Attachments to Narrative Appendix styled
"The Russell Cartwright Receipt."

1. Exhibit OO to Memorandum of Law in Support of Deborah Gore Dean's Motion for Judgment of Acquittal Pursuant F.R.Crim.P. 29(c) and (d) and Motion for New Trial Pursuant to F.R.Crim.P. 33 (Nov. 30, 1993) (Pages 1, 56-57 of Abbie Wiest Grand Jury Testimony)

2. Pages 25-30 of Government's Opposition to Defendant Dean's Motion for New Trial Pursuant to Fed. R. Crim. P. 33 (Dec. 21, 1993)

OFFICE OF INDEPENDENT COUNSEL

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In Re:

SAMUEL R. PIERCE, JR.,

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COPY

Grand Jury Room No. 3
United States Courthouse
3rd & Constitution Ave., N.W.
Washington, D.C.

Thursday, February 20, 1992

The testimony of:

ABBIE G. WEIST

taken before a full quorum of Grand Jury No. 90-4.

BEFORE:

[redacted]

EXHIBIT OO

ATTACHMENT 1

five of us, I would not know what was going on at the other end of the table. So I can't say that they didn't talk about that. But I personally did not hear them talk about those kind of business things.

Actually, what was really discussed was politics more than HUD.

Q. Ms. Weist, do you remember on about how many occasions you had lunch or dinner with Ms. Dean and someone from the Black, Manafort firm?

A. Twice.

Q. Let me see if I can refresh your recollection. I've seen records that reflect a dinner with Russell Cartwright and Abbie Weist at the Mayflower at the 27th of October, 1987. Would that have been one of the occasions that you are thinking of?

A. No. But Debbie Dean wasn't there, was she?

Q. The information we have indicates that she was.

A. No, she wasn't, because my --

Q. I'm looking for your recollection about that event.

A. October 28th is my birthday, and Russell and I were out having drinks. It was just me and Russell. I remember that specifically that night.

Q. Well, why don't you tell me what were the two occasions that you do recall when it was you and Deborah Dean and somebody from the Black, Manafort firm?

A. Well, one time in November we had lunch, me, Debbie Dean, Paul -- not Paul Manafort -- Rick Davis, Laury Gay, Russell Cartwright, me and Debbie Dean had lunch downtown. That was that. Then we had dinner, I don't know if we had dinner before that or after that, but we had dinner in Old Town with Paul Manafort, Rick Davis, Russell Cartwright, Laury Gay, and myself, and Deborah one night.

I want to clarify this for the Grand Jury. Laury Gay and I, we dated, we lived together, we were going to get married. So there is a personal relationship here, and it is very painful to talk about it, by the way. But I'll answer any questions. And Rick Davis and I worked together in the campaign, and Russell Cartwright and I have been friends for a long time. So there is friendships here more than business.

Now with Deborah I don't know. I was friends with them long before Deborah Dean came into the picture, except for Laury Gay. Laury Gay knew Deborah before he knew me. But I knew Rick Davis and Russell Cartwright since 1980 --

ATTACHMENT 2

Pages 25-30 of Government's Opposition to Defendant Dean's Motion for New Trial Pursuant to Fed. R. Crim. P. 33 (Dec. 21, 1993)

Defendant's Memorandum, at 125. As demonstrated by the excerpts from the transcript above, however, the Court itself rejected the notion that the prosecutor's remarks were the product of an improper racial motive. Tr. 2776. Instead, the Court expressed concern that the prosecutor was being "insensitiv[e]" or "disrespectful" (Tr. 2786-87, 2900-01), in a manner that he might have avoided in other circumstances, such as a prominent black defendant, in the example chosen by the Court, or for that matter any prominent or sympathetic defendant. We respectfully submit that there is nothing in this case to warrant the conclusion that the government injected racial issues into any stage of the trial.

In sum, viewed in context and considering the record as a whole, it cannot be said that defendant suffered any prejudice, let alone substantial prejudice, as a result of the prosecutor's comments. The prosecutor's comments consisted of minor, isolated remarks over the course of eight days of testimony by defendant, and in each case the Court gave a curative instruction. On such a record, the prosecutor's statements could not be said to have so undermined the fairness of the trial as to have contributed to a miscarriage of justice. See Young, supra, 470 U.S. at 16.

B. The Court Did Not Abuse Its Discretion in Failing to Cut Off the Prosecutor's Unobjected to Cross-Examination of the Defendant and the Prosecutor's Subsequent Use of That Examination in Closing Argument Was Entirely Proper.

Defendant asserts that the prosecutor's cross-examination demonstrating that she habitually explained away her own wrongdoing by accusing others was improper and that she was unfairly prejudiced by the prosecutor's misuse of her answers in closing

argument. Defendant's Memorandum, at 127-33, 191-94 & 217-19. None of the questions or argument complained of was objected to at trial. Accordingly, defendant's two-fold burden is a heavy one: to show, first, that the questions and argument were improper, and second, that they so substantially prejudiced defendant as to have "undermine[d] the fundamental fairness of the trial and contribute[d] to a miscarriage of justice." Young, supra, 470 U.S. at 16.

In each case, the challenged cross-examination was directly responsive to defendant's direct testimony. In the case of the complained of cross-examination regarding Brennan (Defendant's Memorandum, at 127-28), the prosecutor's questions were directly related to the implication in defendant's direct testimony that Brennan never told her of Brennan's interest in the Arama project and misled her into believing he was simply a disinterested messenger of documents. Tr. 2624-27. In light of that direct testimony, the government was entitled to ask defendant whether Brennan (an unindicted coconspirator) had misled her.

With regard to the cross-examination involving the various receipts and expense records suggesting that defendant had improperly accepted meals from HUD consultants, the government was properly responding to defendant's direct testimony that she was as truthful as possible in answering the questions posed to her by Senator Proxmire and his committee as part of the Senate confirmation process. Tr. 2815-16. The government confronted defendant with her own written statement to Senator Proxmire that

"[a]t no time have I ever accepted a meal, cocktail, or expense to be paid by anyone but myself or the government when appropriate." Tr. 2843. The government proceeded to cross-examine defendant regarding her acceptance of meals from Shelby (Tr. 2844, 2846-47), Sankin (Tr. 2845-46), Winn (Tr. 2847), Wilson (Tr. 2848-53), Murphy (Tr. 2853-62), and the consulting firm of Black, Manafort, Stone & Kelly, including Russell Cartwright (Tr. 2862-65). This cross-examination was also directly related to defendant's suggestion in her direct testimony that she did nothing wrong in accepting these meals because of a rough parity between the meals she accepted (albeit wrongly) and those for which she paid out of her own pocket. Tr. 2435-40.

With regard specifically to the Russell Cartwright expense record, defendant implies in her Memorandum that cross-examination over that meal was improper because, among other reasons, it occurred "several months after defendant resigned her position as Executive Assistant." Defendant's Memorandum, at 129. Although this statement is literally true regarding defendant's position as Executive Assistant to the Secretary, defendant fails to acknowledge that at the time of the Cartwright meal she was still employed at HUD as a consultant to Secretary Pierce while awaiting confirmation as Assistant Secretary for Community Planning and Development.

Defendant also suggests that the government lacked a good faith basis to confront her with the Cartwright expense record because Abbie Weist (the other alleged participant in the dinner)

recollected in the grand jury that defendant was not (contrary to Cartwright's expense record) at the dinner in question. But that conflict alone -- which defendant was aware of from the government's disclosures -- would not render the government's use of the receipt improper, as the prosecutor's questions would nevertheless have been based on a "well reasoned suspicion" raised both by the receipt and defendant's practice. United States v. Pugh, 436 F.2d 222, 225 (D.C. Cir. 1970). Inasmuch as defendant implied in her testimony that the receipt was false, Tr. 2864-65, the government was entitled to confront the defendant with it and ask her that question directly. Tr. 2871.

A trial court has broad discretion in regulating cross-examination. Perholtz, supra, 842 F.2d at 360. On this record, it cannot be said that that discretion was abused. First, the prosecutor's cross-examination directly related to matters raised in defendant's direct testimony. See Pugh, supra, 436 F.2d at 224. But even if defendant had not expressly stated on direct that she was always truthful with Senator Proxmire and his committee, she had nevertheless placed her credibility in issue by taking the witness stand. The government was accordingly entitled under Fed. R. Evid. 608(b) to confront defendant with the receipts and her statement to Senator Proxmire as a specific instance of the defendant's conduct probative of her character for untruthfulness.

Turning to the prosecutor's use of defendant's cross-examination in closing argument, defendant contends that the prosecutor misstated her testimony in arguing that she had

testified that Sankin's receipts were "all lies," that "all the Lance Wilson receipts are lies," "[a]ll of Linda Murphy's receipts are lies," and "[a]ll of Russell Cartwright's receipts are lies." This closing argument, however, properly characterized the thrust of defendant's statements and constituted proper argument regarding defendant's position in explaining away the receipts.

First, the prosecutor's argument that defendant characterized all of Sankin's lunch and dinner receipts as lies is squarely supported by the record. When defendant was asked on direct examination whether she had ever had lunch or dinner with Sankin, she admitted that she had, but none of the events she recounted corresponded to the Sankin lunch and dinner receipts placed into evidence. Tr. 2701-03.[18] Moreover, during her direct testimony defendant explicitly challenged a number of Sankin's receipts as false, Tr. 2706-08, 2722-23, 2728-29, and stated to the prosecutor on cross-examination in reference to Sankin's lunch and dinner receipts that "none of your credit cards that you put through, I think, are accurate . . . ." Tr. 2845 (emphasis added).

With respect to the Lance Wilson receipts, defendant admitted having had lunch with Wilson several times as reflected in Wilson's receipts. But she also denied several lunches and dinners and testified that "his [receipts] are very inaccurate," "Mr. Wilson has admitted openly that his expense accounts were not accurate,"

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[18] The only Sankin receipt the defendant conceded was accurate was the gift receipt for the cup and saucer. Tr. 2704. The government's argument regarding the Sankin receipts was expressly limited to lunch and dinner receipts. Tr. 3408.

and "he [admitted] that a lot of the things that were written off to Deborah Dean were not Deborah Dean expenses." Tr. 2850. Regarding these receipts, defendant testified "yes," they are false. Tr. 2871. Similarly, defendant testified that Murphy's receipts do not "truly reflect what had to do with me," that "yes, people falsify their records," and that "all right" she is testifying that Murphy's receipts were false, Tr. 2870-71; defendant said the same about the Cartwright expense record. Tr. 2871.

Based on this record, the prosecutor's unobjected to closing argument could not possibly have been prejudicial to the defendant, much less so gross an error as to have undermined the fairness of the trial and contributed to a miscarriage of justice. See Young, supra, 470 U.S. at 16.[19]

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[19] The defendant also characterizes the very reference in closing argument to the defendant's testimony regarding the Wilson, Murphy, and Cartwright receipts as improper, because the receipts themselves were not in evidence. Defendant's Memorandum, at 192-93. Under the defendant's theory, any reference to the defendant's testimony regarding the receipts was improper absent the government's introduction of those the receipts into evidence as part of its rebuttal case. Id. The defendant argues that the government had the right to put the Wilson, Murphy, and Cartwright receipts into evidence. Id. at 192. However, rule 608(b) of the Federal Rules of Evidence expressly prohibits extrinsic proof of specific instances of conduct of a witness for the purpose of attacking the witness's credibility. But the Rule nevertheless expressly permits inquiry on cross-examination into such specific instances of conduct probative of the witness's character for truthfulness or untruthfulness. To suggest, as the defendant apparently does, that the Rule allows the inquiry but no reference to it in closing argument has no support in caselaw or logic.