

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 08 CR 888-3
) Judge James B. Zagel
)
)
ALONZO MONK)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant ALONZO MONK, and his attorney, MICHAEL SHEPARD, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The superseding indictment in this case charges Defendant with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 1346 (Count 11).
3. Defendant has read the charge against him contained in the superseding indictment, and that charge has been fully explained to him by his attorney.
4. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the superseding indictment. Count Eleven charges Defendant with participating in a scheme

to commit wire fraud, including through the deprivation of honest services, in violation of Title 18, United States Code, Sections 1343 and 1346.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the superseding indictment. In pleading guilty, Defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

In the Northern District of Illinois, Eastern Division, Defendant, together with co-defendant Rod Blagojevich and others, participated in a scheme to deprive the people of the State of Illinois of their intangible right to the honest services of Rod Blagojevich (“Blagojevich”) in violation of Title 18, United States Code, Sections 1343 and 1346.

It was part of the scheme that beginning by at least November 2008, and continuing until on or about December 9, 2008, Rod Blagojevich, with the assistance of Defendant and others, sought to obtain financial benefits for Blagojevich in the form of campaign contributions to Friends of Blagojevich (“FOB”) from an executive who owned and managed Illinois horse racing tracks (“Racetrack Executive”) in return for the exercise of Blagojevich’s duty under Illinois law to enact legislation that related to the Illinois horse racing industry. At times, Defendant assisted Blagojevich’s efforts to carry out this aspect of the scheme, as Defendant understood Blagojevich wanted him to do, by attempting to extort Racetrack Executive to make contributions to FOB and by discussing that attempted extortion with Blagojevich. At other times, Defendant attempted to get Blagojevich to take actions that

would have had the effect of reducing the pressure on Racetrack Executive to make a contribution to FOB, but Blagojevich refused to take them.

Specifically, Defendant had a longstanding personal and professional relationship with Blagojevich, which included Defendant working as Blagojevich's Chief of Staff from January 2003 through approximately the end of 2005, and serving as campaign manager for Blagojevich's 2006 run for governor. After Blagojevich's re-election as governor in 2006, Defendant became a lobbyist for entities working with the Illinois state government. Defendant continued to be actively involved in fundraising for Blagojevich even after becoming a lobbyist.

Defendant was hired by Racetrack Executive in about 2006 as a lobbyist on behalf of horse racetracks owned and managed by Racetrack Executive. At the time, Defendant knew that Racetrack Executive had arranged for significant contributions to FOB in the past and that Christopher Kelly had been the FOB liaison with Racetrack Executive. After Kelly stopped doing significant fundraising for FOB, and at Blagojevich's request, Defendant began to solicit contributions from Racetrack Executive for FOB.

In about May of 2006, legislation was enacted in Illinois that gave a percentage of revenues collected by Illinois casinos to the Illinois horse racing industry for two years. The legislation expired in about May 2008, but Defendant knew that Racetrack Executive wanted the Illinois legislature to pass legislation that would continue the revenue collection from the casinos. During the November 2008 Illinois legislative session, legislation was introduced that would require Illinois casinos to provide a percentage of their revenues to the Illinois

horse racing industry (the “Racetrack Bill”). As Defendant knew, Racetrack Executive wanted the Racetrack Bill to become law.

Prior to the November 2008 Illinois legislative session, Defendant met at the FOB offices with Blagojevich and Robert Blagojevich to discuss potential donors to FOB. At one point in the meeting, Blagojevich called Racetrack Executive and asked for a \$100,000 contribution, which Defendant understood would likely come from companies that Racetrack Executive controlled or owned. As Defendant could hear only Blagojevich’s side of the telephone conversation, Defendant did not hear what Racetrack Executive said in response to Blagojevich’s request over the phone for the \$100,000 contribution, but Blagojevich said after the call that Racetrack Executive had indicated that he would be supportive. Defendant, Blagojevich, and Robert Blagojevich later agreed that Defendant would follow up with Racetrack Executive in an effort to obtain the contribution. From this conversation and later ones, Defendant understood that Blagojevich and Robert Blagojevich wanted the \$100,000 contribution from Racetrack Executive before the end of that year.

After that meeting, Defendant talked repeatedly with Racetrack Executive about arranging a contribution to FOB. In those conversations, Racetrack Executive acknowledged that he had spoken with Blagojevich and made Defendant think that Racetrack Executive would make the contribution. In some of those conversations, as he had been instructed to do by Blagojevich, Defendant pressed Racetrack Executive to arrange for a contribution before the end of the year. Defendant told Blagojevich and Robert Blagojevich about Defendant’s conversations with Racetrack Executive, although Defendant at times suggested

to Blagojevich and Robert Blagojevich that Defendant had been more aggressive seeking contributions from Racetrack Executive than in fact Defendant was. In conversations with Blagojevich and Robert Blagojevich, Defendant also expressed concern that the potential passage of the Racetrack Bill might affect the timing of a contribution from Racetrack Executive. In those conversations, Defendant explained his concern about the appearance if Racetrack Executive arranged for a contribution at about the same time that the Racetrack Bill was passed.

On November 20, 2008, the Illinois legislature passed the Racetrack Bill and it was subsequently sent to the Office of the Governor for Blagojevich's signature. Starting on November 20, 2008, Racetrack Executive repeatedly asked Defendant to get Blagojevich to sign the Racetrack Bill as soon as possible. Racetrack Executive told Defendant that Racetrack Executive's horse racing tracks were losing about \$9,000 for each day that the Racetrack Bill was not signed into law. After November 20, 2008, Defendant repeatedly pushed Blagojevich to sign the Racetrack Bill without delay, but Blagojevich did not agree to do so.

On December 3, 2008, Defendant went to the FOB offices for a meeting with Blagojevich and Robert Blagojevich about fundraising. Blagojevich and Defendant talked at the FOB offices about Racetrack Executive and the Racetrack Bill. Blagojevich and Defendant discussed whether Racetrack Executive would make a contribution once the Racetrack Bill was signed. From that conversation, Defendant understood that Blagojevich was concerned that Racetrack Executive would not contribute prior to the end of the year if

Blagojevich signed the Racetrack Bill too quickly. Defendant explained to Blagojevich that Racetrack Executive was losing \$9,000 each day that the Racetrack Bill was not signed. Blagojevich raised the idea with Defendant of arranging for a staff member to tell Racetrack Executive that Blagojevich was going to have a bill signing event in January 2009 or late December of 2008. Defendant understood that Blagojevich was not actually interested in conducting a bill signing event, but instead was using the idea of such an event, which would delay the signing of the Racetrack Bill, to put pressure on Racetrack Executive to make a contribution before the end of the year.

Blagojevich and Defendant agreed that Defendant would visit Racetrack Executive to try to get the contribution. Blagojevich asked Defendant to review with Blagojevich what Defendant would say to Racetrack Executive. In response, Defendant explained that he would tell Racetrack Executive to “stop screwin’ around, get me the money” and that Blagojevich was holding back on signing the Racetrack Bill because Blagojevich felt that Racetrack Executive would get “skittish” about making a contribution if Blagojevich signed the Racetrack Bill. Defendant understood that it would put pressure on Racetrack Executive to make a contribution immediately if Racetrack Executive understood that Blagojevich did not want to sign the Racetrack Bill until Racetrack Executive made a contribution.

After leaving the FOB offices on December 3, 2008, Defendant met with Racetrack Executive at the offices of Racetrack Executive. There, Defendant told Racetrack Executive that Defendant had talked with Blagojevich and that Blagojevich was concerned that Racetrack Executive would be “skittish” about making a donation if Blagojevich signed the

bill. Defendant did indicate to Racetrack Executive that the fundraising and the signing of the bill were two different subjects, but Defendant knew that they were not because Blagojevich had tied the two together. Defendant was trying to communicate to Racetrack Executive Blagojevich's view that if Racetrack Executive wanted the bill signed promptly, he should first make a contribution before the end of the year. Later in the conversation, Racetrack Executive talked about the possibility of making part of his contribution after the end of the year, but Defendant pushed Racetrack Executive to make the entire contribution before the end of the year.

Defendant called Blagojevich shortly after leaving Racetrack Executive's offices and related the substance of Defendant's conversation with Racetrack Executive. Defendant described how he had passed on Blagojevich's concerns that Racetrack Executive would not make a contribution quickly if the Racetrack Bill was signed, saying that Defendant had told Racetrack Executive that "there's a concern that there's gonna be some skittishness if your bill gets signed because of the timeliness of the commitment."

On December 4, 2008, Defendant spoke with Blagojevich by phone from the Miami airport. In that call, Defendant suggested that Blagojevich call Racetrack Executive and explained that it would better if Blagojevich made the call "from a pressure point of view," by which Defendant meant that Racetrack Executive would feel more pressure to make the contribution if Blagojevich personally called Racetrack Executive. In that call, Defendant pushed Blagojevich to sign the Racetrack Bill soon, but understood from Blagojevich's responses that Blagojevich wanted to get the contribution from Racetrack Executive before

he signed the Racetrack Bill. Defendant did not want to deal further with Racetrack Executive about the contribution request and made no further efforts to contact Racetrack Executive or to follow up with Blagojevich about Blagojevich's contacts with Racetrack Executive.

7. Defendant disclosed the following self-incriminating information to the government pursuant to the terms of a proffer agreement. Pursuant to the proffer agreement and Guideline §1B1.8(a), this information may not be used in determining the applicable guideline range for Defendant or in aggravation of Defendant's sentence:

Beginning prior to Blagojevich's election as governor in 2002, Defendant had conversations with Blagojevich, Antoin "Tony" Rezko, and Christopher Kelly individually and collectively about how the four of them could make money from their control over the State of Illinois government. Those conversations included a number of specific ideas for making money, such as through operating businesses that would get state money or receiving fees from people who did business with the state. As a general matter, Rezko was responsible for trying to set up the money-making arrangements and Kelly and Rezko were the most knowledgeable about how the plans would work. Defendant understood that Blagojevich and Defendant would use their power and authority in state government as needed to assist whatever plans Rezko and Kelly put in place to make money. Defendant further understood that he would share in the money that was made, but that those funds would not be disbursed to Blagojevich or Defendant until after they were no longer in government.

Kelly first raised the idea that Blagojevich, Kelly, Defendant, and others could make money from state actions with Defendant prior to Blagojevich's election as governor in 2002. After Blagojevich's election, there were times when Blagojevich, Kelly, Rezko, and Defendant met together to discuss the status of their efforts to make money using their control over the State of Illinois government. At those meetings, Rezko typically led the discussion and would go through the status of different ideas or plans to make money for the four men that involved some kind of state action, although not every plan that Rezko discussed for making money involved state action. As Rezko talked, he indicated how much money the four men could hope to make from the different ideas. The amounts of profits that were associated with the different ideas were typically in the hundreds of thousands of dollars per deal. Defendant understood from those discussions that the profits would be split evenly between Defendant, Blagojevich, Rezko, and Kelly.

The discussions involving Defendant, Blagojevich, Rezko, and Kelly about making money from their control over the state government stopped sometime after Defendant and the others learned that Stuart Levine had been confronted by the FBI in the spring of 2004. After that point, Defendant had discussions with Blagojevich, Rezko, and/or Kelly about how Blagojevich, Kelly, and Defendant could benefit from a real estate development that Rezko was working on at Roosevelt and Clark in Chicago (the "Roosevelt and Clark Project"). Rezko talked about different ways that Defendant, Blagojevich, and Kelly could benefit from the Roosevelt and Clark Project, such as by having Blagojevich's wife work on marketing the project or by allowing Defendant to work on the project after Defendant left state government.

Defendant understood from Kelly that Kelly invested in the Roosevelt and Clark Project as well.

Beginning in about the spring or summer of 2004, Rezko provided Defendant cash in amounts of about \$10,000 on seven to nine occasions. Rezko's payments extended through at least 2005. Rezko never suggested that Defendant would have to pay Rezko back and Defendant understood that the money that Rezko provided was a gift, not a loan.

Defendant discussed Rezko's cash payments with Kelly. Defendant was concerned that he had no cash withdrawals from his bank accounts as a result of Rezko's cash payments and worried that it would be a problem if the payments became public. Kelly said words to the effect, "I get it, but don't worry about it."

Pension Obligation Bond ("POB") Deal

One of the ways in which Blagojevich, Rezko, Kelly, and Defendant tried to obtain money for themselves from their control over the State of Illinois government related to the re-financing of \$10 billion in Pension Obligation Bonds ("POB") by the State of Illinois in 2003. Defendant, Blagojevich, Rezko, and Kelly discussed this money-making idea in their group meetings.

Defendant was involved in the decision regarding which investment firm would be chosen to act as the lead underwriter for the POB deal. Kelly and Rezko pushed Defendant to choose Investment Firm A as the firm that would take the lead on the first round of POB sales. Defendant understood that the lead firm would make the most money from the POB sale. Initially, Defendant understood that Kelly and Rezko were pushing for Investment Firm

A to be chosen either because Investment Firm A would make a contribution to Blagojevich or because Defendant, Blagojevich, Rezko, and Kelly would make money if Investment Firm A was chosen. Defendant discussed the decision with Blagojevich and indicated that Kelly and Rezko wanted Investment Firm A to be chosen to be the lead underwriter for the first round of POB sales. After that conversation, Blagojevich decided that Investment Firm A would receive the lead role on the first round of the POB sale.

As Defendant understood, the original plan for the issuance of the POB was that the State of Illinois would issue them in several different offerings. On the day of the first planned issuance of the bonds, however, government staff members recommended that the State issue all \$10 billion in bonds that day. Defendant arranged a meeting that included Blagojevich, Kelly, and other government staff members to discuss what to do. At one point during this meeting, Blagojevich and Kelly stepped away from the group briefly. Shortly after they returned to the group, Blagojevich announced his decision to issue all \$10 billion of the bonds at once.

Later that day, Kelly told Defendant about the conversation between Kelly and Blagojevich when they stepped away from the group. Kelly indicated that he told Blagojevich that letting Investment Firm A sell all \$10 billion of the bonds would mean that Investment Firm A would make more money, and that there would be a benefit for Blagojevich, Defendant, Rezko, and Kelly. Defendant understood that Kelly had told Blagojevich that Defendant, Blagojevich, Rezko, and Kelly would make money personally if Blagojevich agreed to issue all \$10 billion in POB that day.

After the POB issuance, Rezko and Kelly told Defendant in additional conversations about the amount of money that Defendant, Blagojevich, Rezko, and Kelly would make from the POB deal. Defendant learned from those conversations that Individual A, who Defendant understood either had received or was going to receive money from Investment Firm A for acting as a consultant on the POB deal, was going to give Rezko \$500,000 that would be held in a separate account. Defendant understood that the \$500,000 payment was for the help that Rezko had provided to Investment Firm A and Individual A relating to the POB deal, and that the money would later be split between Defendant, Blagojevich, Rezko, and Kelly.

The Tollway Project

In around the summer of 2008, Defendant spoke with board members at the Illinois Toll Highway Authority (the “Tollway”) about a plan to fund road building programs through the Tollway. Defendant later talked with Blagojevich at the FOB offices about this potential road building program. Blagojevich already knew about the program and seemed to take the idea seriously. Blagojevich talked to Defendant about two different potential road building programs. The smaller plan would cost about \$1.8 billion and there was a second program that would cost about \$5 billion. Blagojevich indicated that he could do either program without the need for legislative approval. Blagojevich also indicated that he was going to announce the \$1.8 billion program that Fall and that he would go forward with the \$5 billion plan the following year, but said that he did not want to announce the larger program in the Fall of 2008.

As Defendant had discussed with Blagojevich at different times, Defendant was the point of contact for fundraising for FOB with a number of engineering firms. In this meeting at the FOB offices, Blagojevich talked with Defendant about how good the tollway road building programs would be for engineering companies. Blagojevich then talked about the pending ethics legislation which would prevent Blagojevich from raising money from engineering firms that did business with the State of Illinois after the end of the year. Blagojevich told Defendant to reach out to the engineering firms and tell them to step up and donate and that they would no longer have to donate after January 1, 2009. Blagojevich said words to the effect of, "If they don't step up, fuck 'em. I won't do the bigger announcement in January." Defendant understood Blagojevich to mean that he would not go forward with the \$5 billion Tollway road building program that he had planned to announce in 2009 if the engineering firms did not contribute significantly to FOB by the end of the year.

After Defendant's first conversation with Blagojevich about the potential Tollway road building programs, Defendant had a meeting at the FOB offices with Blagojevich and an individual who was both an executive with a company that manufactured and distributed road building materials and a fundraiser for Blagojevich ("Highway Contractor"). In the meeting, Blagojevich talked about the two potential Tollway road building programs. Blagojevich indicated that he was going to announce the \$1.8 billion plan that Fall. Blagojevich said that he was inclined to also go forward with the \$5 billion plan, but that he did not want word to get out about his interest in doing the larger program because he wanted the legislature to feel pressure to pass a capital bill. Blagojevich suggested to Highway Contractor that Blagojevich

had the power to go forward with either of the two Tollway roadbuilding programs without the approval of the legislature. Toward the end of the meeting, Blagojevich asked Highway Contractor something to the effect of, “Can we count on you for support?”

Defendant thought that Blagojevich was using the prospect of the two Tollway building programs to push Highway Contractor to raise funds for Blagojevich in this meeting. Defendant understood that Blagojevich was giving Highway Contractor inside information about Blagojevich’s interest in the possibility of the larger \$5 billion Tollway program and signaling that Blagojevich had the power to do that program without the legislature. When Blagojevich then followed up that discussion with a request for Highway Contractor to raise funds, Defendant understood that Blagojevich was using the possibility of the \$5 billion Tollway program to encourage Highway Contractor to contribute.

After Highway Contractor left the meeting, Blagojevich said that he wanted Defendant to ask Highway Contractor to raise \$500,000. Defendant understood that Blagojevich was expecting that Highway Contractor would arrange for contributions by the company that he worked for and from other companies in the road building industry, not that Highway Contractor would donate \$500,000 personally. Defendant had subsequent conversations with Highway Contractor in an effort to convince Highway Contractor to raise money for FOB, although Defendant never asked Highway Contractor to raise \$500,000 for FOB because Defendant thought that Highway Contractor could not raise that much money. Defendant kept Blagojevich informed about the status of Defendant’s efforts to raise money from Highway

Contractor and tried to lower Blagojevich's expectations about the amount of money that Highway Contractor would arrange to raise for FOB.

Children's Memorial Hospital

Defendant understood from Blagojevich that he wanted to get a contribution from Children's Memorial Hospital ("CMH") near the end of 2008. The topic of getting a donation from CMH came up during a fundraising meeting Defendant had with Blagojevich, Robert Blagojevich, and a consultant for CMH. In that meeting, Blagojevich asked the CMH consultant about getting a donation from CMH, but the consultant indicated that it was not likely that CMH was going to give money. In a later conversation involving Blagojevich, Robert Blagojevich, and Defendant, the topic of getting a contribution from CMH was raised again. Blagojevich asked Defendant to seek a contribution from CMH, but Defendant responded that he did not have a relationship with CMH and did not want to approach CMH. As a result, it was eventually decided that Robert Blagojevich would follow up with CMH and Defendant did not contact anyone at CMH.

In a subsequent meeting Defendant had at the FOB offices with Blagojevich and Robert Blagojevich, Blagojevich asked Robert Blagojevich about getting a contribution from CMH. Robert Blagojevich said the contact at CMH had not returned a number of his calls and he was not going to call him anymore. Blagojevich got upset and said words to the effect, "Screw these guys" or "Screw them." Almost immediately, Blagojevich arranged for a phone call to a deputy governor about some funding that Defendant understood that the State of Illinois was about to give to CMH. In that call, Defendant heard Blagojevich say words to

the effect, “Where are we on the money to Children’s Memorial Hospital?” After a pause, Blagojevich said words to the effect, “Hold it up” or “Slow it down” or “Don't do anything until I tell you.” Defendant understood that Blagojevich was instructing the deputy governor to hold up the money that was supposed to go to CMH.

8. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for Defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within Defendant's personal knowledge regarding the charged crime and related conduct.

Maximum Statutory Penalties

9. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, Defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

10. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing

Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2008 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the offense of conviction is 12, pursuant to Guideline §2C1.1(a)(2), because Defendant was not a public official.

ii. Pursuant to Guideline §2C1.1(b)(2), because the value to be obtained by a public official exceeded \$5000, the offense level is increased by the number of levels from the table in §2B1.1.

iii. Pursuant to Guideline §2B1.1(b)(1)(E), an 8-level increase is warranted because the value to be obtained by a public official, which was foreseeable to Defendant, was more than \$70,000 but less than \$120,000.

iv. Pursuant to Guideline §2C1.1(b)(3), a 4-level increase is warranted because Blagojevich was an elected public official and in a high-level decision-making or sensitive position.

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if Defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline §3E1.1(b), Defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that Defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining Defendant's criminal history points and criminal history category, based on the facts now known to the government, Defendant's criminal history points equal zero and Defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 21, which, when combined with the anticipated criminal history category of I, results in an anticipated

advisory Sentencing Guidelines range of 37 to 46 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and Defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and Defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Cooperation

12. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

Agreements Relating to Sentencing

13. At the time of sentencing, the government shall make known to the sentencing judge the extent of Defendant's cooperation. If the government determines that Defendant has continued to provide full and truthful cooperation as required by this plea agreement, then the government shall move the Court, pursuant to Guideline §5K1.1, to depart from the applicable Guideline range and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

14. If the government moves the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth in the preceding paragraph, this Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of 24 months. Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. The parties further agree that the district court should

determine whether to accept this agreement and the sentence provided herein based upon, and after it has been provided at the sentencing with, the details of Defendant's offense, the extent of his truthful cooperation with the government, and any matters in aggravation and mitigation of sentencing. If the Court accepts and imposes the agreed term of incarceration set forth, Defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting this plea agreement, or otherwise refuses to accept Defendant's plea of guilty, either party has the right to withdraw from this plea agreement.

15. If the government does not move the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth above, this plea agreement will not be governed, in any part, by Federal Rule of Criminal Procedure 11(c)(1)(C), the preceding paragraph of this plea agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to §5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline §5K1.1.

16. Defendant understands that the government will recommend that the Court impose a fine that represents at least the high end of the anticipated advisory sentencing

guidelines range under Guideline §5E1.2(c)(3), which is \$75,000. Defendant remains free to recommend whatever fine he deems appropriate.

17. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

18. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and Defendant regarding Defendant's criminal liability in case 08 CR 888-3.

19. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against Defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, Defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that Defendant is presumed innocent, that the government has the burden of proving Defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established Defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against Defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, Defendant could present witnesses and other evidence in his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A Defendant is not required to present any evidence.

vii. At a trial, Defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If Defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford Defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, if the government makes a motion at sentencing for a downward departure pursuant to Sentencing Guideline § 5K1.1, Defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge,

including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit Defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to Defendant and that, prior to the filing of Defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant understands that he has the right to have the criminal charge in the indictment brought within five years of the last of the alleged acts constituting the specified violation. By signing this document, Defendant knowingly waives any right to have the charge in the indictment brought against him within the period established by the statute of limitations. Defendant also knowingly waives any defense or claim based upon the statute of limitations or upon the timeliness with which the charge in the indictment was brought.

Presentence Investigation Report/Post-Sentence Supervision

21. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of Defendant's

conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing, including the nature and extent of Defendant's cooperation.

22. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

23. For the purpose of monitoring Defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which Defendant is sentenced, Defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of Defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to Defendant's sentencing, to and including the final year of any period of supervised release or probation to which Defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of Defendant's request to the IRS to disclose the

returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which Defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

25. Regarding matters relating to the Internal Revenue Service (IRS), Defendant agrees as follows (nothing in this paragraph, however, precludes Defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service (IRS) in any tax examination or audit of Defendant which directly or indirectly relates to or arises out of the course of conduct which Defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records which the IRS may request.

b. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure to the Internal Revenue Service (IRS) of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed.R.Cr.P. 6(e)(3)(E)(i). In addition, Defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to

the IRS for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, Defendant.

26. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against Defendant for the events which occurred in the Northern District of Illinois and which he has described in his proffer statements to the United States and/or in his grand jury testimony. Further, it is the government's position that neither restitution nor forfeiture can be awarded on the count of conviction. However, nothing in this Plea Agreement limits the United States from prosecuting Defendant for crimes not disclosed in his proffer statements or his grand jury testimony, except as expressly set forth in this Agreement. Further, nothing in this Plea Agreement limits the government in any way from prosecuting Defendant for any criminal activity by Defendant occurring after the date of this Plea Agreement.

Conclusion

27. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

28. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the

event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute Defendant not subject to any of the limits set forth in this Agreement, or may move to resentence Defendant or require Defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits Defendant to withdraw from this Agreement, or Defendant breaches any of its terms and the government elects to void the Agreement and prosecute Defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

29. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause Defendant to plead guilty.

30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

ALONZO MONK
Defendant

CHRISTOPHER S. NIEWOEHNER
Assistant U.S. Attorney

MICHAEL SHEPARD
Attorney for Defendant