

THE ANDREW SANKIN RECEIPTS

Summary: In the Superseding Indictment, the OIC relied on eight receipts of Andrew Sankin to establish meetings between Sankin and Dean and one receipt to show a gift from Sankin to Dean. These receipts each bore a notation whereby Sankin had referenced Dean or her title, though most of the receipts were not consistent with Dean's calendars. The OIC sought to introduce these receipts at trial.

At trial, the OIC also sought to introduce nine receipts bearing notations referencing unspecified HUD officials or titles other than Dean's. The OIC sought to cause the jury to believe that these receipts also applied to Dean notwithstanding the failure of the receipt to reference her by name or title and, in some cases, other evidence showing that the receipts had not applied to her. The OIC had not relied on these receipts in the Superseding Indictment, evidently reflecting the OIC's view that they did not apply to Dean. Nevertheless, the OIC refused to review the receipts with Sankin before attempting to introduce them at trial.

After the OIC presented the receipts in a manner that would lead the court and the witness to believe that all the receipts were being introduced because they related to Dean, Sankin advised the prosecutor that many of the receipts did not relate to Dean. The prosecutor did not disclose that statement to the court or the defense. Instead, on the following day, the prosecutor questioned Sankin about a receipt that unequivocally related to Dean, thereby reinforcing the impression that all the receipts related to Dean.

During cross-examination Sankin revealed the off-the-stand statement he had made to the prosecutor. During a bench conferences that followed, the prosecutor stated that he had refused to review the receipts with Sankin before he testified. The prosecutor also indicated the view that, if any receipts did not relate to Dean, that is a matter for the defense to show.

In the charts used by the OIC in closing argument, the OIC relied on receipts admitted into evidence even though they did not name Dean and even though testimony had made clear that they did not apply to Dean.

When Dean raised these matters in support of her motion for a new trial, the OIC responded evasively. It also asserted that it had not reviewed the receipts with Sankin because of Sankin's hostility toward the OIC's case.

The court expressed the view that it had never heard of a federal prosecutor failing to review evidence with a witness because of the witness' hostility and that the court expected that any Assistant United States Attorney would have immediately informed the court and defense counsel of Sankin's off-the-stand

statement. It is clear, however, that the prosecutor knew that many of the receipts did not apply to Dean before Sankin had made his off-the-stand statement.

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1. Trial Transcript, pp. 1195-1206

Principal References:

1. 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 at 111-18 (Nov. 30, 1993) ("Dean Mem.")
2. Government's Opposition to Defendant Dean's Motion for New Trial Pursuant to Fed. R. Crim. P. 33 at 12-16 (Dec. 21, 1993) ("Gov. Opp.")
3. Deborah Gore Dean's Reply to Government's Opposition to her Motion for Judgment of Acquittal, or in the Alternative, a New Trial at 6-7 (Jan. 7, 1994) ("Dean Reply")

A. Background

Andrew Sankin was a close friend of Silvio DeBartolomeis whom DeBartolomeis introduced to Dean some time after she came to HUD. Sankin was named as unindicted Co-conspirator Four in Count 2 of the Superseding Indictment. The Superseding Indictment alleged that Dean had assisted Sankin with respect to five projects: an exception rents waiver on the Necho Allen Apartments in Pottstown, Pennsylvania in February 1985; moderate rehabilitation ("mod rehab") funding for Regent Street Apartments in Philadelphia, Pennsylvania in 1985; mod rehab funding for Alameda Towers in Puerto Rico in 1985 (also involving Thomas Broussard); mod rehab funding for Foxglenn Apartments in Prince George's County, Maryland in 1986 (also involving Richard Shelby); and mod rehab funding for Eastern Avenue Apartments in Prince George's County, Maryland in 1987 (also involving Richard Shelby).

The Superseding Indictment alleged that Sankin, who was employed to manage a Gore family property called the Stanley Arms, was providing services "at no charge or below market value for the benefit of [Dean's] family and herself." Superseding Indictment at 27, ¶ 7. The Superseding Indictment also alleged that Sankin provided other benefits to Dean and her family and contributed to political candidates and charities at Dean's request.

In opening argument, Associate Independent Counsel Robert E. O'Neill would describe Sankin as follows:

She met Andrew Sankin through Silvio DeBartolomeis. They became friends. Andrew Sankin had just started in the business world, getting out of school. What was he doing. He started to do lots of favors for defendant. You will hear he provided services for her and her family. So every time he received units, that was benefiting her and her family.

Tr. 49-50.

Later, O'Neill would return to Sankin, describing the benefits Sankin conferred on Dean as follows:

[Sankin's] the individual I mentioned earlier a friend of the defendant, a person during this period of time you will learn is providing services for her. He was wining and dining her. He was buying her gifts. He was providing legal services for her at no cost, because he had just gotten out of law school. If she needed someone to come over to help repair her apartment, he would do that.

Tr. 58 (emphasis added).

The evidence regarding Sankin's management of the Stanley Arms and other alleged benefits to Dean or her family are discussed in a subappendix hereto. The sections that follow pertain to allegations regarding Sankin's "wining and dining" of

Dean and his "buying her gifts," and to the OIC's use of certain receipts to support those allegations.

B. The Receipts

Among the exhibits that the OIC indicated it would seek to introduce at trial, there would be sixteen of Andrew Sankin's American Express receipts from eating establishments. It was the OIC's evident intent to introduce all of these receipts into evidence for the purpose of causing the jury to believe that they pertained to Dean.

1. Dining Receipts That Referenced Dean or Her Position

Eight of the dining receipts the OIC intended to introduce, with amounts totaling \$471.79 and with four references to the discussion of mod rehab, would bear a notation in Sankin's handwriting identifying Dean by name or initials and/or indicating the position of Executive Assistant and/or Chief of Staff. These receipts are listed in Table 1 below. (Asterisks indicate entries that reference the discussion of mod rehab.)

TABLE 1: PROPOSED EXHIBITS INVOLVING MEALS
WHERE RECEIPT NOTATIONS
REFERENCED DEAN OR HER POSITION

11f	5/9/86 (Friday), \$14.00, The Childe Harold in Washington, notation: "Deborah, discussed HUD"
11g	5/9/86 (Friday), \$64.16, Japan Inn in Washington, notation: "___ w/ HUD Exec. Asst. to Sec. discussed stuff"
*11j	7/18/86 (Friday), \$17.00, The Gangplank in Washington, notation: "___ w/Debbie Dean, Hunter Cushing both of HUD discussed Mod Rehab"
11k	7/23/86 (Wednesday), \$130.00, 219 Restaurant in Alexandria, notation: "Dinner w/ Exec Asst. & Chief of Staff at HUD"
*11l	8/17/86 (Sunday), \$61.63, Potomac Restaurant in Washington, notation: "Lunch w/ DD from HUD - discussed Mod Rehab funding"
*11m	11/14/86 (Friday), \$71.00, The China Coral in Chevy Chase, notation: "Dinner w/ Chief of Staff at HUD discussed Mod Rehab"
*11u	5/16/87 (Saturday), \$42.00, 5/16/87, Tia Queta in Bethesda, notation: "Lunch w/ D. Dean Ast. Sec @ HUD Disc. Mod Rehab"
11w	9/29/87 (Tuesday), \$72.00, Flutes in Georgetown, notation: "Entertained Deborah Dean HUD discussed HUD personnel"

For these eight receipts, in only one case (Government Exhibit 11k) did an entry in Dean's calendars reference Sankin or otherwise suggest that Dean might actually have been with Sankin.¹ In four cases, including each of the instances where Sankin's notation referenced the discussion of mod rehab (Government Exhibits 11j, 11l, 11m, and 11u), apart from not mentioning Sankin, Dean's calendars, which were introduced at trial by the OIC, bore entries or information suggesting that it was improbable (if not necessarily impossible) that she was in fact with Sankin as the receipt indicated.²

¹ Dean's office and personal calendars show her dining with another individual on the date of that entry; but Dean's personal calendar also has Sankin written in.

² With regard to Government Exhibit 11j (July 18, 1986), Dean's calendars

There was also a specific indication that Government Exhibits 11f and 11g, two receipts for May 9, 1986, that reflect the first instances of Sankin's apparently claiming an income tax deduction regarding a receipt that referenced Dean, might not actually involve Dean. According to the receipts, on that day Sankin entertained Dean, at the cost of \$14.00 at The Childe Harold where they "discussed HUD," and at the cost of \$64.16 at the Japan Inn, where they "discussed stuff." According to Dean's calendars (which showed no meeting with Sankin that day), on May 9, 1986, Dean was participating in a briefing on HUD's Fair Housing Initiative Program. The OIC was possessed of a record indicating that Sankin sent Dean flowers that day evidently in congratulation of her role in the matter.³ Sankin's closing in the accompanying note,

indicate that she took four hours of sick leave and had a 1:00 p.m. meeting, and was to dine at 7:00 with her boyfriend (Richard Giegengack) and Noury Harold. With regard to Government Exhibit 11i (August 17, 1986), Dean's calendars indicated that she was ill throughout the month of August 1986. With regard to Government Exhibit 11m (November 14, 1986), Dean's calendars indicated that she was scheduled to give a luncheon speech in Carlisle, Pennsylvania, the following day. With regard to 11u (May 16, 1987), Dean's calendar indicated that she would be at the Preakness all day.

³ The note with the flowers said: "Dear Deborah: Congratulations on a job well done. To a truly dedicated and responsible public servant. Hope to see you soon, Andy." Tr. 2845.

"Hope to see you soon, Andy," would seem to suggest that Sankin was not then planning to meet Dean that evening.⁴

In any case, despite the indications that the receipts might not be valid, each of these receipts had supported an entry in the Superseding Indictment indicating that Sankin and Dean had met.

2. Dining Receipts That Did Not Reference Dean or Her Position

The other eight receipts that the OIC had planned to introduce into evidence, with amounts totalling \$608.97 and with four references to the discussion of mod rehab, bore notations indicating HUD officials in general or particular titles of HUD officials other than Dean's title, and in one case the title of an assistant to the First Lady. These entries are set out in Table 2 below. (Asterisks indicate entries that reference the discussion of mod rehab.)

⁴ It is not impossible that after Dean received the flowers, she and Sankin would decide to get together in the evening, which also would account for the absence of any reference in Dean's calendars. The subsequent description of Sankin's behavior, however, will suggest that recouping the cost of the flowers through an deduction for a dinner that did not involve Dean was not out of character. In any case, whatever the underlying reality, the question would remain as to whether the OIC could rely on the receipts in the Indictment and at trial without clarifying with Sankin the apparent inconsistency between the closing to his note and notations on his receipts.

TABLE 2: PROPOSED EXHIBITS INVOLVING MEALS
WHERE RECEIPT NOTATION DID NOT
REFERENCE DEAN OR HER POSITION

*11c	12/23/85 (Monday), \$157.97, Le Pavillion in Washington, notation: "Lunch w/HUD officials re: Mod Rehab Units"
*11d	1/25/86 (Saturday), \$70.00, Duke Ziebert's in Washington, notation: "Andy and HUD officials discussed mod rehab"
11i	7/10/86 (Thursday), \$36.00, The Childe Harold in Washington, notation: "Entertaining HUD personnel, discussed new appointments"
*11n	11/29/86 (Saturday), \$24.00, Hunan in Chinatown, notation: "Dinner/Staff Asst. to Sec. @ HUD, Discussed Mod Rehab"
11o	12/19/86 (Friday), \$140.00, Old Anglers Inn in Potomac, notation: "Dinner /Staff Asst. to Sec at HUD, discussed new tax effects"
11r	12/26/86 (Friday), \$27.00, J. Paul's in Washington, notation: "Lunch w/Staff Asst. to Sec of HUD"
11s	3/12/87 (Thursday), \$40.00, Nathan's in Washington, notation: "w/Asst. to 1st Lady/discussed HUD"
*11v	5/16/87 (Saturday), \$114.00, place illegible, notation: "Dinner w/ Asst. Sec. of HUD/ Mod Rehab"

None of the receipts in Table 2 matched entries in Dean's calendars.⁵ In some cases, entries in Dean's calendars or her own receipts demonstrated that the receipts in Table 2 could not have applied to her.⁶ For example, Government Exhibit 11o was a

⁵ This statement is subject to the following qualification. Dean's calendars showed that she was to meet Sankin at The Guard's Restaurant on the evening of July 10, 1986. Government Exhibit 11i shows Sankin entertaining HUD personnel at The Childe Harold on that date. The Childe Harold and The Guards have a common ownership and it is believed that at times have used the same credit card machine. Thus, the statement in Dean's calendars could be read as supporting the inference that Sankin paid a \$36.00 receipt for Dean and one or more other HUD employees on July 10, 1986, though at The Guard's Restaurant rather than The Childe Harold.

⁶ The OIC introduced all of Dean's calendars into evidence. The OIC also possessed all Dean's available credit card receipts.

\$140.00 receipt, dated December 19, 1986, from the Old Angler's Inn, indicating that Sankin had dined with a "Staff Asst. to Sec of HUD"; Dean's calendars showed that she was dining with Silvio DeBartolomeis that evening and her credit card receipts showed that she paid \$180.00 at the Guards' Restaurant. Government Exhibit 11v was a \$114.00 receipt, dated May 16, 1987, reflecting dinner with "Asst. Sec of Hud"; Dean's calendars showed that she was at the Preakness in Baltimore that day.

None of the receipts listed in Table 2 had been used to support an entry in the Superseding Indictment.⁷ Presumably, this reflected the fact that the OIC believed that the receipts had not applied to Dean. Whatever the OIC thought at the time, however, the OIC would later attempt to cause the jury to believe that the receipts related to Dean, and would do so while refusing to review the receipts with Sankin in advance of his testimony.

The OIC also provided two receipts reflecting gifts, both of which gifts the OIC would seek to cause the jury to believe were for Dean. Government Exhibit 11p was a \$300.00 receipt from Krupsaw Antiques, dated December 23, 1986, for a cup and saucer. The receipt bore the notation "Bus Gift Deb Dean." It had been referenced in the Superseding Indictment.

Government Exhibit 11q was a receipt for \$168.44 from Georgetown Leather Design, dated December 24, 1986, for an unidentified item. It bore the notation "Bus Gift HUD Asst to Sec." It had not been referenced in the Superseding Indictment. Presumably that failure reflected the fact that the OIC knew that the receipt did not pertain to Dean, for whom Government Exhibit 11p indicated Sankin had bought a gift on the previous day.

⁷ This statement assumes that in the Superseding Indictment the statement that Dean met with Sankin on July 10, 1986 (at 39, ¶ 78) is based on Dean's calendar rather than the Government Exhibit 11i; and the statement that Dean met with Sankin on May 16, 1987 (at 42, ¶ 100) is based on Government Exhibit 11u (which mentions Dean by name) rather than Government Exhibit 11v (which mentions neither Dean's name nor her title).

C. Sankin's Direct Examination

a. First Day

The introduction of the receipts began near the close of Sankin's first day of testimony. After questioning Sankin about various benefits Sankin was alleged to have provided to Dean, and after Sankin stated that he had purchased meals and bought gifts for Dean (Tr. 1140), Associate Independent Counsel Robert E. O'Neill had Government Exhibits 11c through 11w marked for identification. Tr. 1141-42. O'Neill then proceeded to place these exhibits on the visual presenter in alphabetical order as each was introduced into evidence.

The first receipt discussed was Government Exhibit 11c, a \$157.97 receipt for Le Pavillion, dated December 23, 1985, and bearing the notation "Lunch w/HUD Officials re: mod rehab units." This was one of the receipts that the OIC had not relied on in the Superseding Indictment. After Sankin identified the handwriting on the receipt as his own, O'Neill introduced the receipt into evidence without objection from the defense. Tr. 1142.

After Sankin identified the exhibit as bill for \$157.97 for La Pavillion, the questioning occurred:

Q. And who did you go to that restaurant with?

A. The annotation says, "HUD officials."

Q. Do you recall who it was?

A. No, I don't.

Q. On that specific day, you don't?

A. No, sir.

Tr. 1143.

Sankin was then questioned about Government Exhibit 11d, which he identified as a \$70.00 receipt for Duke Ziebert's bearing the notation "Andy and HUD official. Discussed mod rehab." This, too, was a receipt not relied upon in the Superseding Indictment. O'Neill then moved to have it admitted.

Defense counsel Stephen V. Wehner objected because there was no connection between the document and Dean. Tr. 1143-44. The court stated: "All right. Well, let's see if they can tie it in in some way. I'll hold it open to see if it's tied in." Tr. 1144.

O'Neill did not then proceed to attempt to tie the receipt to Dean, but moved on to the next exhibit, Government Exhibit 11e, which involved a meeting between Sankin

and alleged co-conspirator Richard Shelby. The exhibit was admitted over a relevancy objection by Wehner. Tr. 1144.

O'Neill then introduced Government Exhibits 11f and 11g. These receipts, which either named Dean or described her position, had evidently been relied upon to support an allegation that Sankin and Dean had met on May 9, 1996. Superseding Indictment at 38, ¶ 75. Neither receipt referenced the discussion of mod rehab. Tr. 1145-46.⁸

After the court asked how many exhibits were going to be introduced and expressed the view that cross-examination could not be completed that day, the court called a break. Tr. 1147.

Following the break, the OIC quickly introduced Government Exhibits 11j through 11Q, along with Government Exhibits 11v and 11w. Tr. 1149-51.⁹ These included the two receipts for gifts that were dated December 23, 1986 (11q), and December 24, 1986 (11p).

Apparently during the break, from the exhibits listed in Table 2, supra, the OIC had pulled Nos. 11i, 11r and 11s. These were receipts totaling \$103.00, where the notation both (1) did not reference Dean or her title and (2) did not reference the discussion of mod rehab. Although the notation on Government Exhibit 11o, a \$140.00 receipt for a December 19, 1986 dinner at Old Angler's Inn, also did not reference Dean or her title and did not reference the discussion of mod rehab and was inconsistent with an entry on Dean's calendar and Dean's own receipts, the OIC continued to use it.

It would later be revealed that after leaving the stand, Sankin, apparently recognizing that it had appeared that all the receipts related to Dean, advised O'Neill that such was not the case.

⁸ These are the receipts with notations of "discussed HUD" and "discussed stuff" that seem inconsistent with Sankin's note of the same day.

⁹ Government Exhibit 11u would be moved into evidence on redirect examination on the following day. Tr. 1275.

b. Second Day

Sankin's direct examination was continued on the following day. At the close of that examination, O'Neill asked Sankin if Dean had ever asked him how much money he made as a consultant. Sankin responded that Dean had asked once, but before he could answer Dean had said: "Never mind. I don't want to know." Immediately thereafter, O'Neill called to Sankin's attention Government Exhibit 11p (the receipt for the \$300.00 teacup and saucer), and asked Sankin to read the notation "Business gift, Deborah Dean." Tr. 1183.

O'Neill then showed Sankin what apparently was a piece of prior testimony (Government Exhibit 505) and asked him if it refreshed his recollection about whether he purchased other gifts for Dean. After Sankin said that the document seemed accurate, he then stated that he purchased gifts for Dean on Christmas and her birthday at times between 1983 and 1988. That concluded the direct examination. Tr. 1184.

D. Sankin's Cross-Examination

At the beginning of Sankin's cross-examination, he testified that he did not know whether Dean was at the December 23, 1985 lunch reflected on Government Exhibit 11c. Pressed as to whether he fabricated receipts for tax purposes, Sankin stated that his receipts were accurate. He also stated:

I think that what I did on many occasions is that if I was out and if there happened to be a few sentences during a meal where something business-related was discussed, then I would write it off on that basis.

Tr. 1189.

Several questions later, this colloquy took place:

Q Did the Independent Counsel go through these credit card receipts with you and ask you if they were accurate?

A I don't recall, sir. I think we went through them.

Q And did you tell them that they accurately reflected what occurred?

A I think they reflected that I had lunch at a certain date or dinner at a certain date.

Q No. I'm sorry, Mr. Sankin, did you tell them that they accurately reflected what occurred?

A. I don't recall being asked that specific question, so I'll have to answer no, sir.

Q Then you tell me what question they asked you about these credit card receipts.

A I think we went through many papers, and they asked me to the extent I could to explain them. Many of them I wasn't asked about.

Tr. 1190.

Questioned as to whether he dated a HUD employee named Carter Bell, Sankin indicated that he would occasionally treat lunches and dinners with her as business expenses. Tr. 1192. After Sankin acknowledged that it was "possible" that the December 24, 1986 Georgetown Leather receipt (Government Exhibit 11q) involved a Christmas gift for Carter Bell (Tr. 1193-94), the following colloquy took place:

Q. No, no, no, no, no, no. It's possible. It's true, isn't it?

A. Sir, I can't remember.

Q. That you gave Carter Bell a present from Georgetown Leather and sat here yesterday and let this jury believe that it went to Deborah Gore Dean. Now that's true.

A. No sir, that is not true. What is true was that I was asked to identify this. I don't believe I ever stated that I gave this to Deborah Gore Dean.

Q. Did you tell the Independent Counsel you gave it to Deborah Gore Dean?

A. No, sir.

Q. Did they ask?

A. Sir, I told the Independent Counsel yesterday that many of the charge slips were definitely not related to Deborah Dean.

MR. WEHNER: I would like, Your honor -- Mr. Sankin, you no more said that yesterday than the man in the moon.

THE WITNESS: Not under oath, sir. Not on the witness stand.

BY WEHNER:¹⁰ Excuse me. You told the Office of Independent Counsel yesterday that many of those credit card receipts didn't relate to Ms. Dean.

A. Yes, Sir.

Q. Many of the ones they introduced into evidence?

A. Several of them, yes, sir.

MR. WEHNER. Your Honor, I request that the jury be excused.

Tr. 1194-95.

Outside the presence of the jury, the following discussion took place:¹¹

THE COURT: Mr. O'Neill, do I understand this characterization of his testimony correctly that he at some time told you that the exhibits, some of which were admitted into evidence here, some of them did not relate to Ms. Dean that he said related to Ms. Dean or left the impression they were Ms. Dean's, related to her.

MR. O'NEILL: No, Your Honor. What had occurred, after Mr. Sankin testified yesterday, he came down from the stand, and when we were walking towards the office, he said "I can't say whether all of these went to Ms. Dean or someone else. I have no specific recollection as to --" like the one that Mr., the one that Mr. Wehner stated is Government's Exhibit 11C, "Lunch with HUD officials re mod rehab units," he said, "I have no independent recollection at this time who they were."

Tr. 1195-96.

There followed a discussion of particular exhibits, during which O'Neill stated:

¹⁰ The transcript erroneously states "O'Neill."

¹¹ Transcript Pages 1195-1206 are attached at Attachment 1.

Well, if your Honor recalls, as I was going through them yesterday, there were a number of other ones, when we took a break that did not specifically say the defendant, Deborah Dean, so I took most of them out, or ones that said -- and this was before his conversation. Let me go through these in order.

Tr. 1197.

In identifying the receipts he left in and took out, O'Neill did not give a rationale. However, of the six exhibits in Table 2 other than from Government Exhibit 11c, which was already admitted, and 11d, which the court reserved ruling on, O'Neill had pulled three. These were Government Exhibits 11i, 11r, and 11s, which, as previously noted, did not reference the discussion of mod rehab and totaled \$103.00.

O'Neill still introduced Government Exhibits 11n and 11v, which mentioned mod rehab and totaled \$138.00. Government Exhibit 11v was the receipt that involved a \$114.00 dinner with "Asst. Sec. of HUD" on May 16, 1987, and which was inconsistent with Dean's calendars. O'Neill also still introduced Government Exhibit 11o, which, though it did not mention mod rehab, was for a \$140.00 dinner at Old Anglers Inn. This is the December 19, 1986 receipt referencing dinner with "Staff Asst. to Sec of HUD" that was inconsistent with both Dean's calendars and Dean's own receipts.

This colloquy followed:

THE COURT: All right. Well, he has answered the question on cross that he informed the Independent Counsel yesterday that he said exhibits that were put in did not, he could not relate to Debbie -- Deborah Dean. Independent Counsel indicates he said as to 11C that he couldn't relate that to Deborah Dean.

That was not brought to our attention before trial started today. I think that counsel should have brought that to the Court and to opposing counsel's attention as Brady-type material at this point, where he comes off the stand and denies a document is related to Ms. Dean. I had a question mark on that document.

MR. O'NEILL: Your honor, just so the record is clear -- I'm sorry to interject.

THE COURT: All right.

MR. O'NEILL: He never denied to me that it was related to Ms. Dean.

THE COURT: All right. Well, he said he couldn't relate the document to Ms. Dean, as I understood it.

MR. O'NEILL: He said he had no specific recollection, Your Honor, as to even the ones that bore her name.

THE COURT: As to all of them, he doesn't recall.

MR. O'NEILL: Correct. That's what he told me, Judge.

THE COURT: All right.

MR. O'NEILL: He just said he doesn't have any recollection.

I didn't -- so the record is clear, I did not show Mr. Sankin any of these documents in the government's case at all prior to his testimony. They were shown to him, I believe, in the Office of Independent Counsel several months ago, but I have refused to show him any documents --

THE COURT: All right. You didn't review it with him before he testified?

MR. O'NEILL: No, Your Honor. I specifically refused to allow him to see the documents.

THE COURT: I see, okay. ...

Tr. 1199-1200.

At this point, Wehner advised the court that many of the documents demonstrably did not relate to Dean. The court then asked Wehner what option he would like to exercise -- striking documents, a cautionary instruction to the jury, or cross-examining the witness to make him look as if he is not telling the truth. After suggesting that the option he desired was dismissal of the case, Wehner requested a moment to consider the options, and the court ordered a short break. Tr. 1200-01.

After the break, Wehner indicated that he would cross-examine the witness, but called to the court's attention the court's prior warning to the Independent Counsel given when the court found, prior to trial, that the OIC had wrongfully withheld Brady material. Wehner requested that the court keep that warning in mind as the cross-examination continued. Tr. 1202.

O'Neill then requested to put a matter on the record. This colloquy followed:

MR. O'NEILL: The series of question elicited to Mr. Sankin were cross-examination and I have no problem with that, but when my credibility is put at issue and in a way that reveals to the jury that I may have done something improper when I do not feel that I did, it becomes time to fight back, Judge, and if he's going to do that on the record, if gloves are going to be off, they're going to be off on both sides, Judge.

I've put up with some of the histrionics so far, the head shaking, and the like. I have no problem with putting up with it. I have not attacked Mr. Wehner's credibility, nor do I intend to, but if my credibility is at issue, that is not what this case is about.

Mr. Sankin on direct examination identified receipts. He identified his handwriting on them. Many of them either said Miss Dean's name or some reference to a high level HUD official. If Mr. Wehner wants to cross-examine about that, to show it was not Miss Dean, if he can prove it was not Miss Dean, that's fine.

The government did not say when it was unnamed, it was Miss Dean. Mr. Sankin then later on said something about not having an independent recollection. How the government is then in a position of hiding Brady is beyond me. But I just want to state for the record, Judge.

THE COURT: I do think in fairness though, Mr. O'Neill, when these documents are introduced they came in as related to Miss Dean in people's minds, if not through direct testimony. I think that's why they were offered. I kept out 11D because it was not indicated in relation to Miss Dean, although it's a HUD official lunch is what it said on it, but at that point someone asked, and that's what my notes recollect anyway. You've got a daily transcript. My notes reflect that someone raised the issue whether or not that was lunch with Miss Dean and I kept that out.

The American express receipt said HUD officials for lunch. That was not challenged and was admitted, but in relation to all the other ones that were admitted that had Deborah Dean's initials on them, and the Georgetown Leather gift which had DD on it,¹² there's some relationship to her, but that as to the other ones, like staff assistant, et cetera, left the impression, at least to the Court if not to the jury, that they're related to Miss Dean directly, not some inference that she would have been at the lunch. Otherwise they're not related Miss Dean --

MR. O'NEILL: I agree with you, Judge, but wasn't that the time to object to it?

¹² The court was mistaken that the letters DD were on the Georgetown Leather receipt.

THE COURT: I said the American Express receipt was allowed in. It was not objected to. On my own notes I have a question on it. It was not objected to and it was not in my mind identified as being Miss Dean's responsibility at that time, but the documents that were put in the same contiguous time frames certainly impresses to the court that they were all related to meetings and lunches and gifts to Miss Dean and went to her culpability as to substantial matters, and if there's evidence that the witness really didn't know it was Miss Dean and didn't -- couldn't say that it was related to Miss Dean, I think that should have been brought out at the appropriate time once the prosecution learned it.

I don't want to see the trial degenerate. This trial has been remarkable for the excellence of counsel on both sides. I have noted to myself and my staff that fact and I contrasted it to the trial I recently finished. I don't want to see it degenerate, but at the same time I think Mr. Wehner is entitled to raise issues with Mr. Sankin as to what he said and what he recollects about these documents and, again, what ones he can testify were Miss Dean's or not. It's up to him how he wants to do that.

Mr. Sankin may remember they were Miss Dean's. On the other hand, he may deny knowing that they're Miss Dean's or not. I will allow him to examine him [as] to the American Express receipt and what he said about it yesterday. I told him that he couldn't possibly finish this examination yesterday. He said that he didn't have any recollection, as I understand it, of having lunch or dinner with Miss Dean precisely, but I think the Government had a basis to put the ones identified with her name on it into evidence certainly.

Others which were identified, he can then testify that that would refer to her as opposed to somebody else he would have lunch with in a high office of HUD, are legitimate. But ones where they're not related to her and he can't say. I do not think they should be used, regardless of no objection.

All right. We'll have Mr. Sankin back and proceed with cross-examination.

I do not want to put the Independent Counsel on trial, although I'm not sure it's not fair game in closing argument to mention these incidents.

All right. Bring Mr. Sankin in.

Tr. 1202-06.

E. Sankin's Cross-Examination Resumed

When his cross-examination resumed, Sankin testified for the most part that he could not remember any of the specific events indicated on his receipts, but stated that he believed that the notations he made on the receipts were correct. It was brought out that Sankin, who was several years younger than Dean, had never dated Dean. Pointing out that the two receipts for May 9, 1986 (Government Exhibits 11f and 11g) were for a Friday, Wehner attempted to have Sankin admit that the receipts actually involved an engagement with a woman Sankin was seeing.¹³ Sankin insisted that, while he could not remember the events, he believed that the notations on his receipts were accurate. Tr. 1208-12.

Pointing out that the receipt for August 17, 1986 (Government Exhibit 11i) was for a Sunday, Wehner asked Sankin whether the lunch was not in fact with the woman Sankin was dating. Sankin indicated that he could only go by the receipt, which indicated that Dean was present. Sankin indicated that he did not remember the lunch and could not say whether the woman he was dating (Kelly Joyce) was also present. Tr. 1214-15.¹⁴

Dean's calendars had indicated that May 16, 1987, was the date that Kelly Joyce graduated from Catholic University; they also indicated that Dean was at the Preakness that day. When questioned as to whether the dinner of May 16, 1987, reflected in

¹³ It would not be until Dean's cross-examination that the record showing that Sankin sent Dean congratulatory flowers that day would be revealed. See Section H infra. No connection would be made at that time. It is not known whether the records pertaining to the flowers were provided Dean during discovery.

¹⁴ As show in Section G infra, Dean would testify that she was ill with meningitis throughout the month of August 1986 and was not present at this lunch.

Government Exhibit 11v occurred on the date of Joyce's graduation, Sankin stated that he did not know if that was the date of the graduation. Sankin did state, however, that he did not believe that the reference to Assistant Secretary of HUD referred to Dean and indicated that it more likely referred to Silvio DeBartolomeis. Tr. 1218.¹⁵

Wehner questioned Sankin about whether Dean had counseled Sankin and a woman he had lived with about whether to terminate a perceived pregnancy and whether the cup and saucer gift was related to that matter. Sankin acknowledged that Dean had counseled the woman and himself on more than one occasion but indicated that he could not say whether that was connected to the gift. Asked question whether he had stated to Dean on giving her the teacup, "I just wanted to thank [you] for counseling [the woman] and myself and helping us through a difficult time," Sankin responded: "I don't remember, but I don't have any problem with that." Tr. 1218-20.

With regard to the Georgetown Leather receipt (Government Exhibit 11q), which bore the notation "Bus Gift HUD Asst to Sec," Sankin stated that he did not remember whether it was a gift to Carter Bell but stated that he did not think it was a gift to Dean, noting that the notation was not consistent with a reference to Dean. Tr. 1222-23.

When Wehner attempted to learn from Sankin whether notes had been taken by government agents when Sankin reviewed receipts with representatives of the OIC (Tr. 1225-27), the following occurred at a bench conference:

THE COURT: Trial counsel today did not review these receipts with him before he testified.

MR. O'NEILL: Absolutely, that's correct, purposely.

Tr. 1228.

¹⁵ The record is at times confused with regard to 11u (the lunch of May 16, 1987), and 11v (the dinner of May 16, 1987). Government Exhibit 11u (the lunch) was originally introduced as 11v. Tr. 1148-49. During Sankin's cross-examination, O'Neill then stated that 11u had not been introduced. Tr. 1216. Wehner then examined Sankin with regard to Government Exhibit 11v (the dinner). Government Exhibit 11u (the lunch) would again be introduced on redirect, this time as 11u. Tr. 1275.

The court then began to discuss FBI notes about the receipts, concluding "I assume you got everything together for the trial that you have on Mr. Sankin?" O'Neill responded:

Judge, I will say the amount of Jenks on this individual is so massive an undertaking that I have never even seen such agents take such ridiculously exact notes. The typical interview would be 20 or 30 pages. I've skimmed through it.

Id.

Further discussion revealed that the Independent Counsel did not have notes that FBI agents took when Sankin reviewed his receipts with them. When Wehner pointed out that Sankin had testified that notes had been taken, O'Neill responded: "Oh, notes were definitely taken, but about what, only the agent could tell us." Tr. 1229.

The matter was left with an instruction that the FBI be asked about any notes that had not been turned over. Tr. 1230-32. The cross-examination resumed as follows:

Q Mr. Sankin, do you generally have a recollection in all your dealings with the Office of Independent Counsel that you told them that your records accurately reflected what happened?

A I don't think they ever asked me that, sir.

Let me clarify that. It was my impression that they were going to draw their own inferences from my records.

Tr. 1232.

Later, asked to estimate the value of the total entertainment and gifts he had given to Dean, Sankin estimated the value to be under \$1,000, though indicating that he was uncomfortable making an estimate. He also stated that Dean had bought dinners for him as well. Tr. 1246-47.¹⁶

¹⁶ Regarding a trip to Bermuda by Dean and her boyfriend along with Sankin and another women, Sankin was asked whether Dean had put Sankin's air fare on her credit card. Sankin indicated that he did not recall. Tr. 1247.

F. Sankin's Redirect Examination

On redirect, O'Neill asked Sankin which of the receipts reflected events he could remember. Apart from a receipt pertaining to a dinner between Sankin and Richard Shelby, Sankin indicated that he could only remember one. That was Government Exhibit 11m, which involved a November 14, 1986 dinner at the China Coral Restaurant. Sankin said he could remember it because he and Dean had discussed Dean's relationship with DeBartolomeis. Tr. 1274-75. This is the dinner in the Chevy Chase restaurant that occurred the Friday evening before Dean was to give a luncheon speech in Carlisle, Pennsylvania at noon the next day.

O'Neill had Sankin read his prior testimony about Government Exhibit 11c, in which Sankin said he did not recall who was present. Sankin also testified that he had two girl friends at HUD and that he may have given them gifts and may have deducted them as business expenses. Tr. 1282-83. Sankin also testified that after he first talked to the Independent Counsel about his receipts, he did not see the receipts again until he appeared in the court room on the day before. Tr. 1283.

Sankin was questioned about his estimate of \$1000 and whether it included the \$300 teacup and whether it included flowers he sent Dean periodically. Sankin said that it did. When asked how many times he sent Dean flowers while she was Executive Assistant, Sankin stated: "I don't recall, sir. Several, I would say." Tr. 1288. Sankin was then shown Government Exhibit 505 again and asked if it refreshed his recollection; Sankin stated that it did not. Apparently in response to being shown Government Exhibit 505, Sankin also indicated that he had given Dean bottles of wine but did not know how many times. He said the wine was port, and as to the cost of a bottle, he stated: "I would say between 50 and \$100." Sankin stated that he recalled no other gifts. Tr. 1287-89.

G. Dean's Direct Examination

Dean testified that she had lunch with Sankin two or three times over a period of five or six years. Tr. 2701. She stated that she had dinner on several occasions with Sankin indicating that he had been dating a woman studying to be an architect and Dean was dating an architect, and that when Sankin was dating a friend of Dean's from HUD, they would meet after work and have a few drinks or eat. Dean also stated that Sankin had been to her apartment for dinner on one or two occasions and that she remembered his bringing a bottle of port on one occasion, though she did not know the price nor did she recall Sankin's indicating that it was a special bottle of port. Dean also indicated that Sankin simply dropped by a lot, and sometimes would stay for dinner. Dean stated that Sankin was not her age and she did not consider him a "friend-friend" but he dropped by when he had problems and when he and the woman he was dating believed that the woman was pregnant, he and the woman spent a lot of time in Dean's living room. Tr. 2702-03.

Dean stated that Sankin had never given her a gift from Georgetown Leather Design, but that he had given her a cup and saucer for Christmas right after the incident when he and the woman he was dating thought the woman was pregnant. Dean stated that she did not realize that it was a very nice cup and saucer until she saw the receipt produced by the OIC. Tr. 2704.

With regard to May 16, 1987, the date of Government Exhibits 11u and 11v, Dean stated that she did not see Sankin on that day. She stated that, as indicated on her calendar, she was at the Preakness that day. Dean named the persons whom she was with at the Preakness. Dean also stated that her calendar indicated that May 16, 1987, was the date of Sankin's girlfriend's graduation from Catholic University and that she (Dean) did not attend that graduation. Tr. 2706-07, 2728.

With regard to Government Exhibit 11l, which is an August 16, 1986 receipt for the Potomac Restaurant on which Sankin's notation indicates that he had lunch with Dean and discussed mod rehab, Dean stated that the lunch did not occur. Dean stated that she was ill with meningitis for the entire month of August 1986.¹⁷ She showed the notation on her office calendars indicating that she was not at work from August 4, 1986, until September 3, 1986. Tr. 2722-23, 2728.¹⁸

H. Dean's Cross-Examination

On cross examination, Dean testified with regard to Sankin's buying meals for her that "none of your credit cards that you put through, I think, are accurate," but that Sankin probably did buy her lunch and she certainly paid for lunch or dinner with Sankin on occasion. Tr. 2844-45.

Asked whether Sankin ever bought her flowers, Dean stated: "I don't recall that he did, but if you say that he did or he remembers that he did specifically, I'm not going to argue with that. I know I never asked him to buy me flowers." Dean was shown three exhibits, which were not introduced but which apparently were receipts for Sankin's buying her flowers. One was for August 1988, more than a year after she had ceased to be Executive Assistant. One was for August 6, 1987. This was after Dean was Executive Assistant but while she was still consultant at HUD; the flowers were apparently sent with regard to her testimony before the Senate Banking Committee that day. Tr. 2845-46.

A third was dated May 9, 1986, which was during the period that Dean was Executive Assistant, and indicated that the flowers were in fact delivered to Dean in her

¹⁷ Dean stated that she might have gone out to eat toward the end of the period. Tr. 2723.

¹⁸ Because of objections from the OIC, Dean was not permitted to introduce her leave record for that period.

office as Executive Assistant. Tr. 2845-46. As previously discussed, this is the record of the purchase of flowers that seemed to suggest that Sankin did not see Dean on that day, notwithstanding Sankin's notations on Government Exhibits 11c and 11d.

The only Sankin meal receipt Dean was questioned about during her cross-examination was Government Exhibit 11k, which is the July 23, 1986 receipt for the 219 Restaurant in Alexandria and which is the only receipt naming Dean or her position that in any way matches an entry on Dean's calendars. Dean stated that, although Sankin's name was penned in on one of the calendars, she believed that the entry reflecting that she had dinner with a different person was correct. Tr. 3092-93.

I. OIC's Summary Charts

The OIC sought to have certain summary charts admitted into evidence, arguing that "the point of the charts is to refer only to documents that are in evidence in and of themselves." Tr. 1954. See also Tr. 2917-19. Ultimately, in the face of vigorous argument from the OIC,¹⁹ the court ruled that the charts would not be admitted into evidence, though they could be used in closing argument. Tr. 2947-60.

Although the court had advised O'Neill that it was proper only to use receipts that either referenced Dean or her title specifically or that Sankin could relate to Dean, in the summary charts used in closing argument, the OIC continued to reference all exhibits in Table 2 that were admitted and which referenced the discussion of mod rehab, as well as the Georgetown Leather receipt.

Government Exhibit 11c, the December 23, 1985 receipt from Le Pavillion, would support the second last entry in the chart for Regent Street and the opening entry in the chart for Foxglenn. The entries read:

SANKIN entertains "...HUD officials Re: Mod Rehab units."

¹⁹ Associate Independent Counsel Paula A. Sweeney had argued that she disagreed that the charts were argument, asserting that "we have made every attempt to use neutral language and to summarize the documents in evidence the same way that the charts that were used in the Williams case were prepared..." Tr. 2947. After the court's ruling, Sweeney argued:

With all due respect, the Government would have a continuing objection to Your Honor's ruling in this matter. We believe that the charts are permissible to organize what's been a voluminous amount of data in a chronological fashion and by count and that is a use that has been recognized in the case law. So, with all due respect, Your Honor, we wish to note our continuing objection to Your Honor's ruling.

Tr. 2959-60.

Government Exhibit 11n, the November 29, 1986 receipt from Hunan in Chinatown, would support the following entry in the Foxglenn Chart:

SANKIN entertains "Staff Asst. to Sec at HUD Discussed Mod Rehab."

Government Exhibit 11v, the May 16, 1987 dinner receipt that Sankin said probably referenced DeBartolomeis, and which conflicted with Dean's calendar entry showing she was at the Preakness, would be used to support the following entry for Eastern Avenue.

SANKIN entertains "Asst. Sec. of HUD/Mod Rehab" at dinner.

In all, in the OIC's summary charts for Count Two, there would be ten references to entertainment paid for by Sankin in which mod rehab was discussed. Four of these references would be supported by the above-referenced receipts listed in Table 2 that did not reference Dean or her title.

The six references supported by receipts in Table 1 would include two references (in Alameda Towers and Foxglenn) supported by Government Exhibit 11j, the July 18, 1986 receipt that appeared to be inconsistent with Dean's calendars. See note 2, supra. Entries in both the Alameda Towers and Foxglenn charts would also be supported by Government Exhibit 11l, which is the August 17, 1986 receipt for the period when Dean had meningitis. An entry in the Eastern Avenue chart would be supported by Government Exhibit 11u, which is the May 16, 1987 receipt for lunch, where Dean specifically denied being present, and where her calendars showed that she was at the Preakness and that Sankin's girlfriend was graduating from Catholic University.²⁰

With regard to the gift receipts, despite the fact that Sankin had testified that he did not believe that the Georgetown Leather Design receipt pertained to Dean, the OIC

²⁰ The other receipt was Government Exhibit 11m, which is the November 14, 1986 receipt showing Sankin entertaining the Chief of Staff at HUD, at the China Coral Restaurant in Chevy Chase, Maryland. This is the dinner Sankin said he specifically remembered, because he had discussed Dean's and DeBartolomeis' relationship. Dean's calendars show nothing this Friday evening, however, and indicate that she would be giving a luncheon speech the following day in Carlisle, Pennsylvania.

would rely on the receipt, along with the receipt for the cup and saucer that did relate to Dean, in support of the following entry on the Foxglenn Chart, bearing the dates of December 23, 1986 and December 24, 1986 (emphasis added):

SANKIN buys gifts for **DEAN**: "Bus. Gift Deb Dean; Bus. Gift HUD Asst. to Sec."

J. Dean's Rule 33 Motion

Dean addressed most of the above matters in a background section to her memorandum in support of her motion for a new trial. Dean Mem. at 111-18. She pointed out that the OIC had been given reason by the court's ruling on Government Exhibit 11d and by Sankin's own off-the-stand statement that all the exhibits would be perceived by the jury to be related to Dean. Yet, instead of correcting that impression, the OIC sought to reinforce it the next day by having Sankin again testify about a receipt that was unequivocally related to Dean. Dean argued that the OIC's conduct indicated that it was operating under a philosophy whereby it is permissible for a prosecutor to introduce evidence that would lead a jury to draw inferences adverse to a defendant even when the prosecution knows that the inferences are or may be false. Id. at 111-13.

Dean argued that the OIC's refusal to review the receipts with Sankin indicated that it believed that a prosecutor has no obligation to make any effort to determine whether the inferences its exhibits will create are justified and no obligation to correct false impressions created by the evidence. In this regard, Dean also argued that the obvious reason for the prosecutor's failure to review the receipts with Sankin before he testified was that such review was certain to make it impossible to use all of the potentially incriminating exhibits. She noted, however, that the OIC had been willing to use receipts even when it had overwhelming reason to believe that the receipts did not apply to her. Id. at 113-14.

Dean argued that the reasons that the OIC had for knowing that various of the receipts did not pertain to Dean made it improper to attempt to introduce many of the receipts in the first place, particularly those that did not reference her or her title and were not indicated in her calendars. She noted that a jury easily might not distinguish between various titles that contained the words "assistant" and "secretary." Dean argued that it was even further improper to use certain of the exhibits in the summary charts after evidence adduced at trial indicated that the facts did not justify the inferences that might be drawn from the exhibits. Id. at 114-18.

With regard to the dinner of May 16, 1987 (Government Exhibit 11v) and the Georgetown Leather Design receipt of December 23, 1986 (Government Exhibit 11q), Dean argued that a variety of factors, including Sankin's testimony that they probably did not relate to Dean, must have persuaded the OIC that they did not relate to her. Nevertheless, she noted, the OIC relied on them in its charts used in closing argument.

In the case of the Georgetown Leather receipt, the OIC's chart had stated that Sankin gave Dean "gifts" thereby indicating that the receipt did relate to Dean. Id.

Dean did not make the point reflected in the background section above that the failure of the OIC to rely on any of the exhibits that did not reference Dean or her title to support entries in the Superseding Indictment indicated that the OIC had not believed that they applied to Dean.

K. OIC's Opposition

In its Opposition, the OIC first pointed out that eight of the fifteen Sankin receipts put into evidence specifically referred to Dean or her position; one did not involve Dean; and "[o]f the remaining six receipts, five arguably related to defendant." Gov. Opp. at 12.

With regard to those five that the OIC stated arguably related to Dean, the OIC first cited 11m, noting that "Chief of Staff" was another name for Executive Assistant.²¹ The OIC then listed Government Exhibits 11n ("Staff Asst. to Sec of Hud"), 11o (Staff Asst. to the Sec. of HUD"), 11q ("Asst. to Sec HUD"), and 11v ("Asst. Sec. of HUD"). With regard to 11v, the OIC noted that at least one other receipt (11u) had referred to Dean as "D. Dean Asst. Sec of HUD." Gov. Opp. at 12 n.10. Government Exhibits 11u and 11v are the two receipts for May 16, 1986, 11v being the one that Sankin stated probably referred to DeBartolomeis.

The OIC described Government Exhibit 11c as the only exhibit that "clearly did not relate to defendant," (id. at 13), and that "on its face could not arguably be tied to defendant" (id. at 13 n.11), and would twice note that the government had itself elicited that Sankin could not tie the receipt to Dean. Id. at 13, 14. The OIC did not, however, explain its basis for nevertheless using Government Exhibit 11c in the Regent Street and Foxglenn summary charts.

After arguing that the above five receipts had arguably related to Dean, the OIC proceeded to describe its introduction of the exhibits as follows:

The government initially sought the admission of the receipts one-by-one, in each case examining Sankin regarding his specific recollection of

²¹ Government Exhibit 11m was included in Table 1 as one of the receipts that in fact referenced Dean's position, and which the OIC had used to support an entry in the Superseding Indictment.

the events surrounding the creation of the receipt. The government noted later in the proceeding that it purposely did not preview each of the receipts with the witness as part of its pretrial preparation (Tr. 1200), because of the witness's hostility to the government's case against the defendant. For example, in connection with discussing Gov't Ex. 11c, it was the government's own examination that revealed that Sankin could not recall who the unspecified "HUD officials" were who are referred to on the receipt. Tr. 1143.

Government Exs. 11c through 11g were each in turn individually identified and discussed (Exs. 11a and 11b were not Sankin receipts). Tr. 1143-47. It was only when the Court expressed concern about the time being consumed by this lengthy examination, Tr. 1147, that the government simply moved the remaining receipts into evidence as a group. Tr. 1151.

Gov. Opp. at 13.

After then describing Sankin's statement on the stand as to what he had told the prosecution, the OIC stated: "It is the government's nondisclosure of this statement prior to Sankin's resuming the witness stand that defendant claims justifies a new trial." Id. at 14. The OIC then noted that the prosecutor's recollection of the statement was different from that of Sankin, who was an unindicted co-conspirator and hostile to the government's case, and argued that Sankin could not even remember anything about any of the receipts that bore Dean's name. The OIC again noted that "the government itself had elicited this point with regard to Gov't Exh. 11c, and sought the admission of the remaining receipts as a group only when the Court expressed concern over the delay." Id. at 14-15.

The OIC noted that, though the court had admonished the OIC for failing to bring the statement to the attention of defense counsel, the court "had explicitly noted that the trial had been 'remarkable for the excellence of trial counsel on both sides.'" The OIC then concluded that defense counsel had been given his choice as to how to proceed, and had effectively used the information that was brought to his attention. Thus, the OIC concluded, there was no harm to the defendant. Id. at 15-16.

The OIC argued that there was nothing improper in relying on Dean's receipts even though they were inconsistent with Dean's calendars or with trial testimony, asserting that "[i]t is precisely this sort of conflict in evidence that it is the jury's duty to resolve..." Id. at 15 n.12. With regard to the use of the Georgetown Leather receipt, the OIC argued that "defendant's complaint that the discredited Georgetown Leather Design receipt should have precluded the government from arguing that Dean had received gifts (rather than one gift) from Sankin ignores Sankin's testimony that over the years he had given defendant multiple gifts." Id. at 16 n.13.

L. Dean's Reply

In Dean's Reply, she noted that the OIC had acknowledged that it intended that the jury should infer that every receipt was related to defendant. She also noted that, while the OIC acknowledged that the Georgetown Leather receipt relied on in the Foxglenn Chart had been discredited, it admitted that it intentionally stated the plural "gifts" in that chart. Dean argued that the OIC's argument that it was permissible to do so because of other gifts not only was absurd, but was also contrary to the OIC's representations made to the court as to the nature of the summary charts.

Dean pointed out that the OIC had represented that its basis for not previewing the receipts with Sankin was "the witness's hostility to the government's case against the defendant." Dean argued that the only obvious relevance of such hostility is that it might cause the witness to try harder to remember which of the receipts the OIC intended to use against the defendant did not in fact relate to her. Dean Reply at 6-7.

M. February 14, 1994 Hearing

At the hearing on Dean's Rule 33 Motion on February 14, 1994, the Court addressed the Sankin receipts when it commenced discussion of the motion. This colloquy with Deputy Independent Counsel Bruce C. Swartz followed:

COURT: All right. Thank you. I'm not going to go through some of the matters that have been raised because many matters have been raised. I was concerned on a couple of areas. One was the Sankin receipts. Let me look at your, I think it's your opposition.

As I understand it, that the receipts were never reviewed with Mr. Sankin prior to putting him on the stand, because the government felt he was hostile, so that the government put on a witness it had not interviewed as to these receipts and indicated through its questioning the receipts were tied to the defendant while actually not knowing. Is that true?

SWARTZ: Well your honor, I think that the government's position was that the receipts on their face, certainly the majority of the receipts were tied to the defendant by their description. It was also the government's position that Sankin as a hostile witness was likely to, as he in fact did say, that he didn't remember whether all the receipts related.

Nonetheless, it was the government's position that given the receipts, it was proper to introduce them through Mr. Sankin, particularly because as --

COURT: Well can you justify as a prosecutor at any time putting a witness on a stand and introducing documents that are put in for the

purpose of identifying the defendant's involvement with some operation, illegal operation, without ever having asked the witness if they do or do not or if they represent that or not?

SWARTZ: Well, Your Honor, I think Mr. Sankin's, I think Mr. Sankin's position was that he could not recall all of the, the particular events of the receipts in question, and I believe that it was in terms of his -- for instance on the one receipt that the government was aware did not involve Ms. Dean,^[22] the government did, in fact, I mean, when introducing the document, the receipt, put before the jury that the receipt did not involve Ms. Dean, and it was only after that time, because of the amount of time consumed, that the government entered the documents en masse. But I think it was, it was clear from the face of the majority of the receipts that they were identified as defendant Dean's.

And beyond that, of course, the defendant was free to cross-examine him as to whether or not these particular receipts related to her. It was defendant's position, of course, that they did not, that she could establish they did not from her calendars or other, other purposes.

But particularly in light of the Court's options that were given to Ms. Dean in terms of having the evidence stricken or being permitted to cross-examine on the receipt, it's the government's position that the receipts were properly before the jury. She elected to cross-examine on those receipts and did in fact do so. In fact, we believe that if the receipts were as damaging to the government's case as Ms. Dean suggests, then she did take the proper election.

²² This would have been Government Exhibit 11c, which the OIC had nevertheless relied on in its charts for Regent Street and Foxglenn.

COURT: It shouldn't be for the Court, and that's one of the problems I have with this new trial motion going through it, it constantly goes back to the fact, well, the Court, corrected the error. I think there's numerous occasions where that had to be done. and I wonder about the cumulative effect of saying, "Well, the Judge took care of it, he told the jury to disregard it, or he told the defendant he had his option to do this or that to try to cure the problem that arose because we put on a witness whom we hadn't talked to and didn't know if these receipts really tied into the defendant or not but still put them all in as if they did, and then later when he said he wasn't sure what they meant, we told the Court, 'Well, you can do something to cure that.'" That's concerning me, particularly the cumulative effect of it all.

Tr. 6-8

The court then moved on to other matters. Later in the hearing, Swartz returned to the issue in the course of offering further defense of the OIC's conduct, observing:

Even as to the particular matters that have been the focus of today argument and the rule 33 motion, there was more than sufficient evidence even from those particular witnesses that would justify the jury in concluding the defendant was guilty beyond a reasonable doubt.

For instance, with regard to Sankin, much has been made of the receipts, but in fact, the receipts were a relatively minor part of what Sankin did for Dean and the Gore family. As his testimony makes clear, he was, as the defendant herself put it, on the family payroll, and the thrust of the government's case always was that the impropriety in particular and the illegality arose from that fact, that he was, in essence, their family employee.

He was managing their apartment. He engaged in obtaining the rent waiver for the Stanley Arms transaction that was worth a tremendous amount of money to the Dean family, and he provided other services to the defendant. If the government had been interested in making a case against defendant for the illegal receipt of meals from various consultants or others that she did business with, this would be a far different case.

Tr. 22-23.

The court would touch upon the issue of Sankin's receipts a number of times in the course of its ruling. First, in listing instances of improper conduct by the OIC, the court noted:

Mr. Sankin was put on the stand by the government, who admitted that they did not interview him as to the accuracies of the receipts and his knowledge about them and his memory of them at the time he testified. That was not brought out during testimony but only volunteered by Mr. Sankin later the next day, or when he finished his direct and was on cross, and he indicated at that time he had already told the government the night before that he couldn't recall anything about the documents, and that was not brought to the Court's attention as it should have been by the independent prosecutor.

Tr. 25.

Later, the court noted, in evident reference to the Sankin receipts:

I think if it had been an assistant United States attorney who had done that before the Court in an everyday case, had put a witness on the stand and asked him to identify this group of documents, they all related to meetings with the defendant, and then had been told by the witness that that was not accurate, I would expect every assistant I've ever had here would have brought that immediately to my attention and the defense's attention, and that was not done, and again, I don't understand that.

Tr. 27.

In concluding its ruling on misconduct issues (apart from the improper closing), the court again alluded to the receipts:

The Court is going to do as follows in this matter: Recognizing its obligation to ensure the defendant has a fair trial and is not prejudiced by any lapses by the prosecution in their handling of the case, the Court is going to deny the motion for a new trial. While it had concerns it expressed and recognizes the difficulty the defendant had in defending an amorphous case that was not helped by the approach of the prosecution particularly -- I don't think I've ever seen the prosecution put on a witness whom they didn't interview as to particular documents they want to tie with a defendant because they say the witness may be hostile. Then you don't put the witness on, or you interview the witness before you put him on as to what these documents mean and what his recollection is. That's compounded by the witness telling the prosecution after he testified he really doesn't remember anything about those documents, and that's not revealed.

That gives great concern to the Court, but I don't think that that tells the whole story, that either alone or in conjunction with other claims of Brady violations or failure to be forthcoming to the Court, because of the way the Court handled the matters, giving the defendant the option how they

wished to go through that, how it instructed the jury at times, as it had to, I believe that any prejudice was met adequately by the Court's instructions and accommodations to counsel for the defendant to appropriately rebut evidence that may have been produced by the government without a full exploration as to its accuracy.

The Court is going to deny the motions for a new trial both upon the government's alleged, on the grounds advanced by defendant, failure of proof or abuses by the government. Many of the witnesses the government was required to call were adverse witnesses. They were either unindicted co-conspirators or individuals who had been given immunity and required to testify or were less than cooperating witnesses, and they had to use the witnesses they had, which is typical, and they have to then rely upon the jury in seeing who they're going to believe in the case.

Tr. 29-31.

N. Comments

Regardless of whether there is reason to believe that the OIC's actions concerning the Sankin receipts had any bearing on the verdict, those actions illustrate in numerous ways the dishonesty of the Office of Independent Counsel in its prosecution of this case. To begin with, one must consider the OIC's failure to rely on any of the receipts to support entries in the Superseding Indictment. The observation in Section A above that presumably that failure indicated that the OIC did not believe that the receipts related to Dean seems a fair one, even as to the receipts where the OIC did not have additional indications (such a calendar entries) that the reference to a position other than Dean's could not have been to Dean. Yet, notwithstanding that belief as of the time of the issuance of the Superseding Indictment, the OIC would ultimately decide to attempt to cause the jury to believe that the receipts pertained to Dean. And it would do so not after consulting with Sankin as to whether the receipts might in fact pertain to Dean; rather, the OIC made the decision while refusing to consult with Sankin.

It is clear as well, however, that the OIC had reason to believe that many of the receipts that actually named Dean or her position did not apply to her. Though it is clear enough that Dean did in fact receive a \$300.00 cup and saucer, it seems likely than few if any of the receipts for meals that mentioned her by name or title actually applied to her. Yet, Sankin's testimony makes it plain that the OIC did not press him about whether it was possible that his receipts were not accurate.

This is something the OIC could have done very effectively on the basis of information in its possession. For example, the OIC could have pointed out to Sankin that Dean's calendars were inconsistent with the May 16, 1987 entry, which was also the date of Sankin's girlfriend's graduation. The OIC could also have asked Sankin why

he would send flowers to Dean on May 9, 1986, stating that he hoped to see her soon if, as reflected in his receipts, he saw Dean that day both at The Childe Harold and Japan Inn. With regard to either matter, advised of the known surrounding facts, Sankin should have been able to plausibly reconcile the conflicting evidence if it could be reconciled. If Sankin could not reconcile the evidence, the OIC then would have to conclude that the receipts were not correct whether or not Sankin admitted it.

Both with regard to the receipts that specifically referenced Dean and those that did not, there may well have been other information in files of the OIC that could conclusively establish that certain of the receipts did not pertain to Dean. Such materials would include the calendars of other persons from HUD that Sankin socialized with indicating that they were with Sankin on dates corresponding with the dates of certain receipts. If there existed Sankin receipts identifying another person by name and listing the person as a "staff assistant to the secretary" it would be fairly strong evidence with regard to whether the phrase "staff assistant" in Government Exhibits 11n, 11o, and 11r had referred to Dean; a receipt merely indicating by name a person who happened to be a "staff assistant to the secretary" would be probative as well. Given that Sankin acknowledged deducting as business expenses the costs of lunches and dinners with HUD employees that were principally social, and that he dated two persons from HUD, it is hard to believe that no Sankin receipt ever mentioned a person by name other than Dean. Yet the OIC provided no receipts identifying HUD personnel by name other than Dean (apart from the one that named both Dean and Hunter Cushing). Nothing in the OIC's actions throughout this case, however, suggest that it would have turned over receipts that did contain notations of names other than Dean's even if they were matched with the title "staff assistant," despite the fact that such receipts would qualify as Brady material given the OIC's acknowledged intention to lead the jury to believe that "staff assistant" referred to Dean. Nor is there reason to expect that the OIC would have turned over calendar entries of Carter Bell or the other persons Sankin knew at HUD showing that they were with Sankin at the events recorded on the credit card receipts that the prosecution sought to cause the jury to believe related to Dean.

The lunch receipt for May 16, 1987, which specifically named Dean, deserves further mention. Dean was sufficiently definite and specific in her denial of that receipt that it would seem impossible that she could merely have forgotten. This is particularly so, since it evidently was the graduation day of Kelly Joyce, a woman whom Sankin had been seeing. Even if Sankin could not remember that May 16, 1987, was Joyce's graduation date, Joyce very likely would remember both the date of her graduation and what she did on that day.²³ The OIC easily could have located Joyce to find out. Testimony that she had lunch with Sankin and Dean after her graduation would have

²³ Sankin would also be expected to remember what he did on Joyce's graduation day, even if he could not remember whether that day was May 16, 1987. Unfortunately, Sankin was merely asked to admit that May 16, 1987 was Joyce's graduation date and that he was with her on that date.

been devastating to Dean's credibility and would likely also have revived the credibility of the Sankin receipts in the eyes of the jury. On the other hand, if Joyce recalled that she was with Sankin but not with Dean as well, it would have meant that both receipts of that day were false. It would also have established that Sankin did in fact write Dean's name on receipts when she was not there. It seems almost certain, however, that the OIC made no effort to locate Joyce after Dean testified, and that the reason that it did not was that it believed that there was minimal chance that Joyce would provide information that would allow the OIC to substantiate that Dean was present at the lunch (or dinner) of May 16, 1987, but much chance that Joyce would provide information indicating that Dean was not present.

Indeed, the OIC's actions here and elsewhere suggest that if it had conclusive proof of the falsity of any Sankin receipt, it would not have regarded that to be a reason not to introduce the receipt into evidence. O'Neill's remarks about the time for objections are revealing in this regard. It appears to be his view that the it is the prosecution's job to make as strong a case as it can with the documents available. With regard to the receipts that did not name Dean, his apparent view was that, if the prosecutor could adroitly cause the jury to think a particular item relates to Dean even though there was overwhelming reason to believe that it does not, that is permissible. It is for the defense to show that it does not. And if the prosecution can make the defense's job more difficult by a narrow interpretation of Brady or by swamping the defense with mountains of Jenks and Giglio material when it is too late to review it, that is permissible as well.

It is hard to know what to make of O'Neill's first question to Sankin about Government Exhibit 11c. It seems unlikely that O'Neill would have asked the question without knowing what Sankin was going to say, particularly since doing so would have allowed for the possibility that Sankin might in fact remember the identity of the HUD officials with whom he discussed mod rehab and remember as well that such officials did not include Dean. In any event, O'Neill followed up with "Not on that specific day?" and then attempted to have Government Exhibit 11d admitted without asking Sankin if he knew who was present.²⁴ This suggests that, whatever were O'Neill's reasons for asking the first question about 11c and whatever response he anticipated, thereafter he sought to introduce the exhibits in a way to cause the jury to believe that by and large they pertained to Dean. And when the court refused to admit 11d unless O'Neill could somehow tie it to Dean, O'Neill made no effort to address the court's concern with regard to that exhibit, which he could have done simply by then asking Sankin who was present. Instead, O'Neill simply attempted to have the others that did not name Dean or her title admitted with as little specific attention as possible.

²⁴ The OIC's statements in its Opposition that it "initially sought the admission of the receipts one-by-one, in each case examining Sankin regarding his specific recollection of the events surrounding the creation of the receipt" and that "Government Exs. 11c through 11g were each in turn individually identified and discussed" (Gov. Opp. at 13-14) are simply false.

Almost every point the OIC made in its various responses on these issues was dishonest in some respect. The statement in its Opposition that "[i]t is the government's nondisclosure of this statement prior to Sankin's resuming the witness stand that defendant claims justifies a new trial," was simply one of the OIC's numerous efforts to misfocus the issue. Although the court was particularly struck by the failure of the prosecution to bring Sankin's statement to the attention of the court and the defense, it was a minor element of Dean's argument. Dean argued that the OIC's actions with regard to Sankin showed that it was willing to use false evidence against her. She did not claim that she was much damaged by that particular false evidence. Rather, Dean argued, the OIC's actions concerning Sankin provided important background to understanding the pattern of abusive conduct.

A particularly notable point in the OIC's Opposition was its claim that the descriptions in Government Exhibits 11n ("Staff Asst."), 11o ("Staff Asst."), 11q ("Asst. to Sec."), and 11v ("Asst. Sec. of HUD") each "arguably related" to Dean. Gov. Opp. at 13 n.10. Whereas Dean had argued that the prosecution was hoping that the jury would not distinguish between these words and "Executive Assistant" (Dean Mem. at 115 n.81), the OIC's assertion that the former words could be taken to refer to Dean was essentially an acknowledgment that such was precisely what the OIC had hoped the jury would do. The OIC proceeded to use those references in its charts in closing argument notwithstanding the court's instruction that it was not proper to rely on such words without testimony tying the exhibits to Dean; notwithstanding that Sankin had said that 11v probably did not relate to Dean; and notwithstanding that Sankin had said, in specifically testifying about 11q, that such a notation was inconsistent with what he would have used to identify Dean. And, as noted, in the case of Government Exhibit 11c, while the OIC pointed out several times that it was the OIC that had brought out that Sankin could not relate the receipt to Dean, and several times acknowledged that the receipt did not relate to Dean, the OIC still used the receipt in two charts in its closing argument anyway. The OIC had no purpose in doing that other than in order to cause the jury, which was unlikely to remember Sankin's specific testimony four weeks earlier, to believe that it did relate to Dean.

It cannot be reasonably supposed that the OIC was merely attempting to give a complete picture. Recall that in the case of Park Towers, the OIC used only the Fine memoranda that referenced Shelby's meeting with "the contact at HUD," (which Shelby had stated was not a reference to Dean, but which the OIC acknowledged seeking to cause the jury to believe was a reference to Dean) and Shelby's February 1986 lunch with a female friend (who probably was Dean). The OIC did not present any of the Fine memoranda showing the substantial contacts with DeBartolomeis with regard to the post-allocation waiver. See Narrative Appendix styled "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony."

The OIC's statement that it did not review the receipt with Sankin because of his hostility is similar to a number of other statements where, in the context of argument,

the OIC made a representation as to the reasons for its actions that could not have been its true reasons. Other instances include Paula Sweeney's statements in the hearing on Dean's Brady motion that the materials were not turned over because the witnesses qualified their statements, as well as Swartz's somewhat different representations to the court of appeals as to the reasons for the same actions,²⁵ and the statement in the OIC's Opposition that the Mitchell messages were not provided under Brady because they were as consistent with guilt as with innocence.²⁶ In none of those instances was the OIC's representation credible. Nor is it reasonable to believe that the actual reason for failing to review the receipts with Sankin was his hostility to the OIC's case except in the sense that the hostility might lead him to try harder to remember facts that would show the receipts not to be related to Dean.

Swartz's effort to articulate this explanation makes no apparent sense. He seems to say that because Sankin was hostile, the OIC feared he would say he could not remember; therefore the OIC refused to review the receipts and refresh his recollection; and the fact that Sankin could not remember the receipts proves that the OIC was correct. One evident reason the OIC would not review the receipts with Sankin -- and would not review them with him while confronting him with related information in the manner the OIC certainly would have done if it believed that the truth about each receipt would help its case -- is that such review certainly would substantially reduce the number of receipts the OIC might succeed in attributing to Dean, at least from among those that did not name her. A second, and at least as important, reason is that such review would likely also lead to a demonstration that Sankin wrote Dean's name or title on receipts when she was not there. That demonstration would not only make it extremely difficult to rely on any receipt on which Sankin had written Dean's name or title, but would greatly undermine Sankin's credibility as to other matters.

²⁵ See Narrative Appendix styled "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony."

²⁶ See Narrative Appendix styled "Arama: The John Mitchell Messages and Maurice Barksdale."

Finally, Swartz's argument that the receipts were a minor part of the OIC's case regarding the benefits Sankin bestowed on Dean ignores two things. First, while no one can predict precisely what will move a jury, there was ample reason to believe that in a case where the OIC asserts that a privileged elite has abused a program intended for the poor, a relatively unaffluent jury would be at least as much influenced by a demonstration that Sankin had been commonly entertaining Dean at expensive restaurants as by such abstractions as the refusal to separately compensate a property manager for securing a rental increase. It must be remembered, moreover, that O'Neill chose in opening argument to assert that Sankin was "wining and dining" Dean and "buying her gifts," and did not even mention the rental increase. Second, the receipts were the OIC's only basis for showing that Sankin and Dean ever were together discussing mod rehab, something Sankin himself was very vague about.

The emphasis in the OIC's Opposition and in Swartz's oral argument that most of the receipts identified Dean on their face is a diversion from the fact that the OIC had reason to believe that those that did not identify Dean were not related to her and still sought to make the jury believe that they were. In essence, the OIC is responding to a claim that it used false evidence by asserting that it also used a lot of evidence that was not false. It should also be kept in mind that it would be the cumulative impact of the receipts that would determine whether the jury would regard the connections between Sankin and Dean as sufficiently unseemly to somehow constitute a conspiracy. Whether or not the OIC believed the connections that might actually exist ought to suffice, it was willing to resort to false connections to assist its case.

The statement in the OIC's Opposition (at 15 n.12) that inconsistencies between such evidence as calendars and trial testimony are "precisely [the] sort of conflict in evidence that it is the jury's duty to resolve" might be defensible in a context where, after fully investigating those inconsistencies, the government goes forward with a firm belief in the truth of the evidence it puts forward. In a context where the government has refused to investigate the inconsistencies and has moved forward having much reason to believe that the evidence it puts forward is false, however, it is a remarkable statement indeed.

Two other aspects of Swartz's oral argument warrant final note. The first is his statement that, "[i]f the government had been interested in making a case against defendant for the illegal receipt of meals from various consultants or others that she did business with, this would be a far different case." One should not make too much of Swartz's remarks. At the time, he apparently was simply saying every evasive thing he could think of. Yet, one cannot entirely ignore the implicit recognition in Swartz's statement that the OIC had done something quite wrong in its use of the Sankin receipts. In essence, he was saying, the OIC used false evidence, but it did so only with respect to a peripheral aspect of its case. That still says something about whether the OIC was willing to use false evidence with regard to central aspects of its case.

The second is Swartz's statement that, "[e]ven as to the particular matters that have been the focus of today's argument and the rule 33 motion, there was more than

sufficient evidence even from those particular witnesses that would justify the jury in concluding the defendant was guilty beyond a reasonable doubt." That point involves a theme that the OIC pressed with evident success with the regard to the entire panoply of the OIC's misconduct, *i.e.*, whether there was other evidence sufficient to sustain a verdict.²⁷ Yet, the issue was not whether there existed other evidence sufficient to sustain a verdict, but whether the misconduct may have influenced the verdict. A small amount of untainted evidence may be sufficient to sustain a verdict, but additional tainted evidence may play a large role in how a jury interprets the untainted evidence.

Dean never asserted in her Rule 33 Motion that it had been shown that Sankin committed perjury. Yet, to understand the full extent of the OIC's misconduct regarding the receipts, one needs to consider the likelihood that Sankin was testifying falsely and that the OIC knew it. Sankin simply maintained that the notation on every receipt was accurate and that he could not remember the facts surrounding any receipt except for Government Exhibits 11m and 11p. Even apart from the documentary evidence suggesting that some, if not most, of the receipts naming Dean or her position were not accurate, Sankin's testimony does not appear believable.

There can be no doubt that the OIC was willing to take advantage of Sankin's willingness to insist that every receipt was accurate and his professed inability to recall information relevant to whether receipts that did not name Dean in fact pertained to her. It is also clear that, prior to Sankin's testifying, the OIC made no effort to question Sankin in a manner that would lead him to acknowledge that any of the receipts did not relate to Dean, notwithstanding that there was much reason to believe that many of them did not relate to Dean. In light of these facts and the improbability of so much of Sankin's testimony, it seems reasonable to conclude that, at a minimum, the OIC

²⁷ After several times expressing its concern about the difficulty of determining the cumulative effect of what it had identified as governmental misconduct, the court had summarily concluded (Tr. 29):

On the other hand, there were multiple other witnesses that testified as to defendant's involvement, and the defendant herself testified at length as to her noninvolvement in these matters in a criminal sense, and the jury concluded against her.

believed it very likely that at least some part of Sankin's testimony was false. If so, the OIC was not merely attempting to deceive the jury through the eliciting of true testimony about misleading documents; the OIC also was attempting to deceive the jury through the eliciting of testimony believed to be false.

As to O'Neill's failure to bring to light Sankin's off-the-stand statement that so disturbed the court, in context it seems a quite minor aspect of the OIC's misconduct regarding Sankin's receipts. O'Neill knew at least as well as Sankin that many of the receipts did not involve Dean. The only significance of Sankin's communication to that effect was to confirm to O'Neill that he had created the desired impression that all of them did relate to Dean.

SUBAPPENDIX: THE STANLEY ARMS AND MISCELLANEOUS BENEFITS
ALLEGED TO HAVE BEEN PROVIDED BY SANKIN TO
DEAN AND HER FAMILY

The Stanley Arms is a 40-unit apartment building on 12th Street in Northwest Washington that is owned by the estate of H. Grady Gore, who was Dean's grandfather. Andrew Sankin, who had graduated from Georgetown Law School in 1984, undertook the management of that property in early 1985. The following is a summary of the testimony regarding Andrew Sankin's management of the Stanley Arms and other miscellaneous benefits alleged to have been provided by Sankin to Dean and her family.

A. Testimony of Thomas Broussard

Thomas Broussard was involved with Sankin in the project known as Alameda Towers. He testified as an immunized witness for the government. On cross-examination, he stated that Sankin had told him that Dean had done him a favor in allowing him to manage the Stanley Arms. He elaborated as follows:

Well, he was trying to get his little company established as a property management company and at the time he told[] me[,] the only private properties he had to manage were the two buildings that his father owned, and then one day he told me that Debbie had done him a favor and had allowed him to act as the manager for a property which her family owned, so that he could include that in the portfolio of projects that he was managing when he sought other projects.

Tr. 1034.

On recross-examination, this questioning occurred on the same subject:

Q. Did you tell the prosecutors under that grant of immunity that you had -
- that Mr. Sankin had told you that Miss Dean had done him a favor in
terms of the work on her family's apartment building?

A. Yes.

Q. At least twice. I told two different people.

Tr. 1038.

B. Testimony of Andrew Sankin

1. Sankin's Direct Examination

On direct examination, Sankin described his coming to manage the Stanley Arms as follows:

My best memory is that -- that I had known that this apartment building belonged to her family and we had discussed it.

Through those discussions I learned something about how the building was being managed and who managed it. I told her that -- that I thought they were doing things poorly and -- and -- I don't remember whether I said why don't you let me manage this or whether she said -- if she said, Andy, if you can do better, why don't you do it, but we came to a meeting of the minds and it was agreed that I would take over management of this building.

Tr. 1125-26.

Sankin said that he managed the building under a standard arrangement whereby he received a percentage of the rents, which he believed was six percent. Tr. 1127. Sankin described the building as being "frequently run at a deficit" (Tr. 1128), but that it came to be run at a profit in 1985 or 1986, about a year after Sankin took over the management. Tr. 1134.²⁸ Sankin explained that immediately after he took over, he began to prepare a hardship petition to secure a rental increase. With regard to the length of time it took to prepare the petition, Sankin said: "It took a while, it was a lengthy proposal." Tr. 1135. He stated such proposals would normally be compensated "based on either an attorney's hourly rate or professional's hourly rate or, in the alternative, based on a, a percentage of the first year's rent increase obtained. I think the prevailing number was 50 percent of the first year's rent increase." He stated that 50 percent would have amounted to "I think twenty-some-odd-thousand dollars." Tr. 1136.

²⁸ The government sought to question Sankin about the use of money from a security deposit account to cover operating expenses in violation of local law for the purpose of showing that Sankin was "doing things for her and the family's property that another management company would not do." Tr. 1133. The court, however, would not allow the questioning.

Sankin stated that he asked Dean and another Gore family member to pay him for securing the rental increase, but he was not paid for it. Tr. 1136.

Sankin testified that he had a specific property manager for the Stanley Arms, and that he paid the manager bonuses when his (Sankin's) firm received lump sum payments from HUD-related work. When asked why he paid the bonuses at that time, Sankin stated:

Well, No. 1, because those were the times that I had money available. I gave, you know, my secretary a bonus as well. But also because I felt that the property management work that he was doing on the Stanley Arms was, was connected to and was important with the consulting work I did at HUD, because it, it, I felt it demonstrated a quality of work produce and a, and a skill level that gave me credibility in discussing real estate problems with the agency.

Tr. 1139.

With regard to legal services, Sankin, who graduated law school in 1984, stated that he was uncomfortable calling them legal services because he was not a member of the D.C. bar, apparently indicating that at the time of the services he was not the member of any bar. Tr. 1139. He stated, however, that when Dean purchased her condominium, he had "sat with her at the, at the closing table to see if there was anything I could add to it." He stated that at another point, he had assisted her on a fee dispute regarding her condominium fee. Tr. 1140. Sankin was not questioned as to the number of hours involved in either matter.

Asked whether Dean had requested him to make political contributions, Sankin stated that he had contributed to Linda Chavez campaign at the request of Dean. He also stated that pursuant to the request of Dean he had made contributions to the American Red Cross, a "charity called Food for Africa,"²⁹ and, the Philadelphia and Los

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F.O.O.D. for Africa was a charity promoted by Assistant Secretary for Housing Thomas T. Demery. It was Demery's connection to F.O.O.D. that originally led to the HUD IG investigation into the moderate rehabilitation program. Dean never promoted the charity and was at times alleged to have first alerted the IG to Demery's F.O.O.D. connection. Also, records indicate that Sankin contributed \$500 in May 1987 at the request of Israel Roizman, a developer who organized three F.O.O.D. fundraisers. That Sankin was certainly mistaken on the matter apparently caused O'Neill to seek a clarification (Tr. 1140):

Q. So the record is clear, you mentioned Food for Africa. At whose request did you do that?

Angeles Fair Housing Committees. Tr. 1140-41. With regard to Chavez, Sankin also testified that Dean had asked him to contribute to a fundraiser for Chavez held in Baltimore, and that Dean had stated to him that Chavez was a good candidate. Tr. 1141.³⁰

2. Sankin's Cross-Examination

On cross-examination, it was brought out that Sankin's fee started out at 4.5% and was raised to 6%. It was made clear that those figures were within standard ranges, but not made clear whether the increase was typical. Tr. 1236-40. With regard to whether Sankin had said he thought Dean had done him a favor in allowing him to manage the apartment, Sankin said we would characterize the matter as "a mutually beneficial business arrangement." Tr. 1241. He stated that he could not remember "whether she asked me to manage it or I asked her to manage it, but I was certainly pleased to have the work." Tr. 1242.

3. Sankin's Redirect Examination

On redirect examination, this questioning took place concerning Sankin's management of the Stanley:

Q. Was it a favor to the defendant, Deborah Gore Dean?

A. I think that it was a mutually beneficial thing.

Q. Did she ever say to you that it was a favor to her?

A. Yes.

Q. Now you stated during cross examination that as to obtaining a fee for the hardship rent increase, you only discussed a fee with her after the fact, after you drafted the petition. Do you recall the testimony?

A. It was at Ms. Dean's.

Q. Are you certain of that?

A. I think so.

Though this was apparently a good faith effort to clarify the record, O'Neill went no further.

³⁰ According to Government Exhibit 158A, on October 23, 1986, Sankin contributed \$3,000 to the Chavez campaign; \$1,000 was returned.

A. I don't think I said after I drafted it, but after the petition was granted, as I recall.

Q. What did you say to her, sir?

A. I think I inquired as to whether she'd be willing to pay a fee for that?

Q. What was her response?

A. She said she had no intention of doing so.

Q. Did you make any additional requests for the fee?

A. I don't think so.

Q. Why not?

A. She made her position clear, and I was doing work the Department of Housing and Urban Development, and I didn't think this, this warranted going to battle stations over and damaging the relationship.

Q. What to you mean, you didn't think this warranted going to battle stations over since you were doing business over at the Department of HUD?

[Objection overruled.]

Q. Please answer for the Ladies and Gentlemen of the jury.

A. It means that Ms. Dean had indicated what her position was, No. 1. It means that, No. 2, I wasn't adamantly, adamantly certain of my own position, and No. 3, that I was doing considerable business with the Department of Housing and Urban Development, and I didn't think it warranted a potential rift with Ms. Dean over this.

Tr. 1285-86.

C. Testimony of Deborah Dean

Dean testified that Sankin had come to her stating that he would like to be a mod rehab consultant, and she had told him that he had to work for other people. When he said he needed to find work, she told him her family was looking for someone to run the Stanley Arms, which Dean felt she could not do because of her job at HUD. She said that Sankin did a good job securing the rent increase and she thought that her mother then increased his percentage. Tr. 2996-99.

Dean said that with regard to the rent increase:

... I think I spoke to him maybe two times about it, but mostly he dealt with my mother and he said that he had spoken with Mr. Mitchell, so maybe he spoke with Mr. Mitchell to deal with my mother. I really -- I don't know. But I only met with him a couple of times about it and that was because he was unable to get an answer from my mother, and he would ask me to intercede with my family to make a decision.

Tr. 2699.

Dean denied that she had requested that Sankin donate to Linda Chavez's campaign, stating that she had never supported Chavez's candidacy and had not gotten along with Chavez while Chavez was at the Civil Rights Commission. Dean stated that, though there was an entry regarding a Chavez reception on her calendar, many receptions appeared on her calendar that she did not attend, and she had not attended that one. Tr. 2507-06.

On redirect examination, this questioning occurred regarding the legal services Sankin was alleged to have provided Dean:

Q. Directing your attention to testimony regarding Mr Sankin on cross-examination, did he attend a real estate closing for you?

A. He -- yes.

Q. What was his, what was his role there?

A. He didn't have a role there. The real estate closing was on New Year's Eve, I remember, the last day of the year, and he had dropped by, and I said, "I can't talk to you now. I'm running off to do a closing. I'm going to buy my apartment, today."

And he goes, "Oh, let me come along. I'll go with you, and then we'll all go out and celebrate afterwards."

I said, "Okay."

I don't even believe that he came into the room.

Q. Directing your attention to cross-examination regarding a condominium fee dispute --

A. Yes.

Q. -- did Mr. Sankin handle that for you at no charge?

A. Oh, I don't know if it was for no charge or not. I asked him to look into a condominium fee dispute I was having, because he was already on the payroll of my family taking care of real estate matters, so I just added that as to one of the things I thought he ought to do.

Tr. 3163.