Sittenfeld's Motion for Acquittal (Doc. 270).

B. Motion for New Trial

The Court turns next to Sittenfeld's Motion for a New Trial. (Doc. 271). Federal Rule of Criminal Procedure 33 permits the Court to vacate a judgment and order a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33(a). A new trial is "an extraordinary remedy for 'extraordinary circumstances.'" *United States v. VanDemark*, 39 F.4th 318, 322 (6th Cir. 2022) (quoting *United States v. Hughes*, 505 F.3d 578, 592 (6th Cir. 2007)). The Sixth Circuit has recognized the Court's power to grant a new trial when a jury verdict went "against the manifest weight of the evidence." *Hughes*, 505 F.3d at 592.

Sittenfeld believes he is entitled to a new trial for six reasons. (*See generally* Doc. 271). First, he believes that his convictions ran against the manifest weight of the evidence. (*Id.* at #6897–99). Second, he believes the government "materially deviated" from the Indictment. (*Id.* at #6899–6905). Third, he believes that the Court erred in its jury instructions. (*Id.* at #6905–08). Fourth, he believes the Court erred by preventing him from offering modus operandi

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[3] The only district court that this Court could identify as holding § 1951 to be unconstitutionally vague was overturned. *See United States v. Williams*, 621 F.2d 123 (5th Cir. 1980).

evidence. (*Id*. at #6909–10). Fifth, he believes that the Court incorrectly excluded the testimony of his expert witnesses. (*Id*. at #6910–13). And finally, he believes that the Court did not adequately investigate jurors' exposure to extrinsic evidence. (*Id*. at #6913–14). Predictably, the government disagrees across the board. (*See generally* Doc. 277).

1. The Verdict Was Not Against The Manifest Weight of the Evidence

Sittenfeld begins by arguing that his conviction goes against the manifest weight of the evidence. This is not a new argument. He repeats his belief that "the government did not identify a single statement or action . . . that evinced a corrupt agreement." (Doc. 271, #6898). He also reiterates his belief that declining corrupt bargains previously should serve as evidence of a lack of *any* corrupt bargain.

The Court will grant a motion for new trial on manifest-weight-of-the-evidence grounds "only in the extraordinary circumstance where the evidence preponderates heavily against the verdict." *Hughes*, 505 F.3d at 593 (quotation marks omitted). Motions such as this one, however, are "generally disfavored." *United States v. Dowty*, 964 F.3d 703, 708 (8th Cir. 2020); *see also United States v. Bowens*, 938 F.3d 790, 796 (6th Cir. 2019). And just because the evidence could point "to a hypothesis other than guilt" does not mean that a conviction goes against the manifest weight of the evidence. *United States v. Funzie*, 543 F. App'x 545, 549 (6th Cir. 2013). Indeed, "virtually every [Sixth Circuit case] dealing with the weight of the evidence involves affirmances of district court denials of new trial motions." *United States v. Burks*,

974 F.3d 622 (6th Cir. 2020) (citing more than twenty cases). Sittenfeld, thus, faces another uphill battle.

In the Court's view, this case is no different from most of those cited in *Burks*. The jury heard the evidence, weighed it, and judged the credibility of the witnesses. And in the end, the jury voted to convict on some counts and not on others. Sittenfeld's assertion that the government did not provide evidence of "a single statement" suggesting a corrupt agreement here is false and contradicts the extensive evidence put on at trial. The evidence—including hours of recordings and testimony—told a consistent, credible story that a jury could reasonably find constituted a tale of corruption. And on another note, the fact that Sittenfeld declined more overt corrupt offers bears little on his participation in the one that got him convicted here.

Again, the Court does not deny that the jury could have reached a different result. Sittenfeld offered plausible alternative explanations for his comments, under which those statements were not evidence of illegal conduct. But that is not the standard. *See Funzie*, 543 F. App'x at 549. The jury was entitled to weigh the evidence as it saw fit. And Sittenfeld's disagreement with how the jury performed that task does not mean the manifest weight of the evidence is against his convictions. He has not made the requisite showing. So this argument fails.

2. Deviation from the Indictment

Sittenfeld next argues that the government unconstitutionally deviated from the indictment by "attempt[ing] to persuade the jury that [he] committed several other, unrelated crimes." (Doc. 271, #6899).

Sittenfeld bases this theory mainly on the government's use of the October 30, 2018, statement from Ndukwe and the alleged campaign finance violation arguments made by the Government. (*Id*. at #6899–6904). The government disagrees, believing both events to have been "inextricably intertwined" with the charged conduct. (*See*, *e.g.*, Doc. 277, #6988).

When there is a difference between the crime an indictment charges and what the government proves at trial, that can present problems. For example, defendants have a Fifth Amendment right to indictment by a grand jury. If the grand jury indicts one crime but the government proves a different one, that could implicate that Fifth Amendment right. But at the same time, not all changes rise to that level.

The Sixth Circuit characterizes changes to the indictment as falling into one of three categories: actual amendment, constructive amendment, or variance. *United States v. Budd*, 496 F.3d 517, 521 (6th Cir. 2007). The first refers to situations where the government secures a new indictment from the grand jury—a setting all agree is not at issue here. Rather, Sittenfeld argues that one of the latter two, or both, occurred: constructive amendment or variance. (Doc. 271, #6900). The Sixth Circuit has set out the relevant standard for, and ramifications of, each:

> **A constructive amendment** "results when the terms of an indictment are in effect altered by the presentation of evidence and jury instructions which modify essential elements of the offense charged such that there is a substantial likelihood that the defendant may have been convicted of an offense other than the

> one charged in the indictment." *United States v. Martinez*, 430 F.3d 317, 338 (6th Cir. 2005). Constructive amendments are "per se prejudicial because they infringe on the Fifth Amendment's grand jury guarantee." [*United States v.*] *Hynes*, 467 F.3d [951,] 962 [(6th Cir. 2006)] (internal citations and quotations omitted). Because of the constitutional injury that results from a constructive amendment, when proven, a defendant is entitled to a reversal of his conviction. *Id*.
>
> **A variance**, however, is "not per se prejudicial." *Budd*, 496 F.3d at 521. Rather, reversal is warranted only where a defendant proves that (1) a variance occurred and (2) that the variance affected a substantial right of the defendant. *United States v. Prince*, 214 F.3d 740, 757 (6th Cir. 2000). A variance "occurs when the charging terms [of the indictment] are unchanged, but the evidence at trial proves facts materially different from those alleged in the indictment." *Id.* at 756–57. The substantial rights of the defendant "are affected only when the defendant shows prejudice to his ability to defend himself at trial, to the general fairness of the trial, or to the indictment's sufficiency to bar subsequent prosecutions." *Hynes*, 467 F.3d at 962 (quoting *United States v. Barrow*, 118 F.3d 482, 488–89 (6th Cir. 1997)).

United States v. Kuehne, 547 F.3d 667, 683 (6th Cir. 2008).

First, Sittenfeld believes that the government constructively amended the indictment, allowing the

jury to convict him of something not charged in the indictment. Specifically, Sittenfeld argues that the indictment charges him solely with soliciting a bribe from Rob, based on the government's use of "to wit" in Counts 3 and 4 of the indictment. (*See* Doc. 3, #42). But, at trial, Sittenfeld says, the government instead focused much of its case on the statement that Sittenfeld made to *Ndukwe*—"You don't want me to be like love you, but can't." (Doc. 271, #6901).

This argument fails both on the law and the facts. Start with the former. Sittenfeld argues that the use of the phrase "to wit" in the indictment limits the scope of the crime the government has charged. Admittedly, this issue presents one of the closer calls in this case. For one, Sittenfeld is correct that other appeals courts have vacated cases based on constructive amendments of "to wit" clauses. *See*, *e.g.*, *United States v. Willoughby*, 27 F.3d 263, 266 (7th Cir. 1994). But the cases Sittenfeld cites to support his argument are almost thirty years old. Newer decisions have noted that viewing indictments as a whole, "to wit" clauses are "properly understood to be illustrative rather than definitional." *United States v. Agrawal*, 726 F.3d 235 (2d Cir. 2013). And the Sixth Circuit has recently rejected narrow readings of an indictment. *United States v. Bradley*, 917 F.3d 493, 503 (6th Cir. 2019). This Court, then, will do the same. In stating the relevant date range and the conduct at issue (including the statement to Ndukwe) in the background portion of the Indictment (*see* Doc. 3, #42), the Indictment put Sittenfeld on notice that conduct potentially outside that expressly mentioned in the "to wit" clauses in Counts 3 and 4 may form part of those charges. That was enough.

On to the facts. Assume Sittenfeld is right that a "to wit" clause is definitional rather than illustrative. On the facts here, the statement about which Sittenfeld complains ("love you, but can't") could be understood as reflecting an intent to obtain a bribe from UCE-1 (i.e., Rob). Or at least the government was free to argue that it did, and the jury was free to agree. As noted above, from Sittenfeld's perspective, Rob and Ndukwe were the same when it came to the real estate development project—and the alleged bribe—at issue. Sittenfeld thus would have reasonably understood his statement to Ndukwe to be one that Ndukwe would pass along to his investment partner, Rob.

In short, given Sittenfeld's understanding of the arrangement, soliciting from Ndukwe was indistinguishable from soliciting from Rob. The two were, as the government suggests, "inextricably intertwined." (Doc. 277, #6998). Thus, the government's reliance on the statement to Ndukwe did not involve a separate crime, as Sittenfeld claims, but rather a part of the overall scheme.

The Court likewise is not persuaded by Sittenfeld's assertions that *Stirone v. United States*, 361 U.S. 212 (1960), requires a new trial here. In that case, the Supreme Court found that it could not be said "with certainty" that the jury convicted the defendant "solely on the charge made in the indictment." *Id.* at 217. Indeed, the indictment did not address part of the later-alleged conduct (sand shipments vs. steel shipments). Here, the government included the allegations of Sittenfeld's solicitations of Ndukwe and incorporated them into Counts 3 and 4, which, as noted above, fit with, and are part of, the allegations

involving Rob. The Court finds no constructive amendment here.

Similarly, the government did not vary from the indictment by arguing that Sittenfeld "violated the campaign finance laws," as he claims. (Doc. 271, #6904). Rather, the evidence presented added to the charged, convictable conduct. Both the evidence that Sittenfeld sought to extort donors who had "hedged" on his candidacy and the straw donor evidence went directly to Sittenfeld's intent, a crucial issue in the case. (*See* Doc. 265. #5946–47). This cannot have surprised Sittenfeld. Indeed, the government expressly mentioned some of that conduct in the Indictment. (*See* Doc. 3, #36–38). And in many ways, as the government notes, it was Sittenfeld, not the government, who continued to interject campaign finance issues into the trial. (Doc. 277, #6999). So the Court is not persuaded by Sittenfeld's contention that the government bringing up conduct that may have violated campaign finance laws meant that the government varied from the indictment.

Separately, as the government also points out, even if Sittenfeld could show a variance from the indictment, he has not shown that it affected a substantial right. *Prince*, 214 F.3d at 757. The Court's jury instructions made it clear multiple times (*see* Doc. 251, #4985–87 *and* Doc. 202, #3232–36) that Sittenfeld was not facing charges for, and could not be convicted of, campaign finance violations. Sittenfeld thinks the jury "may have understood the Court's explanation" of campaign finance law to invite speculation. (Doc. 271, #6905). But Sittenfeld does not connect the dots about how this speculation could have arisen, or how it would have harmed him. And there is no suggestion

anywhere that a juror in fact speculated or did not understand the Court's instructions. Instead, Sittenfeld again turns to false depictions of the government's case involving "innuendo and circumstantial evidence." (*Id.*). The variance argument fails as well.

3. Jury Instructions

Sittenfeld next argues that the Court should order a new trial based on its jury instructions. Specifically, he believes the Court erred in instructing that the government could satisfy the elements of Counts Three and Four concerning "another person," omitting a clarifying instruction on what constituted an "official action," and omitting a "good faith" instruction. The government again disagrees, believing that Sittenfeld failed to preserve the "another person" and "good faith" claims and that the "official action" claim fails on the merits.

The Court notes that Sittenfeld did not raise his "another person" and "good faith" objections at the charge conference or trial. But he raised them in his initial objections to the government's proposed instructions (Doc. 107, #1181).

This leaves the Court a bit confused about what (if any) review it should perform. Some courts in this District have found that failure to object to an instruction constitutes a waiver that precludes a party from relying on that flaw as the basis for seeking a new trial. *See Lees v. Thermo Electron Corp.*, No. 2:06-cv-984, 2008 WL 5212224, at *4 (S.D. Ohio Dec. 12, 2008) ("Plaintiff's failure to object to the jury instructions resulted in a waiver of any objection, and for that reason alone, Plaintiff is not entitled to a new trial.").

And the Sixth Circuit has seemingly endorsed that approach. *See United States v. Sloman*, 909 F.2d 176, 182 (6th Cir. 1990)("An attorney cannot agree in open court with a judge's proposed course of conduct and then charge the court with error in following that course."). But the Sixth Circuit has also explicitly declined to confirm that principle in recent years. *See United States v. Watson*, 852 F. App'x 164, 169 (6th Cir. 2021).[4] But even assuming that Sittenfeld has not waived review, such review ordinarily would be for plain error. *United States v. Vasquez*, 560 F.3d 461, 470 (6th Cir. 2009). And, like the claims in *Watson*, Sittenfeld's claims fail under plain error review, so this Court need not decide whether waiver forecloses review.

First, the Court did not plainly err with its "another person" instruction, an instruction to which neither party objected. Sittenfeld now argues that the instruction enabled the jury to convict him of uncharged conduct, specifically that the jury could have convicted him based on statements to Ndukwe and not Rob. But the Court's instructions mirrored the statute and language from similar trials. *See* 18 U.S.C. § 666; *United States v. Inman*, 39 F.4th 357,

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[4] In *Watson*, the panel noted that [t] his Court recently confronted this exact issue—whether an express agreement by trial counsel with the district court's jury instructions makes any challenge to those instructions unreviewable—and held that "we need not declare a winner on the standard-of-review point" because the defendant's "claim fails even on plain-error review." *United States v. Buchanan*, 933 F.3d 501, 509 (6th Cir. 2019). Because Watson's claim also fails on plain error review, we similarly decline to decide this standard of review dispute. 852 F. App'x at 169.

362 (6th Cir. 2022). Other circuits may have different versions of this instruction, but the evidence here supported the instruction, which accurately stated the law. *See United States v. Reichert*, 747 F.3d 445, 451 (6th Cir. 2014). This does not constitute plain error.

Second, the Court did not plainly err when it declined to give a "good faith" instruction, another decision to which neither party objected. Indeed, the Court directly invited Sittenfeld at the Final Pretrial Conference to explain the need for a good faith instruction and to what such an instruction would apply. (Doc. 149, #2589–90.) Sittenfeld never raised the issue again. The Sixth Circuit's pattern instructions specify that there is no "general good faith defense" to be made here. Sixth Cir. Patt. Instr. 6.08, Comm. And neither ignorance nor mistake can give rise to such a defense. *See United States v. Blagojevich*, 794 F.3d 729 (7th Cir. 2015). Sittenfeld is correct that the Court can give a good faith instruction when warranted. But, from the Court's vantage, nothing in the record warranted such an instruction here. And when asked to elaborate, Sittenfeld declined. This, then, does not constitute plain error either.

Finally, the parties agree that Sittenfeld preserved his objection to the Court's "official action" (or "expressing support") instruction. When an objection has been preserved, jury instruction review comes down to whether the instructions "fairly and adequately submitted the issues and applicable law to the jury." *Arban v. W. Pub. Corp.*, 345 F.3d 390, 404 (6th Cir. 2003). A new trial is not required unless the jury instructions, "taken as a whole, are misleading or give an inadequate understanding of the law."

Morgan v. New York Life Ins. Co., 559 F.3d 425, 434 (6th Cir. 2009).

The Court's "official action" instruction was correct. For one, it mirrors *McDonnell* (and the Sixth Circuit Pattern Instructions). *See* 579 U.S. at 567–74; *see also* Sixth Cir. Patt. Instr. 17.02(2)(D). *McDonnell* requires three clarifying instructions in cases such as these, all of which the Court included. (Doc. 202, # 3228–30). *See McDonnell*, 579 U.S. at 577–579; *see also Dimora v. United States*, 973 F.3d 496, 503 (6th Cir. 2020).

Sittenfeld thinks that an instruction should have been given indicating that merely "expressing support" for a project did not violate the law, as it did not constitute official action. But the facts here rendered Sittenfeld's preferred language problematic. For one, the government never indicated that expressing support *alone* constituted official action. (*See* Doc. 277, #7002). And separately, as the Court noted in the final pretrial conference, "expressing support, depending on the way in which that support is expressed . . . may make the expression of support count as an official act." (Doc. 272. #6935). For this instruction, the Court used the Sixth Circuit Pattern Instruction combined with the standard in *McDonnell* (as articulated in *Dimora*). The instruction accurately stated the law and did not mislead the jury on what the government had to prove for them to convict Sittenfeld. Such an omission did not impair Sittenfeld's theory of the case. So this argument fails.

4. Modus Operandi Evidence

Sittenfeld next argues that this Court abused its discretion by refusing to let him offer modus operandi evidence, believing he could rebut the government's

evidence with evidence about his normal behavior. Sittenfeld once again falsely states that the government lacks "any clear or direct evidence of wrongdoing" and that any wrongdoing was out of character for him.

The Court did not forbid Sittenfeld from introducing modus operandi evidence. Instead, it expressly permitted him to present testimony related to his "demonstrated views on development." (Doc. 190, #2949). And the Court later confirmed that it would "allow other-acts evidence, both good and bad, but only with regard to substantially similar types of situations." (Doc. 267, #6417). Indeed, the Court also confirmed that Sittenfeld would be permitted to call witnesses on specific projects he requested, but Sittenfeld chose not to call them. (*Id*. at #6631).

To the extent Sittenfeld wanted to testify (or put evidence on) regarding good acts more generally, to show his predisposition as a "good guy," recent Sixth Circuit caselaw foreclosed that approach. *See United States v. Dimora*, 750 F.3d 619, 630–31 (6th Cir. 2014). And more, as noted above, the Court cannot see the relevance of pointing out that—other than the criminal conduct here—Sittenfeld avoided other opportunities to engage in criminal behavior. After all, those other opportunities are not at issue here. This argument fails as well.

5. Exclusion of Sittenfeld's Expert Witnesses

Sittenfeld next argues that this Court erred in its "exclusion" of experts Caleb Burns and Edward Fitzgerald. The exclusion argument warrants quotes here because it is far from clear that the Court

excluded anyone Sittenfeld tried to call to the stand. Sure, the government did move before trial to exclude Burns and Fitzgerald. But the Court declined to rule on that motion, saying it would not do so until after completing a voir dire with the experts. (Doc. 190, #2965). And the Court's only ruling on that motion later denied it as moot. (*See* Notation Order, July 21, 2022).

Let's take a closer look at each expert, starting with Burns. Sittenfeld wanted Burns to testify on two topics: (1) campaign finance law, and (2) what happens in the real world, whether consistent with the law or not. While the Court expressed concerns about both, it never made a call as to whether Burns could testify.

Rather, when it came time during trial to discuss calling Burns, the Court explored with the parties the topics on which Sittenfeld intended to elicit testimony from Burns. (Doc. 266, #6189–6194). For example, Sittenfeld wanted Burns to clarify that, as a matter of campaign finance law, Sittenfeld's conduct in various respects had not been illegal (*e.g.*, using a PAC that did not have his name associated with it, which campaign finance law requires for certain PACs). Once the Court had identified all such issues, the Court inquired:

> Well, isn't the easiest and quickest way to shortcut all of this for me to just instruct the jury that there's nothing inherently wrong with contributing money to a PAC. There's nothing inherently wrong with a political candidate accepting checks directly from donors or bundlers who are bringing checks from people.

> There's nothing wrong with those checks being accepted by hand. There's nothing wrong with LLC contributions up to the campaign limit, which everybody agrees in this case for a PAC is $5,000.
>
> Isn't it just like three or four points that I think everybody agrees with?

(*Id*. at #6194–95). Mr. Sittenfeld's attorneys responded "Yes." (*Id*. at #6195). One of them added:

> The other thing is that his name was not associated with the PAC. *If the Court clears that up also, then we're fine*.

(*Id*. (emphasis added)). Consistent with that approach, the Court drafted a proposed instruction explaining what campaign finance law requires on the relevant issues. (*Id*. at #6197 (Court informing parties it would draft up a proposed instruction for the parties' review)). Later that evening, the Court went line by line through that proposed draft modifying it with the parties' input. (*Id*. at #6389–402). As the Court understood it, that obviated the need to call Burns on that topic.

If Sittenfeld's complaint is instead that Burns would have testified about politicians' regular fundraising practices, and that Sittenfeld's conduct here comported with such regular practices, such testimony is not relevant to any permissible defense. Just because someone—or even everyone—else is breaking the law would not mean that Sittenfeld could too. *See Koch v. Jerry W. Bailey Trucking, Inc.*, 482 F. Supp. 3d 784, 789 (N.D. Ind. 2020) (noting that the "everyone else is doing it" excuse "has not worked on a mother in recorded history and, as it turns out, is no more

effective when explaining away" illegal conduct). So neither of these reasons would have led to Burns offering much on the stand. And, in any event, Sittenfeld never attempted to call Burns at trial.

As for Fitzgerald, the Court never excluded him. Sittenfeld mentioned Fitzgerald before trial, where the Court expressed some confusion about the relevance of Fitzgerald's proposed testimony. But the Court said only that it would need more information about his proposed testimony and its foundation if the defense wanted him to testify. Sittenfeld never followed up on the matter and did not indicate during the charge conference, or at trial, that he desired to have Fitzgerald testify. It cannot be error to "exclude" experts no one ever attempted to call. This argument fails too.

6. Investigation of Jurors' Exposure to Extrinsic Evidence

Sittenfeld's last argument is that the Court wrongly limited his ability to investigate potential juror exposure to extrinsic evidence. He believes the Court should have further explored whether any jurors were tainted. The government disagrees, believing that Sittenfeld wants to continue conducting a fishing expedition for evidence to support his claims of juror misconduct.

To start, the Court notes (and appreciates) Sittenfeld's recognition that the Sixth Circuit has already affirmed this Court's refusal to order a forensic examination of a juror's cell phone. *See In re Sittenfeld*, 49 F.4th 1061 (6th Cir. 2022). Indeed, the Sixth Circuit said quite plainly that the Court lacked authority even to entertain such a request. *Id*. at 1079

("in conducting a *Remmer* hearing, a court cannot order a juror to hand over his or her cellphone, computer, or other electronic devices, nor order a search or forensic examination of a juror's devices").

That leaves only Sittenfeld's claim that the Court should have let him investigate whether other jurors heard potentially prejudicial comments on their way into or out of the courtroom. (Doc. 271, #6913). Presumably, this means Sittenfeld wanted to talk to more jurors than the four with whom he has already spoken.[5] The Court already has rejected this request once. (Doc. 249, #4909–10). In response, Sittenfeld includes two new affidavits here. One of those comes from an attorney at one of the firms defending him. (Doc. 2711, #6926–27). The other comes from someone who appears to be an attendee at the trial. (*Id*. at #6928–29).

Sittenfeld is correct that the government has identified no authority preventing him from attaching new affidavits at this stage; the Court has not identified any either. But the Supreme Court has explicitly stated that "[a]llegations of juror misconduct . . . raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process." *Tanner v. United States*, 483 U.S. 107, 127 (1987). The Supreme Court's observation was undoubtedly true when made, and it may be all the more accurate in today's social media age.

The Court stands on its earlier findings from the *Remmer* hearing. None of the four jurors the Court

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[5] Of course, this investigation could not include the jurors' personal devices. *See Sittenfeld*, 49 F.4th at 1079.

has investigated indicated that the allegedly troubling statements from the press in the hallway warranted deeper investigation of their counterparts on the jury. And these new affidavits do not warrant further disrupting "the finality of the process." Sittenfeld bears the burden of proving any bias. *United States v. Lanier*, 988 F.3d 284 (6th Cir. 2021). He has not done so. So the Court declines to reopen its investigation or order a new trial on this basis.

In sum, all six of Sittenfeld's arguments in this Motion lack merit, so the Court **DENIES** Sittenfeld's Motion for a New Trial (Doc. 271).

CONCLUSION

Sittenfeld has not put forth any persuasive arguments supporting either his Motion for Acquittal (Doc. 270) or his Motion for a New Trial (Doc. 271). For these reasons, the Court DENIES both motions.

SO ORDERED.

April 17, 2023

DATE

DOUGLAS R. COLE
UNITED STATES DISTRICT COURT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
Southern District of Ohio

UNITED STATES OF AMERICA v. Alexander Sittenfeld	**JUDGMENT IN A CRIMINAL CASE** Case Number: 1:20-cr-142 USM Number: 18085-509 Justin Herdman, Charles H. Rittgers, and Charles M. Rittgers Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
☑ was found guilty on count(s) 3 and 4 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds	12/17/2018	3

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 1951(a) and (b)(2)	Attempted Extortion Under Color of Official Right	12/17/2018	4

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☑ The defendant has been found not guilty on count(s) 1, 2, 5, and 6

☐ Count(s)_____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/10/2023
Date of Imposition of Judgment

s/ Douglas R. Cole
Signature of Judge

Douglas R. Cole - U.S. District Judge
Name and Title of Judge

10/10/2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

16 Months Imprisonment on Count 3 and 16 Months Imprisonment on Count 4, to be served concurrently to each other

- ☑ The court makes the following recommendations to the Bureau of Prisons:
  (1) That the Defendant be placed in the minimum security work camp next to FCI-Ashland.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☑ reporting delayed until after 12/1/23.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

1 Year Supervised Release on Count 3 and 1 Year Supervised Release on Count 4, to be served concurrently to each other

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*

6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender

registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must

report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the

probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm,

ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these

conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's
Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

(1) Shall provide all financial information requested by the probation office.

(2) Shall not incur new credit charges or open lines of credit without the approval of the probation office.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assess–ment	**Restit–ution**	**Fine**	**AVAA Assess–ment***	**JVTA Assess–ment****
TOTALS	$ 200.00	$	$40,000.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.
If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss*****	**Restitution Ordered**	**Priority or Percentage**
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 40,200.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

While incarcerated, if the defendant is working in a non-UNICOR or grade 5 UNICOR job, he shall pay $25.00 per quarter toward the fine obligation. If working in a grade 1-4 UNICOR job, he shall pay 50% of his monthly pay toward a fine obligation. Any change in this schedule shall be made only by order of this Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (*including defendant number*)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs

APPENDIX E

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D88

File Number:	194B-CI-2109777
Date:	10/26/2018
Time Recording Starts:	
Time Recording Ends:	SA Nathan C. Holbrook
Session:	
Agent:	

Participants:

Chinedum Ndukwe
Alexander PG Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

[Begin Transcript]

Sittenfeld: Chin congratulations brother.

Ndukwe: Hey, is mayor Sittenfeld available please?

Sittenfeld: (UI) How, how the first couple weeks been?

Ndukwe: Oh my gosh. Nonstop, man, nonstop. Uh it is, I'm, I'm finally getting a workout in. But uh…

Sittenfeld: You looked lit–, you looked a little soft in that (UI).

Ndukwe: That was great. I love how you clarify it. You're not adorable, your, your, your son is. I was like ah classic (UI).

Sittenfeld: The two balance each other out. No man it's uh, I'm thrilled for you guys and I'm also, I'm a little jealous. If I can play my cards right, maybe we won't be too far behind you guys.

Ndukwe: Uh, What are, are you guys or is she is she pregnant?

Sittenfeld: No, but we're actually, we are…

Ndukwe: No, no, okay. You, you guys are trying?

Sittenfeld: …we are trying. Yeah, we're like, we're like we think it's time to like…because you know I mean we all have friends who like (UI) for trying. It takes them years sometimes. We're like we might as well, at least think about trying to get a little bit of a jump on this.

Ndukwe: Dude, well the worst is when you have friends that have like eight year-olds and like nine year-olds. And like you're like, all of a sudden you feel like you're a decade behind them, you know?

Sittenfeld: Yeah. Well and, you, you, I mean you would know this in a way that I wouldn't. But like fatherhood is a physical activity too and uh we're not getting any younger.

Ndukwe: I'm telling you man, I, I, I told someone I haven't been this sore since a Sunday night, Thursday night turn around game. But it's all good man, it's all good.

Sittenfeld: You do get like uh, what you gain in bicep strength you add in (UI).

Ndukwe: Yeah right. Uh, so hey, so a couple things man I wanted to touch base with you on.

Sittenfeld: Yeah, yeah.

Ndukwe: First of all how's that, how's that dinner?

Sittenfeld: It was great, it was really good. So this guy like he's been the ambassador from the UK to several other countries. And is now the top guy for fourteen states so. It was me, Chip Gerhardt, Odell Owens, Laura Brunner, the head of the firefighters, um who am I blanking on, Jason Williams from the Enquirer, like I just wanted to…

Ndukwe: Oh, nice.

Sittenfeld: They didn't give me a lot of time. So I kind of moved quickly to put together an interesting group, but we'll uh the next, the next time we'd love if can join. Sorry it was such late notice.

Ndukwe: No, no dude. Uh, yeah, keep me in mind anytime there is opportunities like that.

Sittenfeld: Yeah, I def–I definitely will.

Ndukwe: I'll uh..

Sittenfeld: Well and I kinda (UI)...it was you know the, the, the, the British Council General is a great dude but I thought like even independent of him like there's probably doesn't happen enough that just interesting groups of city leaders get together like that.

Ndukwe: Absolutely, absolutely. Well that's good. So the, the other reason why I wanted to touch base is you know the four, this four thirty five Elm deal is starting to heat up a little bit.

Sittenfeld: Good.

Ndukwe: And, and, you know I have these guys that are...I don't know if you've met Rob and Brian. They're a, you know, they've been spending a lot of time with uh you know Pete in, in Cincinnati and trying to help...

Sittenfeld: Right.

Ndukwe: ...get some stuff done. Have, have you met those guys yet or no?

Sittenfeld: If I did it was once briefly.

Ndukwe: Okay, okay.

Sittenfeld: But honestly, I not positive, it's like I, I don't, I don't have a relationship with them.

Ndukwe: No, no, no, no, no. So what I want to do is 'cause they are prob– you know there is going to be a ton of capital sources. They're gonna be one of 'em in this four thirty five Elm deal.

Sittenfeld: Right, yup.

Ndukwe: And I know that they got a ton of different LLCs. And I was gonna talk to Jay about this, but I wanna see if there is a way tee up getting you with them before they change everything in November...

Sittenfeld: Yeah, yeah that would be great...

Ndukwe: ...to help, to help you out.

Sittenfeld: I'd love...

Ndukwe: You know what I mean?

Sittenfeld: ...I'd, I'd love, I'd love to do that. Obviously the, you know, a week from Tuesday that that rule change is gonna kick in. So I don't know if they'll have time to do it before then. I can certainly make myself available.

Ndukwe: Well, they're, they are, they literally are like all in on Cincinnati. They just

got a place at the five eighty building and so they're here, they're here all the time. And I think just even if, you know, I want, I want to see if they're gonna be in town before next week. It would, it's Nov–, it's, it's the November eleventh right? Is when everything changes, or?

Sittenfeld: November, November, November sixth. November sixth.

Ndukwe: Okay, shit, okay, all right. So let me try to see what their schedule is.

Sittenfeld: Okay, yeah.

Ndukwe: And then if you, I, 'cause I think it will go a little smoother if they meet you in person first.

Sittenfeld: Yeah, yeah, yeah, yeah, yeah of course. I will uh...

Ndukwe: You know what I mean?

Sittenfeld: Yeah, that's, that's, that's great. Well it would be good to do any ways. So I'll, I will, I can move my schedule around let me know when they are available, if they'll be in town before uh Tuesday the sixth. And then let's try to get them on the books.

Ndukwe: Okay, okay. Perfect, perfect. Sounds good.

Sittenfeld: Okay, all right. Keep me, keep me posted.

Ndukwe: All right buddy.

Sittenfeld: I'll wait to hear from you on that.

Ndukwe: I will. All right. Sounds good.

Sittenfeld: Thanks, thanks Chin. Talk to you brother.

Ndukwe: Thanks PJ. All right. Bye, bye.

[End Transcript]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D89-2

File Number:	194B-CI-2109777
Date:	10/30/2018
Time Recording Starts:	
Time Recording Ends:	SA Nathan C. Holbrook
Session:	
Agent:	

Participants:

Chinedum Ndukwe
Alexander PG
Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

Sittenfeld:	Hey Bud.
Ndukwe:	Hey, sorry about that man.
Sittenfeld:	No. All good, sorry. I was just on a, on a another call.
Ndukwe:	No. I was, I was early anyway so. So I talked to uh Rob and he's not going to

be, one of my investors on 435 Elm. He's not going to be in town until the 7th um, they will be in Cincinnati. (UI) in town on the 7th and 8th. Are you, are you free any uh those two days?

Sittenfeld: Um, hold on. I am yeah. I mean the one challenge is that is obviously after the, the deadline.

Ndukwe: Yeah, so one of the things I was talking to Jay about is I can obviously try to a get some of my friends up in Columbus 'cause...here, here's, here's the deal PG it's like, and I don't know how much you know about how Cranley is just trying to fuck me left and white, right because I supported Yvette.

Sittenfeld: Yeah, I know pretty good, I know. I know a pretty good amount about it.

Ndukwe: Okay. Good. So I mean, so based on my learning experience it's like me personally I'm trying to like just lay it off on either partners or other people who have vested interest in seeing these things come to fruition and like not in my name. So, you know, I'll give you a perfect example um you know my fin– like my analyst that supported you. I got a text message from Smitherman and Albert saying hey we want to make sure the same guy supports me too. I mean it's like crazy shit like that. I mean it's fucked up.

Sittenfeld: Yeah, that's, that's weird and questionable legality. (UI).

Ndukwe: Well, I mean it's like he…the next time I see you I'll show you the screen shot. Anyways, long story short. Uhm I'm just trying to, you know, keep my name off, off of shit for the most part.

Sittenfeld: Just so, just so you know like, look I have, you know I, I love what you do as someone revitalizing our city creating jobs. I am fond of you as a friend. I also have like you know obligations to do the things I need to do to be a successful candidate so.

Ndukwe: Absolutely.

Sittenfeld: So, but what that means is I don't really get like, if if you say look I don't want to support you in the name of Chinedum Ndukwe, but some guy I've never met from Columbus is going to use a coup, you know, you know you're network are going to a, round up a bunch of LLC checks. Like that's great. I actually don't care. But I mean the one thing I will say is like, you know I mean, you don't want me to like be like 'hey Chin like love you but can't' you know like, you know, I mean like, you know like. I, I, I want people to support me, that's like…

Ndukwe: Absolutely.

Sittenfeld: …if a candidate doesn't want people to support them, they're a shitty dumb candidate…

Ndukwe: Yeah, right, yeah, right.

Sittenfeld: …and you know I've been (UI) a lot of people have come through in a really big way that's been awesome so far and I would love, I would love for you to be one of those people too.

Ndukwe: I hear ya. I hear ya. So we'll, we'll figure, we'll, we'll make sure, trust me, we'll, we'll, we'll make something happen sooner than later too. Um (UI).

Sittenfeld: Well can you (UI), Can you even do it before the LLC thing?

Ndukwe: I don't know, let me, let me, let me, let me touch base with Jay again and see how, how we can make it work. Uhm I mean honestly just with, with everybody I've been trying to, you know, the other thing is these guys have a ton of LLCs. But I, I know that he's not going to be in town…so when is the drop dead date? Is it the sixth?

Sittenfeld: They can't, those guys can't use more than one LLC for each of them after, after the sixth, yeah. That's why, so just to let you know North American has done twelve in LLCs, Uptown has done ten, Medpace has done ten, Model has done eight. Uhm I, I need to go down like the whole list.

Ndukwe: Yeah, yeah, yeah.

Sittenfeld: You know Eli has done five. So because people are like, you know, we got to get this done before this (UI) option goes away.

Ndukwe: Yeah, yeah, yeah, for sure, for sure. Well let me, let me see–

Sittenfeld: Even, even if you were able to like, you know, Columbus people, these guys round up five LLCs before next Tuesday it'd be big.

Ndukwe: Yeah, okay, okay. All right, let me, let go to work on that. Let me go to work on that.

Sittenfeld: You're, you're, you're a persuasive guy Chin, I believe in you.

Ndukwe: Love it, I love it. That's why you are a great politician I know.

Sittenfeld: No, I'm not, I'm not.

Ndukwe: So, so well let me, so lis– I know, cause I know your, your schedule will fill up quick. Can you just take a quick look at the seventh, even if…

Sittenfeld: Yeah, yeah, yeah, you tell me so I got, I got–

Ndukwe: ...coffee or, or uh–

Sittenfeld: Why don't I take, why don't I take you guys out to lunch on Wednesday the seventh?

Ndukwe: Wednesday the seventh? Okay. That should, that should work perfectly. So Wednesday, November seventh.

Sittenfeld: Can we get likely early, can we do an 11:45?

Ndukwe: That should work. That should work. And we'll, we'll keep it quick.

Sittenfeld: So, should I, should I pencil that in?

Ndukwe: Yeah, yeah, go ahead. Let me, I'll confirm it, but go ahead and pencil them in on your end. So (UI).

Sittenfeld: All right, 11:45 am, next Wednesday the seventh. If that doesn't work, I mean we could find, I could do coffee in the afternoon or whatever else. Uhm And then you're gonna deliver the goods before next Tuesday.

Ndukwe: All right, let me go to work on that. All right buddy.

Sittenfeld: All right, thanks man talk to you.

Ndukwe: All right, sounds good. All right bye.

Sittenfeld: Bye.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D93

File Number:	194B-CI-2109777
Date:	11/2/2018
Time Recording Starts:	
Time Recording Ends:	SA Nathan C. Holbrook
Session:	
Agent:	

Participants:

Chinedum Ndukwe
Alexander PG
Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

Sittenfeld:	Chin.
Ndukwe:	Hey PG.
Sittenfeld:	Hey can you hear me okay?
Ndukwe:	Yeah, yeah, yeah I can hear you fine. How's it going?

Sittenfeld: Ah, it's going well. So my a, my wife and I moved into a, a new house and the cell reception is kind of shitty actually.

Ndukwe: Oh, shit, no I, I can hear you perfectly. What, what part of town are you in?

Sittenfeld: Recently bought my childhood home. So...

Ndukwe: Did you really? Okay.

Sittenfeld: (UI) I'm uh, we're like should our bedroom be in my childhood bedroom or my parents' bedroom like that's weird either way. So I'm gonna need a good therapist to help me work through all these mom, mommy and daddy issues. But we're basically going from living in, in theory, you know, modest, unfancy, no frills downtown apartment to like a big ole kinda grand East Walnut Hills home that's also kind of like a pain in the ass that needs like forty years of work done to it.

Ndukwe: Oh, that's perfect man, that's great. That's great (UI)...

Sittenfeld: Yeah, I know it's cool. So we'll uh...we'll, we'll get you guys over for dinner.

Ndukwe: Awesome, awesome, where, where did your parents move? Just out, out of curiosity are they, are they...

Sittenfeld: They–

Ndukwe: ...local or down in Florida?

Sittenfeld: No, they, they spend about four months of the year up kind of like you know New

England, Cape Cod area in the summer but...

Ndukwe: Oh, nice.

Sittenfeld: ...they, they moved to East Hyde Park, kinda, you know, place with like a first floor bedroom. Place they can you know, get old without a lot of hassle.

Ndukwe: Yeah, yeah, yeah no that's perfect. Well, well good man, good. So listen, real...

Sittenfeld: Yeah, we're (UI).

Ndukwe: ...real, real quick...

Sittenfeld: Yeah.

Ndukwe: 'Cause I'm…I got to run into another deal but…so good news and bad news…

Sittenfeld: Yup.

Ndukwe: …what, what do you want first?

Sittenfeld: Uh, always, always the bad news.

Ndukwe: All right, so bad news is can't do the LLCs before next week. Okay?

Sittenfeld: Okay.

Ndukwe: But, but good news is I'll probably be able to get you close to twenty thousand over the next couple. Uhm you know, and, and these guys that are doing that deal on 435 Elm, uh, you know, they're, they're, very, you know, they don't really fuck around. They're very specific. They're like, you know…so I, you know, for me just want my experience of this whole Cranley bullshit with Yvette. Like I'm…

Sittenfeld: Yeah, yeah, no, I get it.

Ndukwe: …not trying to you know what I mean. I'm not trying to put anything on my name at all and…

Sittenfeld: Totally understand. I totally understand. Look if you can–

Ndukwe: …But, but–

Sittenfeld: Here, here, it it's my…as I told you before it's my job as a candidate to put myself in the strongest position as possible and you know, I've done a pretty good, I've done a pretty good job with that. At the end of the day, if you can, if you can, you know, rather than delivering 5K in LLC checks by next Tuesday, can help raise twenty over the next couple years. Like you know I will be incredibly grateful.

Ndukwe: No, I mean, I think it's like over the next couple of weeks. I mean, so…

Sittenfeld: No shit. No, dude that's…yeah.

Ndukwe: …so and then for, for, and then for this meeting with Rob next week, I'm pretty sure he can get you ten this week. You know the biggest thing is, you know, if we do the ten, I mean, they're gonna want to know that when it comes time to vote on 435 Elm, like whenever that, I don't know if it's next year, two years, three years, that it's gonna be a yes vote, you know, without, without a doubt. I've shared that with them, that hey known PG for years,

all this stuff, but they're like all right we'll get his attention.

Sittenfeld: I mean, obv–, as you know, obviously nothing can be illegal like…illegally nothing can be a quid, quid quo pro. And I know that's not what you're saying either. But what I…

Ndukwe: Yeah.

Sittenfeld: …can say is that I'm always super pro-development and revitalization of especially our urban core.

Ndukwe: Okay, no, I hear ya. I hear ya. And so they're, he'll probably come out–

Sittenfeld: And we can, we, we, we can discuss that more in person.

Ndukwe: Okay, okay. My guy, perfect, perfect.

Sittenfeld: But I'm not, I'm not sure, I'm not they're, I, in seven years I have voted in favor of every single development deal that's ever been put in front of me so.

Ndukwe: Okay. My guy. So, so, we'll, we'll keep this up for, now do you have, it's next Wednesday at, at noon – correct?

Sittenfeld: Yeah we said we, or we said like 11:45 to get a jump somewhere.

Ndukwe: Oh, yeah, yeah, that's right. What, what, where at? Or what's the best location for you next Wednesday?

Sittenfeld: The u– it, it doesn't matter. Pick what's convenient. I'll be downtown, but I can

come up to like Rookwood, I can go across the river.

Ndukwe: No, no. Down, downtown is perfect. What about, you know, I'll, I'll shoot you a text later today on the location. But downtown should…

Sittenfeld: Okay, let me, do you think, I think it also, meeting these guys, I should, I should, i– if we can take five minutes, walk them through some of like the voting data just so that they can appreciate the starting point that I'm beginning this, this endeavor in.

Ndukwe: Okay, okay.

Sittenfeld: My, my sense is that it will give them some comfort.

Ndukwe: Okay, perfect, perfect. No, I think that would be great, I think that would be great.

Sittenfeld: Look, these, these, these guys want to know, I mean, look people want to invest in a winning endeavor, right? And I want, I want to give them the confidence and the comfort that that's what they're doing.

Ndukwe: Perfect, perfect. Okay.

Sittenfeld: Okay, okay, I'll, I'll, let me, let me, let, let me know what spot you want to meet in and I'll be there next Wednesday.

Ndukwe: All right, sounds good man. Thanks.

Sittenfeld: All right talk to ya, Chin, see ya. Bye.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D98 AND 1D96 SECTIONS 6 & 7

File Number:	194B-CI-2109777
Date:	11/07/2018
Time Recording Starts:	
Time Recording Ends:	
Session:	SA Nathan C. Holbrook
Agent:	

Participants:

Chinedum Ndukwe
UC Rob Alexander PG
Sittenfeld
Unknown Female (UF)
Unknown Male (UM)

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

[Begin Transcript 1D98 at 00:11:41]

Ndukwe: What's up man?

Sittenfeld: Sorry about that.

Ndukwe: A little traffic there?

Sittenfeld: Right out there, yeah. Hi, P.G.

UC Rob: Rob, yeah we've uh.

Sittenfeld: Yeah, we've met before.

UC Rob: Yeah yeah.

Sittenfeld: Where where where were…

UC Rob: Uh, J. Alexander's with Sam Malone.

Sittenfeld: Oh yeah yeah yeah yeah that's right.

UC Rob: That was forever ago, yep?

Ndukwe: I forgot you guys…

Sittenfeld: You keep all sorts of lively company.

Ndukwe: …you were lookin' at some shit with him huh?

UC Rob: Well…

Sittenfeld: Any, anything come of that?

UC Rob: Hell no, so no not at all.

Sittenfeld: You probably found a better partner.

Ndukwe: Holy shit. Yeah I didn't, I didn't I forgot you mentioned that. Um, yeah so so Rob and uh his partner Brian are lookin' at puttin' money in and really already have to.

Sittenfeld: 435.

Ndukwe: 435 Elm. And they're I mean they, like I was telling you they really focus on secondary markets.

Sittenfeld: Right.

Ndukwe: Um and so I just wanna make sure to tee you guys up and I kinda told you about P.G.

UC Rob: Yeah yeah.

Ndukwe: Rock star, you know locally and I I think I just heard Aftab's thinkin' about runnin' now that he got his ass waxed on on that whole deal.

Sittenfeld: He's not gonna run.

Ndukwe: But I think without a doubt, P.G.'s uh probably gonna be our next mayor uh so. When when are you (UI).

Sittenfeld: From from Chin's lips to God's ears.

Ndukwe: When do you officially announce?

UC Rob: I've heard that a lot of places so far so.

Sittenfeld: Probably sometime like on a later part of next year.

Ndukwe: Really?

Sittenfeld: Yeah, I, it depends. One person's already announced which I think is ridiculously early. Um, probably sometime next year.

Ndukwe: Yeah yeah yeah yeah.

Sittenfeld: Um.

UM: Do you want more water sir?

Sittenfeld: (UI) the–

UC Rob: Sure.

Sittenfeld: When we were at J. Alexander's, did you see that J. Alexander's is no longer J. Alexander's?

Ndukwe: Redlands or something like that.

Sittenfeld: Do you know what that's about?

Ndukwe: No, huh uh, huh uh. I'm not sure.

Sittenfeld: Um you were, you've been a (UI) other than just real estate right like.

UC Rob: Yeah so.

Sittenfeld: (UI) too?

UC Rob: My partner Brian has a green energy company.

Sittenfeld: That's right.

UC Rob: That's when Cincinnati announced...

Sittenfeld: That's right.

UC Rob: ...that big green energy initiative and stuff. That's how we kinda started working with Sam a little bit.

Sittenfeld: Right.

UC Rob: We didn't really know, have any connections in Cincinnati.

Sittenfeld: Right.

UC Rob: At that time we were back in uh a development deal out in Sycamore Township, um.

Sittenfeld: That's right.

UC Rob: Separately and then so we were like hey we're gonna do this so we might as

well get Brian some business on the green energy side.

Sittenfeld: Yeah yeah totally.

UC Rob: Then Brian and Chin actually have some relationships in the past and...

Ndukwe: Yeah.

UC Rob: ...so we we kinda sat down and started talking at the same time and got started looking at this deal so.

Sittenfeld: You guys are out in two different places right?

UC Rob: Brian's in Nashville, I'm in North Carolina.

Sittenfeld: Right, remind me where in Carolina.

UC Rob: Well I I say Raleigh, but I'm kind of all over the place so–

Sittenfeld: Right.

UC Rob: Yeah. I was in Savannah, Georgia forever uh that's where I kinda like cut my teeth doing development stuff.

Sittenfeld: Right.

UC Rob: And then now I just kind of look at for our little investment group our I kind of evaluate all of the real estate deals so.

Sittenfeld: And how how sort of diversified are is your guys you know.

UC Rob: Oh you know.

Sittenfeld: (UI) or is it mostly real estate?

UC Rob: No. Um so basically all our guys are in, it's not like a true fund. It's it's truly just guys who are in a bunch of industries and we collectively kind of put our money together.

Sittenfeld: Yeah yeah.

UC Rob: And so Brian's got a green energy deal, he's kind of the point guy. Um, Robbie one of the other guys kind of handles all of the technology stuff.

Sittenfeld: Literally pass the hat amongst the group.

UC Rob: Right.

Sittenfeld: And sometimes people are in and sometimes they're not in.

UC Rob: Right. Yep.

Sittenfeld: Yeah yeah.

UC Rob: So we kind of got a core group of about 5 or 6 guys and then uh you know a a extended group of about 15 depending on how much capital we've gotta raise.

Sittenfeld: Yeah that's a good way to do it.

UC Rob: And how long we've gotta have it tied up so. 'Cause we've got a couple guys that are not in that core group that if it's more than a yearlong deal you don't want them involved 'cause they're, it's a pain in the ass to...

Sittenfeld: Right yeah.

UC Rob: ...have their money in the deal so it just kind of depends.

Sittenfeld: Do you guys usually go for pretty quick...

UC Rob: No.

Sittenfeld: ...turnaround? (UI).

UC Rob: Um some of them are more long term. It just depends. I mean like literally it's, I, everybody always, we don't have a deal that's like a here's what we look for, it's pretty much like hey 'cause these guys being in different industries. They run across deals all the time. If it's a real estate deal, I'm the one that kind of takes the point on it and says hey look, here here's our options on it. We can be in it for two years you know and here's what our return is on it or we can go and be the 20 year partner and it is what it is so.

Sittenfeld: Right.

UC Rob: Everyone's a little different so.

Sittenfeld: But you guys (UI) pretty good amount of stuff?

UC Rob: Yeah uh Robbie's got a pretty big portfolio he keeps and then uh just to 'cause a lot of his other stuff is all technology-based stuff...

Sittenfeld: Right.

UC Rob: ...and so he likes keepin' that uh...

Sittenfeld: Right.

UC Rob: ...long-term stuff. Um but yeah, most of its most of it's 5 years or less.

Sittenfeld: Right.

UC Rob: And then we'll usually get taken out of that corner. Usually that's the plan.

UF: How are you?

Sittenfeld: Good, how are you doing?

UF: Good thanks. Something to drink other than water?

Sittenfeld: Water's great for me.

UF: Water? Have you all been here for lunch?

Sittenfeld: Yes.

UF: Yes? Can I answer any additional questions? Are you ready to order?

Ndukwe: Do you guys know what you want?

Sittenfeld: Yeah I can go for it.

[Transcript stops 16:22]

[Transcript starts 21:20]

Sittenfeld: You'll have more fun in the city anyway.

UC Rob: Yeah, yeah.

Sittenfeld: So what's the latest on 435?

Ndukwe: So we are I think we're meeting with Marion Haynes and um and, and Dan Valier (PH) I like Dan Valier (PH) a lot.

Sittenfeld: I do too.

Ndukwe: I think he is a rock star.

Sittenfeld: Yeah, that's good feedback.

Ndukwe: But we're we're meetin' with him next week. I believe it's next week. Uh and

we've we've been workin' on the plans they've finalized. Elevar is the architecture that's on record. We'll probably bring in like more of a when it gets to like more of the exterior design phase we'll probably bring in another architect. Elevar is doin' the architect now

Sittenfeld: (UI).

Ndukwe: Yeah yeah he's great, he's good. So I wish I had those. I was tellin' Rob we had we should have those all that stuff uh really end of day today. And then at that point we're gonna go make our proposal for a development agreement.

Sittenfeld: Right.

Ndukwe: And basically we got, we have probably 1 point when it's all said and done we'll have 1.8 million into it. We're gonna make a proposal to the city basically to them, hey we wanna get this for a dollar or work out some long-term lease of some sort for a minimal amount or we're gonna need X, Y, and Z. I brought on a guy, his name is Seth Barnhard. I don't know if you met him but he built, he was Augustus's from Medpace, his owner's rep on their Medpace hotel out there. So I just hired him and so he's runnin' point on all that stuff.

Sittenfeld: Yeah.

Ndukwe: It's kinda fucked up but essentially long story short is Cranley doesn't want me a part of, out in front of this thing. And like...

Sittenfeld: We can take care of that too.

Ndukwe: ...whole whole 'nother conversation. Holy shit.

Sittenfeld: Our current Mayor is capable of being very petty.

Ndukwe: Dude, oh my God. I mean he's I was kinda sharin' a little bit...

Sittenfeld: Which is no, not a way to be.

Ndukwe: ...and it's just fascinating. And it's over just you know our last election and that's part of the reason I was like how can we work out ways to keep my name off shit.

Sittenfeld: Yeah yeah.

Ndukwe: Um but that's where we're at. So it it'll come here hopefully.

Sittenfeld: What about uh the Goldschmidt situation and what about um is it um not NIOC?

Ndukwe: OSHA?

Sittenfeld: OSHA.

Ndukwe: OSHA. So OSHA's representative was actually in town from Chicago a couple weeks back. I met with him I um they toured a couple different sites for potential relocations. They're like gung-ho on getting them out to Blue

Ash. That's the only kind of downer, they're leave, they're gonna leave move those jobs out there.

Sittenfeld: On what timetable?

Ndukwe: Probably, they'll start, I think they'll be done movin' them by third/fourth quarter of next year. Which is fine.

Sittenfeld: What's your guys' timetable?

Ndukwe: We wanna we wanna really by by the fourth quarter of next year we wanna have shovels in the ground tearing that building down. So we're tryin' to–

Sittenfeld: So obviously it's a complete demo.

Ndukwe: Yeah yeah complete demo, straight to the ground. We I have this parking elevator company out of New York that will probably be here in the next couple of weeks. We're trying to put some parking underground. Elevators right? So you just it's all valet. And then retail and then we have a pretty strong LOI with um an office tenant I was I was talking to the head of IHG hotels last night. I don't, Jay Kincaid met him the last time they were in town. But they wanna be there. They wanna build a Indigo Hotel. It's huge, uh and then we're pretty confident we can do some high-end uh apartments up top.

Sittenfeld: How many square feet is it currently? Just to orient myself. (UI)

Ndukwe: So honestly it's like currently right now I don't know what the square footage is but two floors of retail and then like the back half of it is like probably an additional 5 floors of office space. And it's a dump. But it's but it's roughly about…

Sittenfeld: And the irony that OSHA is in this building that's probably unsafe.

Ndukwe: So unsafe, holes in. It needs to be scrapped. But it's it's about a little under a half acre with the park included. Um I mean it's it's it actually lays out perfectly for a hotel.

Sittenfeld: What's what's what's the proposal for the totality of the development?

Ndukwe: It's probably it, right now our numbers and we've been having Turner giving us some soft bids, close to a 75 million dollar deal.

Sittenfeld: So hotel.

Ndukwe: Hotel.

Sittenfeld: Ground retail.

Ndukwe: Ground retail, office, um is it confidentially confidentially super confidential I'll share with you. We're lookin' at potentially doin' a sports book confidentially, all right?

Sittenfeld: Okay.

Ndukwe: All right, but that won't be on our proposal to the City but we're amongst friends so.

Sittenfeld: Yeah yeah yeah.

Ndukwe: Um we're that would be a huge win if we could do that next to the convention center.

Sittenfeld: How many units in the hotel?

Ndukwe: 140, 140.

Sittenfeld: How many square feet of office?

Ndukwe: Probably close to, if we do 30,000 uh for our existing office tenant put another 15 for that co-working banquet-esque meeting space.

Sittenfeld: Yeah.

Ndukwe: Um which we think we have a there's a group out of Columbus, it's called Serendipity, they do like co-working space.

Sittenfeld: Right.

Ndukwe: It's pretty cool. They're they're interested also in taking up that 15 and…

Sittenfeld: Cool.

Ndukwe: …programming (UI).

Sittenfeld: Right.

Ndukwe: Um so we're we're I we feel like we're in a really good spot with the timeline where OSHA's at.

Sittenfeld:	What else do you guys feel like you would want from the City? So the land.
Ndukwe:	So we want the land for–
Sittenfeld:	Or the the landing the building whatever.
Ndukwe:	Yeah, the land the building for a dollar or a long-term, you know, lease for 99 years.
Sittenfeld:	And then a CRA?
Ndukwe:	Yeah a solid CRA. Nothing out of the ordinary but just competitive right? Like yeah I know gone are the days of like 75% abatements and all that stuff but you know it's gonna it's gonna activate that corner.
Sittenfeld:	No no no no gap financing?
Ndukwe:	I don't think, I don't think we're gonna need it. I don't I mean–
Sittenfeld:	Some would argue...
Ndukwe:	Yeah.
Sittenfeld:	...if it's the land for a dollar–
Ndukwe:	Oh yeah yeah right right right. That that would be–
Sittenfeld:	lt's easier (UI) just like cash ...
Ndukwe:	Mm-hmm.
Sittenfeld:	...is the hardest thing for the city to do, because if it's updating future value that would not be created but for the abatement I've never had an issue with that. If its land that otherwise is you

	know has derelict buildings sitting on it and isn't productive for the city that's not that big a lift.
Ndukwe:	Right.
Sittenfeld:	And we do, even though some of my colleagues talk kind of crazy about it and the CRA's are pretty routine so. If that, if it was all of that it's got my support...
Ndukwe:	Yeah.
Sittenfeld:	...and you know can certainly shepherd the votes too.
Ndukwe:	Yeah, no that's awesome, that's awesome. That's what I–
Sittenfeld:	Any any anything in terms of City intervention that's not covering? Or that's basically it?
Ndukwe:	I mean that's that's basically it. We'll you know I I been working with Seth to hammer out the fine details but we'll probably be in front of Council hopefully just to get the approval on the development agreement...
Sittenfeld:	Right.
Ndukwe:	...sooner than later. I mean...
Sittenfeld:	Guess on on that?
Ndukwe:	Probably no later than, I mean, I'm tellin' these guys fuckin' December both the holidays and stuff, no later than January I think.
Sittenfeld:	Okay.

Ndukwe:	You know what I mean? I mean we're tryin' we're tryin' to get it turned around. I mean I think there's gonna be just the experience of this other hotel it's gonna be a little bit of back and forth with...
Sittenfeld:	Right.
Ndukwe:	...E D but I think I think we can get it done hopefully before January.
Sittenfeld:	That's great.
Ndukwe:	Yeah so. These guys are wantin' it yesterday, so uh–
UC Rob:	Always.
Sittenfeld:	How many things are you guys in at any given moment? How many things are you in at any given moment?
UC Rob:	Uh well I mean we still have a lot of land positions uh down in Savannah. Um we got a couple little deals out north of Wilmington, North Carolina, coastal area um...
UF:	Are we all right?
Sittenfeld:	I'm almost gonna say don't leave those but...
UF:	Do you want me too?
Sittenfeld:	They're already here.
UC Rob:	So usually I mean we're in probably 10 to 15 deals at a time and then really I still have some like developments that I'm actually doing.

UF:	I've got your food coming over so I'm gonna move your small plates if that's okay?
Sittenfeld:	Thank you. More, uh–
UC Rob:	2 or 3 that I'm just kinda doing by my own self so.
Sittenfeld:	More uh generally the urban core or all over the place?
UC Rob:	Yeah, kinda all over the place like uh I mean all the stuff in Savannah is single family or uh town home pieces so um.
Sittenfeld:	Right.
UC Rob:	I don't really do anything downtown Savannah. The historical society and all that kind of stuff is just that's a whole 'nother game there so um, but uh.
Sittenfeld:	Thank you, thank you.
UC Rob:	Then out like uh south of Wilmington, Carolina Beach we own a bunch of, we probably bought like 20 properties. Everything there is just old beach houses, tearin' them down, re-zonin' them, and we are getting 4 units per lot basically. Just re-doing lot plans, just selling houses.
Sittenfeld:	Thank you.
UM:	Those are your black beans. Enjoy.
Sittenfeld:	Thank you.
UC Rob:	Pretty much just (UI).

Sittenfeld: Right.

UC Rob: Um–

Sittenfeld: You you anywhere else in Ohio?

UC Rob: Do what?

Sittenfeld: You anywhere else?

UC Rob: No we uh, so most, if I'm gonna run it, it's gonna be an East Coast deal just for oversight purposes.

Sittenfeld: Sure sure.

UC Rob: And everything else like money-wise then we're you know this is kind of our first one we've done in Ohio so.

Sittenfeld: Good, hopefully not the last.

UC Rob: 'Cause always the questions I get out of my guys are why are we going to a new market? You know, we know the politics and everything else of the markets we're currently in. So it's always we have 2 or 3 deals teed up and we'll spend a lot of time evaluating the deal and just getting a feel for...

Sittenfeld: Right.

UC Rob: ...kind of like Sycamore Township. Like I wasn't gonna go to my guys and say hey this deal, park 22 million dollars and then you know Tom Weidman's a dick and holds it up and now I look like an idiot so.

Sittenfeld: The good news for you guys, one Chinedum has great relationships with most of us, yeah, certainly

	respected as a developer, but also I think me and my colleagues appreciate this isn't just a good development it's a strategic development.
UC Rob:	Yeah.
Sittenfeld:	And we can't have that parcel...
UC Rob:	Right.
Sittenfeld:	...sitting at sitting as it–
UC Rob:	Across the street from the convention center.
Sittenfeld:	Yeah yeah exactly. How...
Ndukwe:	Killin' our (UI).
Sittenfeld:	...how how how high could you go there?
Ndukwe:	I mean we could go, I mean I think Fernandez put together and I can show these to you, put together a rendering of uh close to 70 75 floors. I mean 75 floors and 700 rooms. At one point in time we were lookin' at also tryin' to get that garage. It was just such a long battle that PG I'm like you know what, I know for sure that I can build one hotel, an office, and some residences. I know we can get it financed, um, let's just do a deal we can do and get it (UI).
Sittenfeld:	I think it's easy for me to say go as big as you can there.
Ndukwe:	Well yeah. Here's the other thing, so I was talkin' to Steve Leeper who runs 3CDC. They wanna build they're like

	he he's like gung-ho about building a convention center hotel on that surface lot the Port just–
Sittenfeld:	I mean it's the end-run around the Millennium.
Ndukwe:	I'm tellin' you.
Sittenfeld:	This guy is like the Warren Buffet of Singapore.
UC Rob:	Yeah.
Sittenfeld:	And uh owns...
Ndukwe:	Yeah.
Sittenfeld:	...our main convention hotel I mean like kind of like compare a flea-bag hotel...
UC Rob:	Oh yeah.
Sittenfeld:	...like literally...
Ndukwe:	Literally.
Sittenfeld:	...uh such a dump, you know, but it's the biggest and the most proximate hotel.
UF:	How is everything?
Ndukwe:	Great.
Sittenfeld:	Mine's tasty thank you. To the convention center, but a mass-massive challenge for the city and there's you know, it's like such a tiny little piece of his portfolio.
UC Rob:	Right.
Sittenfeld:	We only ever deal with his head of North American, you know

	development or properties or whatever. Uh so finally we're sort of saying, you know, can we just, if we can't do this with you, can we go around you?
UC Rob:	Right.
Ndukwe:	Yeah. I don't know if you heard any updates or anything on that but, I heard it was like under under an LOI or under a contract or somebody, I just…
Sittenfeld:	I haven't heard anything new in the last handful of weeks, but.
Ndukwe:	Yeah.
Sittenfeld:	But I can ask.
Ndukwe:	Yeah.
Sittenfeld:	City city needs it.
Ndukwe:	Yeah. Definitely, definitely does.
Sittenfeld:	So are the…
Ndukwe:	Oh and then with the Goldschmidts.
Sittenfeld:	Yeah not to come back to that.
Ndukwe:	Yeah yeah no no. So they are, so they were in front of Geor– Judge Winkler.
Sittenfeld:	Which one? There's a couple of them.
Ndukwe:	I I know right? Um so it was the husband, I think it was the husband or whoever lost to Aftab.
Sittenfeld:	Uh that's Ted, yeah.
Ndukwe:	Yeah.

Sittenfeld: Who I like a lot actually.

Ndukwe: Do you do you really? So.

Sittenfeld: Not as a judge, as a person.

Ndukwe: Yeah yeah.

Sittenfeld: I have no idea what kind of Judge he is.

Ndukwe: Yeah, every, it seems like there's a lot of these families that just keep, I don't know everyone's involved in public office.

Sittenfeld: No one knows who they are, but you know their last name.

Ndukwe: Right.

Sittenfeld: Yeah.

Ndukwe: So that's like that's right where it needs to be. We're good on that.

Sittenfeld: Are they out?

Ndukwe: I mean, no they're not out, but they're essentially...

Sittenfeld: Are they holding on to try and get some sweetheart...

Ndukwe: They're trying, but it's not, I mean (UI)...

Sittenfeld: How how are you and Ryan?

Ndukwe: That's what I was telling Ryan. I I'm not sure whose running the show, if it's his dad or if it's him. He's the las– he's the tenant in there dragging his feet. We gave him a deal, like we're like hey

	walk away and you don't have to pay anything. Meanwhile they're like...
Sittenfeld:	They should jump on that.
Ndukwe:	...they. Well that deal's off the table now, but it was–
Sittenfeld:	They like didn't pay taxes for like 20 years.
Ndukwe:	Oh can you imagine. I mean I, it's like the craziest thing I've ever heard.
Sittenfeld:	Right.
Ndukwe:	But, I don't know.
Sittenfeld:	They didn't they didn't not pay taxes in the smart way. They didn't pay up taxes in the dumb way.
Ndukwe:	Right, they just didn't pay them.
Sittenfeld:	Not in the legal loop-holey way, just the...
Ndukwe:	Yeah so I was like you guys are really just crippling the City.
Sittenfeld:	So that deal's off off the table.
Ndukwe:	Yeah it's off, mm-hmm. So we're lettin' that run its course this time.
Sittenfeld:	All right.
Ndukwe:	Mm-hmm
Sittenfeld:	All sounds good. I mean let me, is is anything backlogged in the City right now?
Ndukwe:	No no, I mean...
Sittenfeld:	I mean with Law or ED or...

Ndukwe: Mm-mm. No, we'll probably, we can talk about this another time but there's another deal I'm workin' on 3401 Reading Road, but I wanna talk to you about. That I think, it's up in Avondale, that I think you can help, but um I think at 435 Elm I think just when it...

Sittenfeld: It's a big piece of business.

Ndukwe: ...yeah, just when it's I'm I'm glad to hear that you're on board when it's time to...

Sittenfeld: The deal that you guys talked about, easy to support.

Ndukwe: Yeah. Mm-hmm.

Sittenfeld: I'm gonna have to work on some of my colleagues for you. Did you see what some of them trying to pull with the uh land swap by the tri-state wholesale thing?

Ndukwe: Yeah what's I mean. What is uh–

Sittenfeld: I think there is, you know, just depending on the day, anywhere from 2 to 4 people that like this isn't meant to spook you at all...

UC Rob: Sure.

Sittenfeld: ...because there are always at least five votes.

UC Rob: Oh yeah.

Sittenfeld: But again, depending on the issue. They kind of just like I think like

	honestly it almost just seems like they don't want developers to make money.
Ndukwe:	(UI).
Sittenfeld:	Even if it means that private capital is being deployed in your community, by like in your community...
Ndukwe:	Right.
UC Rob:	Right.
Sittenfeld:	...that has a choice to go elsewhere if you, you know, if that's the attitude you take toward them. There's this thing where 4 of them and I got I don't wanna spook you 'cause...
Ndukwe:	Yeah.
Sittenfeld:	...we always we always find a way.
Ndukwe:	Right.
Sittenfeld:	Um and I think this will be, I can promise the votes obviously. But um on a on a we were gonna give a piece of land that was worth literally like $300,000 for a dollar and they didn't wanna do it and it could have thrown a wrench in the entire MLS stadium situation. It's just like...
Ndukwe:	Wow.
Sittenfeld:	...is that really worth it?
UC Rob:	Right.
Sittenfeld:	When people put $350 million of private capital into (UI).
Ndukwe:	So, is that gonna go through though?

Sittenfeld:	Yeah, it already did. They just made it something that didn't need to be a close-call a close-call.
Ndukwe:	Yeah seriously.
Sittenfeld:	But this is, everyone appreciates like where this the positioning of this building. I I think it should be all good.
Ndukwe:	Yeah.
Sittenfeld:	Will the CBB, like will Julie chime in and say we think this would be great?
Ndukwe:	Are you asking?
Sittenfeld:	Yeah, I don't think it's necessary, but I don't think it hurts.
Ndukwe:	Yeah I think I don't know if you know I'm I'm on the CBB Board. She's been great.
Sittenfeld:	(UI) she been doin?
Ndukwe:	She has been man.
Sittenfeld:	I mean as you know 1 wrote a letter for someone else.
Ndukwe:	I know and I was I was comin' back.
Sittenfeld:	Julie's better.
Ndukwe:	Yeah, speaking of, how was she even doin' like is she she's out of office now right?
Sittenfeld:	As of yesterday. Or actually maybe maybe til til December 31 or something like that, but is about to be. I don't know I mean honestly I think she needs it (UI).

Ndukwe: Yeah.

Sittenfeld: Like is she able to is she able to pay, you know I I like it on (UI), does she have a way of paying herself through the CDC they started?

Ndukwe: I don't know, there should be.

Sittenfeld: You tell me, but I mean she (UI).

Ndukwe: Honestly they wanted...

Sittenfeld: The woman's a State Rep.

Ndukwe: Yeah Alicia, Alicia Reece.

Sittenfeld: And is about to get termed out.

Ndukwe: She wanted me to leave I had a I had another group in ah from out of town, a couple of my other partners from Columbus, she wanted me to leave that meeting and they're putting they put real dollars in deals and like come and meet her and her dad at like Bob Evans on like, I don't know some part of t... I was never, I mean I've never I rarely go to the West side but it was like way it was further on the West Side I was like no way. I was like, Alicia I can't do that. She was so offended, so offended, day of.

Sittenfeld: She's again she's she's also a friend.

Ndukwe: Mm-hmm

Sittenfeld: Political friend but she's a friend. She has an interesting way of doing business.

Ndukwe:	Oh my God. That is that is puttin' it very very (UI).
Sittenfeld:	A little, yeah, it probably flirts with the line of like–
Ndukwe:	Yeah.
Sittenfeld:	So no that's (UI) totally nosy invasive question, do you uh married or–
UC Rob:	Divorced.
Sittenfeld:	Divorced.
UC Rob:	Two kids, divorced.
Sittenfeld:	Can we find you a wife in Cincinnati?
UC Rob:	Can you find me one?
Sittenfeld:	Would you accept one?
UC Rob:	Um.
Sittenfeld:	Good-lookin' guy, single.
UC Rob:	Yeah yeah I'm always...
Ndukwe:	You got the swag.
Sittenfeld:	Maybe line it up man.
UC Rob:	...I'm always (UI)
Ndukwe:	He's got the swag.
Sittenfeld:	I I'm not kidding.
UC Rob:	…I'm always looking for my next ex-wife.
Sittenfeld:	And she's lookin' for you! How, how old are you?
UC Rob:	38, I'll be 39 in December.

Sittenfeld:	I'm not kidding and I don't know if Chin agrees with this, this town has a total glut of smart attractive women…
Ndukwe:	It's true.
Sittenfeld:	…in like their early 30s.
Ndukwe:	It's true.
Sittenfeld:	And just for whatever reason, like the guys all got paired up with someone else.
Ndukwe:	Yeah yeah yeah.
Sittenfeld:	There are more of them then there were of us.
Ndukwe:	A hundred percent.
Sittenfeld:	So I don't I don't know how uh geographically flexible you are but you tell me if you're gonna be in town for a couple of days, I'll set you up on a good blind date.
UC Rob:	Okay.
Ndukwe:	You've gotta, you gotta make it happen. Gotta make it happen.
UC Rob:	So you're, what about you, you're married obviously.
Sittenfeld:	Yeah I'm married um.
UC Rob:	You got kids?
Sittenfeld:	Not yet, hopefully I'm not too far behind Chinedum though.
UC Rob:	Ah, we were just talking about it a second ago.
Ndukwe:	Dude, take your time.

Sittenfeld:	See I (UI) before I before I put the weight on, I gotta have kids.
Ndukwe:	Take your time.
Sittenfeld:	Um yeah hopefully not too long. Ask ask me again in maybe a year or two.
UC Rob:	Yeah, they're fun, that's what I told Chin like…
Sittenfeld:	Where where are they geographically?
UC Rob:	They're in uh just outside of Raleigh so and like my my ex-wife and I are great, great relationship like…
Sittenfeld:	So (UI).
UC Rob:	...we we, you know, really like she couldn't handle me travelling and being gone and the stuff I do...
Sittenfeld:	Right.
UC Rob:	...and so we we kinda like writing was on the wall we were like hey this is not gonna go well and neither one of us (UI).
Sittenfeld:	Ah good to, good to recognize it.
UC Rob:	So uh...
Sittenfeld:	So are you are you geographically uh pretty set in Raleigh for that reason or?
UC Rob:	...uh, I mean probably the southeast at least. It's nice, uh my kids are 9 and 7 so like...
Sittenfeld:	Right.
UC Rob:	...you know, I can make football games and practices....

Sittenfeld: Yeah yeah yeah yeah.

UC Rob: ...and that kind of stuff when I'm in town so it's nice. Um now but like ya know I mean I'm all over the place. I mean like, we we ended up renting an apartment at 580. Um you've met my partner Brian.

Sittenfeld: Yeah yeah.

UC Rob: He's high-maintenance as shit uh so like he like...

Sittenfeld: (laughing) I didn't I didn't get that impression.

UC Rob: Ah no I'm just kidding. He's hilarious but he's like he's that guy that like it's always spontaneous and he's like we started staying at 21C and like twice we came here, we couldn't get a room.

Sittenfeld: Seriously?

UC Rob: And he's like fuck-it, we're getting an apartment. He was like we're gonna be here a couple times a month like, you know, he's just that kinda guy so.

Sittenfeld: I just bought a huge house if you ever need a guest bedroom. You don't have to see me. I'll give you your own key. My wife works in another city during the week so.

Ndukwe: How much longer does she have up there?

Sittenfeld: A couple years.

Ndukwe: Wow.

Sittenfeld: Well though actually I have the key to marital success...

Ndukwe: Yeah seriously.

Sittenfeld: ...it keeps things fresh.

UC Rob: Right right right.

Sittenfeld: Doesn't get sick of me too quickly. Chin can I show Rob some uh data on the, you mind if I, is that appropriate (UI)?

Ndukwe: No no yes definitely.

Sittenfeld: This this is this is political stuff.

Ndukwe: Yeah yeah.

Sittenfeld: But it is, in the event that um Chinedum is successful in twisting your arm to be supportive of someone, I want you to know that I think it's a you like making good bets and good investments. This is just three quick slides but give you some landscape here, give you some con-context rather. So Chin's seen these.

Ndukwe: Yeah yeah.

Sittenfeld: So this is the last City election. The white is the county, this bizarre shape is the City of Cincinnati. This is a slide from the Cincinnati Enquirer they had their data people break down every neighborhood and Ward in the City and of everyone who was on the ballot, color-coded based on who finished first, so I'm turquoise in this (UI) there's a

little bit of non-turquoise, but it's basically all turquoise.

UC Rob: Sure.

Sittenfeld: Um, no reason you would know this, in this neighborhood over here is the I think it's actually the biggest neighborhood in the City. It is white, working-class, more conservative. Top vote getter there. Neighborhood Chin just mentioned, Avondale, almost uh entirely African American, low-income, very Democratic, top vote getter there. Move over to the east side of the city, Hyde Park, Mt. Lookout, affluent more Caucasian neighborhoods, top vote getter there so I mean I I take very seriously that you know I wasn't sent to City Hall to be the best Democratic Councilman you can be or just be the best for the East-side like you know be responsible to the whole City, get good stuff done for the whole city and you know the city the city returns the love in kind.

UC Rob: Yeah.

Sittenfeld: This is so this is the same same election a year, actually it's a year ago today. This is just raw votes, individuals in the city that went to the polls. This had only happened one other time in the city's history that someone running for city-wide council seat uh kicked the ass of the person

	running for Mayor. Actually both of them and obviously he won. This guy here is the most likely competitor who I have no ill-will towards him, he doesn't like me, but I'll tell you why he doesn't like me. Because of the space between...
UC Rob:	(laughing) Sure.
Sittenfeld:	…there and there, um. And the last slide, and this is more um from a business perspective. Obviously you do stuff at all sorts of different geographies with all sorts of different political persuasions. Um even even as Ohio as a state went went very red yesterday.
Ndukwe:	(UI) sorry about that.
UM:	No you're good.
Sittenfeld:	Can't take him anywhere.
UC Rob:	I know right.
Ndukwe:	(laughing) (UI) right through your last slide. I know.
UC Rob:	We cut we cut him off.
UF:	May I?
Sittenfeld:	Thank you.
UF:	Are you finished with the black beans and rice as well?
UC Rob:	I am, yes.
Sittenfeld:	What's the secret ingredient? There's something that it makes it a little…

UF: In the black beans?

Sittenfeld: Like cheese or something?

UF: No, there's no, well there's a…

Sittenfeld: Salt?

UF: …little sprinkle on top. Yeah salt for sure, um they have a lot of tomato in them. Um so it's like we puree the beans down with tomato with a bunch of seasoning so it's not just like normal plain black beans coming out of a can so.

Sittenfeld: Yeah, it's delicious. Um this is the city, so yesterday even as Ohio has like become like Missouri or Indiana this county and especially this city anchoring the county has gotten very blue. Like we used to say purple leaning blue. As of yesterday, did you see Stephanie Dumas won yesterday?

Ndukwe: No, I didn't see that.

Sittenfeld: A woman who raised $12,000, African American woman, I supported her. I was one of the 10 people that donated to her uh–

UC Rob: One of ten.

Ndukwe: Who'd she beat?

Sittenfeld: Chris Monzel, raised 400k. So so anyway.

UC Rob: Wow.

Sittenfeld: So this is this is the city today, 73% Democratic. Last time a Republican

	was elected Mayor, 1971. The last time anyone other than a Democrat, 1984. So the reason I did, look, I mean in 50 years uh this trends gonna continue. 50 years of (UI) isn't about to be reversed. So my thing and you know I've said this to Chin and others (UI) and and I'm a she's a personal friend, Chin knows her well, she got into big trouble by trying to torpedo this $600 million Children's Hospital deal. If you're gonna have a Democratic mayor of a city, my attitude is have someone who has great relationships with the business community and appreciates people that want to deploy private capital and say ya know, we wanna grow here, we wanna create wealth, we wanna create jobs here so. That's the, but, I mean, the the money side for you is is this one. I can't sit here and politics is too unpredictable, but if you were literally just gonna place a bet I biasedly say the data backs up, it's a smart place to…
UC Rob:	Sure.
Sittenfeld:	…to place one so. Chin did I miss anything?
Ndukwe:	No man I love that I love that slide. I think that's that speaks volumes.
Sittenfeld:	Well it's not me, it's it's data, you know.
Ndukwe:	It's just the data right? Yeah no I don't I don't think you missed anything at

all. I think it's great. I think it was good. What do you think?

UC Rob: Yeah I mean I agree. Um, you know, I mean obviously, uh I mean I this isn't the first time I've heard that you'll probably be the next Mayor. Like I think, had a lot of meetings with a lot of people and that constantly comes up so I mean this wasn't a surprise when Chin told me, hey we need to go do this lunch, um.

Sittenfeld: One and then one another thing, sorry to interrupt there is you know, a couple of the people that uh Chin has mentioned, Tom Fernandez the CEO of Elevar just became one of my biggest donors yesterday. Um the CEO and founder of Medpace August Troendle, yeah, I mean, you literally, you look at, and by, I don't I don't, as I've told you, I don't care where the money comes from but if you look at the list of every successful developer, business leader in Cincinnati, they've already placed their bet with me, so…

UC Rob: Right.

Sittenfeld: …if if anyone does that going forward, they're in good company.

UC Rob: Right, right. Yeah, and so um obviously we we wanna have a hopefully a long-term relationship with Chin and and the City of Cincinnati.

Sittenfeld: The City yeah, we want you too.

UC Rob: Um, you know obviously we're very concerned with knowing and being in a good relationship with the next Mayor, uh so and that's huge for us. The part that really concerns me for Chin is, you know, he said it, like Cranley's got a hard-on for him like

(UI) you know, and so we wanna try to set 435 up being veto-proof you know. And that that's kind of what's I'm 'cause this deal is gonna happen, long before that.

Sittenfeld: Yeah.

UC Rob: So that that's kind of when our strategically that's how what what we're trying to figure out too so.

Sittenfeld: So so two things, two reactions to that. One, you know like, I don't have a machine, but we just got 6 people together to pass my budget…

UC Rob: Right.

Sittenfeld: …over John. I think I c–, at this point, I can say I control, not control, that's the wrong word.

Ndukwe: Right right right right.

Sittenfeld: But like I can move more votes than any single other person. Including the Mayor or, he he had 3 votes on his budget, I had 6.

UC Rob: Right.

Sittenfeld: Um the other issue is just I'm just being realistic, I mean, he can be a uh short, prickly, petty little pain in the ass sometimes.

Ndukwe: Mm-hmm.

Sittenfeld: But, I have a very good relationship with John. We had lunch together yesterday. He won't give a shit, if you, like, in terms of supporting me.

UC Rob: Right.

Sittenfeld: He doesn't care at all.

Ndukwe: Right.

UC Rob: Yeah yeah yeah I'm not concerned about that as much as I am–

Sittenfeld: Just getting this…

UC Rob: Well I mean it's a math, can I can I count to the, can I get, how do I get to the votes where it doesn't matter what his opinion like if it if it's gonna, get him the development agreement, whether he jumps up and down in his office and stomps his feet. We never want that to be like we will do everything in our power to smooth things over with him and and get him on our side. But we're just saying…

Sittenfeld: If you need too…

UC Rob: …we gotta plan for the–

Sittenfeld: …I mean don't let him hold anyone hostage either.

UC Rob: Yeah.

Sittenfeld: Like but I will look, I will say this, he's, is he capable of a lot of pettiness and like vengefulness? He is, but he also he actually genuinely likes development. So like if this project is what it is tee'd up to be.

Ndukwe: Mm-hmm, mm-hmm.

Sittenfeld: Does John want to be the voice after after 6 years of like rah rah we gotta like keep you know keep the investment going?

UC Rob: Yeah.

Sittenfeld: Even if he, you know…

Ndukwe: Yeah.

Sittenfeld: …has some beef with Chin or whatever, like, I I don't think he's going to stand in the way of a good deal.

UC Rob: Okau.

Sittenfeld: And I'm happy to play my part…

Ndukwe: Yeah.

Sittenfeld: …in the public framing of this. So I'm, I think you're okay there.

UC Rob: Okay. All right yeah we can uh I can say we're we're in we're we're…

Sittenfeld: You you guys can sort stuff out, I just wanted to make make my case.

UC Rob: …we're backin' these guys up. Well I mean yeah yeah I mean. After lunch we can walk across the street and

	maybe you you and I can talk for a second.
Sittenfeld:	Yeah (UI).
UC Rob:	That way he doesn't have to be in the middle of of it, but uh.
UF:	Care for anything else?
Ndukwe:	No. I'll I'll take it, I'll take the check.
Sittenfeld:	(UI) I'm happy to get it. I'm offering.
UC Rob:	I got the check.
UF:	I'll put it in the middle okay?
Sittenfeld:	Bring it, Rob bring it to me.
UC Rob:	No, I got this.
Ndukwe:	Rob will take the check, take the check.
Sittenfeld:	I'm happy to pick it up.
Ndukwe:	No no no. Thank you, thank you PG.
UC Rob:	I'm happy too. Uh–
Sittenfeld:	Yeah no we look I I looked at uh I'm gonna be in Indianapolis in a couple of weeks, meeting with some of the lead developers there. Gotten (UI). Like I want, we're not we're not done growing by a long-shot.
UC Rob:	Right right. And that's what you know it's funny like I think and Brian and I have seen this as we've spent time here in, to me, Cincinnati is at that, it's on the climb, like it can go down down.
Sittenfeld:	Yeah I agree.

UC Rob:	Seems it's got energy you know like people are here it's it's coming back downtown so–
Ndukwe:	(UI).
UC Rob:	Let me, let me get it. I got it.
Ndukwe:	Where is it? Come on.
UF:	(UI) whoever can get it first all right?
Ndukwe:	I'm not runnin' I'm not beatin' any, I'm not winnin' any races.
UC Rob:	I got it. I got it.
Ndukwe:	Rob, I gotta get outta here buddy.
UC Rob:	All right.
Ndukwe:	All right so we'll catch up here (UI). PG appreciate it buddy.
Sittenfeld:	You sure I'm not (UI) I'm glad to get it.
UC Rob:	Absolutely, happy to get it.
Sittenfeld:	Next next time is my treat.
UC Rob:	Um so yeah, so we're excited you know like overall like and and so we're backin' another deal with another developer of Kennedy Connector, so um...
Sittenfeld:	Oh nice.
UC Rob:	…Chris Hildebrandt, I don't know if you know Chris.
Sittenfeld:	Yeah, a little bit.
UC Rob:	Chris is Chris is who we were…
Sittenfeld:	Oh cool.
UC Rob:	…(UI) up in Sycamore Township.

Sittenfeld:	Oh yeah yeah yeah.
UC Rob:	So we're not just, you know what I mean, but like we like the market so far we like the ya know so we're looking at other deals.
Sittenfeld:	Oh yeah, no that's great.
UC Rob:	So um that's that's a big piece of it for us is kind of long-term.
Sittenfeld:	And look that's the fun I mean you know you wanna you wanna do stuff where you're gonna get your return and also a city you enjoy coming too once in a while.
UC Rob:	Right right exactly yeah.
Sittenfeld:	Have you uh has anyone like you know taken you out for a night on the town here or…
UC Rob:	Uh we've been out a little bit, but not a lot. So but we should do that one time when Brian's in town…
Sittenfeld:	Yeah yeah let me know.
UC Rob:	…we should all go out and get drinks and stuff.
Sittenfeld:	That'd be great.
UC Rob:	Hang out so uh…
Sittenfeld:	(UI) this uh, this you gotta like (UI) someone didn't didn't necessarily know like you know what, how to put a fun night together. You can hit some spots that were good but not like like, there, the city can present very well so.

UC Rob:	Yeah yeah. I mean we've been we've been a lot like Jeff Ruby's a lot, we've been to Boca a lot.
Sittenfeld:	Sure. Yeah.
UC Rob:	And uh So- what's underneath? Sotto's.
Sittenfeld:	Sotto.
UC Rob:	Sotto and um…
Sittenfeld:	Yeah good spot.
UC Rob:	Yeah, it's funny like uh–
Sittenfeld:	So you so you and Brian are, you guys have an apartment…
UC Rob:	Yeah.
Sittenfeld:	…(UI) at 580?
UC Rob:	Yeah yeah we ended up renting an apartment…
Sittenfeld:	That's awesome.
UC Rob:	…over there at 580, so um–
Sittenfeld:	How do you like my my dad now maybe 30 years ago worked in that as an office building.
UC Rob:	That's hilarious.
Sittenfeld:	He did uh wealth management, investment advising and uh before it was condos, yeah. 'Cause I was I was thinking that building was very nostalgic for me.
UC Rob:	Yeah that's funny.
Sittenfeld:	Nostalgic sort of way.

UC Rob:	Yeah we've enjoyed it so far. I mean we wanted to…
Sittenfeld:	When when did you guys start renting up there?
UC Rob:	September, yeah September. And then uh we actually ended up doing like a corner, top corner right there, overlooking this intersection.
Sittenfeld:	Cool.
UC Rob:	It's a good spot.
Sittenfeld:	It is it is a good spot…
UC Rob:	Yeah.
Sittenfeld:	…to be close too.
UC Rob:	But we looked we looked down the street at uh what is it (UI)…
Sittenfeld:	Yep. Yeah yeah yeah.
UC Rob:	…or something like that, over on top of the Banks and all that kind of stuff, and we're like well everything we're doing is right here so.
Sittenfeld:	I think you guys landed in a good spot.
UC Rob:	Yeah.
Sittenfeld:	Uh, another thing I was gonna say and offer is and look I you know, ask a bunch of peoples' opinion on a bunch of shit relative to Cincinnati, but um, if I can ever be helpful in navigating certain things um I I personally, was just like, (UI), I sometimes feel like people pay uh government relations people some big fat monthly retainer

	and I'm like I could literally tell you in 10 minutes all of the advice, which would be better than, obviously like, I'm inside it, so I have access to…
UC Rob:	Sure.
Sittenfeld:	…the information or relationships and stuff. But if you ever want you know, lay of the land.
UC Rob:	What I mean and I'll tell you that's a lot of the reasons we stay out of the major, the New York's, the Miami's. 'Cause 'cause like to to us, politics is local you know on the development-side.
Sittenfeld:	Yeah.
UC Rob:	And lobbyists have their place and all that kind of stuff, but like...
Sittenfeld:	But so often (UI).
UC Rob:	...if I can't have a meeting or a lunch with the with the actual person that's gonna vote like I never feel comfortable putting my guys' money at at on the table. 'Cause I mean you know how private money works like, you screw up one deal the next time you go to the well...
Sittenfeld:	Yeah yeah yeah yeah.
UC Rob:	...They're gonna be like, yeah we're we're going somewhere else.
Sittenfeld:	(UI) two deals and yeah.

UC Rob: Right yeah. So um, it's always I you know like I said lobbyists, we'll do 'em sometimes open the door.

Sittenfeld: Well I'm just look, no matter, regardless of anything else, if you wanna um you know, be invested in Cincinnati, anything I can do to help interpret the landscape.

UC Rob: Yeah.

Sittenfeld: I'm more than happy to do, uh.

UC Rob: Okay. Um, I appreciate that. That means a lot. So...

[Transcript stops 56:04]

[Begin transcription of 1D96 Section 6 at 2:20 - Video]

UC Rob: Yeah so uh you know Chin uh the stuff with Cranley what concerns me...

Sittenfeld: Yeah.

UC Rob: ...obviously like you got Chin kinda sideways with him was obviously he backed...

Sittenfeld: Yeah yeah.

UC Rob: ...you know the the wrong horse or whatever.

Sittenfeld: Sure.

UC Rob: So he doesn't want his name on anything.

Sittenfeld: Right.

UC Rob: And and um and we typically don't either.

Sittenfeld: Right.

UC Rob: Um you know we usually try to figure out a creative way to to do something.

Sittenfeld: Right, understood.

UC Rob: Um, but at the same time, like we want to help, we want to make sure, we want to really get this thing, Cranley, I would feel comfortable tellin' my guys like hey we're we're in...

Sittenfeld: Right.

UC Rob: ...this deal with Chin if I know we're Cranley-proof.

Sittenfeld: Yeah.

UC Rob: Um and so with that like Chin told me like hey you know I want to try to get uh P.G. 20,000...

Sittenfeld: Right.

UC Rob: ...and I'm like, hey man I I'm I'm if if if we can get this deal done, like fuckin' let's do it.

Sittenfeld: Yeah.

UC Rob: You know and so.

Sittenfeld: Do you guys?

UC Rob: What is the best way, what's the best way for us to get that to you, to get that deal? You know what I mean, like...

Sittenfeld: Yeah yeah yeah. I'm just, do you guys know that he's gonna try and veto it?

UC Rob: No, we don't know that. I'm just saying like I want it, I just want to be comfortable that...

Sittenfeld: Yeah no I get it I get what you're…

UC Rob: I mean obviously like I think, I don't think he will. Like we've had a lot of just meetings with him you know. We've we've done some things to kind of massage, we just wanna you know, he's been pretty good like, he he straight up told us, we had a meeting with him in his office and he's like, look, like it'll get, I'm fine with it I just don't want Chin to be the face of it. I just don't want Chin to be the one

walking in and we're like cool we're fine with that.

Sittenfeld: Honestly I can I can deliv–… I can sit here and say I can deliver the votes.

UC Rob: Okay okay.

Sittenfeld: I do think if knowing that and I'll, if you don't mind I'll talk to John about it directly um.

UC Rob: That's up to you, whichever way.

Sittenfeld: We have that relationship.

UC Rob: Okay.

Sittenfeld: It's fine. Um he's no no no I think that's fine um, if he said that, I think he's actually, I'll call him today 'cause I think he's getting on a plane to China um tomorrow. Yeah he is. But um…

UC Rob: (UI)

Sittenfeld: …I mean the thing is as long as Chin, I mean I actually think that is a a good solution.

UC Rob: Okay.

Sittenfeld: 'Cause that, John he doesn't like, I mean I don't know how much of a sense you, he doesn't want to feel like he's like you know to save face or (UI) won't…

UC Rob: Yeah.

Sittenfeld: …let him save face 'cause if he's like oh here's this person who I think this is his view of it tried to screw me or

whatever, but as long as he's not like facing (UI) their deal (UI) your deal.

UC Rob: Right.

Sittenfeld: John John loves guys like you.

UC Rob: Yeah.

Sittenfeld: You know like people who choose to invest here they believe in it, they're revitalizing a (UI) so I can get I can get it done.

UC Rob: Okay. So what's the best way to get so like I mean I brought 10,000 cash with me 'cause Chin was like hey I was like buddy I'm not gonna be able to pull $20,000 out of the bank this week, but…

Sittenfeld: No no, um. Well whose name can stuff be in?

UC Rob: ...uh I mean that I mean we can come up with some names if if they need to be checks or we can...

Sittenfeld: 'Cause here's the...

UC Rob: … 'cause my understanding, is like the whole LLC thing got crushed or voted down.

Sittenfeld: Well actually actually it's good through Dec.., so it voted down yesterday.

UC Rob: Mm-hmm

Sittenfeld: But technically people can still give through December 1.

UC Rob: Okay.

Sittenfeld: Now the the max for LLC is 1,100. So I don't know how many LLCs you guys have. Probably a lot.

UC Rob: Yeah.

Sittenfeld: Um I mean honestly the easiest thing would probably be uh the easiest thing would probably be you know 18 hopefully 18, yeah like 18, I don't know if there are 18 LLCs. If there are 18 LLC checks...

UC Rob: Mm-hmm

Sittenfeld: ...each for $1,100...

UC Rob: Okay.

Sittenfeld: ...before December 1.

UC Rob: Okay.

Sittenfeld: I don't know if that's doable. The one, there is it's I mean obviously like money directly into a campaign is the most valuable thing. I do have a PAC that one, no one's like snooping around in who's giving that there, Jo-, I mean I think frankly a lot of people don't even know that I have it. Um uh, John, (UI) um any LLC or individual can give up to $5,000 to that. So if you guys were like, hey we don't have 18 LLCs that we can use for this.

UC Rob: Yeah.

Sittenfeld: You can do one check for $5,000 from an LLC and then 12 LLC checks or

something like that. Do you think, is something like that doable?

UC Rob: Yeah I mean I would...

Sittenfeld: What are you what what's what are you guys most comfortable with?

UC Rob: Oh I mean the easiest thing for us is to, you know to do cash and you know you figure out how you interject it or put it wherever you want to. If if you can't or are uncomfortable doin' that then even if it's uh you know…

Sittenfeld: Yeah, I don't…

UC Rob: …individual names like we can come up with 'cause the problem with LLCs it's still like at the end of the day like coming up with all those LLCs still kinda ties back to us with the LLCs. That's what (UI). So if we need to like come up with the names of, you know get cashier's checks or money orders.

Sittenfeld: I mean if an individual, if if as a technicality it it is attributed to that individual and they agree that that's where it came from then that's you know, yeah.

UC Rob: Okay. So just…

Sittenfeld: But again, the challenge is, even that individual could only do uh 1,100…

UC Rob: Yeah yeah, but I mean I can find I can get 18.

Sittenfeld: …I mean if you had well yeah sure if you had 18 friends who um said this is this is a contribution from me…

UC Rob: Right.

Sittenfeld: …um yeah. I mean if you guys, like in this pool of people, so yeah yeah.

UC Rob: Okay, so that's the best way for you?

Sittenfeld: Um…

UC Rob: Or we can split I mean it doesn't we can do 10,000 one way 10,000 the other, 5 thou–, you know.

Sittenfeld: Well if you if you basically were like, I feel like the cash thing is probably not, I mean I guess technically people can give like, someone can give $1,100…

UC Rob: Yeah.

Sittenfeld: …to, can I call and ask someone really quickly? Is that okay? Um did someone if you if you gave me $1,100…

UC Rob: Do you want a water or anything?

Sittenfeld: …and said, I'm good, and said this is from this person…

UC Rob: Right.

Sittenfeld: …and they said, yeah this is from me, I guess that's no different than a check. Um can I ca– you mind if I call and ask real quick? And I appreciate, I mean again, I wanna do this in a way that…

UC Rob: Yeah yeah.

Sittenfeld: ...is comfortable for you guys.

UC Rob: Yeah I'm we'll do it whatever way you want it done.

Sittenfeld: (AS speaking on cell phone) Hey question, can someone give, I mean, can someone give $1,100 in cash? So what if someone raised from uh 10 people uh $1,100 each and said this is who it's attributed too? Does that does that start to like send up? Yeah yeah okay. Do you want me to ask him? Um okay (UI) do you do you guys so well actually Jared let me call you back. Okay, okay bye (phone call ended). Um if if you had you know like John Doe as a person that something could be attributed too, could they do a check or?

UC Rob: I I mean ultimately it's it's gonna be the same $10,000 or $20,000.

Sittenfeld: Right.

UC Rob: So I mean, I can get money orders in...

Sittenfeld: Right.

UC Rob: ...however many names.

Sittenfeld: Right.

UC Rob: But as far as like personal checks, that would be a little...

Sittenfeld: Right right, okay. Okay and then what timeline do you wanna do this on?

UC Rob: You tell me when you when you when do you need it? So I mean, like I said when Chin called me and told me what we were doing I was like okay I'll bring

$10,000 with me and you know we'll have that option you know if we need to do something quick so.

Sittenfeld: And he said it's fine, the only thing is if it was like one person doing $1,100, I don't wanna send up signals.

UC Rob: Yeah yeah, yeah whatever's...

Sittenfeld: You know what I mean?

UC Rob: Yeah, same thing like I I don't want, that's the reason I wanted to have this conversation with you without Chin being in the middle of it 'cause it's, so we could talk through what's best for everybody.

Sittenfeld: I always just proceed in an abundance of caution that again if you were like hey here's $1,100 from me, attributed to me um I think but but if there was that volume of them it I don't know if it would like send up uh.

UC Rob: Okay what if what if like in the next two weeks...

Sittenfeld: Money orders could be different though actually.

UC Rob: ...okay what if what if like we did so they don't all come in at one time we do like the first 10,000 in De– in November and then the the next 10,000 like the first two weeks of December or something? Do you need it?

Sittenfeld: With with I mean the thing he wasn't sure about was the volume of cash.

UC Rob: Yeah I'm talking about if in in money orders.

Sittenfeld: In money orders?

UC Rob: Money orders in different peoples' names.

Sittenfeld: Yeah that could definitely be possible.

UC Rob: Okay and just do and that way we don't give you…

Sittenfeld: And by the way I mean if if this is done by the end of this year, so you guys are actually, you think not using any of the LLC options is best?

UC Rob: Probably best, I mean that's what I know what Brian's gonna say he he fuckin' you know he he'll jump up and down like if we walk into a campaign event and they make you sign in like he'll walk out the door.

Sittenfeld: Right.

UC Rob: Like he you know 'cause it's the same thing, like nobody wants to have their name on the paper, you know or okay.

Sittenfeld: Right.

UC Rob: But so I mean I think the individual would be the same. If we need some of it to be LLC money like we can look…

Sittenfeld: Right.

UC Rob: …for the second 10,000 we can look at that option or something. We can do

the first quicker probably if we do just money orders from you know John Doe and get you 10 of those

Sittenfeld: What's uh? But a real real person.

UC Rob: Mm-hmm

Sittenfeld: Whose part of your guys' network.

UC Rob: Yeah well yeah yeah. I mean it's our collective you know I mean it's the that same 10,000 that'll just get converted in in names for…

Sittenfeld: This is Jared. (AS accepts telephone call) Hey Jared. I just wonder a little bit, is there anything like when when when it gets deposited into an account, does it say like it was cash or no? Is, do you think is a cashier's check better? Yeah I mean I just I mean having having never deposited that much cash into a campaign before, I just didn't know if like the bank if any like flag goes up at the bank or something like that. Really? So you think, but so so if I had, so if I had a friend who was like hey I wanna raise you $10,000 and then he went and got um uh 10 $1,000 cashier's check from 10 of his friends, that's that's the better way to go? Okay okay I think that's doable. Okay, I'll be in touch. All right, thanks, bye (telephone call ends). That seems to be the way to go.

UC Rob: Okay.

Sittenfeld: As long as the individuals are real human beings obviously.

UC Rob: Yeah yeah.

Sittenfeld: Um, is that doable on your end?

UC Rob: Yeah yeah.

Sittenfeld: Sorry I know this is a bit of a pain.

UC Rob: No no I mean like I said that's fine I I that's the reason you know when Chin told me I was like hey I'll bring, I'll bring it and Chin was like well I don't know and I was like buddy you don't need we'll work that out like.

Sittenfeld: Yeah yeah.

UC Rob: And that's same thing.

Sittenfeld: I just, I always like to proceed out of an abundance of caution you know.

UC Rob: Sure I I there's, I, we appreciate that, you know. That's that's the last thing you know any of us need so.

Sittenfeld: In the long term, well the last the last thing I want to do is cause a headache for you or for me because...

UC Rob: Yeah.

Sittenfeld: ...um okay so, let me um can I can I get your number too?

UC Rob: Sure.

Sittenfeld: So so you can, why don't I? Did I put it in when we were with Sam?

UC Rob: I don't...

Sittenfeld: What's your last name?

UC Rob: Miller.

Sittenfeld: You you seen Sam since then?

UC Rob: No, he started like he started trying pitch to us all these deals of his own.

Sittenfeld: Are you 910?

UC Rob: 691-5503.

Sittenfeld: That's so funny, it shows up in my phone. It must have gotten in there at some...

[End Session 6]

[Begin Session 7]

UC Rob: Yeah yeah. Maybe we did it that night.

Sittenfeld: Boy that's, let me let me try texting you. Yeah we probably did.

UC Rob: Yeah. Sam like he started tryin' to pitch us all these stupid deals of his. And we're like buddy like we're happy to use you to like set up lunches and meetings and you can make money on that but we're not gonna let you, we're not gonna buy an apartment complex for you. Like he started sending me numbers on stuff and I'm like Sam, if you paid us back you would lose money on this deal, do you not see that?

Sittenfeld: So are you like closely in touch with him or anything like that?

UC Rob: No.

Sittenfeld: So honestly in terms of navigating the landscape, you know, I mean Sam has run for office like 10 times, won once. Um, I don't know if you know this and so like, he and I, as you saw, like we have a good relationship.

UC Rob: Sure.

Sittenfeld: He asks me to come and meet someone who he he's trying to help out, I'm glad to do it. Like he was in the newspaper for, I don't know, did you ever see this? For beating his kid.

UC Rob: No.

Sittenfeld: And there was a quote that was like I'm gonna beat the black off you.

UC Rob: Oh God.

Sittenfeld: I mean he's just uh the current Attorney General of the State, was the State Auditor now is the Attorney General, he um, he put out a report that Sam basically like owes the government back like like six figures.

UC Rob: (UI).

Sittenfeld: I would I would feel I think it like, I could have like, our relationship is friendly, political, whatever, but like if you're gonna have a business relationship with him, I would feel like I was not honoring the commitment I made at the table to give you a sense of the landscape so.

UC Rob: Oh yeah yeah yeah. We we we quickly recognized that. Again you know it's kind of one of those learning the...

Sittenfeld: Give me your number again, 910..

UC Rob: 691...

Sittenfeld: ...691...

UC Rob: ...5503...

Sittenfeld: …5503, I'm gonna I'm gonna text you, see if that works. So yeah if that works um to do that first batch…

UC Rob: Okay.

Sittenfeld: …as money orders with the name of the person who yeah…

UC Rob: Yeah.

Sittenfeld: Does that work?

UC Rob: Yeah absolutely we can do that.

Sittenfeld: Okay and I mean if you're, to be honest at at that chunk of change if you're gonna be back in Cincinnati before too long I always kind of prefer to do it in person rather than pop something in the mail.

UC Rob: Oh yeah yeah, I I um I can prob– uh I'll get back down here before the end of the month so.

Sittenfeld: You sure?

UC Rob: Yeah.

Sittenfeld: I don't want you to (UI).

UC Rob: 'Cause we're 'cause Thanksgivings early this. So there's a whole 'nother week in November.

Sittenfeld: There is yeah.

UC Rob: Probably that last week in November I'll probably be back in town.

Sittenfeld: Okay. I'm gonna, I'm flying to DC Wednesday afternoon, so I don't know if you…

UC Rob: Of that week?

Sittenfeld: Yeah.

UC Rob: Okay.

Sittenfeld: Of the week after.

UC Rob: Okay, so we'll we'll shoot for the first of the week.

Sittenfeld: It's it's it's also fine to put something in the mail.

UC Rob: No no we'll get it or or either, if nothing else, if I have to mail it, I will mail it to Chin…

Sittenfeld: Okay.

UC Rob: …not…

Sittenfeld: Yeah yeah.

UC Rob: …so that it doesn't have to be mailed to you so.

Sittenfeld: Yeah yeah yeah, that's perfect, cool.

UC Rob: But yeah, I appreciate you.

Sittenfeld: Yeah no, I appreciate it.

UC Rob: 'Cause like I said, Chin wants to get that development agreement you know and so if you can…

Sittenfeld: We're gonna make, we're gonna make it happen.

UC Rob: If you can pull those votes together that's awesome.

Sittenfeld: Yeah yeah yeah we, we definitely can we're not gonna let John torpedo (UI) and like you said, I think, I mean honestly he was pretty blunt with you. Have someone else, you know, be be the face of it so (UI).

UC Rob: Uh, let me grab my keys and I'll just walk you out.

Sittenfeld: You sure.

UC Rob: Yeah I just don't want to lock myself out (UI).

[End Transcript 1D96]

COURT REPORTING SERVICE

File Number: 14-38-24 01726-001
Date: 11/21/2018

Participants:

Alexander PG
Sittenfeld
UC Rob

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

UC Rob: Hello.

Sittenfeld: Hey, Rob?

UC Rob: What's up, man?

Sittenfeld: Hey, it's PG, how are you doing?

UC Rob: Good, buddy. How are you?

Sittenfeld: Sorry to miss you a second ago. How uh, how are the mountains?

UC Rob: It's good, man. Good, good couple of days.

Sittenfeld: Were you, uh, were you in the Carolinas or elsewhere?

UC Rob: Yeah, yeah, up near Boone. Yeah, (IA).

Sittenfeld: Nice, just camping or hunting or?

UC Rob: Uh, hunting a little bit and then, uh, I took my boys up there because they are with their mom for Thanksgiving and

stuff. I just went up there, hung out for the weekend. Messed around with them on (IA) that kind of stuff, so.

Sittenfeld: Right, sounds awesome. Yeah, I, uh, we got to see Brian was in town last week so got to catch up with him briefly.

UC Rob: Oh, I'm sorry you had to deal with that. It's usually the cross I have to bear, you know?

Sittenfeld: Life is too short, right? Chinedum, Chinedum says to Brian, he was like, "Man, Rob must just kill it with the ladies." And Brian, Brian didn't deny it so. So wanted to loop back on our conversation and unfortunately, I, and I really obviously tried to foresee that, out of like, out of abundance of caution, but for my sake and for your sake, um. So even the money orders, the money orders are obviously like the equivalent of cash and they are caps on the amount cash the campaign can take. So here is, tell me if this would be doable. There is a PAC, the Progress and Growth PAC.

UC Rob: Mm-hmm.

Sittenfeld: That my name is not connected to. One, basically no one knows about it and two, my name in no filings and no paperwork and no anything is connected to it.

UC Rob: Okay.

Sittenfeld: Um, and instead of those limits being $1,100, um, someone can give up to $5,000 to that.

UC Rob: Okay.

Sittenfeld: So, the, so, where – and again, I really wanted to be thorough about this before getting back to you. It needs to either be a check from a human being or a check from an LLC. Now, that being said, um, if uh, if it goes to this Progress and Growth PAC instead of to Sittenfeld for Cincinnati, uh, nothing about it in any way will be ever be connected to me and no one will um, you know, no one is going to be poking around for it to find your names on it. And then, because of the higher limit, if there were either four LLCs or two LLCs and two individuals or something like that, it could just be four checks for $5,000 total.

UC Rob: Gotcha.

Sittenfeld: So I don't know, I don't know if that's sounds doable. But I wanted to get back to you with that.

UC Rob: Yeah, I need to check, um, so I left um, that $10,000 at the condo and I think, I think Brian might have already gotten it converted into money orders while he was up there. but I will, I will have to check and see, um –

Sittenfeld: Yeah, I, I apologize for that. You can obviously just shred those.

UC Rob: Uh. Well, I mean, I got to figure out what I, can I get the $10,000 back if he's already, if he already, I don't know where he got them done. I need to check with him and see what's –

Sittenfeld: Well, yeah, but I mean if, obviously the money orders aren't deposited.

UC Rob: Right.

Sittenfeld: It wouldn't go through, right?

UC Rob: Well, see, I don't know if he did. I think for money orders I think he did them at like, um, like, he already gave them the cash and they gave him the money orders so, um, but let me check and see what he, what he actually did with them and I can figure it out and then, um, and then we can – the other $10,000 yeah, that's fine. I mean, we can definitely do it however that way. Um –

Sittenfeld: Well, I mean, I figure if you guys, if you guys have a couple LLCs amongst your thing, you know?

UC Rob: Yeah.

Sittenfeld: At least for starters, two of those LLCs could each do a check for 5,000 bucks to this thing that, you know, won't, won't come back to you guys and isn't attached to me.

UC Rob:	Gotcha. Gotcha. Okay yeah, let me, uh, let me, let me talk to him and see what he –
Sittenfeld:	Sorry, sorry –
UC Rob:	No, no, yeah, that's fine.
Sittenfeld:	Sorry for the pain. But look, I want to, I want to make sure I'm doing this right and I also want to protect you guys too.
UC Rob:	Yeah, absolutely. Yeah, we appreciate that, so let me –
Sittenfeld:	You need to figure out, yeah –
UC Rob:	Let me figure out what the deal is with that first $10,000 I left at the condo and see what –
Sittenfeld:	Yeah, yeah, yeah.
UC Rob:	He did with it and uh –
Sittenfeld:	Make sure obviously that you guys can get that fully retrieved.
UC Rob:	Yeah, yeah, we will figure, I'll figure that out and uh, let me talk to him and um, I'll have it all sorted out by the time I get there. I'll be there Monday. Are you around the first part of the week?
Sittenfeld:	Oh, yeah, yeah. I'm, so I fly to DC as I mentioned, Wednesday afternoon. But I'm around all day Sunday, all day Monday, all day Tuesday, first half of the day Wednesday.
UC Rob:	Okay, cool. Well we will definitely catch up.

Sittenfeld: All right.

UC Rob: But I'll sort all that out and uh, and, and we will figure it out on the first part of the week, so.

Sittenfeld: Awesome. All right, happy Thanksgiving Rob. Really appreciate it, man. See you back (IA).

UC Rob: No problem, man. See you.

Sittenfeld: All right, thanks brother. Talk to you. Bye.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D103

File Number:	194B-CI-2109777
Date:	11/28/2018
Time Recording Starts:	
Time Recording Ends:	
Session:	SA Nathan C. Holbrook
Agent:	

Participants:

UC Rob
UC Brian
Alexander PG
Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

[Begin Transcript 1D103-2 at 6:46]

Sittenfeld: (UI) actually (UI) in touch with him. He seems like a good guy.

UC Rob: Okay.

Sittenfeld: Um yeah so, Brian what's goin' on man?

UC Brian: Hey buddy, how are you?

Sittenfeld: Good.

UC Brian: Doin' all right?

Sittenfeld: Yes.

UC Brian: Good to see you buddy.

[End Transcript 6:57 Session 2]

[Begin Transcript 8:00 Session 2]

UC Brian: (UI) much at all.

Sittenfeld: Any anything new on the uh 435 front or?

UC Rob: Nah, we're just kind of waitin' on, I mean Chin seems to think–

UC Brian: He's very positive.

Sittenfeld: Look I'm ready to shepherd the votes as soon as it gets to us at Council.

UC Rob: Yeah.

Sittenfeld: Just a matter of, and by the way, I mean if if, like the Law Department is ever being sluggish drafting up the Ordinances or anything I can give a, but at this point I'm kind of in like waiting mode...

UC Rob: Yeah.

Sittenfeld: ...until it gets to our part of the part of the process.

UC Brian: Well we appreciate the votes there. That'll be big. He's very happy, he's very (UI)–

Sittenfeld: It's gotta happen, I mean, I've already in the conversation I've already had with my colleagues you know, that parcel and what it means for you know broader tourism and things...

UC Brian: Mm-hmm.

Sittenfeld: ...that you know we, that can't be what it has been historically...

UC Brian: Sure.

Sittenfeld: ...if if if we're gonna energize that part of downtown, so...

UC Rob: Yeah.

Sittenfeld: ...yeah, all good. So have you met Tony Birkla at any point? The guy that did this building?

UC Brian: I don't think so.

Sittenfeld: You guys.

UC Brian: Are they Indianapolis-based?

Sittenfeld: Yeah yeah.

UC Brian: Okay.

Sittenfeld: There is a crazy amount of um development dollars and firms based in Indy...

UC Brian: Yeah.

Sittenfeld: ...doing stuff in Cincinnati. I just saw them all last Tues–

[End Transcript 9:06 Session 2]

[Begin Transcript 2:04 Session 4]

Sittenfeld: When's Rob when are you uh when's your flight outta here?

UC Rob: Uh 1:15.

Sittenfeld: 1:15?

UC Rob: Yeah.

Sittenfeld: I'd say I'd give you a I'd give you a ride to the airport but I'm I'm about two hours behind you.

UC Rob: Oh yeah, no worries.

Sittenfeld: Um, were you guys able to get stuff sorted out or?

UC Rob: Yeah yeah.

Sittenfeld: Sorry for the sorry for the hassle on that.

UC Brian: (UI).

Sittenfeld: As I as I told Rob, I wanna make sure, no headaches for me but I also wanna make sure there are no headaches for you.

UC Brian: Sure.

Sittenfeld: And this way, as I told him, this PAC, my name is not, I mean this will, can certainly support and benefit me but my name is not connected to it in any way.

UC Brian: Right.

Sittenfeld: No one will ever know this.

UC Brian: Well that was gonna be my question. Is this gonna be able to help you?

Sittenfeld: Yes. Yes. 100%.

UC Rob: So, just so you know well you saw it kinda last night. I just sent those money orders to Omar and he just put 'em into uh his LLCs.

Sittenfeld: So are these are these LLCs?

UC Rob: Yep.

Sittenfeld: Okay so even though that one says an Inc. it's an LLC.

UC Rob: Uh yep. Yeah. It should be.

Sittenfeld: Okay.

UC Rob: I'll double, yeah, yeah.

Sittenfeld: Okay, I just wanna make sure 'cause I know sometime all I see is what's on the check.

UC Rob: Mm-hmm.

Sittenfeld: And my guy processes them and if it's not an LLC, it doesn't work.

UC Rob: Okay, yeah I'll double I'll I told him that that and so he told me that they were both LLCs so I'll double check so.

Sittenfeld: It's yeah yeah yeah. If he told you they're LLCs…

UC Rob: Yeah.

Sittenfeld: …we we should be all good. Um thank you guys for making this happen.

UC Rob: Yeah.

UC Brian: Shoot. Thank you man.

Sittenfeld: Greatly appreciate it. We're excited you guys are you know doing what

you're doing in Cincinnati. Chin's on a good hot streak so you're in with a good person. How'd, remind me one more, how'd how'd you all get connected?

UC Brian: So he and I knew each other when I used to live in Columbus, a hundred years ago.

Sittenfeld: Right.

UC Brian: And we kind of ran into each other and separated and then we just reunited…

Sittenfeld: Oh cool.

UC Brian: …and he's like hey I got this deal and I'm like hey I'm doing pretty well too and…

Sittenfeld: Yeah yeah.

UC Brian: …let's let's talk.

Sittenfeld: That's awesome.

UC Brian: Yeah have drinks and I was bragging about how good I'm doing and he's braggin' about how, you know what I mean?

Sittenfeld: Yeah.

UC Brian: So it was like, fuck, let's do some things together.

Sittenfeld: Yeah.

UC Brian: And so yeah–

Sittenfeld: No that's awesome, it's a good good uh...

UC Brian: He's a good dude.

Sittenfeld: ...it's a good team yeah, Chin's good.

[End Transcript 4:02 Session 4]

[Begin Transcript 7:40 Session 4]

Sittenfeld: I mean honestly probably Barry Sanders probably could have had a couple more seasons, 2,000 yards retired out of the blue.

UC Brian: Out of the blue.

Sittenfeld: 'Cause as a fan you're like what?

UC Brian: I know I was so upset. I'm not a Detroit fan but I liked watching him play.

Sittenfeld: Well he was, he did what, I've never seen anyone...

UC Brian: Oh it's incredible. On a shitty team.

Sittenfeld: I mean he, you know Tennessee when they were talking about him rackin' up 2,000 yards, I would like to see total 'cause he'd like run 15 yards back...

UC Rob: Oh yeah yeah.

Sittenfeld: ...just to get 20 yards forward.

UC Brian: Yeah he probably had 4,000 yards that season.

Sittenfeld: He prob...honestly probably... with shit a shitty team, shitty offensive line.

UC Brian: Oh horrible. Can you imagine if he was just with a decent team?

Sittenfeld: Well it's like if you subbed, if you took out Emmett Smith and put him on those Cowboys teams or something like that, 4,000 yards.

UC Brian:	Easy.
Sittenfeld:	Yeah yeah would have been crazy.
UC Brian:	Yeah for sure.
Sittenfeld:	I got a meeting across town.
UC Rob:	Cool.
UC Brian:	All right buddy.
Sittenfeld:	Um, let me know what you guys need. Thank you guys for...
UC Rob:	Yeah we'll be back. I don't know if we'll be back for, we're still talking.
Sittenfeld:	Yeah we still gotta, we still got to um, you guys are invited over for family dinner another time but I'd probably rather get drinks with you guys so um let me know.
UC Rob:	Cool.
Sittenfeld:	When you getting out of town?
UC Brian:	Uh right after him.
Sittenfeld:	Right after, cool. If you guys are ever loaded up here, my wife and I got a big big house that's empty so...
UC Brian:	Appreciate it.
Sittenfeld:	...if you ever, you know, if there's ever spillover. How how many bedrooms are in here?
UC Brian:	2.
UC Rob:	Just 2.
Sittenfeld:	2. If you ever bring your other buddies in town.

UC Rob:	Yeah.
Sittenfeld:	I got literally, it's a big, mostly empty house 10 minutes from here so.
UC Brian:	That'll do it. For sure.
Sittenfeld:	All right. Safe travels.
UC Brian:	(UI).

[End Transcript 1D103-4 at 9:04]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236
SESSION 1827

File Number:	194B-CI-2109777
Date:	12/3/2018
Time Recording Starts:	
Time Recording Ends:	1827
Session:	SA Nathan C. Holbrook
Agent:	

Participants:

Alexander PG
Sittenfeld
UC Rob

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

Sittenfeld:	Hey Rob.
UC Rob:	What's going on man?
Sittenfeld:	Hey, sorry, sorry for all the, the uh back and forth. Sorry for missing each other today.
UC Rob:	(UI).

Sittenfeld: Great seeing you guys in person last week and obviously…

UC Rob: (UI).

Sittenfeld: (UI) can you hear me?

UC Rob: Yeah, yeah. How was your trip to DC?

Sittenfeld: It was good, it was good. Um, it was kind of with a cohort of elected officials from around the country.

UC Rob: Gotcha.

Sittenfeld: It was just, I was just, I was just there for about forty eight hours, but it was a good trip. Um, so, I know this is like such a pain in the ass, but we checked and unfortunately both of those checks are incorporated as corporations not LLCs.

UC Rob: Ah, man he, I, I told him specifically it needed to be LLCs.

Sittenfeld: No, no, no, so here, here, here's, here's, here's the good news. For that deadline, because it's to the PAC isn't until the end of this calendar year. So it's totally, it's totally fine.

UC Rob: Okay.

Sittenfeld: And if you had, if you talked to, you know, your universe of buddies and investors and you want to like, uh give us the name. 'Cause I think those are both incorporated in Illinois as corporations. And unfortunately they can only be um, limited liability companies. So if you wanna, if you

wanna like run couple names by us and we can double check it to make sure they're LLCs. But sorry…

UC Rob: Yeah, I'll, I'll make sure this time that – he had he, I think 'cause I sent him those money orders from where we had those and it was just confusion between me and Brian and sent them to Omar to get 'em down to me in time to get to you so. I'll get 'em, I'll get 'em straightened out and I'll just and get…

Sittenfeld: Well it's, (UI) it's, it's, it's no sweat. The, the good news is if it was to the campaign that deadline was last Friday, but since it's to the PAC it's not until December thirty-one.

UC Rob: Okay.

Sittenfeld: Um, so we're totally fine on time. And I, mostly, honestly, I just feel bad about causing you pain in the ass.

UC Rob: Yeah, yeah, no, no, no, no, no worries. I'll, I'll get it straightened out and um…what's your uh…

Sittenfeld: (UI). We, we always look them up on the um, usually on the secretary of state's website…

UC Rob: Yeah.

Sittenfeld: …for a given state just to confirm. So if, if you want us to do any pre-research, we are glad to do it.

UC Rob: No, no, I'll make sure they are right next time. (UI) again like I said it was

	kind of a last minute back and forth and…
Sittenfeld:	Yeah, no (UI) we were, we were we were moving quickly so I, no, no sweat at all.
UC Rob:	But I will, what's your schedule like the rest of the month? Are you in town or are you gonna be gone all…
Sittenfeld:	Yeah, I'm in town, I'm, you know, because my wife's in Cleveland during the week. I'm in Cleveland this weekend and otherwise I'm in (UI) the entire month.
UC Rob:	Okay, cool. I don't, I don't know what my schedule looks like yet, but I'll, I'm gonna get back down there sometime before Christmas. So I'll let you know…
Sittenfeld:	Well and if you, if you, if you know your dates, let me know in advance so we can go out and grab dinner and drinks and stuff.
UC Rob:	Okay, cool. I will do it buddy.
Sittenfeld:	Okay, alright. Thanks man I'll talk to Rob.
UC Rob:	I appreciate it, sorry about that. See ya.
Sittenfeld:	Alright see you brother, you got it.
UC Rob:	Alright bye.
Sittenfeld:	Bye.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

TRANSCRIPT 1D113

File Number:	194B-CI-2109777
Date:	12/17/2018
Time Recording Starts:	
Time Recording Ends:	SA Nathan C. Holbrook
Session:	
Agent:	

Participants:

Alexander PG
Sittenfeld
UC Brian
UC Rob

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

[Begin transcript 1D113-1 at 24:17]

UC Rob:	Trying to get the...
UC Brian:	Why don't you go out there with us?
Sittenfeld:	When you going?
UC Brian:	Pacquiao, UFC, you name it. It doesn't matter, whatever.

Sittenfeld: (UI) As long as my wife lives in a different city...are you going during the week or weekend?

UC Brian: Depends on the, I mean Pacquiao...

Sittenfeld: Let me know.

UC Brian: ...is on Saturday. Is that hard? Could she come (UI).

Sittenfeld: Weekends are tough.

UC Brian: So you want to go during the week?

Sittenfeld: Yeah, you don't want me bringing the ball and chain.

UC Brian: Why?

Sittenfeld: Unless at the end of the night you need doctor to resuscitate you, which actually might not be a bad idea right?

UC Brian: Yeah.

Sittenfeld: Yeah, that'd be fun. I'd go out to Las Vegas some time.

UC Brian: Would you?

Sittenfeld: Yeah.

UC Brian: You want to go to mid-week though is better?

Sittenfeld: Yeah, I mean it's a little...unfortunately I used to travel a lot. Now it's tougher because weekends with the wife and we always have a full council meeting when we actually vote on stuff is Wednesdays. So it kinda leaves like, like Thursday, Friday trip sort of thing.

UC Brian: So if we left on a Thursday, come back Saturday morning?

Sittenfeld: Yeah, I can do that.

UC Brian: Okay.

Sittenfeld: Yeah.

UC Brian: Maybe we can do that.

Sittenfeld: Keep me, keep me in the loop.

UC Brian: Yeah.

Sittenfeld: That'd be fun.

[End Transcription 1D113-1 at 25:06]

[Begin Transcription 1D113-2 at 10:03]

Sittenfeld: (UI). Do you guys want to walk over to Sotto?

UC Brian: Yeah, let's go.

Sittenfeld: Does that work?

UC Brian: Yeah, let's do it.

UC Rob: Actually let me give you these real quick.

Sittenfeld: Sorry for all the...one thank you again. Sorry for, sorry for the pain in the ass.

UC Rob: Yeah and I check, I had my girl in the office run them all in the Secretary of State. So they are all L, LLCs and so...

Sittenfeld: Cool.

UC Rob: So there are...so obviously those three...so replace the other two...

Sittenfeld: That's huge...

UC Rob: ...and then this one...

Sittenfeld: ...that's awesome

UC Rob: ...so I, I even printed it for you so you wouldn't be... So Cll LLC they just haven't changed the bank account, the name on the account still says Inc. But it is, it is, it was changed to a registered LLC.

Sittenfeld: Oh, so it is an LLC?

UC Rob: Yeah, so just rec, just, the, the account name is still the same, but it is an LLC. There's all the...

Sittenfeld: That's huge man.

UC Rob: ...fucking documentation and shit all that so.

Sittenfeld: I appreciate you, brother.

UC Rob: Yeah, yeah.

Sittenfeld: All, all a big help.

UC Rob: Yeah. And I mean that's big. Like Chin...

Sittenfeld: No, this is huge.

UC Rob: I guess he had, he uh, he said he had good news on 435 this week and stuff so.

Sittenfeld: Yup, we're moving, we're moving, yeah, yeah. It's uh, one it's, as I told you guys before, I mean, it's, it's too strategic a project for… One, I think you guys are smart as hell to get it on it, but for the, I mean… You guys are great guys and I wanna, you know, support my

	buddies. But I also like for the city, we can't let that parcel of a downtown that's making a big, you know urban comeback sit and be what it has been…
UC Rob:	Yeah, yeah, yeah.
Sittenfeld:	…for way too long you know so–
UC Rob:	Yeah. Chin's nervous, but I mean about there becoming an issue.
Sittenfeld:	Chin's, you, you, you want Chin to be a little bit nervous.
UC Rob:	Sure. Absolutely. I want him to make, I want him to make sure the shit's together so.
Sittenfeld:	Right.
UC Brian:	Do you think it's gonna happen?
Sittenfeld:	Uh-huh.
UC Brian:	Do you think it's gonna happen?
Sittenfeld:	I do.
UC Brian:	Vote wise?
Sittenfeld:	Yeah, uh oh yeah, I do. Here's, I, don't let these be my famous last words, but, um, I can always get a vote to my left or a vote to my right.
UC Brian:	Okay.
Sittenfeld:	So, you know, all you got to do is count to five. Cranley will be there, so yeah…
UC Rob:	Um and the other two checks just void them, shred them, whatever.
Sittenfeld:	Right, oh yeah, yeah, yeah. I think we already shredded them. Yeah, yeah.

UC Rob: Okay, yeah.

Sittenfeld: I probably already told you this and this is where, you know, it's kinda…we're three white guys, but like you know, stuff that sometimes, I mean, I mean having a lead minority investor is…

UC Brian: Well, yeah.

Sittenfeld: …it has, I mean Chin's a great guy. He's a personal friend but…

UC Rob: No, no, no, no listen…

Sittenfeld: …in city politics it has, it has its place too

UC Rob: …trust me. Our group, an investment group, that's part of the reason, I mean, Chin doesn't exactly have a huge track record. But that's part of the reason we got behind him. We're like look, like, if we can get him the credentials to be a serious developer…

Sittenfeld: Right.

UC Rob: …regionally like…

Sittenfeld: Oh, oh yeah.

UC Rob: I mean…

Sittenfeld: Well not only that, but I mean, Colum-, you know, he's got, he's got just as good as ties in Columbus as he does here, you know.

UC Rob: Yeah, yeah, for sure. I'm gonna grab my jacket (UI).

Sittenfeld: You know.

UC Brian: Yeah, we gotta get you somewhere to meet some of our…I think you'd have a good time.

Sittenfeld: Yeah, I'd love to.

UC Brian: Yeah, it'd be fun

Sittenfeld: Vegas sounds good.

UC Brian: Yeah, let's do Vegas, let's do Vegas. So midweek's better for you, after, after Wednesday?

Sittenfeld: Yeah, I mean look, it, it, it, it all depends on the um it…

UC Brian: I mean all the UFC fights, the fights fights those are going to be Saturdays. So we'll have to forgo that, if you don't want to do that. If you want to go it…

Sittenfeld: No, man that sounds fun. I look, it depending, it depends on the week too. Like if you throw some, throw some dates out.

UC Brian: …if we do–

Sittenfeld: Decide when you guys are doing something and then uh let me know and I can try to make it work. I can, if there's not a big vote on the council meeting…I don't like to do this because the En…the newspaper runs like a who's missed the most meetings, but…

UC Brian: Sure. Right.

Sittenfeld: …everyone can miss one uh...

UC Brian: But could you do a Saturday is my question. That's, that's, that's when all the fights are.

UC Rob: What do you, do you even care about doing a fight or do you just wanna go down there a fucking get after it for a little bit?

Sittenfeld: That's fine too. A fight sounds good, but I'm good with anything.

UC Rob: Okay.

UC Brian: All right.

Sittenfeld: I'm good with anything.

UC Brian: Well fights are on Saturdays. If you can't do that let's just go Thursday ur, yeah Thursday, Friday, come back Saturday.

Sittenfeld: Uh, yeah that'll be cool. That'll be great.

UC Brian: Okay.

[End Transcript 1D113-2 at 13:59]

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

SESSION 41253

File Number:	194B-CI-2109777
Date:	12/9/2019
Time Recording Starts:	
Time Recording Ends:	41253
Session:	SA Nathan C. Holbrook
Agent:	

Participants:

UC Vinny
Alexander PG Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

Sittenfeld:	Hey Vinny.
UC Vinny:	Good morning, my friend.
Sittenfeld:	Hey, good, sorry– I think I missed you over the weekend. My apologies.
UC Vinny:	Yeah, no problem, no problem. I figured you were busy. I said maybe you know what, maybe he don't answer the phone

on the weekends or something, so I just call you today. How you been alright?

Sittenfeld: Uh, yeah, yeah, everything's been good. Um, how about, how was, you still down uh, down in uh Florida or Miami.

UC Vinny: No, unfortunately I came home. I should have stayed another month.

Sittenfeld: You, you, I agree, you should have, for sure.

UC Vinny: I made the wrong call though, it's, it's pouring like hell over here.

Sittenfeld: Yeah, well if it makes you feel better, the weather sucks right now in Ohio too. So I, we're not doing any better.

UC Vinny: Yeah yeah. Hey, you got a minute?

Sittenfeld: Yeah, absolutely.

UC Vinny: Yeah – hey I just wanted to touch base with you um, I think you told me that there was going to be a meeting?

Sittenfeld: Yes, so, um the, an– and literally Chin and I have traded about like six calls without connecting. Um, but I, uh, uh, friend of mine who is helping Chin, I think on the legal side. He and I debriefed and things are ba– in terms of like, 'cause Laura, the head of the Port, was being a little bit difficult, um, in terms of like relationship mending, I think things are back on a better path. I think where they left things, and this is where I, I, I just don't have all the details 'cause Chin and I traded all

these calls, are uh, the number around uh like what the Port's fee would be. And I think they want something kind of exorbitant. Like even know, you know, they got this piece of land for a buck. They want a, you know, like three hundred thousand dollars a year or something like that. Chin is offering a more reasonable number and I think they're kinda trying to like work out what is fair in between. But I think it was a pretty good, pretty productive meeting. But I don't have all the details yet. I can get 'em, but um, yeah just because Chin and I've missed each other.

UC Vinny: Yeah, my guys are telling me that she told 'em to put a proposal together. Um, but, but, I'm not sure if she's serious about considering him because all of the sudden, you know, she wasn't that nice and then all of the sudden she says oh yeah put one together. To me that sounds like a brush off, you know what I mean?

Sittenfeld: No, I think she (UI), 'cause she said the same thing to me and like you know, I mean, I, I'm, I'm an elected official that helps control her operating budget, her, the composition of her board. She has said like, I think she wants like somewhat like specific development plan from Chin. So I actually think that

	is a sincere request and offer on her end. I really believe that.
UC Vinny:	Well he, my guy told me that anoth– somebody else looked at 435.
Sittenfeld:	What do you mean?
UC Vinny:	That uh, she told him that somebody else was looking at that place.
Sittenfeld:	I mean, I don't know…
UC Vinny:	Another developer.
Sittenfeld:	…I've, that, no, I, I talked to her recently. I mean, she, she knows she needs to…I mean look I'm, I'm not saying this is what you want or what Chin wants, but like if she wanted to like buy you guys out or something like that. Then she could talk to someone else. But that's not, an– and, that's not where she is now. And I had that conversation with her, I don't know, ten days ago.
UC Vinny:	Alright, no problem.
Sittenfeld:	She, she, she knows she needs to work through this current situation.
UC Vinny:	Hmm-mm
Sittenfeld:	So I feel, I, I, I thinks it's just a matter of like you know, yes Chin bringing forward a specific development plan and then them working out middle ground on that number to the Port. But I think, you know, like that's kind of,

	you know, what's needed to, to move things forward.
UC Vinny:	Right. Well, I'm trying to get ready, I mean, in my opinion 435 is me in Cincy for the long haul, you know what I'm saying. (UI)
Sittenfeld:	Yeah, which we, which we want big time. Big time.
UC Vinny:	Yeah, that, that's me there for the long haul and right now, you know, like we talked about last time, you know I'm looking at winners for twenty-twenty. That's what I want.
Sittenfeld:	Sure.
UC Vinny:	I want winners, not losers, you know what I mean.
Sittenfeld:	Yeah, yeah, absolutely, absolutely, hundred percent makes sense.
UC Vinny:	That's all, yeah, and so, you know…
Sittenfeld:	Let me, let me, let me get a hold of… Are you around tomorrow?
UC Vinny:	Oh yeah, yeah, yeah.
Sittenfeld:	Let me, let me get, I mean, I can talk to Laura at the Port directly. Um, let me talk to Chin and then let me just see what I, I mean, I mean, frankly I have applied some pressure already. Um, but let me just see what's needed to just, you know like, get, move through this impasse and get the damn deal

	down. Because the city needs to get the deal done. This is a win for the city.
UC Vinny:	Right, and that goes through the council right?
Sittenfeld:	Absolutely, yeah.
UC Vinny:	That, that goes through, okay. Alright, not a problem, I appreciate it, I appreciate it.
Sittenfeld:	Yeah, no, never, Vinny never…
UC Vinny:	I just wanted to be able to make sure like, like right now inside I feel a little unsettled, you know what I mean? And I want to go…
Sittenfeld:	Oh, I don't blame you, this has been…
UC Vinny:	… into the holidays with a good taste in my mouth.
Sittenfeld:	No, this is, yeah this has been, frankly this has been annoying. Um, you know, I will say Laura, and this should be in the past now, but Laura was a little spooked that the time by, you know, the, the extracurricular legal issues. But that should no longer, you know, that shouldn't be a consideration for her so… Let me make a couple calls today and let's, let's if you have time, we'll chat briefly tomorrow and I'll give you an update.
UC Vinny:	Yeah. And if it's not tomorrow, then the next day, that's fine. I mean I'm not trying to put pressure on you (UI).

Sittenfeld:	No, no, look, I, I feel. I feel urgency on this deal too. I want, I want to get it done and it seems like all the pieces are there. Both sides just need to come to an agreement and get on with it.
UC Vinny:	Right, right, right. 'Cause that, I mean that's, Cincy is a spot, it's, it's kind of to me like when Nashville was not developed yet. And now look…
Sittenfeld:	Completely agree, yeah.
UC Vinny:	…what (UI) Nashville. You know, Cincy can be the next Nashville to me.
Sittenfeld:	I really strongly agree with that. I actually tell that to people all the time. That, you know, could we be where Nashville is in, you know, if not five years, ten years. I think it's a good investment.
UC Vinny:	Yeah, I think sooner than that. I think sooner than that. There's so much going on there right now…
Sittenfeld:	Yup, I think there is a lot going on.
UC Vinny:	…that I think sooner than (UI).
Sittenfeld:	We gotta have you be a more regular visitor too.
UC Vinny:	Yeah, not a problem, not a problem. I'm around, if you can't get a hold of me, get a hold of the tall guy there and uh…
Sittenfeld:	I'll do it.

UC Vinny:	…he can always get a hold of me. He's funny that kid, he kills me. Um, but uh yeah just, I appreciate you.
Sittenfeld:	(UI) you guys, you guys are all good guys.
UC Vinny:	I appreciate your help and uh…
Sittenfeld:	Okay, I'll, I'll, I'll track this down and and see what's needed to move the damn thing forward because, I mean, frankly, I'm getting a little impatient too.
UC Vinny:	…Yeah, well if there's something that's needed that, you know, I can help out with you let me know about that.
Sittenfeld:	Okay, I think we're all good.
UC Vinny:	Okay.
Sittenfeld:	Alright, thanks Vinny, I'll be in touch soon.
UC Vinny:	Thanks, thanks brother.
Sittenfeld:	Talk to ya.
UC Vinny:	Bye.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
2012 RONALD REAGAN DRIVE
CINCINNATI, OHIO 45236

SESSION 42468

File Number:	194B-CI-2109777
Date:	12/23/2019
Time Recording Starts:	
Time Recording Ends:	42468
Session:	SA Nathan C. Holbrook
Agent:	

Participants:

UC Vinny
Alexander PG
Sittenfeld

Abbreviations:

Unintelligible	UI
Inaudible	IA
Phonetic	PH

Sittenfeld:	Hey Vinny.
UC Vinny:	Hey, how are you?
Sittenfeld:	I'm good um…your uh, your ears must have been burning. I just got off a couple calls, uh, this morning about 435.
UC Vinny:	Oh, you did? How did I know?

Sittenfeld: I literally about…yeah you must have uh, uh ESP or something. Uh, I got off the phone with Laura Brunner four minutes ago 'cause they submitted the updated proposal and uh, Laura basically said uh, you know like, very strong proposal. It looks good. Still probably a couple things to iron out, but like the fundamentals… And she was like this is by far the best proposal we've seen. Uh, you know like things are going in, uh, a very positive direction. Um, so I feel, I feel good about it.

UC Vinny: Perfect, perfect. Yeah I was just calling you to check in with you on that.

Sittenfeld: Yeah they got a, they g– yeah like I said I mean I've been keeping very close track of the whole situation. They got a follow-up meeting, because they, I think they submitted the proposal last week. They got a follow up meeting just because of Christmas and New Year's, they got a follow-up meeting scheduled for January 13, which should be the uh, that should be the time to just like you know ma– make everything finalized. And the other thing I feel good about, because you know, she kind of threatened are we gonna, uh, are we gonna do an RFP if like if if the proposal isn't good are we gonna go to RFP and I feel quite good that things are not heading in that direction, which

by the way, I mean it would have been, I think it would've invited lawsuits and just like it would've been a not, not good direction. So I think we both, you know, what, what you and I talked about a couple weeks ago of let's get a good proposal in and let's do it by the deadline. I think we hit, hit the mark on both.

UC Vinny: Okay good, good, perfect, perfect. I appreciate you keeping track of that because I was, I was sitting here and I was like you know what I wonder what's going on with the, with that because I figured something would've happened last week right?

Sittenfeld: Yeah, exactly. Well they, they had, they had a uh preliminary meeting. You and I talked after that one. And then you and I had not spoken since they uh since they actually turned the proposal in. But I, literal– I, it's funny why you called like I literally got off the phone with Laura Brunner the head of the Port Authority five minutes ago. And she was, she was like, you know again, some details to be worked out, but like the fundamentals are, are in place.

UC Vinny: Well I appreciate it, I appreciate that (UI) that's, that's perfect. That's, that's perfect. Are you…

Sittenfeld: Um, (UI), a nice, a nice little early, early Christmas gift. I think things are, are in the place we want them to be.

UC Vinny: Yeah, let's uh, we'll keep uh, I'll keep those guys on track and focused. And I think uh, I think if they keep doing what they're doing we should be all right. That's perfect. That's absolutely perfect.

Sittenfeld: Yeah (UI). Everything, everything else good on your (IA).

UC Vinny: Yeah everything's good. Uh, just gonna try to get ready for the holidays and I've got a lot of uh, I've got a lot of distant Christmas presents I've got to get delivered. You know, you know, so uh.

Sittenfeld: I assume you're uh, you, you in Providence? You on the a, you on the yacht somewhere or?

UC Vinny: Yeah, I'm home. I'm, I'm in uh I'm in Newport.

Sittenfeld: Uh…

UC Vinny: I'm, I'm in, I'm in Newport. It's, it's a nice day up here today though it's not too bad.

Sittenfeld: Yeah I'm actually…

UC Vinny: It's not too bad.

Sittenfeld: …I'm, I'm just lit– pulling into St. Louis for a, for a Christmas with my in-laws and it's like sixty degrees here which… so much for a white

Christmas, but I'm not complaining either.

UC Vinny: Wow, no kidding, no kidding. Are you um, are you coming east for the holidays at all? You gonna be coming to see your family in Rhode Island any time soon?

Sittenfeld: No, unfortunately not. They're um, we do, we do some holidays up there in Westport, but uh we're not, we're not doing it uh this year. So I don't, I, I told you I uh, if, you know, I don't, I don't have a naturally occurring reason to uh, get up to your neck of the woods sometime soon. I'll just, you know, I'll come up any way and check in on family, see you, uh but no I'm not gonna… I don't have a planned trip up there at this point.

UC Vinny: Not a problem, not a problem. I've been researching that guy that you mentioned to me a while ago. Um…

Sittenfeld: Seth Magaziner?

UC Vinny: Looks like, looks like a, looks like a good deal. Looks like a good deal. Very, very solid guy.

Sittenfeld: Yeah, very solid guy. And I do want, uh, I want the three of us to get to go up for a meal together. Um, look I think, I might have told you this before. He doesn't exactly have like a ton of pizazz, but from my, I tried to do my homework. I think today he has as good

a chance of being the next governor of Rhode Island as anyone else that's gonna run. Maybe a little bit better. Now you know, politics is a fluid situation, but I'd love for you guys to meet up sooner rather than later.

UC Vinny: Yeah, you know him? Like, you know him good or...?

Sittenfeld: I know, I,I know him very well, know him very well.

UC Vinny: Yeah, yeah, all right well you know what get through the holidays and um, you know, I've, I've been looking into him a little bit and I think he absolutely um would be one of the fastest horses in that race. So um you know, get through your holidays and enjoy your family and then consider coming on out here and we'll have that meal.

Sittenfeld: Yeah, no, I will do that. I will do that. Um that sounds great. And obviously keep me posted if anything brings you uh, brings you near Cincinnati.

UC Vinny: Yeah, absolutely, absolutely and if you're uh, if you're trying to get out here and you're looking for a reason, um, you know, I got a friend who runs that plane thing out there. And one phone call and it's waiting for you so you don't have to...

Sittenfeld: (UI)

UC Vinny:	...you know, (UI), waiting in line to shit.
Sittenfeld:	(UI). I really appreciate that Vinny. You're always very kind.
UC Vinny:	Not a problem, not a problem (UI).
Sittenfeld:	I will... But the other thing I'll do, again this meeting is to kind of get everything finalized uh is January 13. You'll hear from me after that one way or another. But I anticipate good news.
UC Vinny:	All right, I wrote it down, I wrote it down.
Sittenfeld:	Perfect.
UC Vinny:	Enjoy your family my friend. Enjoy your holiday all right.
Sittenfeld:	All right, merry Christmas. Keep in touch. I'll talk to ya.
UC Vinny:	All right (UI).

APPENDIX F

18 U.S.C. § 666

§ 666. Theft or bribery concerning programs receiving Federal funds

Currentness

(a) Whoever, if the circumstance described in subsection (b) of this section exists–

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof–

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that–

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local

or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

(c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) As used in this section–

(1) the term "agent" means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative;

(2) the term "government agency" means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program;

(3) the term "local" means of or pertaining to a political subdivision within a State;

(4) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) the term "in any one-year period" means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense.

18 U.S.C. § 1951

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section–

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place

outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.