

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 05 CR 408
	)	
v.	)	Violations: Title 18, United
	)	States Code, Sections 2,
	)	1341, 1343, 1346, 1951
P. NICHOLAS HURTGEN	)	<b>Second Superseding Indictment</b>

**COUNT ONE**

The SPECIAL AUGUST 2006-2 GRAND JURY charges:

1. At times material to this indictment:

**Relevant Entities and Individuals**

a. **The Illinois Health Facilities Planning Board** (“Planning Board”) was a commission of the State of Illinois, established by statute, whose nine members were appointed by the Governor of the State of Illinois.

i. State law required an entity seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a “Certificate of Need” (“CON”), from the Planning Board prior to beginning construction. A function of the Planning Board was to prevent duplication of medical facilities by ensuring that new medical facilities were constructed only if there was a demonstrated need for those facilities.

ii. Pursuant to the Illinois Health Facilities Planning Act (20 ILCS 3960 et seq.) and the Planning Board Rules, members of the Planning Board were required to base their decision on an application for a CON on reasonable and objective standards in accordance with the criteria set forth in the Planning Act and the Planning Board Rules.

Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/5-50), which became effective on December 9, 2003, Planning Board members were prohibited from having any material communications with a representative of a party concerning a pending matter, without reporting that contact to the Board in writing. The Board's Ethical Guidelines, which were circulated in August 2003, also prohibited such communications, providing, in part, that:

A Member should not communicate with any party in support of, or opposed to, a matter pending before the Board or with the representative of any such party concerning such matter, except as a matter of official record[.]

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

b. **Edward Hospital**, which was part of Edward Health Services Corporation (collectively referred to as "Edward Hospital"), was a not-for-profit corporation that operated a hospital in Naperville, Illinois, and provided health care services to the public.

i. Edward Hospital sought to expand its operations by building a hospital and adjacent medical office building in Plainfield, Illinois, a municipality located in a rapidly-growing portion of the Chicago metropolitan region in which multiple hospital operators were competing to obtain permission from the Planning Board to build new facilities. The projected construction costs for the buildings proposed by Edward Hospital were approximately \$90 million for the hospital and \$23 million for the medical office building.

ii. Edward Hospital had negotiated with Construction Company A to construct the Plainfield hospital and medical office building. Construction Company A was a large construction company that operated nationwide and internationally and was experienced in hospital construction. Construction Company A provided Edward Hospital with a proposal for construction of the buildings that included a construction management fee that would serve as Construction Company A's compensation and was expressed as a percentage of the total construction costs.

c. **Stuart Levine** was a businessman and attorney, and a member of the Planning Board. In that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State of Illinois. Both as a member of the Planning Board, and through his relationships with certain high-ranking State of Illinois officials and their associates – who in turn maintained influence over other members of the Planning Board – Levine exercised substantial influence over the decisions of the Planning Board. In addition, Levine was a member of the Board of Trustees of The Finch University of Health Sciences/Chicago Medical School (“the Chicago Medical School”), now known as the Rosalind Franklin University of Medicine and Science, where he served as chairman of the real estate committee, which was responsible for overseeing significant construction projects at the school. Levine also served as a Trustee of the Teachers Retirement System of the State of Illinois, a public pension plan with assets of approximately \$30 billion that provided pension, survivor, and disability benefits for teachers and administrators employed in Illinois public schools except in the City of Chicago.

d. **Jacob Kiferbaum** owned and operated **Kiferbaum Construction Company** (“Kiferbaum Construction”), a construction company located in Deerfield, Illinois. Kiferbaum Construction operated principally in the Chicago metropolitan area and had never built a hospital. Kiferbaum also was a member of the Board of Trustees of the Chicago Medical School.

e. **Defendant P. NICHOLAS HURTGEN** was employed as a Senior Managing Director in the Chicago office of **Bear Stearns & Co.** (“Bear Stearns”), an investment bank that had done and sought future business with Edward Hospital, including seeking to arrange the financing of the proposed Plainfield hospital and medical center for Edward Hospital. Bear Stearns, with HURTGEN’s knowledge and participation, also did extensive business with the State of Illinois, including managing substantial funds belonging to the Teachers Retirement System, and participating in the financing of approximately \$10 billion in State of Illinois bonds. In part through Bear Stearns’s participation in these matters, HURTGEN was acquainted with Levine and high-ranking State of Illinois officials. Bear Stearns compensated HURTGEN in part through payment of an annual bonus, whose size was influenced by the amount of business HURTGEN was responsible for generating in the year.

**Illinois Laws Regarding Conduct of Public Officials and Bribery**

f. Pursuant to the criminal laws of the State of Illinois, relating to bribery (720 ILCS 5/33-1(d)), Levine, as a member of the Planning Board, was prohibited from agreeing to accept any property or personal advantage which he was not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent

to cause him to influence the performance of any act related to the employment or function of any public officer.

g. Pursuant to the criminal laws of the State of Illinois, relating to official misconduct (720 ILCS 5/33-3(c)), Levine, as a member of the Planning Board, was prohibited from committing the following acts in his official capacity: (1) performing any act in excess of his lawful authority, with intent to obtain a personal advantage for himself or others; and (2) soliciting or knowingly accepting, for the performance of any act, a fee or reward which he knew was not authorized by law.

h. The Planning Board's Ethical Guidelines provided, in part, that:

A Member should not accept, or offer to accept, either directly or indirectly, any economic opportunity or thing of value, if a substantial possibility exists that the opportunity or thing of value is made available to the Member for the purpose of influencing an official action.

A Member should not solicit, accept or agree to accept, directly or indirectly, anything of value from any person having an interest in any matter which is pending before the Board, under circumstances from which it might reasonably be inferred that the donor's purpose is to influence an official action....

A Member should not communicate with any party in support of, or opposed to, a matter pending before the Board or with the representative of any such party concerning such matter, except as a matter of official record[.]

i. Counsel for the Planning Board advised Board members in writing that Board members should not participate in Board activities if the independent exercise of the Board member's judgment was threatened, or continued participation would jeopardize public confidence in the integrity of the decisions of the Board.

**Edward Hospital's Applications for Certificates of Need**

j. Beginning in or about 2003, Edward Hospital sought CONs to construct the proposed hospital and medical office building in Plainfield, Illinois.

i. In connection with a meeting of the Planning Board in or about December 2003, the staff of the Planning Board issued a report stating that the proposed medical office building in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its December 2003 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the medical office building.

ii. In connection with a meeting of the Planning Board in or about April 2004, the staff of the Planning Board issued a report stating that the proposed hospital in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its April 2004 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the hospital.

### **The Scheme to Defraud**

2. Beginning in or about 2001, and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere:

Stuart Levine and Jacob Kiferbaum devised, intended to devise, and participated in a scheme and artifice to defraud the Planning Board and the State of Illinois of the intangible right to the honest services of Levine, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof caused the use of the United States mails and other interstate carriers and interstate wires, which scheme is further described below, and

P. NICHOLAS HURTGEN,

defendant herein, beginning no later than in or about December 2003 and continuing through at least in or about June 2004, did aid and abet Stuart Levine and Jacob Kiferbaum in devising and carrying the scheme and artifice to defraud the Planning Board and the State of Illinois of the intangible right to the honest services of Levine, through the use of the United States mails and other interstate carriers and interstate wires.

### **Overview of the Scheme**

3. Beginning in or about 2001, and continuing at least through in or about June 2004, Levine and Kiferbaum devised a scheme to defraud in which Levine misused his positions of responsibility and trust with the Chicago Medical School and the Planning Board in order to provide millions of dollars in financial benefits to Kiferbaum, principally by using Levine's positions to improperly direct business to Kiferbaum Construction. Kiferbaum, in return, provided and promised to provide millions of dollars in concealed kickbacks to Levine and his nominees. Prior to in or about December 2003, the corrupt relationship between Levine and Kiferbaum had resulted in concealed payments by Kiferbaum of more than \$1.6 million to Levine's nominees in connection with two construction projects at Chicago Medical School. The corrupt relationship also had resulted in an agreement by Kiferbaum to pay Levine a substantial kickback in return for Levine's role in securing a CON for Mercy Health System, Incorporated ("Mercy Hospital") to construct a new hospital in Crystal Lake, Illinois, which Mercy Hospital had hired Kiferbaum to build.

4. It was further part of the scheme that beginning in or about December 2003, HURTTGEN agreed to and did assist Levine and Kiferbaum in the abuse of Levine's position

and authority with the Planning Board for the purpose of obtaining financial gain for Kiferbaum Construction, HURTGEN'S employer, Bear Stearns, and HURTGEN. Specifically:

a. HURTGEN joined in and assisted Levine's efforts to abuse his official position by (i) promising representatives of Edward Hospital that the Planning Board would approve the Plainfield hospital and medical office building if Edward Hospital retained Kiferbaum Construction to build those facilities, and (ii) threatening those representatives that the Planning Board would deny Edward Hospital's CON applications if it did not hire Kiferbaum Construction to build the facilities. Levine's and HURTGEN's insistence on the use of Kiferbaum Construction, rather than Construction Company A, was unrelated to any objective criteria for Planning Board approval of the CONs for the Plainfield hospital and medical office building.

b. Knowing that Illinois law prohibited Levine from communicating with representatives of Edward Hospital regarding the pending CON applications, and in order to reduce the risk that third parties would detect the unlawful efforts to force Edward Hospital to hire Kiferbaum Construction, HURTGEN agreed with Levine to communicate Levine's threats and promises to representatives of Edward Hospital, and to communicate their responses to Levine. Additionally, in order to demonstrate to Edward Hospital's CEO that HURTGEN was in fact communicating on behalf of Levine and that his representations regarding Levine's threats and promises were genuine, HURTGEN agreed to and did stage a sham encounter in which HURTGEN and Levine purported to "accidentally" meet the CEO and Kiferbaum at a restaurant, providing the CEO with the opportunity to observe HURTGEN and Levine together, and Levine with the opportunity to praise Kiferbaum to the CEO.



c. Kiferbaum and Levine agreed that in return for Levine's misuse of his official position to steer the Edward Hospital construction work to Kiferbaum Construction, Kiferbaum Construction would pay a substantial kickback to Levine or his nominee from the fees that Kiferbaum Construction would derive from erecting the hospital and medical office building.

d. HURTGEN sought to obtain financial gain for Bear Stearns and himself by assisting in Levine's abuse of his official position, believing from his communications with Levine that forcing Edward Hospital to hire Kiferbaum Construction would result in Planning Board approval for the Plainfield hospital and medical office building, whose construction HURTGEN expected Bear Stearns to finance.

#### **Details of the Scheme**

5. It was further part of the scheme that in or about December 2003, Levine, Kiferbaum, and HURTGEN agreed that Levine would assist Edward Hospital in obtaining CONs to build the Plainfield hospital and medical center if Edward Hospital gave the construction work for the projects to Kiferbaum Construction. HURTGEN agreed that he would introduce Kiferbaum to the CEO of Edward Hospital. Kiferbaum understood, as a result of his recent prior dealings with Levine, in the course of which Kiferbaum had already paid more than \$1.6 million in kickbacks to persons designated by Levine and had agreed to pay more, that Levine would direct him to pay a kickback in connection with the Edward Hospital projects.

#### **The December 2003 Planning Board Meeting**

6. It was further part of the scheme that in or about mid-December 2003, HURTGEN called the CEO of Edward Hospital and said that Edward Hospital should give the construction contract to Kiferbaum Construction if Edward Hospital wanted to get its CONs approved. HURTGEN knew that on December 17, 2003, the Planning Board was scheduled to review Edward Hospital's application to build a new medical office building, and HURTGEN told the CEO that Edward Hospital needed to give the construction work to Kiferbaum and therefore the CEO should postpone having that application reviewed so that Edward Hospital would have time to hire Kiferbaum Construction. In order to assist Levine in his attempt to steer the construction work to Kiferbaum, HURTGEN told the CEO that if Edward Hospital went forward at the December Planning Board meeting with its CON application for the medical office building, the application would be denied.

7. It was further part of the scheme that on or about December 17, 2003, when Edward Hospital went forward with its application for a CON for the Plainfield medical office building notwithstanding HURTGEN's communication of Levine's threat, Levine voted against approval of that application and the Planning Board issued an intent-to-deny with respect to the application.

**HURTGEN's Communications With Representatives of Edward Hospital Following the December 2003 Planning Board Meeting**

8. It was further part of the scheme that following the December 17, 2003 Planning Board meeting, Levine, Kiferbaum, and HURTGEN engaged in a series of communications with each other and with representatives of Edward Hospital regarding the possibility that Edward Hospital would hire Kiferbaum Construction as a means of obtaining its CONs for the

hospital and medical office building. HURTGEN, Levine, and Kiferbaum knew that Levine could not communicate with representatives from Edward Hospital about their pending applications because any such communications outside of the Planning Board's official proceedings were prohibited. HURTGEN and Kiferbaum therefore communicated with Edward Hospital representatives in place of and on behalf of Levine, in order to convey Levine's threats and promises to Edward Hospital. In addition, HURTGEN and Kiferbaum communicated to Levine the responses of the Edward Hospital representatives to the efforts to force Edward Hospital to hire Kiferbaum Construction.

9. It was further part of the scheme that in a conversation with the CEO of Edward Hospital on or about December 22, 2003, shortly after the Planning Board's rejection of the CON for the medical office building, HURTGEN told the CEO that he knew he could get the Planning Board to approve the CONs for the hospital and medical office building if Edward Hospital hired Kiferbaum Construction. HURTGEN told the CEO that in return for his assistance in working with Levine and Kiferbaum to secure the CONs for Edward Hospital, all HURTGEN was asking was that Edward Hospital use Bear Stearns to handle financing for the projects. HURTGEN told the CEO that he wanted her to meet Kiferbaum to discuss the projects, and HURTGEN arranged a meeting for the following day.

#### **HURTGEN's December 23, 2003 Meeting With Edward Hospital Representative**

10. It was further part of the scheme that on or about December 23, 2003, HURTGEN introduced Kiferbaum to the CEO at a suburban restaurant in an attempt to persuade her to hire Kiferbaum Construction to build the pending projects. Unbeknownst to HURTGEN and

Kiferbaum, the Edward Hospital CEO was at this time and thereafter cooperating with the Federal Bureau of Investigation. During this meeting, among other things:

a. HURTGEN told the CEO that hiring Kiferbaum would take care of all Edward Hospital's issues with the Planning Board, that Edward Hospital would be "safe" with HURTGEN and Kiferbaum, and that Edward Hospital did not need anyone other than Kiferbaum and HURTGEN to get the projects approved at the Planning Board's next meeting in February 2004.

b. HURTGEN reminded the CEO that HURTGEN had correctly told her that the Planning Board would deny Edward Hospital's application for the medical office building CON if Edward Hospital proceeded without hiring Kiferbaum, and that Levine had wanted Edward Hospital to defer the Planning Board's vote on its application for the medical office building.

c. HURTGEN told the CEO that Levine had told HURTGEN that, in addition to the Edward Hospital project for the Plainfield area, there were three other projects proposed and the Planning Board would only approve one of them.

d. Kiferbaum told the CEO that he had been working with Mercy Hospital on its new project, and that Mercy's application to build a new hospital in Crystal Lake was going to be approved. The Planning Board previously had issued an intent-to-deny with respect to Mercy Hospital's CON application for the Crystal Lake hospital.

#### **HURTGEN's January 8, 2004 Meeting With Edward Hospital Representatives**

11. It was further part of the scheme that on or about January 8, 2004, HURTGEN met at a suburban restaurant with Edward Hospital's CEO and an Edward Hospital employee

who was the project administrator for the Plainfield hospital and medical office building, and who, like the CEO, was cooperating with the Federal Bureau of Investigation. During this meeting, among other things:

a. HURTGEN told the CEO that he and Levine were close, that Levine was using HURTGEN to talk to the CEO, that Levine wanted HURTGEN to take care of this with the CEO, and that Levine had told HURTGEN that without Kiferbaum, the CON would not be approved. HURTGEN told the CEO that Levine could not talk to her directly because of the *ex parte* rules and that Levine did not want to put himself at risk.

b. HURTGEN told the CEO that Levine and Kiferbaum were friends and that Levine had a close relationship with a high-ranking Illinois elected official, Public Official A, who also liked Kiferbaum. HURTGEN told the CEO that she did not want to know why Levine and Public Official A wanted Kiferbaum to get the Edward Hospital construction projects, but advised her that the support for Kiferbaum by Public Official A and those surrounding Public Official A was “all about money” for political campaigns. HURTGEN also told the CEO that he had recommended to Levine that Kiferbaum “latch on to” the CEO’s team because Edward Hospital was a growth hospital.

c. HURTGEN told the CEO that Mercy Hospital was going to use Kiferbaum Construction and that Mercy Hospital’s CON would be approved by the Planning Board.

d. HURTGEN told the CEO that he expected Edward Hospital to use Bear Stearns to finance the hospital and medical office building if the projects were approved.

e. In response to the CEO’s request for proof that the threats and promises were real, HURTGEN told the CEO that he might be able to arrange for the CEO to have what

would falsely appear to be an accidental encounter with HURTGEN and Levine, which would demonstrate that HURTGEN was in fact speaking on behalf of Levine.

### **Kiferbaum's January 15, 2004 Meeting With Edward Hospital Representatives**

12. It was further part of the scheme that on or about January 15, 2004, Kiferbaum met at Edward Hospital with Edward Hospital's CEO and the project administrator for the proposed hospital and medical center. Kiferbaum told the CEO and project administrator that if Edward Hospital hired Kiferbaum Construction, they would get approval from the Planning Board, but if they did not hire him, Edward Hospital would not get approval and Kiferbaum would build a hospital for someone else, possibly a competitor of Edward Hospital. Kiferbaum advised the CEO and project administrator that HURTGEN was accurate in his statements about what was necessary to get the project done.

### **Telephone Conversations**

13. It was further part of the scheme that from on or about January 17, 2003 through on or about February 2, 2004, HURTGEN participated in a series of telephone conversations with the Edward Hospital project administrator and CEO regarding the compensation that Kiferbaum would require for his involvement in the project. HURTGEN urged the project administrator to be flexible with regard to Kiferbaum's compensation, and told the project administrator that he believed Kiferbaum was looking for a fee of three to four percent of the construction cost, rather than the 1.65 percent fee that the project administrator told HURTGEN had been agreed to by Construction Company A. HURTGEN reiterated that it was necessary

for Edward Hospital to reach an agreement with Kiferbaum in order to get the deal done and that the agreement should be reached promptly. The Edward Hospital CEO advised HURTGEN that Kiferbaum had proposed a 3.5 percent construction management fee.

**HURTGEN's Arrangement of Sham "Accidental" Encounter**

14. It was further part of the scheme that on or about April 13, 2004, HURTGEN told Edward Hospital's CEO that he understood that before Edward Hospital executed a contract with Kiferbaum Construction, the CEO wanted some demonstration from Levine or HURTGEN which would allow the CEO to see that HURTGEN and Levine knew each other and were talking to each other. HURTGEN said he would talk to Levine about that and would call the CEO back about arranging something that weekend.

15. It was further part of the scheme that on or about April 14, 2004, HURTGEN told Edward Hospital's CEO that he had a long talk with Levine that morning, and Levine did not have a problem with running into the CEO and saying hello. HURTGEN said that Levine wanted to make sure that everything was on track, and that Levine thought Edward Hospital's medical office building should be approved at the next meeting.

16. It was further part of the scheme that on or about Friday, April 16, 2004, Kiferbaum talked with the Edward Hospital CEO about setting up a meeting that would demonstrate that Kiferbaum and Levine knew each other. Later that same day, HURTGEN and Kiferbaum both left voicemail messages for the CEO, confirming that there would be a meeting that Sunday.

17. It was further part of the scheme that on or about Saturday, April 17, 2004, Levine told Kiferbaum that he would speak to Kiferbaum and the CEO at the restaurant on Sunday, and he would have HURTGEN or someone else with him.

18. It was further part of the scheme that on or about Sunday, April 18, 2004, Levine and Kiferbaum talked about the meeting that they were going to have that morning at a restaurant. Levine said he would talk to Kiferbaum and the CEO at the restaurant. Levine instructed Kiferbaum to tell the CEO that because of the ethics law prohibiting *ex parte* communications relating to pending projects, the CEO should not ask anything direct about her particular project. Levine said that the CEO knew why she was there with Kiferbaum, and she was either going to do it or she was not going to do it. Levine said he would bump into Kiferbaum by mistake a little later that day.

19. It was further part of the scheme that on or about Sunday, April 18, 2004, Levine and HURTGEN went to a restaurant in Deerfield, Illinois, as planned, in order to prove to the CEO that Levine, HURTGEN, and Kiferbaum were working together, and that their threats and promises were real. Levine and HURTGEN walked over to a table where Kiferbaum and the CEO were sitting. Levine said that he was the Chairman of the Board of the Chicago Medical School and that Kiferbaum had done a project for them. Levine said that Kiferbaum is a person upon whom one can rely, and he is a person whose word can be depended on.

20. It was further part of the scheme that shortly after this meeting, Kiferbaum thanked Levine for what he had done at the restaurant. Kiferbaum said that it went perfectly and the CEO understood. Kiferbaum said that he told the CEO that they had to come to some sort of agreement. Levine said that they would find out what she's made of. Levine said that



he had never been in a better position, and there had never been such a tight control of the central apparatus. Levine said that if the CEO promised to sign a contract, Kiferbaum should say that he accepted her word, and that he would do whatever he could.

### **Edward Hospital's Failure to Hire Kiferbaum Construction**

21. On or about April 21, 2004, the Planning Board held a Board meeting at which Edward Hospital's application for a permit to build the Plainfield hospital was considered. Edward Hospital had not hired Kiferbaum by that time. It was further part of the scheme that Levine voted against Edward Hospital's application to build a new hospital, and the Planning Board issued a notice of its intent to deny the application. As HURTTGEN previously had told Edward Hospital's CEO it would do, the Planning Board approved Mercy Hospital's application for the Crystal Lake hospital at that meeting. Levine voted in favor of the Mercy Hospital CON.

22. It was further part of the scheme that on or about April 21, 2004, shortly after the Board meeting, Levine and Kiferbaum talked about the fact that Mercy's project got approved and Edward Hospital's project got denied. Levine said that they were in this together. Levine said that Edward Hospital would come back and try again with the application for the new hospital, but that Edward Hospital would not get approved.

23. It was further part of the scheme that on or about May 13, 2004, HURTTGEN spoke to the project administrator for Edward Hospital about the next Planning Board meeting, which was scheduled for June 2004. The project administrator said that Edward Hospital was reassessing the situation, and they realized that they probably needed to change course.

HURTGEN said that if they were willing to listen, and to think about some things, he would find out what, if anything, needed to be done.

### **Concealment**

24. It was further part of the scheme that notwithstanding his position as a member of the Planning Board, Levine intentionally concealed from and failed to disclose to the Planning Board material facts relating to its consideration of Edward Hospital's applications for permits to build the Plainfield hospital and medical office building, including Levine's arrangement with Kiferbaum and HURTGEN to pressure Edward Hospital to hire Kiferbaum Construction Company, Levine's understanding with Kiferbaum that Kiferbaum would pay a kickback at Levine's direction, and Levine's *ex parte* contacts, through HURTGEN and Kiferbaum, with Edward Hospital officials regarding Edward Hospital's pending CON applications.

25. It was further part of the scheme that Levine, Kiferbaum, and HURTGEN did misrepresent, conceal and hide, and cause to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme and the purposes of those acts.

### **Mailings and Transmissions by Wire and Radio**

26. It was further part of the scheme that Levine, Kiferbaum, and HURTGEN executed and attempted to execute the scheme described above by causing correspondence, communications, contracts, invoices, other documents, funds, and other items, to be transmitted in interstate or foreign commerce by signals, over wire or radio, through the U.S. mails, or by private or commercial interstate carriers.

27. On or about January 26, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause an envelope to be delivered by UPS, a commercial interstate carrier, according to the directions thereon, which envelope contained a proposed contract from Kiferbaum Construction Company relating to the construction of a new hospital and a medical office building, which envelope was addressed to the CEO of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

## COUNT TWO

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 26 of Count One of this Indictment as though fully set forth herein.

2. On or about January 17, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call between defendant HURTGEN in Florida, and the Edward Hospital project administrator in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

### **COUNT THREE**

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 24 of Count One of this Indictment as though fully set forth herein.
2. On or about January 31, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause to be delivered by mail according to the directions thereon, an envelope containing a letter from the Planning Board, namely, a Notice of the Planning Board's intent to deny Edward Hospital's application to build a medical office building, which envelope was addressed to a representative of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

## **COUNT FOUR**

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 26 of Count One of this Indictment as though fully set forth herein.

2. On or about April 13, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely, a phone call between defendant HURTGEN in Colorado and the CEO of Edward Hospital in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

**COUNT FIVE**

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 26 of Count One of this Indictment as though fully set forth herein.

2. On or about April 14, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause to be transmitted by means of wire and radio communication in interstate commerce signals and sounds, namely a phone call between defendant HURTGEN in Colorado, and the CEO of Edward Hospital in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1343, 1346, and 2.

## COUNT SIX

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraphs 1 through 26 of Count One of this Indictment as though fully set forth herein.

2. On or about May 6, 2004, at Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, for the purpose of executing and attempting to execute the above-described scheme, which scheme was aided and abetted by defendant HURTGEN, did knowingly cause to be delivered by mail according to the directions thereon, an envelope containing a letter from the Planning Board, namely a Notice of the Planning Board's intent to deny Edward Hospital's application to build a hospital, which envelope was addressed to a representative of Edward Hospital, at the hospital's address in Naperville, Illinois;

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.



## COUNT SEVEN

The SPECIAL AUGUST 2006-2 GRAND JURY further charges:

1. The Grand Jury realleges and incorporates by reference paragraph 1 of Count One of this Superseding Indictment as though fully set forth herein.

2. Beginning in or about December 2003 and continuing through in about May 2004, HURTGEN, Levine, and Kiferbaum agreed to and did misuse Levine's position and authority with the Planning Board for the purpose of obtaining financial gain for Kiferbaum Construction, including by (i) promising representatives of Edward Hospital that the Planning Board would approve the Plainfield hospital and medical office building if Edward Hospital retained Kiferbaum Construction to build those facilities, and (ii) threatening those representatives that the Planning Board would deny Edward Hospital's CON applications if it did not hire Kiferbaum Construction to build the facilities. The use of Kiferbaum Construction, rather than Construction Company A, was unrelated to any objective criteria for Planning Board approval of the CONs for the Plainfield hospital and medical office building.

3. Beginning in or about December 2003 and continuing through in about May 2004, at Deerfield, Highland Park, and Naperville, in the Northern District of Illinois, Eastern Division,

NICHOLAS HURTGEN,

defendant herein, together with Stuart Levine and Jacob Kiferbaum, did attempt to commit extortion, which extortion would obstruct, delay, and affect commerce, in that the defendant, Levine, and Kiferbaum attempted to obtain property from Edward Hospital, in the form of a contract and the resulting revenues relating to the construction of the Plainfield hospital and

medical office building, for the benefit of Kiferbaum, with Edward Hospital's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm;

In violation of Title 18, United States Code, Sections 1951, and 2.

A TRUE BILL:

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FOREPERSON

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UNITED STATES ATTORNEY