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United States Court of Appeals, Third Circuit.

UNITED STATES of America, Appellant in 17-1346
v.
Chaka FATTAH, Sr., Appellant in 16-4397
Karen Nicholas, Appellant in 16-4410
Robert Brand, Appellant in 16-4411
Herbert Vederman, Appellant in 16-4427

Nos. 16-4397, 16-4410, 16-4411, 16-4427, 17-1346
|
Argued January 18, 2018
|
Filed: August 9, 2018

OPINION

SMITH, Chief Judge.

I. Introduction

Chaka Fattah, Sr., a powerful and prominent fixture in Philadelphia politics, financially overextended himself in both his personal life and his professional career during an ultimately unsuccessful run for mayor. Fattah received a substantial illicit loan to his mayoral campaign and used his political influence and personal connections to engage friends, employees, and others in an elaborate series of schemes aimed at preserving his political status by hiding the source of the illicit loan and its repayment. In so doing, Fattah and his allies engaged in shady and, at times, illegal behavior, including the misuse of federal grant money and federal appropriations, the siphoning of money from nonprofit organizations to pay campaign debts, and the misappropriation of campaign funds to pay personal obligations.

Based upon their actions, Fattah and four of his associates—Herbert Vederman, Robert Brand, Bonnie Bowser, and Karen Nicholas—were charged with numerous criminal acts in a twenty-nine count indictment. After a jury trial, each was convicted on multiple counts. All but Bowser appealed. As we explain below, the District Court's judgment will be affirmed in part and reversed in part.

II. Background[1]

During the 1980s and '90s, Fattah served in both houses of the Pennsylvania General Assembly, first as a member of the House of Representatives and later as a Senator. In 1995, Fattah was elected to the United States House of Representatives for Pennsylvania's Second Congressional District. In 2006, Fattah launched an unsuccessful run for Mayor of Philadelphia, setting in motion the events that would lead to his criminal conviction and resignation from Congress ten years later.

A. The Fattah for Mayor Scheme

Fattah declared his candidacy for mayor in November of 2006. Thomas Lindenfeld, a political consultant on Fattah's exploratory committee, believed that "[a]t the beginning of the campaign, [Fattah] was a considerable ... candidate and somebody who had a very likely chance of success." JA1618. But Fattah's campaign soon began to experience difficulties, particularly with fundraising. Philadelphia had adopted its first-ever campaign contribution limits, which limited contributions to $2,500 from individuals and $10,000 from political action committees and certain types of business organizations. Fattah's fundraising difficulties led him to seek a substantial loan, far in excess of the new contribution limits.

1. The Lord Loan and Its Repayment

While serving in Congress, Fattah became acquainted with Albert Lord, II. The two first met around 1998, when Lord was a member of the Board of Directors of Sallie Mae.

As the May 15, 2007 primary date for the Philadelphia mayoral race approached, Fattah met Lord to ask for assistance, telling Lord that the Fattah for Mayor (FFM) campaign was running low on funds. Fattah asked Lord to meet with Thomas Lindenfeld, a political consultant in Washington, D.C., and part-owner of LSG Strategies, Inc. (Strategies), a company that was working with the FFM campaign and that specialized in direct voter contact initiatives. Lindenfeld had been part of the exploratory group that initially considered Fattah's viability as a candidate for mayor. Lindenfeld had known Fattah since 1999, when Fattah endorsed Philadelphia Mayor John Street. Through Fattah, Lindenfeld had also gotten to know several of Fattah's associates, including Herbert Vederman, Robert Brand, and Bonnie Bowser. Herbert Vederman, a businessman and former state official, was the finance director for the FFM campaign. Robert Brand owned Solutions for Progress (Solutions), a

"Philadelphia-based public policy technology company, whose mission [was] to deliver technology that directly assists low and middle income families [in obtaining] public benefits." JA6551. Bowser was Fattah's Chief of Staff and campaign treasurer, and served in his district office in Philadelphia.

Lord's assistant contacted Lindenfeld to arrange a meeting, and Lindenfeld informed Fattah that he would be meeting with Lord. Lindenfeld, along with his partner, Michael Matthews, met with Lord and discussed Fattah's need for funds to mount an intensive media campaign. After that meeting, Lindenfeld reported to Fattah that Lord wanted to help, but that they had not discussed a specific dollar amount. Approximately a week later, Fattah instructed Lindenfeld to meet with Lord a second time. Lord "wanted to know if he could give a substantial amount of money, a million dollars" to Fattah's campaign. JA1630. That prompted Lindenfeld to reply that the amount "would be beyond the campaign finance limits." *Id.*

Lord proposed a solution: he offered to instead give a million dollars to Strategies in the form of a loan. To that end, Lindenfeld had a promissory note drafted which specified that Lord was lending Strategies $1 million, and that Strategies promised to repay the $1 million at 9.25% interest, with repayment to commence January 31, 2008. Lindenfeld later acknowledged that the promissory note would make it appear as though Lord's $1 million was not a contribution directly to the Congressman, although he knew that it was actually a loan to the FFM campaign. Indeed, Lindenfeld confirmed with Fattah that neither Lindenfeld nor Strategies would be responsible for repayment. With that understanding, Lindenfeld executed both the note and a security agreement purporting to encumber Strategies' accounts receivable and all its assets.

On May 1, shortly before the primary election, Lord wired $1 million to Lindenfeld. Lindenfeld held the money in Strategies' operating account until Fattah told him how it was to be spent. Some of the money was eventually used for print materials mailed directly to voters. And, at Fattah's direction, Lindenfeld wired a substantial sum to Sydney Lei and Associates (SLA), a company owned by Gregory Naylor which specialized in "get out the vote" efforts.

Naylor had known Fattah for more than 30 years.[2] During the campaign, Naylor worked as the field director and was in charge of getting out the vote on election day. On the final day of the campaign, Naylor worked with Vederman, who allowed Naylor to use his credit card to rent vans that would transport Fattah voters to the polls.

As the primary date neared, Fattah and Naylor knew the campaign was running out of money. The campaign was unable to finance "media buys," and Naylor needed money for field operations to cover Philadelphia's more than one thousand polling places. In early May, Lindenfeld called Naylor to say that Lindenfeld "would be sending some money [Naylor's] way." JA3057. Within days, SLA received a six-figure sum for Naylor to use in the campaign and on election day. Naylor used the money to pay some outstanding bills, including salaries for FFM employees, and allocated $200,000 to field operations for election day.

Fattah lost the mayoral primary on May 15, 2007. Afterward, Lindenfeld spoke with Fattah, Naylor and Bowser about accounting for the FFM campaign money from Lord that had been spent. They decided that the amounts should not appear in the FFM campaign finance reports, and Fattah instructed Naylor to have his firm, SLA, create an invoice. Naylor did so, creating an invoice dated June 1, 2007 from SLA to FFM, seeking payment of $193,580.19. Naylor later acknowledged that the FFM campaign did not actually owe money to SLA, and that the false invoice was created to "hide the transaction that took place earlier" and "make it look like [SLA] was owed money." JA3075–76. Although FFM did not owe SLA anything for the election day expenses, the FFM campaign finance reports from 2009 through 2013 listed a $20,000 in-kind contribution from SLA for each year, thereby lowering FFM's alleged outstanding debt to SLA.

Of the total $1 million Lord loan, $400,000 had not been spent. Lindenfeld returned that sum to Lord on June 3, 2007. He included a cover letter which stated: "As it turns out the business opportunities we had contemplated do not seem to be as fruitful as previously expected." JA1254. Lindenfeld later admitted that there were no such "business opportunities" and that the letter was simply an effort to conceal the loan.

In late 2007, faced with financial pressures, Lord asked his son, Albert Lord, III, to collect the outstanding $600,000 balance on the loan to Strategies. Lord III contacted Lindenfeld about repayment and expressed a willingness to forgive the interest owed if the principal was paid. Lindenfeld immediately called Fattah and informed him that repayment could not be put off any longer. Fattah told Lindenfeld more than once that "[h]e would take care of it," JA1652, but Fattah did not act. Needing someone who might have Fattah's ear, Lindenfeld reached out to Naylor and Bowser. Naylor talked to Fattah on several occasions and told him that

Lindenfeld was under considerable pressure to repay the loan. Fattah told Naylor more than once that he was "working on it." JA3082–83.

During his political career, Fattah had focused on education, especially for the underprivileged. Indeed, Fattah founded two nonprofit organizations: College Opportunity Resources for Education (CORE), and the Educational Advancement Alliance (EAA).

EAA held the annual Fattah Conference on Higher Education (the "annual conference") to acquaint high school students with higher education options. JA3079. Sallie Mae regularly sponsored the conference. According to Raymond Jones, EAA's chairman of the board from 2004 through 2007, EAA offered a variety of programs to provide "marginalized students with educational opportunities so they could continue and go to college." JA1360. EAA was funded with federal grant money which could only be spent for the purposes described in the particular grant. Karen Nicholas served as EAA's executive director, handling the organization's day-to-day administrative responsibilities. Nicholas had previously been a staffer for Fattah when he was a member of Pennsylvania's House of Representatives.

CORE was an organization that awarded scholarships to graduating high school students in Philadelphia who had gained admission to a state university or the Community College of Philadelphia. CORE received funding from a variety of sources, including Sallie Mae. Because CORE also received federal funds, and because EAA had experience working with federal grants, EAA received and handled the federal funds awarded to CORE. In short, EAA functioned as a fiduciary for CORE. When money became a problem for the FFM campaign, Fattah's involvement with EAA and CORE soon became less about helping underprivileged students, and more about providing an avenue for disguising efforts to repay the illicit campaign funds from Lord.

On January 7, 2008, Robert Brand contacted Fattah by telephone. Shortly thereafter, Lindenfeld received an unexpected call from Brand proposing an arrangement for Brand's company, Solutions, to work with Strategies. Solutions had developed a software tool called "The Benefit Bank," which was designed to "assist low and moderate income families to have enhanced access to benefits and taxes." JA1993. During the telephone call, Brand referred to The Benefit Bank and suggested a contract under which Strategies would be paid $600,000 upfront. JA1666. Shortly thereafter, on January 9, 2008, Brand followed up on his call to Lindenfeld with an email about "develop[ing] a working relationship where you could help us to grow The Benefit Bank and our process of civic engagement. While I know this is not your core business I would like to try to convince you to take us on as a client." JA6427. Lindenfeld responded that he was interested. To Lindenfeld, "this was the way that Congressman Fattah was going to repay the debt to Al Lord." JA1654. When Lindenfeld called Fattah and told him of the contact from Brand, Fattah simply replied that Lindenfeld "should just proceed." JA1666–67.

A few days later, Brand emailed Nicholas at EAA a proposal from Solutions concerning The Benefit Bank, which sought EAA's support in developing an education edition of The Benefit Bank and a $900,000 upfront payment.

As the January 31 date for repayment of the balance of the $1 million Lord loan approached, a flurry of activity took place. On January 24, both Raymond Jones, chair of the EAA Board, and Nicholas signed a check from EAA made out to Solutions in the amount of $500,000. Although no contract existed between EAA and Solutions, the memo line of the check indicated that it was for a contract, and Nicholas entered it into EAA's ledger.[3]

That same day, Ivy Butts, an employee of Strategies, emailed Lindenfeld the instructions Brand would need to wire the $600,000 balance on the Lord loan. Within minutes, Lindenfeld forwarded that email to Brand at Solutions. Brand then made two telephone calls to Fattah. By late afternoon, Brand emailed Nicholas, informing her that he had "met with all the people I need to meet with and have a pretty clear schedule of what works best for us. I am also seeing what line of credit we have to stretch out the payments until you get your line of credit in place." JA6558. Brand asked if they could talk and "finalize this effort." JA6558. On January 25 and 26, there were a number of calls between Fattah, Brand, and Nicholas.

On Sunday January 27, at 5:46 pm, Brand telephoned Fattah. At 10:59 pm, Brand emailed Nicholas a revised contract between EAA and Solutions for the engagement of services. Brand indicated he would send someone to pick up the check at about 1:00 pm the following day. The revised contract called for the same $900,000 payment from EAA to Solutions, yet specified that $500,000 was to be paid on signing, with $100,000 due three weeks later, and another $100,000 to be paid six weeks out. No due date for the $200,000 balance was specified. The terms of the contract called for EAA to assist Solutions with further developing The Benefit Bank. In addition, under the contract, EAA would receive certain funds from

the Commonwealth of Pennsylvania for a program relating to FAFSA applications.[4]

The same evening, Brand sent Lindenfeld a contract entitled "Cooperative Development Agreement to Provide Services to Solutions for Progress, Inc. for Growth of The Benefit Bank." JA6569. The agreement proposed a working partnership in which Strategies would work with Solutions to identify and secure a Benefit Bank affiliate in the District of Columbia and two other states, and to facilitate introductions to key officials in other states where The Benefit Bank might expand. The terms of the agreement provided that Solutions would pay $600,000 to Strategies by January 31, 2008, which would "enable [Strategies'] team to assess opportunities and develop detailed work plans for each area." JA6572. Brand copied Solutions' Chief Financial Officer, Michael Golden. Lindenfeld responded to Brand's email within a minute, asking if Brand had received the wiring instructions. Brand immediately confirmed that he had.

Concerned that Solutions did not have $600,000 to pay Strategies, Golden talked to Brand, who informed him that Solutions would be receiving a check for $500,000 from EAA. Early the next morning, Nicholas responded to Brand's email from the night before. She advised Brand that he could pick up the check, "but as I stated I am not in a position to sign a contract committing funds that I am not sure that I will have." Gov't Supp. App. (GSA) 1. That same day, a $540,000 transfer was made from the conference account, which EAA handled, into EAA's checking account. The conference account was maintained to handle expenses for Fattah's annual higher education conference. Prior to this transfer, EAA had only $23,170.95 in its account. EAA then tendered a $500,000 check to Solutions, which promptly deposited the check before the close of that day's business. EAA never replenished the $540,000 withdrawal from the conference account.

Brand received the executed contract between Solutions and Strategies on January 28. Even though the contract called for Strategies to perform services in exchange for the $600,000 payment, Lindenfeld neither expected to do any work for the $600,000, nor did he in fact do any work.

In sum, by January 28, Solutions had received $500,000 from EAA, but it still had to come up with $100,000 to provide Strategies with the entire amount needed to repay the Lord loan. Golden obtained the needed funds the following day by drawing $150,000 on a line of credit held by Brand's wife. Brand and Fattah spoke four more times on the telephone on January 29. Trial evidence later showed that, during the month of January 2008, neither the FFM campaign bank account nor Fattah's personal account had a sufficient balance to fund a $600,000 payment.

On the morning of January 30, frustrated by the delay, Lindenfeld sent Brand an email with a subject line "You are killing me." JA6430. Lindenfeld stated that he had "made a commitment based on yours to me. Please don't drag this out. I have a lot on the line." *Id.* Brand responded late in the afternoon, stating: "just met with Michael. He does the transfer at 8 AM tomorrow. It should be in your account ($600K) early tomorrow morning." *Id.* Lindenfeld replied: "The earlier the better." *Id.* The following morning, Golden wired $600,000 from Solutions' Pennsylvania bank account into Strategies' Washington D.C. bank account. JA2745, 2874. Strategies in turn, wired the same amount from its Washington D.C. bank account to Lord's bank account in Virginia. JA2874, 6549. Around noon, Brand telephoned Lindenfeld.

In the days following the exhaustive efforts to meet the January 31 loan repayment deadline, four more telephone calls took place between Brand and Fattah.[5] Naylor learned at some point that the loan had been paid off. When Naylor asked Fattah about details of the repayment, Fattah simply replied "[t]hat it went through EAA to Solutions and it was done." JA3088.

Meanwhile, at some point in January, EAA received notice that the Department of Justice Office of the Inspector General (DOJ) intended to audit its books.[6] DOJ auditors told EAA to provide, at the "entrance conference," documentation containing budgetary and accounting information. EAA failed to produce any accounting information.

Although Lindenfeld was no longer making demands of Brand, Brand was still owed the remaining $100,000 that Solutions had paid to satisfy the Lord loan. On March 23, 2008, Brand sent Nicholas an email outlining his efforts to contact her over the previous two weeks about documentation on the CORE work, how to proceed with the paperwork for the Commonwealth of Pennsylvania, and "how we can get our proposed contract signed and the outstanding payments made." JA2749. Nicholas responded that evening, writing:

> I can appreciate your urgency however I do have EAA work that I continue to do, including the [usual] facilitation of programs, our financial audit, the start-up of two new programs[,] and of course the

> DOJ audit. I am still trying to obtain a line of credit without a completed 2007 audit and things are getting a little uncomfortable now as I try to keep us afloat.

JA6576. Nicholas told Brand that the DOJ auditors were making demands and would soon be on site. She noted that "[t]hey are still very uncomfortable with your contract amongst other things and depending on their findings some of the funding received may have to be returned." *Id.* Nicholas said that she had submitted the paperwork to the state, and she told Brand that "in the future ... as a result of the DOJ audit I will not be in a position to do another contract such as this." *Id.*

Shortly after Nicholas's reply to Brand, Nicholas forwarded the Brand–Nicholas email chain to Fattah. The body of the email stated, in its entirety: "I really don't appreciate the tone of Bob's email. I can appreciate that he has some things going on however I am doing my best to assist him. Some other things are a priority. He needs to back off." GSA2. Later that night, Bowser sent Fattah an email with a subject line that read "Karen N" and a telephone number. JA2752.

As the audit continued, the auditors found other deficiencies. During April of 2008, DOJ issued a notice of irregularity to EAA, which resulted in the audit being referred to DOJ's Investigations Division for a more comprehensive review.

On April 24, 2008, Brand emailed Nicholas asking for a time to update her on The Benefit Bank. In early May, Brand sent another email to Nicholas attaching a revised EAA–Solutions contract proposal, which decreased the initial upfront cost from $900,000 to $700,000.

Although Solutions and EAA had still not signed a contract, EAA paid Solutions another $100,000 in May. That money was obtained via a loan to EAA from CORE. Thomas Butler, who had worked for Fattah both when Fattah was in Congress and when he was in the General Assembly, was CORE's executive director. Butler had been contacted in mid-May by Jackie Barnett, a member of CORE's Board who had also worked with Congressman Fattah. Barnett informed Butler that Nicholas had requested a loan from CORE to EAA, and that Fattah, as Chairman of CORE's Board, had approved it. Butler and Barnett withdrew funds from two CORE bank accounts and obtained a cashier's check, dated May 19, in the amount of $225,000 and made payable to EAA. The withdrawals were from accounts used for Sallie Mae funds and other scholarship money.

After EAA received the $225,000 check, EAA tendered a $100,000 check to Solutions. The check bore the notation "Commonwealth of Pennsylvania." EAA repaid CORE the following month. Because EAA lacked sufficient funds of its own to cover this payment, EAA drew on grant money that it had received from NASA.

Brand and Lindenfeld continued to communicate concerning The Benefit Bank. In July of 2008, a meeting was held at Solutions with Brand, Lindenfeld, Golden, and other Solutions employees to discuss "an enormous amount of work" that Brand wanted Strategies to do. JA1670. Lindenfeld said in response "we'd be glad to do that, but ... we would have to be paid." *Id.* At that point, someone in the meeting stated that Strategies "had already been paid" $600,000. *Id.* Lindenfeld replied: "well, that was for Congressman Fattah, ... that's not for us. So if you want us to do work, we have to get paid for it separately." *Id.* Brand became upset with Lindenfeld over his comment about being paid because his colleagues at Solutions were not aware of the reason for the $600,000 payment.

Meanwhile, EAA was attempting to meet the demands of the DOJ auditors, who were focused on the relationship between EAA and CORE. DOJ served a subpoena upon Solutions to produce "[a]ny and all documents including, but not limited to, contract documents, invoices, correspondence, timesheets, deliverables and proof of payment related to any services provided to or payments received" from CORE or EAA. JA2350.

Special Agent Dieffenbach, from the DOJ, interviewed Nicholas on July 14, 2008. During that interview, Nicholas discussed the relationship between EAA and CORE, how invoices were paid, and how consultants were handled. Nicholas also answered questions about EAA's relationship with Solutions, including the payment of invoices. She did not inform Agent Dieffenbach of the $500,000 payment in January or the subsequent $100,000 payment in May. Nor did the interview address the EAA–Solutions contract that purportedly required those payments, because the contract had yet to be produced.

Solutions failed to comply with the subpoena, prompting an email from Agent Dieffenbach on August 26 asking for an update concerning Solutions' reply to the DOJ subpoena. Solutions then produced an undated version of the EAA–Solutions contract that required the $600,000 upfront payment. Neither Brand nor Nicholas provided the auditors with the January and May checks from EAA to Solutions.

Efforts to conceal the repayment of the Lord loan and to promote the political and financial interests of Fattah continued. The FFM campaign reports indicated in-kind contributions of debt forgiveness by SLA even though there had been no actual debt. In September of 2009, with EAA's ledgers still under scrutiny, Nicholas altered the description of the entry for the $100,000 check to Solutions from "professional fees consulting" to "CORE Philly." JA2546. Other FFM campaign debt was reduced further after Vederman negotiated with creditors.

EAA never fully recovered from its payment of the $600,000 balance on the Lord loan and the audits that took place in 2008. It began laying off employees in 2011, and by June of 2012, only four employees remained. JA3659. EAA ceased operations at some point in 2012. JA1530.

2. The College Tuition Component of the FFM Scheme

Although the FFM campaign was close to insolvent, it nevertheless made tuition payments for Fattah's son, Chaka Fattah Jr., also known as Chip. Chip attended Drexel University, but had yet to complete his coursework because he had failed to pay an outstanding tuition balance. As the FFM campaign got underway in 2007, Fattah wanted Chip to re-enroll in classes at Drexel and get a degree. Fattah asked Naylor to help financially, and he did so by writing checks from SLA to Drexel toward Chip's outstanding tuition. By October of 2007, Chip was permitted to re-enroll in classes.

Although Naylor never directly addressed the issue with Fattah, he agreed to assist with Chip's outstanding tuition with the expectation that SLA would be repaid. The first check to Drexel in the amount of $5,000 was sent in August of 2007, with $400 payments in the months that followed until August of 2008. At some point, Chip informed Naylor that the payee was no longer Drexel, but Sallie Mae. Naylor then began sending monthly checks from SLA to Sallie Mae. Those payments, in the amount of $525.52, began in March of 2009 and continued until April of 2011, after which Fattah told Naylor he no longer needed to make them. SLA's payments to Drexel and Sallie Mae totaled $23,063.52.

Naylor's expectation of repayment was eventually realized. Beginning in January of 2008 and continuing until November 2010, Bowser sporadically sent SLA reimbursement checks from the FFM campaign with a notation that payment was for "election day operation expenses." JA3136. The FFM funds had been transferred from the Fattah for Congress campaign. These reimbursement checks totaled $25,400. In an effort to conceal the source of the payments to Drexel and Sallie Mae, and to make it appear that the younger Fattah had performed services for SLA, Naylor created false tax forms for Chip. Chip, however, had never performed services for SLA.

3. The NOAA Grant and the Phantom Conference

In mid-December 2011, when EAA was experiencing serious financial difficulties, Nicholas submitted an email request to the educational partnership program of the National Oceanic & Atmospheric Administration (NOAA) for a grant "designed to provide training opportunities and funding to students at minority serving institutions" interested in science, technology, engineering, and math fields related to NOAA's mission. JA3354–55. The request sought $409,000 to fund EAA's annual conference scheduled for February 17–19, 2012. Jacqueline Rousseau, a supervisory program manager at NOAA, participated in a conference call with Nicholas shortly thereafter and advised Nicholas that the agency could not afford the $409,000 request but would consider a smaller grant. Rousseau advised Nicholas that EAA would need to submit an application if it wished to be considered for a grant.

Before submitting a grant application, Nicholas emailed Rousseau about sponsoring the conference. On January 11, 2012, Rousseau informed Nicholas that the "NOAA Office of Education, Scholarship Programs has agreed to participate and provide sponsorship funds of $50K to support the referenced conference." JA6453. Rousseau also informed Nicholas that Chantell Haskins, who also worked with the student scholarship program, would be the point of contact for NOAA.

In February 2012, EAA held its annual conference at the Sheraton Hotel in downtown Philadelphia. The conference had been held at the same location each year since 2008.

Nicholas contacted Haskins at some point in early 2012, inquiring about the $50,000 grant. On May 8, 2012, Haskins sent Nicholas an e-mail which included information about submitting proposals to fund a conference for students. EAA then submitted a grant application, which Haskins reviewed. She advised Nicholas on June 28, 2012 that the grant could not be used to provide meals, and that the date of the conference would have to be pushed back, with the new date included in a modified application. When Nicholas asked if expenses from a previous conference could be paid from the new grant, Haskins informed her that this was not allowed.

In early July 2012, Nicholas sent a modified grant

proposal to Haskins. It eliminated the budget item for food and changed the date of the 2012 conference to October 19–21, 2012 at the same Sheraton Hotel in Philadelphia where EAA's annual conference had taken place earlier in the year. NOAA approved a $50,000 grant for the October 2012 conference—a conference that would never be held.

Unaware that no October 2012 conference had taken place, NOAA allowed Nicholas access to the $50,000 grant in March of 2013. She then transferred the entire amount from NOAA to EAA's bank account a few days later. Naylor had performed services for EAA for which he was still owed $116,590. JA3119. In discussions with Naylor, Nicholas had informed him that the likelihood of EAA's being able to pay him was "[n]ot very good." JA3120. Yet several days after EAA had received the $50,000 from NOAA, Nicholas sent Naylor a check for $20,000. JA3120, 4283.

On April 3, 2013, Nicholas submitted a final report to NOAA concerning EAA's use of the grant. Notably, page 4 of the report stated the conference had been held in February 2012, while page 17 stated that the conference had been held from October 19 to 21, 2012. NOAA issued a notice asking for clarification and for a list of students who had been supported at the conference. Nicholas failed to file either a clarifying report regarding the date of the conference or a timely report regarding the disbursement of the grant. Finally, in November of 2013, Nicholas submitted the final Federal Financial Report in which she certified, falsely, that the $50,000 had been used for a project during the period from August 1, 2012 to December 30, 2012.

B. The Blue Guardians Scheme

In addition to functioning as the conduit for Lord's $1 million loan to Fattah's campaign, Lindenfeld's company, Strategies, also performed services for the campaign. The work resulted in indebtedness from FFM to Strategies of approximately $95,000. Fattah made several small payments, but failed to pay the full amount due. Although Lindenfeld spoke to Fattah, Naylor and Bowser about the debt, no payments were forthcoming. During a meeting in Fattah's D.C. office, Fattah told Lindenfeld "that [repayment] really wasn't going to be possible because the campaign had been over for a long time" and the funds were not available. JA1693. Fattah then asked Lindenfeld if he could write off the debt on his FFM campaign finance reports. *Id.* Lindenfeld told Fattah that as long as he was paid, it was not his business how Fattah disclosed it on the campaign finance reports. JA1694.

In lieu of repayment, Fattah suggested that Strategies could claim to be interested in setting up an entity to address environmental issues and ocean pollution along the coastline and in the Caribbean. Fattah explained that creating such an entity would make it possible to obtain an appropriation from the government. Hearing this, Lindenfeld knew he was not going to be paid by the FFM campaign, and was amenable to receiving money from an appropriation instead. At a later meeting, Lindenfeld told Fattah that the name of the entity would be "Blue Guardians." Lindenfeld consulted with an attorney about creating Blue Guardians as an entity to receive the federal grant. He emailed Fattah, asking questions about how to complete an application to the House Appropriations Committee. Fattah provided suggestions, and an application was eventually completed. It indicated that Blue Guardians would be "in operation for a minimum of ten years," and, in accordance with Fattah's guidance, requested $15 million in federal funds. JA1711–13.

Lindenfeld submitted the application to Fattah's office in April of 2009. Afterward, a Fattah staffer contacted Lindenfeld to suggest that he change his Washington, D.C., address to Philadelphia because that was the location of Fattah's district. Fattah later suggested to Lindenfeld that Brand might allow the use of his Philadelphia office address, a plan to which Brand agreed.

In February 2010, Lindenfeld submitted a second application to the Appropriations Committee. In March, Fattah submitted a project request using his congressional letterhead and seeking $3,000,000 for the "Blue Guardians, Coastal Environmental Education Outreach Program." JA6432. Within a month, Blue Guardians had both articles of incorporation and a bank account. Around that time, a news reporter contacted Lindenfeld to discuss the new Blue Guardians entity. The inquiry made Lindenfeld uncomfortable, and he ultimately decided to abandon the Blue Guardians project. He continued to seek payment from Fattah, to no avail.

Nonetheless, having obtained Lindenfeld's acquiescence to writing off the campaign's debt to Strategies, Fattah started falsifying FFM's campaign reports. Beginning in 2009 and extending through 2013, the FFM campaign reports executed by Fattah and Bowser stated that Strategies made in-kind contributions of $20,000, until the debt appeared to have been paid in full.

C. The Fattah–Vederman Bribery Scheme

Vederman and Fattah were personal friends. Vederman was a successful businessman who had also served in prominent roles in the administrations of Ed Rendell when he was Mayor of Philadelphia and Governor of Pennsylvania. In November of 2008, Vederman was a

senior consultant in the government and public affairs practice group of a Philadelphia law firm. His assistance to the FFM campaign included paying for rented vans used in the get-out-the-vote effort.

After Fattah's electoral defeat, the campaign still owed more than $84,000 to a different law firm for services performed for the campaign. Vederman approached that firm in the summer of 2008 asking if it would forgive FFM's debt. Negotiations resulted in a commitment from FFM to pay the firm $30,000 by the end of 2008 in exchange for forgiveness of $20,000, all of which would appear on the FFM campaign finance report. Vederman's efforts also led to payment by Fattah of an additional $10,000 in 2009 to the law firm, in exchange for additional forgiveness of $20,000 of debt. It was not long after Vederman's successful efforts to lower Fattah's campaign debt, that Fattah wrote a letter to U.S. Senator Robert P. Casey recommending Vederman for an ambassadorship.

At some point in 2010, Vederman again intervened on behalf of the FFM campaign. FFM remained in debt to an advertising and public relations firm owned by Robert Dilella. By late 2011, Vederman and Dilella had worked out a settlement to resolve the outstanding debt. Pursuant to that settlement, Dilella received partial payment from the FFM campaign: $25,000 in satisfaction of a $55,000 debt. Dilella testified at trial that he would not have agreed to retire a portion of the debt had he known the FFM campaign was paying college tuition for Fattah's son.

Vederman helped Fattah financially in other ways. Before the 2006 FFM campaign, Fattah and his wife, Renee Chenault-Fattah, sponsored a young woman named Simone Muller to live with them as an au pair exchange visitor. Muller was from South Africa, and her J-1 visa allowed her to serve as a nanny and to study in the United States. Muller later applied for and received a second visa, an F-1 student visa that indicated she had been accepted as an international student at the Community College of Philadelphia. The application indicated that Muller would again be residing with the Fattahs. Notwithstanding this living arrangement, Fattah identified Vederman as the person who would be paying for Muller's trip to the United States.

By the beginning of 2010, Muller wished to transfer to Philadelphia University. This required her to submit verification that funds were available to pay for her study. Although the Fattahs were Muller's sponsors, Fattah explained to the University's Dean of Enrollment Services that he was submitting a letter of secondary support from Vederman. JA3754, 3763–65, 6504. Without Vederman's January 2010 letter of support, the University would not have admitted Muller. In addition to this pledge of support, Vederman paid $3,000 of Muller's tuition. Shortly thereafter, Fattah resumed his efforts to secure an ambassadorship for Vederman.

In February of 2010, Fattah staffer Maisha Leek contacted Katherine Kochman, a scheduler for White House Chief of Staff Rahm Emanuel. Leek requested a telephone conference with Emanuel, Rendell, and Fattah to discuss Vederman's "serving his country in an international capacity." JA2893. In a follow-up email on March 26, Leek sent documents to Kristin Sheehy, a secretary to White House Deputy Chief of Staff James Messina. The documents included Fattah's 2008 letter to Senator Casey and Vederman's biography. After participating in a telephone conference about Vederman with Fattah and Rendell, Messina sent Vederman's biography to the White House personnel office for consideration.

As the April 2010 tax deadline approached, Fattah still owed the City of Philadelphia earned income tax in the amount of $2,381. Just days before the filing deadline, Vederman gave a check to Chip Fattah for $3,500. The younger Fattah quickly deposited $2,310 into his father's bank account. Fattah paid his tax bill on April 15. Without Chip's deposit into his father's bank account, the older Fattah would not have had sufficient funds to pay his tax bill.

On October 30, 2010, Vederman gave Chip another check, this one for $2,800. That same day, Fattah hand-delivered a letter to President Obama recommending Vederman for an ambassadorship. A few weeks later, Fattah's staffer, Leek, sent the letter that Fattah had given to President Obama to Messina's office. That letter pointed out that both Rendell and Fattah had sent letters on behalf of Vederman, and that he was an "unquestionably exceptional candidate for an ambassadorship." JA6291–92.

Fattah's efforts to secure Vederman an ambassadorship were unsuccessful. Fattah then shifted gears and sought to secure Vederman a position on a federal trade committee. Fattah approached Ron Kirk, who served as U.S. Trade Representative, and asked him to speak with a constituent. In May of 2011, Leek followed up on that discussion by emailing Kirk and asking him to meet with Vederman. Kirk met with Vederman on June 5, 2011 and explained to him the role of the trade advisory committees. Although the two men "had a very nice conversation," JA 3566, it soon became "pretty apparent to [Kirk and his staff] that [serving on a trade advisory committee was]

not what Mr. Vederman was interested in." JA3567. As Kirk put it, "it was obvious that [Vederman] was looking for something perhaps more robust in his mind or ... higher profile than one of our advisory committees." *Id.* Given Vederman's lukewarm interest, no appointment to an advisory committee was forthcoming.

In late December 2011, the Fattahs applied for a mortgage so they could purchase a second home in the Poconos. Shortly after applying for the mortgage, Fattah emailed Vederman, offering to sell him his wife's 1989 Porsche for $18,000. Vederman accepted the offer. The next day, Vederman wired $18,000 to Fattah's Wright Patman Federal Credit Union account.

The Credit Union Mortgage Association (CUMA) acted as the loan processing organization for the home mortgage. Because CUMA is required to verify the source of any large deposits, CUMA's mortgage loan processor, Victoria Souza, contacted Fattah on January 17, 2012, to confirm the source of the $18,000. Fattah informed Souza that the $18,000 represented the proceeds of the Porsche sale. Souza requested documentation, including a signed bill of sale and title.

That same day, Bowser emailed Vederman a blank bill of sale for the Porsche. After Vederman signed the bill of sale, Fattah forwarded it to Souza. The bill of sale was dated January 16, 2012, which was the day *before* Souza had requested the documentation. It bore the signatures of Renee Chenault-Fattah and Herbert Vederman, with Bonnie Bowser as a witness.

Fattah also provided Souza with a copy of the Porsche's title. It was dated the same day it was sent to Souza, and bore signatures of Chenault-Fattah as the seller and Vederman as buyer, along with a notary's stamp. Neither Vederman nor Chenault-Fattah actually appeared before the notary.

Vederman never took possession of the Porsche. Renee Chenault-Fattah continued to have the Porsche serviced and insured long after the purported sale had taken place. Moreover, the Porsche remained registered in Chenault-Fattah's name, and was never registered to Herbert Vederman. When FBI agents searched the Fattahs' home in 2014, the Porsche was discovered in the Fattahs' garage.

On January 24, 2012, the Fattahs wired $25,000 to the attorney handling the escrow account for the purchase of the vacation home. Without the $18,000 transfer from Vederman, the Fattahs would not have had sufficient funds in their bank accounts to close on the home.

Around the same time that the Fattahs were purchasing the house in the Poconos, Fattah's Philadelphia office hired Vederman's longtime girlfriend, Alexandra Zionts. Zionts had long worked for a federal magistrate judge in Florida. Near the end of 2011, the magistrate judge retired, leaving Zionts ten months shy of obtaining the necessary service required to receive retirement benefits. If Zionts could find another job in the federal government, her benefits and pension would not be adversely affected. Vederman assisted Zionts in her job search, which included calling Fattah. Fattah hired her, a move that put his congressional office overbudget. Zionts worked in Fattah's office for only about two months, leaving to work for a congressman from Florida.

Tia Watson, who performed constituent services for Fattah and worked on the same floor as Zionts in Fattah's district office, testified she had no idea what work Zionts performed. Although Zionts contacted Temple University about archiving Fattah's papers from his career in both the state and federal government, an employee from Temple University observed that Zionts' work contributed nothing of value to the papers project.

D. The Indictment and Trial

Fattah's schemes eventually unraveled. On July 29, 2015, a federal grand jury in the Eastern District of Pennsylvania returned a twenty-nine count indictment alleging that Fattah and his associates had engaged in a variety of criminal acts. Fattah, Vederman, Nicholas, Brand, and Bowser were charged with unlawfully conspiring to violate the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(d). In addition to the RICO charge, the indictment alleged that Fattah and certain co-defendants had unlawfully conspired to commit wire fraud, 18 U.S.C. §§ 1343, 1349; honest services fraud, 18 U.S.C. §§ 1343, 1346, 1349; mail fraud, 18 U.S.C. §§ 1341, 1349; money laundering, 18 U.S.C. § 1956; and to defraud the United States, 18 U.S.C. § 371. Several defendants were also charged with making false statements to banks, 18 U.S.C. § 1014; falsifying records, 18 U.S.C. § 1519; laundering money, 18 U.S.C. § 1957; and engaging in mail, wire, and bank fraud, 18 U.S.C. §§ 1341, 1343, and 1344.

The RICO charge alleged that the defendants and other co-conspirators constituted an enterprise aimed at supporting and promoting Fattah's political and financial interests. The efforts to conceal the $1 million Lord loan and its repayment are at the heart of the RICO conspiracy and the Fattah for Mayor scheme. The indictment further alleged that the RICO enterprise involved: (1) the scheme to satisfy an outstanding campaign debt by creating the

fake "Blue Guardians" nonprofit; and (2) the bribery scheme to obtain payments and things of value from Vederman in exchange for Fattah's efforts to secure Vederman an appointment as a United States Ambassador.

* * * * *

After deliberating for approximately 15 hours, the jury returned with its verdicts on June 21, 2016, finding the defendants guilty on most counts. Fattah, Vederman, and Brand were convicted on all counts. The jury acquitted Bowser on sixteen counts, but found her guilty of the bribery conspiracy and the associated charges of bank fraud, making false statements to a financial institution, falsifying records, and money laundering (Counts 16, 19, 20, 21 and 22). The jury also acquitted Nicholas of wire fraud (Count 24). *See* Nicholas Supp. App. (NSA) 36.

* * * * *

V. Sufficiency of the Evidence for the RICO Conspiracy Conviction

The jury found Fattah, Vederman, Brand, and Nicholas guilty of the RICO conspiracy charged in Count 1 of the indictment, but acquitted Bowser. Vederman filed a post-verdict motion, and the District Court overturned his RICO conspiracy conviction.

On appeal, Fattah, Brand, and Nicholas challenge the sufficiency of the evidence supporting their RICO conspiracy convictions. We "review[ ] the sufficiency of the evidence in the light most favorable to the government and must credit all available inferences in favor of the government." *United States v. Riddick*, 156 F.3d 505, 509 (3d Cir. 1998). If a rational juror could have found the elements of the crime beyond a reasonable doubt, we must sustain the verdict. *United States v. Cartwright*, 359 F.3d 281, 286 (3d Cir. 2004), *abrogated on other grounds by United States v. Caraballo-Rodriguez*, 726 F.3d 418 (3d Cir. 2013) (en banc).

The indictment charged a RICO conspiracy in violation of 18 U.S.C. § 1962(d), which makes it "unlawful for any person to conspire to violate" § 1962(c). Section 1962(c) provides:

> It shall be unlawful for any person ... associated with any enterprise engaged in, or the activities of which affect, interstate ... commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity....

18 U.S.C. § 1962(c).

In *Salinas v. United States*, 522 U.S. 52, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997), the defendant was convicted of a § 1962(d) RICO conspiracy, but a jury acquitted him of the substantive RICO offense under § 1962(c). *Id.* at 55, 118 S.Ct. 469. The Supreme Court rejected Salinas's contention that his conviction had to be set aside because he had neither committed nor agreed to commit the two predicate acts required for the § 1962(c) offense. *Id.* at 66, 118 S.Ct. 469. The Court declared that liability for a RICO conspiracy under § 1962(d), "unlike the general conspiracy provision applicable to federal crimes," does not require proof of an overt act. *Id.* at 63, 118 S.Ct. 469. A conspiracy may be found, the Court explained, "even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other." *Id.* at 63–64, 118 S.Ct. 469 (citations omitted). This means that, if a plan "calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators." *Id.* at 64, 118 S.Ct. 469. Thus, opting into and participating in a conspiracy may result in criminal liability for the acts of one's co-conspirators. *Smith v. Berg*, 247 F.3d 532, 537 (3d Cir. 2001).

Accordingly, liability for a RICO conspiracy may be found where the conspirator intended to "further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Salinas*, 522 U.S. at 65, 118 S.Ct. 469. Because the substantive criminal offense here was conducting a § 1962(c) enterprise, the government had to prove:

> ***34** (1) that two or more persons agreed to conduct or to participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity; (2) that the defendant was a party to or member of that agreement; and (3) that the defendant joined the agreement or conspiracy knowing of its objective to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity.

United States v. John-Baptiste, 747 F.3d 186, 207 (3d Cir.

2014).

In *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981), the Supreme Court instructed that an enterprise is a "group of persons associated together for a common purpose of engaging in a course of conduct." *Id.* at 583, 101 S.Ct. 2524. The government can prove an enterprise "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Id.* In *Boyle v. United States*, 556 U.S. 938, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009), the Supreme Court established that an "association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Id.* at 946, 129 S.Ct. 2237. The structure necessary for a § 1962(c) enterprise is not complex. *Boyle* explained that an enterprise

> need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, [or] established rules and regulations.... While the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence.

Id. at 948, 129 S.Ct. 2237.

Another element of a substantive § 1962(c) RICO enterprise is that the enterprise must conduct its affairs through a pattern of racketeering activity. Section 1961 defines racketeering activity to include various criminal offenses, including wire fraud, 18 U.S.C. § 1344, and obstruction of justice, 18 U.S.C. § 1511. *See* 18 U.S.C. § 1961(1). A pattern of such activity "requires at least two acts of racketeering activity." *Id.* § 1961(5). The racketeering predicates may establish a pattern if they "related and ... amounted to, or threatened the likelihood of, continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 237, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

Here, the District Court denied the post-trial sufficiency arguments raised by Fattah, Brand, and Nicholas. It reasoned:

> For a RICO conspiracy to exist, the conspirators must agree to participate in an enterprise with a unity of purpose as well as relationships among those involved. The evidence demonstrates that an agreement among Fattah, Brand, Nicholas, Lindenfeld, and Naylor existed for the overall purpose of maintaining and enhancing Fattah as a political figure and of preventing his standing from being weakened by the failure to be able to pay or write down his campaign debts. These five persons agreed to work together as a continuing unit, albeit with different roles.
>
> The Government established that Fattah, Brand, and Nicholas conspired along with Naylor and Lindenfeld to conceal and repay the 2007 illegal $1,000,000 loan to the Fattah for Mayor campaign.

JA128–29. The District Court further determined that

> [w]hile each member may not have been involved in every aspect of the enterprise, its activities were sufficiently structured and coordinated to achieve the purpose of maintaining and enhancing Fattah's political standing and of preventing him from being weakened politically because of his campaign debts.
>
> A RICO conspiracy also requires an agreement to participate in an enterprise with longevity sufficient to pursue its purpose. This was established. In May 2007 the illegal loan was obtained and continued through its repayment in January 2008 and into at least 2014 when the last campaign report reducing a fake campaign debt to Naylor's consulting firm was filed by Fattah.

JA131.

The defendants argue that the evidence is insufficient to show either an enterprise for purposes of § 1962(c) or an agreement as required for a § 1962(d) conspiracy. We disagree, and conclude that the District Court's analysis is on the mark.

We begin by considering whether there was an agreement. The evidence showed that Fattah knew each member involved in the scheme to conceal the unlawful campaign loan. When Lindenfeld learned of the $1 million loan, he informed Fattah that it exceeded

campaign finance limits. In short, the transaction was unlawful, and the two knew it. The transaction nonetheless went forward, disguised as a loan, with Lindenfeld executing the promissory note as Strategies' officer and obligating Strategies to repay Lord $1 million. The concealment efforts continued as Lindenfeld funneled a substantial portion of the loan proceeds to Naylor for get-out-the-vote efforts. After the losing campaign, Lindenfeld spoke with Fattah and Naylor about accounting for the funds that had been spent. They decided not to include the amounts in the FFM campaign reports. Fattah instructed Naylor to prepare a fictitious invoice, and Naylor complied. The FFM campaign reports filed from 2008 to 2014 disclosed nothing about the unlawful $1 million loan. Instead, they falsely showed that Naylor's consulting firm made yearly in-kind contributions of $20,000 in debt forgiveness, when in reality there was no debt to forgive.

As Lindenfeld fretted over repaying the $600,000 balance of the Lord loan, Naylor assured him that Fattah had promised to take care of the repayment. And the evidence supports an inference that Fattah recruited both Nicholas and Brand in doing so. As EAA's director, Nicholas could fund the repayment. Brand, through his company, Solutions, acted as the middleman: he received the payment from EAA pursuant to a fictitious contract, and then forwarded the balance due to Strategies pursuant to yet another fictitious contract. Nicholas and Brand continued in the spring and summer of 2008 to hide the fictitious agreement and the $600,000 payment to Lindenfeld to satisfy the Lord loan.

In short, this evidence shows that Fattah, Lindenfeld, Naylor, Brand, and Nicholas all agreed to participate in Fattah's plan to conceal the unlawful campaign loan to maintain his political stature. Nicholas and Brand claim that they had no knowledge of the false campaign reporting aspect of the plan. But as *Salinas* instructs, conspirators need not "agree to commit or facilitate each and every part of the" conspiracy. 522 U.S. at 63, 118 S.Ct. 469. Rather, they "must agree to pursue the same criminal objective and may divide up the work, yet each [be] responsible for the acts of each other." *Id.* at 63–64, 118 S.Ct. 469. Thus, a conspirator may agree to "facilitate only some of the acts leading to the substantive offense" yet still be criminally liable. *Id.* at 65, 118 S.Ct. 469.

The evidence showed that a substantial amount of money was needed to repay Lord, and that the source of the repayment was EAA, a non-profit organization whose funds could be spent only for purposes consistent with the terms of the grants it received. It also showed that Nicholas was presented with a sham contract to legitimize the EAA–Solutions transaction. We conclude that the evidence is sufficient to support an inference that Nicholas knew at the start that the plan was unlawful. Yet she still agreed to provide the requisite funds and to play a role in concealing the illegal campaign loan so that Fattah could maintain his political stature.

As to Brand, even if he did not know that false campaign reports were being filed, the evidence is sufficient to show he played a key role in the enterprise. From the outset, Brand worked to disguise the repayment of the Lord loan as the consideration in a sham contract between EAA and Solutions. He then arranged for the transfer of funds to Strategies in satisfaction of a contractual term in another purported business agreement between Solutions and Strategies. The evidence reveals that Brand was the point man in the effort to meet the January 31, 2008 deadline to repay the Lord loan, and it amply shows that Brand also agreed to participate in the plan to hide the illegal campaign loan and its repayment to benefit Fattah politically.

Fattah, Brand, and Nicholas attack their RICO conspiracy convictions on another front. They argue that those verdicts should be set aside because the evidence fails to show that the various schemes alleged in the indictment as part of the RICO conspiracy are connected. The RICO count, they assert, charges a hub-and-spoke conspiracy that is unconnected by a rim. In their view, Fattah is the hub, and the spokes consist of a series of independent schemes: the Vederman bribery scheme, the payment of the outstanding tuition debt of Fattah's son Chip, the Blue Guardians plan, and the repayment of the illegal Lord loan to maintain Fattah's political stature. They argue that, without a unifying rim, their actions cannot constitute an enterprise. Again, we disagree.

In *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3d Cir. 2010), we concluded, in analyzing one of plaintiffs' RICO claims, that the alleged hub-and-spoke enterprise—comprised of broker hubs and insurer spokes—could not withstand a motion to dismiss because it did not have a unifying rim. *Id.* at 374. We explained that the allegations did "not plausibly imply concerted action—as opposed to merely parallel conduct—by the insurers, and therefore cannot provide a 'rim' enclosing the 'spokes' of these alleged 'hub-and-spoke' enterprises." *Id.* Thus, the allegations did not "adequately plead an association-in-fact enterprise" because the hub-and-spoke conspiracy failed to "function as a unit." *Id.*

That is not the case here. The evidence showed that Fattah, Brand, and Nicholas agreed to conceal the illegal

Lord loan. Each acted for the common purpose of furthering Fattah's political interests. In short, they engaged in concerted activity and functioned as a unit. The jury convicted Fattah, Brand, and Nicholas of the RICO conspiracy based on the racketeering activity of wire fraud and obstruction of justice to conceal the unlawful transaction. Because the evidence shows that Fattah, Lindenfeld, Naylor, Brand, and Nicholas agreed to protect Fattah's political status by acting to maintain the secrecy of the unlawful Lord loan, the alleged lack of a unifying "rim" is not fatal to this RICO enterprise. What matters in analyzing the structure of this enterprise is that it functioned as a unit. *Boyle*, 556 U.S. at 945, 129 S.Ct. 2237; *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d at 374. That "basic requirement" was met. *Id.*

We turn next to the contention that the evidence fails to establish other components of an enterprise. We conclude that much of the evidence supporting the existence of an agreement also shows that there was an association-in-fact enterprise.

Boyle made clear that an association-in-fact enterprise must have "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." 556 U.S. at 946, 129 S.Ct. 2237. The purpose, as we have repeatedly observed, was to maintain and preserve Fattah's political stature by concealing the illegal loan and its repayment. Though informal, there were relationships among those associated with the enterprise. Fattah was at the center of this association and he directed its activity. He knew each of the association's members, and the members knew each other (except, perhaps, for Nicholas, who may not have known Lindenfeld).[19]

The Government also adduced sufficient proof of the longevity component required for an enterprise. The scheme began in mid-2007, when Lord made the campaign loan, directing the proceeds of the loan to Strategies. From the outset, Fattah, Lindenfeld, and Naylor all knew they needed to conceal this illegal transaction. They began by fabricating an explanation for the source of the funds they spent on election day. SLA created a fake invoice for the campaign, showing a fictitious debt that Naylor could later forgive by fictitious in-kind contributions existing only on Fattah's campaign finance reports.

The effort to disguise the Lord loan was not limited to filing false campaign reports. Nicholas and Brand, who joined the conspiracy a few months later than the other members, understood that they too had to make the fraudulent $600,000 payment by EAA to Solutions appear legitimate. Nicholas and Brand tried to disguise the sham contract as an ordinary transaction (even though it called for a six-figure upfront payment simply to support Solutions' various projects), and they succeeded in keeping it out of the DOJ auditors' view until August 2008. The ruse continued as Solutions funneled the $600,000 payment to Strategies under the guise of another sham contract (which also required an upfront six-figure payment). The scheme then continued as Fattah submitted false FFM campaign reports from 2008 through 2014.

Finally, we consider whether the enterprise conducted its affairs through a pattern of racketeering activity, as required for a § 1962(c) enterprise. Wire fraud and obstruction of justice may constitute "racketeering activity" under § 1961(1). As the Supreme Court instructed in *H.J. Inc.*, the "multiple predicates within a single scheme" must be related and "amount[ ] to, or threaten[ ] the likelihood of, continued criminal activity." 492 U.S. at 237, 109 S.Ct. 2893. Here, the amount of the illegal loan to be concealed was substantial. The enterprise needed to write off the fictitious debt to Naylor's consulting firm, and it was urgent that both the EAA–Solutions contract and the Solutions–Strategies contract be legitimized. We conclude the evidence was sufficient to establish that this enterprise conducted its affairs through a pattern of racketeering activity and that the predicate acts of wire fraud and obstruction of justice were related. The racketeering activity furthered the goals of maintaining the secrecy of this $1 million illicit campaign loan and of preserving Fattah's political stature.

Nicholas contends that the evidence fails to establish a pattern of racketeering activity because the actions to which she agreed did not "extend[ ] over a substantial period of time" as *H.J. Inc.* requires. 492 U.S. at 242, 109 S.Ct. 2893. That case indeed instructs that the continuity requirement of a pattern is a "temporal concept," and that "[p]redicate acts extending over a few weeks or months" do not satisfy the continuity concept. *Id.* But the Supreme Court explained that continuity may also be established by showing that there is a "threat of continued racketeering activity." *Id.* Here, the course of fraudulent conduct undertaken to secure and to conceal the $1 million Lord loan consisted of the creation of sham debts, fictitious contracts, and false accounting entries over the course of about a year. But because Fattah needed to appear able to retire his campaign debt, the enterprise needed to continue filing false campaign reports for several years, allowing the annual $20,000 in-kind debt forgiveness contributions to appear to satisfy Naylor's fake $193,000 invoice. That evidence was sufficient to establish the requisite threat of continued criminal activity. *See H.J. Inc.*, 492 U.S. at 242–43, 109 S.Ct.

2893.

We conclude that the Government met its burden in proving that Fattah, Brand, and Nicholas[20] engaged in a RICO conspiracy in violation of § 1962(d).

Footnotes

1 The facts are drawn from the trial record unless otherwise noted.

2 Naylor first worked with Fattah when he was in the state legislature. When Fattah was elected to Congress, Naylor worked in his Philadelphia office. Naylor met Nicholas when she joined Fattah's staff at some point in the 1990s. After concluding her employment with Fattah's office, Nicholas worked with the Educational Advancement Alliance (EAA), an education nonprofit entity founded by Fattah. This entity helped to recruit underrepresented students for scholarship and college opportunities. Around 2009, Naylor left Fattah's office to work exclusively with SLA. Naylor also knew Brand.

3 Raymond Jones, who was EAA's Chairman of the Board from 2004 through 2007, recalled at trial that the Board had a limit on the amount that Nicholas could spend without board approval. JA1358, 1369. Nicholas was authorized to sign contracts on behalf of EAA for no more than $100,000. JA1369–71. Jones did not recall the contract between EAA and Solutions, nor did the EAA board minutes for December 2007, February 2008, or May 2008 refer to the EAA–Solutions contract or to the substantial upfront payment of half a million dollars upon execution of the agreement. JA6358–63; 6567.

4 FAFSA is an acronym for Free Application for Federal Student Aid.

19 Nicholas's lack of familiarity with Lindenfeld does not undermine her membership in this association-in-fact enterprise. We have previously explained that "[i]t is well-established that one conspirator need not know the identities of all his co-conspirators, nor be aware of all the details of the conspiracy in order to be found to have agreed to participate in it." *United States v. Riccobene*, 709 F.2d 214, 225 (3d Cir. 1983), *abrogated on other grounds by Griffin v. United States*, 502 U.S. 46, 112 S.Ct. 466, 116 L.Ed.2d 371 (1991).

20 Nicholas also asserts, in passing, that that her conviction under § 1962(d) should be set aside because that statutory provision is unconstitutionally vague as applied to her. According to Nicholas, a person of ordinary intelligence would not know that her actions constituted an agreement to participate in a RICO enterprise. *See United States v. Pungitore*, 910 F.2d 1084, 1104–05 (3d Cir. 1990). To the contrary, a person of ordinary intelligence, who had been employed by a prominent politician and then became the CEO of a nonprofit organization which that politician had founded (and, to some extent, continued to direct), would realize that agreeing to participate with others in hiding an unlawful campaign loan of $1 million could constitute an unlawful RICO conspiracy.

36 We likewise reject Brand's prejudicial spillover arguments. *See* Brand Br. 6 ("Brand adopts the significant issue advanced by his co-appellant pursuant to Fed. R. App. P. 28(i) that improper jury instructions and the resulting spillover of related improperly admitted evidence and argument unfairly prejudiced Brand.").

37 Nicholas adopted "pertinent portions" of the prejudicial spillover arguments advanced by Vederman and Fattah. Nicholas Br. 65. Her spillover claim has no more merit than theirs. Nicholas's involvement in the RICO conspiracy was distinct from the bribery charges, which did not unfairly influence the other counts. As to Nicholas's assertion that the NOAA charges did not belong in the indictment and should have been tried separately, we fail to see how this relates to a claim of prejudicial spillover. To the extent it challenges the District Court's denial of Nicholas's motion for a severance, Nicholas has failed to provide legal support for such a contention. *See* Fed. R. App. P. 28(a)(8)(A); *United States v. Irizarry*, 341 F.3d 273, 305 (3d Cir. 2003).

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