

NUNN'S ANNOTATION REGARDING MITCHELL'S RIGHT TO HALF THE ARAMA CONSULTANT FEE

Summary: In the Superseding Indictment in United States of America v. Deborah Gore Dean, the Office of Independent Counsel alleged that the co-conspirators involved in Count One would tell their developer/clients of their association with John Mitchell, who was Deborah Gore Dean's stepfather. Consistent with that theme, the OIC included allegations in the Superseding Indictment indicating that on January 25, 1984, the day that Louie B. Nunn entered into a consultant agreement with developer Aristides Martinez to secure moderate rehabilitation funding for the Arama project, Nunn wrote on the agreement that Mitchell was to be paid half of the consultant fee. All actions the OIC took with regard to this matter -- including the words chosen in the Superseding Indictment and the presentation in the OIC's summary charts, as well as the actions the OIC took in selecting, introducing, and calling attention to the various copies of agreements between Nunn and Martinez introduced into evidence -- were calculated to support the interpretation that Nunn had annotated the consultant agreement on January 25, 1984, and that, consistent with Nunn's annotating the agreement at the time it was originally executed, Martinez possessed a copy of the agreement bearing Nunn's annotation.

Yet, Nunn would not make that annotation until the original agreement had been modified in several respects, including the addition of a guarantee by the three general partners of Arama Limited, and Nunn would not have a copy of the agreement bearing that guarantee until subsequent to April 3, 1984. There is no reason to think that Martinez ever saw a copy of the annotated agreement. The OIC thus introduced documents into evidence representing them to be things other than what the OIC knew them to be.

The court prevented the OIC from eliciting from Martinez that he had been told by Nunn or Mitchell that Mitchell was Dean's stepfather, as the OIC had alleged in the Superseding Indictment. Possibly because of being denied the opportunity to elicit that testimony, the OIC eventually would change its approach. Instead of arguing that Nunn had emphasized Mitchell's involvement with the Arama project to Martinez, the OIC argued that Nunn had concealed Mitchell's involvement from Martinez. The OIC would make that argument despite knowing with absolute certainty that Nunn had not concealed Mitchell's involvement with Arama from Martinez and despite in-court testimony from Nunn as to his discussions with Martinez about involving Mitchell. In making this argument, the OIC also had to ignore the various exhibits that it had placed in evidence that demonstrated, though falsely, that Martinez possessed a copy of the consultant agreement bearing the annotation indicating that Mitchell was to receive half the consultant fee.

Contents of this Document:

A.	Background	5
B.	The OIC's Use of Annotated Copies of the Consultant Agreement as Government Exhibits 20 and 25 in a Manner to Lead the Jury to Believe that Martinez Possessed an Annotated Copy of the Agreement	10
1.	The OIC's Exhibits and Summary Charts	10
2.	Martinez' Testimony	14
3.	Nunn's Testimony	16
C.	The Facts Concerning Nunn's Annotation on the Consultant Agreement	18
D.	The OIC's Choice of Documents to Use as Exhibits as It Reflects on the OIC's Intentions	27
E.	The OIC's Revised Theory Regarding Martinez' Knowledge of Mitchell's Involvement with Arama	32
F.	Comments	38
	Addendum (September 1995)	45

Attachments

1. Interview of Aristides Martinez, dated May 15, 1992.
- 1a. Trial Transcripts: Pages 228-51, 1351-79, 2029-30, 2917-19, 2947, 2959-60, 3519.
2. Government Exhibit 20: Consultant agreement signed by Jiminez, Martinez, and Nunn, and bearing the guarantee by the three general partners of the Arama Limited partnership and Nunn's annotation regarding Mitchell's entitlement to half the fee.
3. Government Exhibit 21: Attorney agreement signed by Jiminez, Martinez, and Nunn, but without the guarantee by the three general partners of the Arama Limited partnership.

- 3a. OIC's Arama summary chart used in closing argument.
4. Government Exhibit 22: Attorney agreement signed by Jiminez, Martinez, and Nunn, and bearing the guarantee by the three general partners of the Arama Limited partnership and the April 11, 1984 annotation increasing the amount of the attorney fee.
5. Government Exhibit 25: April 4, 1984 letter from Martinez to Nunn with items listed below as Attachment 5a through 5e.
 - 5a. Consultant agreement signed by Jiminez, Martinez, and Nunn, and bearing the guarantee by the three general partners of the Arama Limited partnership and Nunn's annotation regarding Mitchell's entitlement to half the fee. (This is the same document as Government Exhibit 20, Attachment 2 hereto).
 - 5b. A document styled "Addendum" providing certain terms of payment and indicating that there would be a reduction in fee at the rate of \$1,250 per unit in the event Nunn was unable to obtain subsidy for the entire 300 units, and bearing the guarantee by three general partners of the Arama Limited partnership.
 - 5c. Attorney agreement signed by Jiminez, Martinez, and Nunn, and bearing the guarantee by the three general partners of the Arama Limited partnership and the April 11, 1984 annotation increasing the amount. (This is the same document as Government Exhibit 22, Attachment 4 hereto.)
 - 5d. A second document styled "Addendum" providing certain terms of payment and indicating that there would be a reduction in fee at the rate of \$1,250 per unit in the event Nunn was unable to obtain subsidy for the entire 300 units, and bearing the guarantee by the three general partners of the Arama Limited partnership.
 - 5e. A copy of a letter dated March 29, 1984, from Melvin J. Adams, director of the Metropolitan Dade Department of Housing and Urban Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office.
6. Government Exhibit 33: July 1, 1985 letter from Louie B. Nunn to John N. Mitchell enclosing a cashier's check for \$75,000; a listing of out-of-pocket expenses; a copy of the consultant agreement between Nunn and Martinez bearing the guarantee by the three general partners of the Arama Limited partnership and Nunn's annotation regarding Mitchell's entitlement to half the fee; and a copy of the Addendum to the consultant agreement.

7. A group of 21 pages of documents from the files of Martinez/Jiminez bearing OIC microfiches numbers EB06 0845 to EB06 0865.
8. A group of 30 pages of documents from Nunn's files bearing OIC microfiche numbers running between BA155 0302 and BA155 0372 and OIC stamping machine numbers that run consecutively from 000137 to 000166.
9. A group of 16 pages of documents from Mitchell's files bearing OIC microfiche numbers running from CA159 0016 to CA159 0034 and OIC stamping machine numbers that run consecutively from 002173 to 0002191.
10. Government Exhibit 36A: Mitchell's notes on Arama.
11. A group of 8 pages of documents from the files of Martinez/Jiminez bearing OIC microfiche numbers running between EB06 0845 and EB06 1464 and OIC stamping machine numbers that run consecutively from 003182 to 003187 and from 003190 to 003191.
12. Interview reports of Martinez and Nunn from the HUD Inspector General's Report.
13. July 1, 1985 letter to Mitchell from Nunn's secretary with enclosures in the form that the letter and enclosures appeared in Mitchell's files.
14. July 1, 1985 letter to Mitchell from Nunn's secretary with enclosures in the form that letter appeared in the OIC's preliminary production of exhibits (i.e., with the Addendum missing).
15. A copy of a letter dated March 29, 1984, from Melvin J. Adams, director of the Metropolitan Dade Department of Housing and Urban Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office, with attachments, as found in HUD headquarters files.
16. A copy of a letter dated March 29, 1984, from Melvin J. Adams, director of the Metropolitan Dade Department of Housing and Urban Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office, as found in Mitchell's files.

A. Background

Count One of the Superseding Indictment in United States of America v. Deborah Gore Dean alleged that Deborah Gore Dean had conspired with former Attorney General John N. Mitchell and others to secure moderate rehabilitation funding for three projects in Dade County, Florida: Arama (293 units, funded in 1984); Park Towers (143 units, 1985), and South Florida I (219 units, 1986). Former Kentucky governor Louie B. Nunn was alleged to be an unindicted co-conspirator with regard to the Arama and South Florida I projects; the developer of these projects was named Aristides (Art) Martinez. Richard Shelby was alleged to be an unindicted co-conspirator with regard to the Park Towers project; the developer of that project was named Martin Fine.

With regard to the Arama project that is the subject of this document, as discussed at some length in the Narrative Appendix styled "Arama: The John Mitchell Telephone Messages and Maurice Barksdale," and in the Introduction and Summary, Section II.A. 2, there was evidence that Mitchell had secured the funding for the project through Lance H. Wilson, who had been Dean's predecessor as Executive Assistant to HUD Secretary Samuel R. Pierce, Jr. A telephone message found in Mitchell's files indicated that on January 12, 1984, a week after Martinez had contacted Nunn about the Arama project, Mitchell had talked to Wilson. Mitchell's handwriting on the message indicated that Wilson had informed Mitchell that he (Wilson) was talking to then Acting Assistant Secretary for Housing Maurice C. Barksdale about securing 300 units. Barksdale is the official who would later sign the documents authorizing the funding. Another phone message showed that Wilson had called Mitchell (or returned Mitchell's call) on January 26, 1984, the day after Nunn entered into initial agreements to secure 300 moderate rehabilitation units for Martinez. As also discussed, though the Office of Independent Counsel ("OIC") had alleged that Dean had facilitated the funding to benefit Mitchell, the OIC would not provide these messages to Dean as Brady material. And the OIC would bring Barksdale before the grand jury and call him to testify in court for the purpose of tying Dean to the Arama funding without ever confronting him with the information contained in the Mitchell messages indicating that Wilson had talked to him (Barksdale) about the matter.

This document, however, deals with other aspects of the OIC's effort to establish a conspiracy with regard to the Arama funding. As discussed in several other places, the OIC ultimately would seek to show that Nunn and Shelby had concealed Mitchell's involvement with the projects in Count One from both Art Martinez and Martin Fine, arguing that this concealment evidenced the conspiratorial nature of the relationships among the alleged co-conspirators.¹ In the Superseding Indictment, however, the OIC

¹ See Introduction and Summary and the 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." See also Section E infra.

presented a thesis exactly the opposite of what it ultimately would seek to show regarding developers' knowledge of Mitchell. In the Superseding Indictment the OIC alleged both that the co-conspirators would tell their developer/clients of Mitchell's involvement and that the co-conspirators would tell the developer/clients that Mitchell was Dean's stepfather.

In the section of the Superseding Indictment styled "The People and Entities Involved in the Conspiracy Charged in Count One," the OIC alleged:

6. During the relevant period of time, the defendant **DEBORAH GORE DEAN** considered Co-conspirator One [John Mitchell] to be her stepfather and referred to him as her father and "Daddy," and Co-conspirator One referred to the defendant **DEBORAH GORE DEAN** as his "daughter." The Co-conspirators told developers/clients of their association with the defendant **DEBORAH GORE DEAN's** stepfather, Co-conspirator One.

Superseding Indictment at 8-9.

In the section of the Superseding Indictment styled "Manner and Means of Accomplishing the Goals of the Conspiracy Charged in Count One," the OIC alleged:

16. It was a further part of the conspiracy that the Co-conspirators would tell developers/clients that the defendant **DEBORAH GORE DEAN's** was Co-conspirator One's stepdaughter.

Superseding Indictment at 11.

These allegations were evidently based on a May 15, 1992 interview with Art Martinez, in which Martinez told representatives of the OIC that in early 1984, he and his partner Mario Jiminez had come to Washington for 15-minute meeting with Mitchell.² Martinez stated that "[b]efore meeting with Mitchell or during the meeting with Mitchell, Martinez had been told that Deborah Dean was Mitchell's stepdaughter" and "that Dean held a high position at HUD." According to the interview report, Martinez had interpreted these statements to mean that Nunn and Mitchell had access to someone at a high level within HUD. Interview Report at 4 (Attachment 1 hereto). In the same interview, Martinez stated that he knew that Mitchell was helping Nunn with regard to Arama. Martinez also stated that Nunn had told him (Martinez) that he (Nunn) was associated with Mitchell's company, Global Research International. Id. at 3-4.³

² Though the interview report does not indicate that Martinez explicitly stated that Nunn was present at the meeting, it is evident from testimony and the OIC's representations at trial that Nunn was present.

³ As noted at the outset, addressed in a number of other places are the OIC's bringing Maurice Barksdale before the grand jury and calling him to testify in court for

During the trial the OIC would twice seek to elicit from Martinez testimony that at a meeting of Martinez and Jiminez with Nunn and Mitchell at Mitchell's office in early 1984, as described to the court by Associate Independent Counsel Robert E. O'Neill, "Mitchell or Nunn, he cannot identify which one, but one of the two stated that John Mitchell has some sort of relationship to Dean and she's at HUD and important to know" (Tr. 232), or that "either Mitchell or Nunn and I believe it goes to weight, that's the Government's position, since we cannot tell which one it is who says that John Mitchell is related to Deborah Dean and that she is an important person at HUD." Tr. 246-47.⁴

the purpose of tying Dean to the Arama funding without ever confronting him with the information contained in the Mitchell messages indicating that Wilson had been talking to him (Barksdale) about the matter. Barksdale had been interviewed by the OIC on June 28, 1992 and appeared before the grand jury on June 29, 1992. Though OIC attorneys would not confront Barksdale with the information on the Mitchell telephone messages, as of May 15, 1992, the matter was apparently of some concern to those attorneys. In questioning Martinez about Nunn's and Mitchell's contacts at HUD headquarters, OIC attorneys asked Martinez whether he knew if Nunn knew Maurice Barksdale or Lance Wilson. Id. at 4.

⁴ O'Neill's description of Martinez' expected testimony differed from Martinez' interview in this respect. Whereas Martinez had stated that he was told that Dean was Mitchell's stepdaughter either before the meeting with Mitchell or during the meeting,

Martinez' awareness of Mitchell's involvement with Arama was also stressed in the section of the Superseding Indictment styled "Overt Acts of the Conspiracy Charged in Count One," in the subsection relating to the Arama project, which contained the following allegations:

28. On or about January 5, 1984, Art Martinez sent a letter to Co-conspirator Two [Louie B. Nunn], addressed to "Global Research, 2828 Pennsylvania Avenue, Washington, D.C.," a company in which Co-conspirator One [John Mitchell] had an interest.

29. On or about January 25, 1984, Co-conspirator Two entered into agreements with Art Martinez and his partners in which Co-conspirator Two contracted to obtain up to 300 Mod Rehab units for use by Arama Ltd., in Dade County, Florida. The contract provided that Arama would pay Co-conspirator Two a total of \$375,000 for his services, \$225,000 in legal fees and \$150,000 in consulting fees.

30. On or about January 25, 1984, Co-conspirator Two wrote on the consulting document that one-half of the \$150,000 was to be paid to Co-conspirator One.

31. On or about April 11, 1984, the agreement between Co-conspirator Two and Arama was increased by \$50,000.

Paragraphs 29 to 31 were based on two separate agreements entered into between Nunn and Martinez (along with Martinez' partner Mario Jiminez). One was a

O'Neill stated that Martinez had been told about the relationship during the meeting either by Mitchell or Nunn. In contrast to O'Neill's characterization of what Martinez was expected to testify in court, Martinez' statement in the interview admitted of the possibility that the statement had been made outside Mitchell's presence. The fact that Martinez remembered that the statement had been made either before the meeting or during it would seem also to suggest that it was unlikely that it had been Mitchell who made the statement.

consultant agreement for \$150,000. On a copy of the document that ultimately would reflect that agreement Nunn eventually would write the following words: "1/25/84. In event of death or disability, 1/2 of above amount belongs to John Mitchell. Louie B. Nunn." As will be shown, Nunn would not make that annotation until the original agreement had been modified in several respects, including the addition of an Addendum in early February 1984, and the addition of a guarantee by the three general partners of Arama Limited at the beginning of April 1984, and Nunn would not have a copy of the agreement bearing that annotation until subsequent to April 3, 1984. There is no reason to think that Martinez ever saw a copy of the annotated agreement.

The other agreement was for an attorney fee of \$225,000. After having an Addendum added to it in early February 1984 and a guarantee by the three general partners added to it at the beginning of April 1984, the attorney agreement would be increased to \$275,000 based on a handwritten notation dated April 11, 1984, signed by Nunn, Martinez, and Jiminez. Though the important issue in this narrative involves the consultant agreement and Nunn's annotation on that agreement, treatment of that issue requires addressing the evolution of the attorney agreement, and the OIC's manner of presenting evidence regarding the attorney agreement, in detail similar to that given the consultant agreement.

In Paragraph 28, the apparent purpose of the statement that Martinez had contacted Nunn at Mitchell's business address was to emphasize Mitchell's involvement with Nunn, as well as Martinez' awareness of that involvement. Martinez' awareness of Mitchell's involvement was also implicit in the suggestion in Paragraph 30 that Nunn annotated the consultant agreement regarding the payment to Mitchell on the same day that he and Martinez entered into the consultant and attorney agreements regarding Arama. Further, the use of the words "was to be paid to" was apparently intended to suggest that Nunn's annotation was a direction to Martinez, who presumably would possess a copy of the agreement bearing the annotation, in contrast to the actual words of the annotation -- "1/2 of above amount belongs to" -- which seem more like something a person in Nunn's position might write on his own file copy of the agreement as an instruction to the administrator of his estate.

Set out in Section B below is a description of how the OIC introduced two copies of the consultant agreement into evidence as Government Exhibit 20 and part of Government 25 in a manner to lead the jury to believe that Nunn had annotated the agreement on January 25, 1984, and that Martinez possessed a copy of the annotated agreement. Set out in Section C is an account of how the consultant agreement evolved into the form on which Nunn made his annotation regarding Mitchell and a description of the evidence indicating that Nunn annotated only his own file copy of the agreement.⁵ Set out in Section D is a discussion of how the OIC's choice of documents

⁵ Readers may find it useful to examine the chronology set out at the beginning of Section C even before reading Section B.

to use as exhibits to represent the agreements between Nunn and Martinez, as well as its removal of certain documents from its preliminary production of exhibits, reflects on the OIC's intentions in creating the false impression that Nunn had annotated the agreement on January 25, 1984, and that Martinez possessed a copy of the annotated agreement. Set out in Section E is a description of how the OIC eventually changed its approach and argued that Nunn had concealed Mitchell's involvement from Martinez, even though the OIC know with absolute certainty that Nunn had not concealed Mitchell's involvement from Martinez. That Section shows that in pursuing the revised approach, the OIC made statements regarding the consulting agreement reflecting the knowledge of OIC attorneys that Mitchell had annotated only his own copy of the agreement.

B. The OIC's Use of Annotated Copies of the Consultant Agreement as Government Exhibits 20 and 25 in a Manner to Lead the Jury to Believe that Martinez Possessed an Annotated Copy of the Agreement

1. The OIC's Exhibits and Summary Charts

In addition to the Superseding Indictment itself, the OIC's intent to convey that Nunn had annotated the consultant agreement on the same day that it was executed and that Martinez possessed a copy of the annotated agreement was reflected in certain OIC actions early in the trial. The OIC would introduce as Government Exhibit 20 (Attachment 2) a copy of the consulting agreement bearing Nunn's annotation regarding Mitchell. The OIC would introduce as Government Exhibit 21 (Attachment 3) the attorney agreement for \$225,000.

The copy of the consultant agreement introduced into evidence as Government Exhibit 20, in addition to bearing signatures of Mario Jiminez and Aristides Martinez as the First Parties and Louie B. Nunn as the Second Party, also bore the signatures of the three general partners of Arama Limited, Jiminez, Martinez, and Ray Borr, guaranteeing the agreement on behalf of the Arama Limited partnership. The agreement also referenced an Addendum, though none was attached.

The copy of the attorney agreement introduced into evidence as Government Exhibit 21 bore signatures of Mario Jiminez and Aristides Martinez as the First Parties and Louie B. Nunn as the Second Party, but did not include a guarantee on behalf of the Arama Limited partnership. The agreement referenced an Addendum though none was attached.

In the summary chart on Arama that the OIC used in its opening argument, the OIC would include the following entries referencing these exhibits.

January 25, 1984: Consultant contract betw. Martinez and **NUNN**. (Government Exhibit 20)

NUNN adds agreement to pay **MITCHELL**. Second contract betw. Martinez and **NUNN**. (Government Exhibit 21).⁶

It is to be noted that with the above entries, the OIC explicitly represented both that Government Exhibit 20 was the consultant agreement executed on January 25, 1984, and that Nunn had annotated the consultant agreement on that date. These entries would seem also to suggest that Nunn annotated a copy of the agreement that was retained by Martinez.

That the OIC intended to convey that Nunn had annotated the original agreement was also reflected in the statement of Associate Independent Counsel Robert E. O'Neill when arguing to be allowed to elicit from Martinez testimony that either Nunn or Mitchell had told him (Martinez) that Mitchell and Dean were related. O'Neill there stated:

What the Government's proffer would be, Judge, is that Mr. Nunn was hired by Mr. Martinez to operate as a consultant on the Arama project. Mr. Martinez requests of Mr. Nunn 293 units. Mr. Nunn goes and hires John Mitchell. He -- they sign an agreement between Mr. Nunn and Mr. Mitchell -- excuse me, Mr. Martinez and Mr. Nunn, for several hundred thousand dollars, two separate agreements. One is an attorney contract and one is a consultant contract. So they keep them separate.

On the consultant contract Mr. Nunn writes at the bottom one-half of this in the event of my death and disability to go to John Mitchell.

⁶ In the OIC's chart used in closing argument (Attachment 3a), these entries were modified in a minor respect. The following are the revised entries:

January 25, 1984: Consultant contract betw. Martinez and **NUNN**. **NUNN** adds agreement to pay **MITCHELL**. (Government Exhibit 20)
Second contract betw. Martinez and **NUNN**. (Government Exhibit 21)

Tr. 230-31.⁷

There was no question that Mitchell ultimately received half the consultant fee. O'Neill's mentioning Nunn's annotation would seem not to be for the purpose of bringing out that Mitchell was involved in the project. Rather, O'Neill's mentioning the annotation in the context of seeking to be allowed to elicit from Martinez that he (Martinez) had been told that Mitchell was Dean's stepfather was evidently intended to imply that Nunn annotated the agreement in front of Martinez or at least that Martinez had a copy of the agreement bearing the annotation. Even without regard to context, this would seem the plainest meaning of O'Neill's statement.

⁷ All cited transcript pages are included in Attachment 1a.

The OIC would introduce as Government Exhibit 22 (Attachment 4) a version of the attorney agreement that included a handwritten notation, dated April 11, 1984, signed by Nunn as well as Martinez and Jiminez, increasing the attorney fee by \$50,000.⁸ That agreement also bore a guarantee signed by the three general partners of Arama Limited. The agreement referenced an Addendum, though none was attached.

It is to be noted at this point, however, that in the OIC's list of exhibits, it would describe Government Exhibit 22 as "Agreement with addendum," apparently intending to convey that the referenced Addendum was the annotation increasing the fee, rather than the Addendum added in February 1984.

The OIC would introduce as Government Exhibit 25 (Attachment 5) an April 3, 1984 letter from Martinez to Nunn, referencing an enclosed "executed amended agreement between Arama Limited and its general partners and you for your records." The letter also referenced an attached March 29, 1984 letter from a Dade County housing official to HUD's Jacksonville Office transmitting a list of projects in Dade County's pipeline and Fact Sheets on each project. In advising Nunn that Arama was Project V on the Fact Sheets, Martinez noted that the application had been signed by Ray Borr, "who is one of our partners in Arama Limited and the new signator to the agreement with you for your compensation on this project."

In addition to the letter, Government Exhibit 25 was comprised of the following documents, which are listed below by the numbers they bear as Attachments hereto:

- 5a. The consultant agreement bearing Nunn's annotation. This is the same document as Government Exhibit 20, which is also found as Attachment 2 hereto.
- 5b. A document styled "Addendum" providing certain terms of payment and indicating that there would be a reduction in fees at the rate of \$1,250 per unit in the event Nunn was unable to obtain subsidy for the entire 300 units.

⁸ Though not clear on the copy of Government Exhibit 22 attached as Attachment 4, the modification is initialed by Nunn and signed by Jiminez and Martinez. It is not clear whether Borr's signature also appears under that of Jiminez. See ninth page of Attachment 8.

- 5c. The attorney agreement bearing the April 11, 1984 annotation increasing the fee by \$50,000. This is the same document as Government Exhibit 22, which is also found as Attachment 4 hereto.
- 5d. A second document styled "Addendum" providing certain terms of payment and indicating that there would be a reduction in fees at the rate of \$1,250 per unit in the event Nunn was unable to obtain subsidy for the entire 300 units.⁹
- 5e. A copy of a letter dated March 29, 1984, from Melvin J. Adams, director of the Metropolitan Dade Department of Housing and Urban Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office. The copy of the letter indicated that it had been received at the Jacksonville Area Office on April 2, 1984. The letter referred to attached Fact Sheets on nine projects totalling 1,709 units. The referenced attachments to the Adams letter were not part of Government Exhibit 25.¹⁰

⁹ The fact that the \$1,250 reduction per each of 300 units would equal the total \$375,000 sum of both agreements (\$225,000 in an attorney's fee and \$150,000 in a consulting fee) might suggest that there was only one addendum, which was referenced above the signatures on both the attorney agreement and the consultant agreement. Otherwise, if only, say, 120 units were secured, the reduction would wipe out both the \$150,000 consultant fee and the \$225,000 attorney fee. It seems unlikely that the parties intended such a result. Nevertheless, whatever the intended implications of two addenda with each separately providing for a \$1,250 per unit reduction, it is clear that there were in fact two addenda.

¹⁰ As discussed infra, however, the copy of the March 29, 1984 letter from Adams to Sharrott was not the copy of that letter that Martinez had enclosed with his

The OIC would reference Government Exhibits 22 and 25 in its Arama chart used in opening argument in the following manner:

April 3-4, 1984: Martinez increases Nunn's fees. (Government Exhibits 22, 25).

At this point, it is to be noted that in contrast to the Superseding Indictment, which gave April 11, 1984, as the date of the increase in the amount of the attorney contract, the OIC's Arama chart gives the date as April 3-4, 1984. Read in conjunction with Martinez' reference to "the executed amended agreement" this might suggest that the reference was to the increase in the amount of the attorney agreement. For the present, however, we can put aside this matter, as well as the issue of whether an April 3, 1984 letter would in fact enclose a copy of an amendment to the attorney agreement dated April 11, 1984.

With regard to the more significant issue of whether Martinez possessed a copy of the consultant agreement bearing Nunn's annotation concerning Mitchell's entitlement to half the fee, it would appear that, if the consultant agreement attached to Martinez' April 3, 1984 letter had borne the annotation, this would conclusively establish that at some point in time -- and evidently prior to April 3, 1984 -- Martinez had become possessed of a copy of the consultant agreement bearing Nunn's annotation. Martinez could not send a copy of the annotated consultant agreement to Nunn on that date if he (Martinez) did not already have a copy of it.

But, as shown the next section, the April 3, 1984 letter from Martinez to Nunn did not enclose an annotated copy of the consultant agreement. Set out in the subsections immediately below, however, is a description of the manner in which each of the above-referenced exhibits would be used by the OIC during the testimony of Martinez and Nunn.

2. Martinez' Testimony

Martinez testified on September 14, 1993. After eliciting from Martinez that he had sent his January 5, 1984 initial contact letter on Arama (Government Exhibit 19) to Nunn at Mitchell's business address (Tr. 238-39), O'Neill introduced Government Exhibit 21 (the attorney agreement) into evidence through Martinez. Tr. 240-41.

O'Neill then asked Martinez whether he also had a consulting agreement with Nunn. When Martinez said he did not recall, O'Neill showed him Government Exhibit

April 3, 1984 letter to Nunn.

20 to refresh his recollection, which it did. Tr. 241-42. O'Neill did not, however, introduce Government Exhibit 20 through Martinez. Nor did O'Neill ask Martinez whether he had ever before seen the annotation on the document whereby Nunn had indicated that Mitchell would receive half the consulting fee. Nor did O'Neill ask Martinez at what point in time the guarantee was added.

O'Neill then proceeded to introduce through Martinez Government Exhibit 22 (the attorney agreement containing the \$50,000 increase). When O'Neill attempted to elicit from Martinez that the agreement was made at or about the date indicated at the top of the agreement (which was January 25, 1984), Martinez, referring to the notation regarding the increase in the fee, responded that the modification is dated at the bottom. O'Neill then elicited testimony merely that the modification was dated, though without eliciting testimony as to what the date was. Without further questioning of Martinez, O'Neill then requested that the document be admitted. When the court asked the date of the document, O'Neill stated "the date of the addendum is April 11, '84," (Tr. 242-43), suggesting, just as the OIC had explicitly indicated in its list of exhibits, that the reference to an "addendum" was a reference to the annotation increasing the amount of the attorney fee.

Thereafter, O'Neill clarified, in response to the court's question, that he had not yet moved Government Exhibit 20 into evidence. Tr. 244. O'Neill would not then introduce Government Exhibit 20 through Martinez, but would introduce it later through Nunn. Introducing this single-page document through Martinez would have required eliciting testimony from Martinez as to his knowledge of the document, which would raise the danger that Martinez would indicate whether or not he had ever seen the annotation on it.

Later on in the questioning of Martinez, O'Neill would elicit testimony that a March 20, 1984 letter from Martinez to Nunn (Government Exhibit 24) was sent to Nunn at Global Research. Tr. 256-57. O'Neill then had Government Exhibit 25 marked for identification, and questioned Martinez about the document as follows:

Q. And I'd ask you if you recognize this?

A. That is my signature.

Q. Did you write this letter?

A. It is my signature, yes, I --

Q. And I note there are two attachments to this letter that are referenced in the body of the letter?

A. Yes, sir.

Q. Did you attach these attachments to that letter?

A. Yes, sir.

Tr. 257-58.

O'Neill then proceeded to introduce the document into evidence, eliciting from Martinez that he had sent the letter to Nunn at Global Research. Tr. 258-59. O'Neill did not elicit from Martinez any of the following items of information:

1. the meaning of the reference in the April 3, 1984 letter to the enclosed "executed amended agreement between Arama Limited and its general partners and you" or the subsequent reference to the fact that Ray Borr was "the new signator to our agreement with you for your compensation on this project";
2. when the guarantee by the Arama general partners was added to the agreement;
3. whether as of April 3, 1984, or at any other time, Martinez had possessed a copy of the consultant agreement bearing Nunn's annotation, as one of the attachments to Martinez' April 3, 1984 would appear to indicate; or
4. why the increase in the attorney agreement dated April 11, 1984, was enclosed with an April 3, 1984 letter.

Before introducing Government Exhibit 25, O'Neill, as a prelude to a second attempt to elicit testimony from Martinez concerning the meeting with Mitchell, asked Martinez whether he met with Nunn with regard to the Arama project. After Martinez stated he had met with Nunn, O'Neill asked when that occurred. Martinez stated: "Well, we had a number of meetings. One of them was on or about when this increase to the contract was executed." Tr. 245.¹¹ Martinez' suggestion that the increase in the contract occurred at an in-person meeting would contradict the OIC's representation in its Arama chart that the April 3, 1984 letter introduced as Government Exhibit 25 had transmitted the increase in the attorney agreement. O'Neill did not follow up on that

¹¹ Though the phrase "on or about" admits the possibility that the increase might have been effected other than in an in-person meeting, it seems more likely that Martinez was merely using the same type of legalistic phrase to refer to a date that O'Neill had used moments before. See Tr. 243. That the notation is handwritten and initialed by Jiminez, Martinez, and Nunn, and that there are no letters of transmittal in the files of Nunn or Martinez/Jiminez seem to confirm that the increase occurred at an in-person meeting.

matter, nor did he ask Martinez whether the contract was increased on April 11, 1984, as alleged in the Superseding Indictment, or on April 3, 1984, as represented in the OIC's Arama chart.

More generally, O'Neill asked Martinez no questions that would elicit responses indicating that either agreement was ever modified in any respect, other than with regard to the \$50,000 increase in the amount of the attorney agreement.

3. Nunn's Testimony

Nunn testified on September 24, 1993, his testimony having been delayed because of illness. O'Neill showed Nunn Government Exhibit 20, had him describe it, then moved it into evidence. O'Neill then asked Nunn to read aloud the handwritten notation regarding Mitchell. Nunn responded: "It's dated 1-25-84. It says, 'In the event of my death or disability, one-half of the above amount belongs to John Mitchell,' signed, 'Louie B. Nunn. Tr. 1352. O'Neill did not inquire as to whether January 25, 1984 was in fact the date on which Nunn made the annotation.

O'Neill proceeded to question Nunn further about the agreement and what actions it entailed. Tr. 1353-58. O'Neill then again called Nunn's attention to the handwritten notation regarding Mitchell, asking Nunn whether he had an agreement with Mitchell and what Mitchell's role was to be. Tr. 1358. This questioning then occurred:

Q. Okay. Did you have a conversation with Mr. Martinez in which you asked him to bring Mr. Mitchell into the Arama project?

A. I don't know that I asked him to bring Mr. Mitchell in. I asked him if he had any objections if I brought Mr. Mitchell in, because Mr. Mitchell had worked on the other three projects with me, too.

Tr. 1359. Thereafter, O'Neill elicited testimony, based on Nunn's earlier grand jury testimony, concerning why Nunn had told Martinez that he wanted to involve Mitchell, with the reason being Mitchell's Washington contacts or experience. See Tr. 1361-62.

O'Neill did not, however, ask Nunn any questions about when he annotated Government Exhibit 20 regarding Mitchell's entitlement to half the \$150,000 consulting fee or whether Martinez possessed a copy of the agreement bearing that annotation.

O'Neill later questioned Nunn about Government Exhibits 21 and 22, merely eliciting that the original agreement had been increased from \$225,000 to \$275,000. Tr. 1368-70. O'Neill also introduced through Nunn Government Exhibit 33 (Attachment 6), which was a July 1, 1985 letter from Nunn's secretary to Mitchell enclosing a cashier's check for \$75,000 and also enclosing copies of the consultant agreement and the addendum thereto. The consultant agreement bore the guarantee by the general

partners of the Arama partnership and the annotation regarding Mitchell's entitlement to half the \$150,000 consultant fee. This would be the third of three copies of the consultant agreement introduced into evidence. All would bear the guarantee by the general partners of the Arama partnership and the annotation regarding Mitchell's entitlement to half the \$150,000 consultant fee. O'Neill would elicit from Nunn that the letter had enclosed "a copy of the agreement that I had with the people in Florida." Tr. 1376. O'Neill did not otherwise question Nunn about the enclosed copy of the agreement.

Although Government Exhibit 25 was created entirely from documents in Nunn's files, O'Neill would ask Nunn no questions about that exhibit. As with Martinez, O'Neill asked Nunn no questions that would elicit responses indicating that either agreement was ever modified in any respect, other than with regard to the \$50,000 increase in the amount of the attorney agreement. O'Neill asked neither Martinez nor Nunn any questions that would elicit testimony that there existed more than one copy of either agreement.

C. The Facts Concerning Nunn's Annotation on the Consultant Agreement

Set out in this section is a description of the facts concerning Nunn's annotation of the consulting agreement. Presented immediately below is a chronology of relevant events that ought to facilitate the review of more detailed description that follows thereafter. The detailed description entails the drawing of certain inferences regarding which copies of certain documents were retained by the various parties. The inferences are very likely correct ones. Whether they are or not, however, there is little room for doubt about the correctness of the events set out in the chronology. Certainly there is no room for doubt about the certain critical points, namely that (1) Nunn did not annotate the consulting agreement until after April 3, 1984; (2) that Government Exhibits 20 and 25 were not what the OIC represented them to be.

The chronology follows:

- January 25, 1984: Nunn meets with Martinez and Jiminez in Atlanta and they reach initial agreement, marking up and signing copies of previously typed copies of the consultant agreement and the attorney agreement (no annotation regarding Mitchell on consultant agreement).
- January 26, 1984: Nunn sends re-typed copies of both agreements to Martinez for signatures of Martinez and Jiminez (no annotation regarding Mitchell on consultant agreement).
- February 7, 1984: Jiminez sends Nunn copies of agreements with signatures of Jiminez and Martinez, along with addenda signed by Jiminez

and Martinez, requesting Nunn to sign the addenda (no annotation regarding Mitchell on consultant agreement).

February 10, 1984: Nunn returns copies of agreements and addenda having initialed reference to the addendum on the attorney agreement and having signed the addenda.

March 23, 1984: Nunn sends Martinez copies of agreements requesting guarantee by the general partners of Arama (no annotation regarding Mitchell on consultant agreement).

April 3, 1984: Martinez sends Nunn copies of agreements bearing guarantee by the general partners of Arama Limited (no annotation regarding Mitchell on consultant agreement).

April 11, 1984: Attorney fee is increased by \$50,000.

April 3, 1984 -
July 1, 1985: On a copy of the consulting agreement bearing the guarantee of the general partners, Nunn makes annotation indicating that Mitchell is entitled to half the fee.

The discussion that follows in this section will be based principally on documents contained in Attachments 7 and 8. Attachment 7 is a group of 21 pages of documents from the files of Martinez and/or Jiminez bearing OIC microfiche numbers EB06 0845 to EB06 0865, which presumably reflects the order in which they were retained in the files of Martinez/Jiminez. References herein to particular documents in Attachment 7 will include the last three digits of the OIC microfiche number ("MN"). Attachment 8 is a group of 30 pages of documents from the files of Nunn, bearing OIC microfiche numbers running between BA155 0302 and BA155 0372. These numbers also presumably reflect that order in which the documents were maintained in Nunn's files, though many documents are not included. The materials collected in Attachment 8 reflect a portion of the OIC's preliminary production of evidence to be introduced at trial.¹² They bear OIC stamping machine numbers at the top left that run consecutively from 000137 to 000166. References herein to particular documents in Attachment 8 will include the last three digits of the OIC stamping machine number ("SMN").

¹² Some time prior to producing its actual trial exhibits, the OIC preliminarily produced almost 3,700 pages of exhibits. The exhibits were not numbered, but the pages bore microfiche numbers and consecutive stamping machine numbers.

Nunn met with Martinez and Jiminez in Atlanta on January 25, 1984, and agreed to the basic terms of the consultant agreement and the attorney agreement pertaining to Nunn's securing moderate rehabilitation funding for Arama. On that day, Jiminez, Martinez, and Nunn signed rough copies of the agreements, after marking up certain documents that had been previously typed. Attachments 7, MN 863-64. The consultant agreement (Attachment 7, MN 864) did not at that time include Nunn's annotation regarding Mitchell. Nor would a copy of the consultant agreement include that annotation until after the general partners of Arama Limited had added a guarantee to that document at least two months later.

On January 26, 1984, Nunn, who had returned to Lexington, Kentucky, sent Martinez a letter (Attachment 7, MN 865) referencing the meeting in Atlanta and enclosing retyped copies of the two agreements, implementing the handwritten changes. Nunn had signed the retyped documents. In his letter, Nunn explained that, although on the attorney agreement signed a day earlier the parties had marked out a paragraph regarding the payment of escrow funds (see Attachment 7, MN 863), for certain reasons Nunn had decided to include the paragraph in the retyped agreement after all.

Nunn apparently enclosed two copies of each retyped agreement, which he had signed. It is possible that one was a signed photocopy and that other was a signed typed copy, which Nunn referred to as "the originals" that he wanted returned.¹³ For purposes of the discussion that follows, these copies will be referred to as Attorney Agreement Copy 1, Attorney Agreement Copy 2, Consultant Agreement Copy 1, and Consultant Agreement Copy 2. Each is described below:

¹³ In his letter, Nunn referred only to "a photocopy" of each agreement. He requested that Martinez and Jiminez sign them and "retain a copy for yourselves and return the originals to me." Attachment 7, MN 0865. This might suggest that, after signing one copy of the attorney agreement and one copy of the consultant agreement, Martinez and Jiminez should make a photocopy of each agreement for their files and then return the single copies of each agreement bearing original signatures to him. Yet, as the discussion that follows makes clear, Nunn had signed two copies of each agreement.

Attorney Agreement Copy 1: The "L" in Nunn's signature touches the typed "B", in contrast to Attorney Agreement Copy 2 in which the "L" in Nunn's signature misses the typed "B." After being countersigned by Jiminez and Martinez, it would be further distinguished from Attorney Agreement Copy 2 by the way the "J" in Jiminez' signature loops the typed "A" in "MARIO," in contrast to the way the "J" crosses the "A" in Attorney Agreement Copy 2. The earliest version of Attorney Agreement Copy 1 may be found as Attachment 8, SMN 147-48. If Nunn included a typed version of the attorney agreement, this was probably it, since this would be the version ultimately retained by Nunn. All versions of the attorney agreement admitted into evidence by the OIC would be versions of Attorney Agreement Copy 1. Two copies of Attorney Agreement Copy 1 would eventually be made and then become Nunn's and the Arama partners' copies of the guaranteed attorney agreement.

Attorney Agreement Copy 2: Its distinguishing features have already been described. Attorney Agreement Copy 2 would become the file copy of the unguaranteed attorney agreement for Martinez/Jiminez. The earliest version may be found in Attachment 7, MN 858-59, and the only other version as Attachment 7, MN 846-47.

Consultant Agreement Copy 1: The "L" in Nunn's signature curls up to a point between the typed "U" and "N", in contrast to Consultant Agreement Copy 2 in which the "L" in Nunn's signature does not curl up. After being countersigned by Jiminez and Martinez, it would be further distinguished from Consultant Agreement Copy 2 by the way the "J" in Jiminez' signature loops much of the typed "MARIO," in contrast to the way the "J" barely touches the line in Consultant Agreement Copy 2; it would at that time be further distinguished from the Consultant Agreement Copy 2 by the fact that in the reference to an addendum, "addendum" would be correctly spelled, while in Consultant Agreement Copy 2, that word would be spelled "adendum." The earliest version of Attorney Agreement Copy 1 may be found as Attachment 8, SMN 149. If Nunn included a typed version of the consultant agreement, this was probably it, since this would be the version ultimately retained by Nunn. All versions of the consultant agreement admitted into evidence by the OIC would be versions of Consultant Agreement Copy 1. Two copies of Consultant Agreement Copy 1 would eventually be made and become Nunn's and the Arama partners' copies of the guaranteed consultant agreement.

Consultant Agreement Copy 2: Its distinguishing features have already been described. Consultant Agreement Copy 2 would become the file copy of the unguaranteed agreement for Martinez/Jiminez. The earliest (and only) version may be found in Attachment 7, MN 852.

On February 7, 1984, Mario Jiminez wrote to Nunn enclosing both copies of each agreement, which had been countersigned by Jiminez and Martinez. Jiminez also enclosed copies of an addendum to each agreement, which provided for a reduction in the total fee in the event not all 300 units were funded. Jiminez requested Nunn to sign the addenda indicating his acceptance of their terms and to return one copy of each at his earliest convenience. Attachment 7, MN 857.¹⁴

Jiminez retained a photocopy of his letter to Nunn along with photocopies of (1) Attorney Agreement Copy 2 with Jiminez and Martinez' signature as well as Nunn's (Attachment 7, MN 858-59), and its Addendum, which Jiminez and Martinez had signed and which did not yet have Nunn's signature (Attachment 7, MN 860); and (2) Consultant Agreement Copy 1 with Jiminez' and Martinez' signature as well as Nunn's (Attachment 7, MN 861), and its Addendum, which Jiminez and Martinez had signed and which did not yet have Nunn's signature (Attachment 7, MN 862). This photocopy of Consultant Agreement Copy 1 did not contain Nunn's annotation regarding Mitchell.

Nunn apparently signed each addendum by February 10, 1984. By letter of that date (Attachment 7, MN 856), Nunn returned to Jiminez Attorney Agreement Copy 2 (id. MN 846-47), having initialed the reference to the addendum, along with a copy of the countersigned addendum with countersigned addendum (id., MN 848). Nunn also returned Consultant Agreement Copy 2 (id., MN 852), along with a copy of the countersigned addendum (id., 854). Consultant Agreement Copy 2 would not then contain Nunn's annotation regarding Mitchell, nor would it ever.

¹⁴ The circumstances and Jiminez' letter itself might suggest the possibility that Jiminez had sent only one copy of each agreement, having retained one signed copy of each agreement for his record, and merely wanted Nunn to return a signed copy of the two addenda. However, the fact that, as shown below, Nunn initialed the reference to the addendum in Attorney Agreement Copy 2 found in the files of Martinez/Jiminez indicates that Jiminez enclosed both copies of each agreement with his February 7, 1984 letter to Nunn.

Nunn retained for his files Attorney Agreement Copy 1 (Attachment 8, SMN 147-48) and Consultant Agreement Copy 1 (Attachment 8, SMN 149). The copy of Consultant Agreement Copy 1 that Nunn retained did not contain his annotation regarding Mitchell.¹⁵

On March 23, 1984, Nunn wrote to Martinez, enclosing "photocopies of the original agreements concerning the 300 moderate rehabilitation units." Attachment 7, MFN 845. In the letter, Nunn also requested that the three general partners of Arama Limited enter into the agreement and that the partnership guarantee payment of his fees. The letter stated in pertinent part:

The enclosed are photocopies of the original agreements concerning the 300 moderate rehabilitation units. Inasmuch as the application is in the form of a general partnership with three general partners, I would suggest that the copies be treated as duplicate originals and for the safety of all concerned the third general partner enter into the agreements and that the partnership also guarantee in the payment of the fees set forth in the original agreements. Please return a signed copy to me.

¹⁵ Nunn appears to have initialed the reference to the addendum on both copies of the attorney agreement, but on neither copy of the consultant agreement.

Nunn had enclosed two photocopies of Attorney Agreement Copy 1 (with Addendum) and Consultant Agreement Copy 1 (with Addendum).¹⁶ Nunn still retained in his files copies of each agreement without the requested guarantee. Presumably, if Nunn's original (unguaranteed) copies of Attorney Agreement 1 and Consultant Agreement 1 were typed (as opposed to photocopied), these were the copies he retained and that would remain in his files to be found as the documents to be microfiched by the OIC as BA155 0325-26 and BA 155 0328 (Attachment 8, SMN 147-49).

¹⁶ Nunn's letter itself appears to suggest that he enclosed two copies of each agreement. In any case, that he did so is confirmed by the fact that in the guarantees that were added, the Jiminez and Borr signatures were obviously different in Nunn's and the Arama partners' copies of the attorney agreement, and all three signatures were obviously different in Nunn's and the Arama partners' copies of the consultant agreement.

On the two sets of photocopies of Attorney Agreement Copy 1 and Consultant Agreement Copy 1 and their addenda, the three general partners of Arama Limited, Mario J. Jiminez, Aristides Martinez, and Ray Borr, added the guarantee below and to the left of the existing signatures. The Arama partners retained one signed copy of the guaranteed Attorney Agreement Copy 1 (Attachment 7, MN 849-50), with guaranteed Addendum (Attachment 7, MN 851), and one signed copy of the guaranteed Consultant Agreement Copy 1 (Attachment 7, MN 0853), with guaranteed Addendum (Attachment 7, MN 0855).¹⁷ The guaranteed copy of Attorney Agreement Copy 1 retained by the Arama partners does not include the notation indicating the April 11, 1984 increase in the amount of the attorney fee, nor does any other copy known to exist in the files of the Arama partners. The guaranteed copy of Consultant Agreement Copy 1 found in the files of the Arama partners does not contain Nunn's notation regarding Mitchell's entitlement to half the consulting fee, nor does any other copy known to exist in the files of the Arama partners.

On April 3, 1984, Martinez sent to Nunn the letter that would later be made part of Government Exhibit 25. Enclosed with it, along with the March 29, 1984 letter from the Dade County housing authority to HUD's Jacksonville Area Office and its attachments, were the following documents:

1. Attorney Agreement Copy 1, now bearing the guarantee signed by Jiminez, Martinez, and Borr;
2. the Addendum to the attorney agreement, now bearing the guarantee signed by Jiminez, Martinez, and Borr;
3. Consultant Agreement Copy 1, now bearing the guarantee signed by Jiminez, Martinez, and Borr; and
4. the Addendum to the consultant agreement, now bearing the guarantee signed by Jiminez, Martinez, and Borr.

The use of the word "amended" by Martinez in the April 3, 1984 letter to Nunn enclosing the "executed amended agreement between Arama Limited and its general partners and you" was a reference to the addition of the guarantee by the three general partners, as has been requested by Nunn in his March 23, 1984 letter. As pointed out earlier, Martinez had made it clear elsewhere in the letter that it had transmitted the

¹⁷ In the Martinez/Jiminez files, following a copy of Nunn's March 23, 1984 letter, file copies of the agreements were retained in the following order Attorney Agreement Copy 2; unguaranteed Addendum; Attorney Agreement Copy 1 with guarantee; Addendum with guarantee; Consultant Agreement Copy 2; Consultant Agreement Copy 1 with guarantee; unguaranteed Addendum; Addendum with guarantee. Attachment 7, MN 845-55.

agreements containing the guarantee that included the signature of the third general partner, Ray Borr.¹⁸

The word "amended" was not a reference to the increase in the amount of the attorney fee, as had been suggested by the OIC's Arama chart used in opening argument that gave April 3-4, 1984, as the date of the amendment of the agreement and referenced Government Exhibit 25. There is no reason to believe that the notations reflecting the increase in amount of the attorney agreement was yet on the copy of Attorney Agreement Copy 1 that Martinez sent to Nunn on April 3, 1984. Presumably that modification was in fact made on April 11, 1984. It evidently occurred at an in-person meeting, as Martinez indicated (Tr. 245), which presumably accounts for the fact that the increase was handwritten and that it appears only on Nunn's copy of the agreement.

¹⁸ Though Martinez would use the singular "agreement" both times in his letter, there does not seem a reasonable interpretation whereby the April 3, 1984 letter transmitted only one of the agreements. More likely, Martinez regarded the entire arrangement to constitute one agreement, which is how the matter is referenced in the two addenda. Jiminez' February 7, 1984 letter also used the singular in referring to the enclosed "contract."

As discussed in note 8, it is possible that Borr's signature also appears on the April 11, 1984 annotation increasing the amount of the attorney fee. Even if that it so, however, it is not plausible that Martinez' reference to Borr's being the new signator was a reference to Borr's signature on the April 11, 1984 annotation, among other reasons, because the guarantee would have come before the annotation.

It is possible that increase was made on the day of the meeting at Mitchell's office, which is known to be an instance where increase Nunn, Martinez, and Jiminez were all present.¹⁹ The first three pages of Attachment 9 are a copy of an April 11, 1984 memorandum to file by Martinez discussing the origin and present status of the Arama project. The document, which bears the OIC microfiche prefix of CA159, suggesting that it was from the files of Mitchell, was provided as part of the OIC's preliminary production of exhibits to be used at trial. When provided at that time, the Martinez memorandum was followed by a copy of the March 29, 1984 letter from Melvin Adams of Metro Dade to Harry Sharrott of HUD's Jacksonville Area Office, along with the attachments thereto, and Arama original proposal to Dade (also included in Attachment 9), which OIC microfiche numbers indicate were maintained along with the Martinez memorandum in Mitchell's files. Mitchell's notes on Arama, which were introduced into evidence as Government Exhibit 36A (Attachment 10) track the Martinez April 11, 1984 memorandum in several respects, suggesting the possibility that the Martinez memorandum was a working paper for the meeting at Mitchell's office.²⁰

Whether the April 11, 1984 increase in the attorney fee occurred at the meeting in Mitchell's office is not important to the issue of when the increase occurred. But if the meeting did occur on that date, and the OIC knew it, the matter is significant with regard to prosecutorial misconduct issues in the following respect. It has been noted above that Government Exhibit 25 would establish that Martinez possessed a copy of the consultant agreement bearing Nunn's annotation concerning Mitchell, unless Nunn made that annotation subsequent to receiving Martinez' letter. There are two factors that might raise an issue an observer's mind as to whether Nunn's annotation regarding Mitchell was on the copy of the consultant agreement when it was sent by Martinez to Nunn. First, if the increase in the attorney agreement occurred subsequent to April 3,

¹⁹ Martinez testified that he met with Nunn in Washington at "at the airport and subsequent to that we met at Mr. Mitchell's office." Tr. 245. This seems to suggest that both meetings occurred on the same day. Possibly the modification to the attorney agreement, which did not involve Mitchell, took place at the airport before the meeting in Mitchell's office. That the notation reflecting the increase in the attorney agreement was signed at the airport may also account for the fact that the only known copy of the agreement bearing the increase was found in Nunn's files. No copy is known to exist in the files of Martinez/Jiminez. Of course, if Borr also signed the annotation (see notes 8 and 18 supra), that would suggest that the annotation was not made on the day of the meeting with Mitchell since Borr was not present. See Attachment 1 at 4. It is possible, however, that if Borr signed the annotation, he did so at a later date.

²⁰ It is possible as well, however, that the Martinez memorandum was provided to Mitchell at some other time. The first attachment to Government Exhibit 33 (Attachment 6 hereto) indicates that Nunn took three trips to Miami relating to the Arama project.

1984, then the fact that the annotation reflecting that increase was added later raised the possibility that the annotation on the consultant agreement might also have been added later. Second, the fact that the guarantee was added at the beginning of April 1984, like everything else suggesting that the consultant agreement evolved into the final form used as Government Exhibit 20, and that there existed various copies of interim forms, raised as issue as to whether, as stated in the Superseding Indictment, on or about January 25, 1984, Nunn in fact "wrote on the consulting document that one-half of the \$150,000 was to be paid to" John Mitchell. Both of these problem were considerably obviated if observers accepted the OIC's representations in its charts, which treated the April 3, 1984 letter as if it transmitted the increase in the attorney agreement, and which thereby also obscured the fact that the reference to an "amended agreement" was a reference to the addition of the guarantee.

The fact that the increase was dated April 11, 1984, if given any attention, would create a problem for an effort to show that Martinez' April 3, 1984 letter transmitted the increase in the attorney agreement. This gave the OIC some interest in not calling further attention to any meeting of Martinez, Jiminez, and Nunn on April 11, 1984. If the attorney fee was in fact increased on the day of the meeting at Mitchell's office and the OIC knew that to be the case, then it is of some significance that in responding to a question by the district court judge, who appeared to be of the view that the meeting had occurred in April 1984, O'Neill explicitly represented that he did not know the exact date. Tr. 250. The question is whether O'Neill knew the date of the meeting when he represented to the court that he did not know.²¹

With regard to the more central issue addressed in this document, there is no reason to believe (and much reason not to believe) that the guaranteed copy of Consultant Agreement Copy 1 enclosed with Martinez' April 3, 1984 letter contained Nunn's annotation regarding Mitchell. In order for that notation to have been on the agreement when Martinez mailed it to Nunn, it would be necessary that Nunn, after making two copies of his copy of Consultant Agreement Copy 1 that did not contain that notation (Attachment 8, SMN 149, had then made the notation on only one of the two copies he then sent to Martinez, and Martinez had then sent back to Nunn the copy that contained the notation. Yet, there is no reference to any such notation in Nunn's letter requesting the guarantee, which in fact states that both copies should be "treated as duplicate originals." It seems plain that Nunn annotated the agreement some time subsequent to April 3, 1984, and some time prior to his providing a copy of the annotated agreement, along with a \$75,000 check, to John Mitchell on July 1, 1985. See Attachment 6.

²¹ That the meeting at Mitchell's office occurred on April 11, 1984 is speculation. Yet, this document is merely a guide for investigating what in fact occurred. If the government investigates this matter, it ought to be able to readily determine the knowledge of its agents regarding when the meeting took place and the state of mind of O'Neill when he told the court that he did not know the exact date of the meeting.

D. The OIC's Choice of Documents to Use as Exhibits as It Reflects on the OIC's Intentions

The OIC placed into evidence none of the documents either from the Martinez/Jiminez files or from Nunn's files that would show the evolution of the consultant and attorney agreements into their final form. Nor did the OIC put any document into evidence suggesting that there ever existed two copies of each agreement. The OIC asked no questions of any witness that would elicit testimony that the documents reflecting the agreements were modified in any form other than with regard to the increase in the attorney agreement or that there existed two copies of each agreement.

The copies of the agreements introduced into evidence all came from Nunn's files. Although Government Exhibit 20 purported to reflect the original agreement, the OIC declined to use Attachment 8, SMN 149, which was the earliest version of the agreement known to exist in Nunn's files, and which did not contain Nunn's annotation regarding Mitchell. Instead, the OIC used Attachment 8, SMN 144, on which Nunn had evidently made his annotation regarding Mitchell some time subsequent to Nunn's receiving a copy of the agreement bearing the guarantee that the Arama Limited general partners had added between March 23, 1984, and April 3, 1984.

By contrast, for Government Exhibit 21, which purported to reflect the original attorney agreement, the OIC did use the earliest version in Nunn's files, which was Attachment 8, SMN 147. Thus, unlike Government Exhibit 20, Government Exhibit 21 did not bear the guarantee that was added by the Arama partners after March 23, 1984. In its charts on Arama, however, the OIC would refer to both of these documents as reflecting agreements reached on January 25, 1984.

As indicated earlier, there is reason to believe that the pre-guarantee copies of the attorney agreement (Attachment 8, SMN 147-48) and consultant agreement (Attachment 8, SMN 149) maintained in Nunn's files were signed copies of typed (as opposed to photocopied) documents, which is why Nunn regarded them as "originals." If that is so, this would be another factor distinguishing the OIC's choice of the documents it presented as the attorney agreement (Government Exhibit 21) and the consultant agreement (Government Exhibit 20).

For Government Exhibit 22, the attorney agreement with the annotation indicating the \$50,000 increase, the OIC used the only copy of that agreement known to exist in any of the files, Attachment 8, SMN 145. As noted, however, in its list of exhibits, the OIC referred to this document as an "agreement with Addendum," indicating that the referenced "Addendum" was the increase in the attorney fee that the OIC's charts indicated occurred on April 3, 1984, and in responding to a question from the court, O'Neill contributed to that false impression by referring to the annotation as "the addendum."

For Government Exhibit 25, as indicated, the OIC pulled together the copies of the agreements and addenda available in Nunn's files that had been received by Nunn from Martinez with Nunn's letter dated April 3, 1984. For the consultant agreement, the OIC used Attachment 8, SMN 144, which is the same document it had used for Government Exhibit 20. This is in fact the copy of the consultant agreement enclosed with Martinez' April 3, 1984 letter, but it did not have Nunn's annotation regarding Mitchell at the time it was received by Nunn.

For the attorney agreement that was enclosed with Martinez' April 3, 1984 letter, the OIC used Attachment 8, SMN 145. This is in fact the copy of the agreement enclosed with Martinez' April 3, 1984 letter. But, as indicated, despite what the OIC stated in its summary chart on Arama, this document did not contain the annotation concerning the \$50,000 increase at the time that it was received by Nunn.

As shown in Attachment 8, which reflects the way the OIC had preliminarily put together its exhibits from Nunn's files on this matter, there is nothing in the way the materials were maintained in Nunn's files that ought to have confused the OIC on this matter. Inasmuch as the OIC provided at that time a copy of the consultant agreement from Nunn's files that did not bear that annotation regarding Mitchell, it seems more than reasonable to assume that OIC attorneys were aware of its existence. When the OIC produced that document as part of its preliminary production of trial exhibits, it followed immediately after the document that the OIC would ultimately use as Government Exhibit 21. See Attachment 8, SMN 147-49.

Further, the OIC also had secured all the above-mentioned materials from the Martinez/Jiminez files. In its preliminary production of trial exhibits, the OIC included certain of these documents as proposed exhibits. Attachment 11 is a group of nine pages of the documents from the Martinez/Jiminez files bearing OIC stamping machine numbers 003181-87 to 003190-91, which reflect that manner in which the OIC originally presented them.²² Included were copies of both the guaranteed consultant agreement (SMN 3185) and the unguaranteed consulting agreement (SMN 3187), with neither containing Nunn's annotation regarding Mitchell.

The first documents the OIC reviewed regarding the contracts between Martinez and Nunn on Arama were probably the contracts in a HUD audit file that had been described in the HUD inspector general's report in the context of Martinez' November 8, 1988, and Nunn's December 12, 1988 interviews by HUD IG agents. These contracts had been secured from Martinez in connection with an audit of Dade County's housing

²² There are no pages 003188-89 in Attachment 10. Possibly, these were misplaced after being provided to the defense by the OIC. On the other hand, number 003187 is not actually a stamping machine number, but a partially handwritten number. This suggests that the OIC made some adjustments to these documents after they were stamped, and the adjustments might have included the deletion of the pages that had been numbered 003188-89.

authority. The discussion of those contracts in the Nunn interview suggests that, consistent with the documents actually found in Martinez' files, there was no reference to Mitchell in Martinez' copy of the consultant agreement.²³ Presumably, the OIC knew this from the outset of the investigation.

²³ The pages of the HUD IG report containing the Martinez and Nunn interviews are attached as Attachment 12. The indication that the contracts had been received from an audit is found at page 792. The discussion of the contracts with Nunn is found at page 794.

In addition, Nunn, who testified before the grand jury on April 16, 1992, had been available to the OIC even prior to the issuance of the Superseding Indictment.²⁴ It is difficult to imagine that the OIC would not have at some point asked Nunn why he had annotated the agreement, when he did it, and whether Martinez possessed a copy bearing that annotation. The single reason why it would seem that OIC attorneys might not ask Nunn such questions is that, being persuaded on the basis of the documents that Nunn annotated only his own file copy, the OIC chose not to ask Nunn any questions that would confirm that understanding. The same applies to Martinez.

The OIC's preliminary production of exhibits also provides certain additional insight into the OIC's intentions in the following ways. Although as shown in both Attachments 8 and 11, the OIC had originally intended to include copies of the consultant agreement without Nunn's annotation regarding Mitchell, the OIC selected the preliminary exhibits, like the final exhibits, to avoid any suggestion that the agreements were modified, particularly with regard to the addition of the addenda.²⁵ As shown in the preliminary exhibits, the OIC excluded from the materials it produced from Nunn's files all copies of the addenda. Presumably those addenda had filled the gaps reflected in Attachment 8, for example, BA155 0322, BA155 0327, or the pages following BA155 0328, which are likely places for the addenda to have been maintained in Nunn's files. See Attachment 8, SMN 144-50. As shown in Attachment 11, the OIC pulled all copies of the addenda from the Martinez/Jiminez files.

²⁴ Apart from Nunn's December 12, 1988 interview by a HUD IG agent, the only Jenks material provided to Dean was the transcript of Nunn's grand jury testimony. The writer does not know the content of that testimony.

²⁵ The preliminary production of exhibits did include, both among documents from Nunn's files (Attachment 8, SMN 143) and among documents from Martinez' files (Attachment 11, SMN 3182), a copy of Nunn's March 23, 1984 letter to Martinez requesting the guarantee by the three Arama partners. Whatever the OIC's reasons for including this letter in the preliminary production of exhibits, the OIC omitted the letter from its exhibits actually used at trial.

With regard to the July 1, 1985 letter from Nunn's secretary to Mitchell, in Mitchell's files the document had run from CA159 2058 to CA159 2061 (Attachment 13), with CA159 2061 being the addendum. But the OIC had pulled CA159 2061 from the document, giving the impression that the reference to the addendum had been either to the increase in the attorney agreement or to Nunn's annotation regarding Mitchell. See Attachment 14 and note the OIC stamping machine numbers reflecting that CA159 2061 had not been included. This suggests that at the point in time of the preliminary production of its exhibits, the OIC intended not to introduce any copies of the addenda into evidence, and in order not to do so intended to present the July 1, 1985 letter to Mitchell with one page of its attachments missing, just as the OIC intended to -- and ultimately did -- present the agreements themselves with their addenda missing.

Evidently, however, in reconstructing a version of Martinez' April 3, 1984 letter from Nunn's files, the OIC felt obliged to include the addenda that had been enclosed with that transmittal, even as it sought to give the impression that certain of the enclosures with that letter bore notations that they did not yet in fact bear. And ultimately, the OIC apparently felt compelled to present enclosures to the July 1, 1985 letter in their entirety in Government Exhibit 33.

Finally, it must be noted that, assuming the OIC introduced the April 3, 1984 into evidence for the purpose of establishing that Martinez possessed a copy of the consultant agreement bearing Nunn's annotation regarding Mitchell,²⁶ it was essential to that purpose that copy of the April 3, 1984 letter used as Government Exhibit 25 copy be from Nunn's files, since only in Nunn's files would the consultant agreement bear the annotation regarding Mitchell. Nunn's files did not, however, contain an actual copy of the March 29, 1984 letter from Adams to Sharrott that had been enclosed with Martinez April 3, 1984 letter. The only copy in Nunn's files (see Attachment 8, SMN 357-58) was the copy that had been received in HUD's Jacksonville Area Office on April 2, 1984, and that had been stamped received elsewhere on April 3, 1984.²⁷ Nunn or Mitchell had probably received that copy from someone at HUD headquarters. Attachment 15 is a copy of the letter (with attachments) from the HUD headquarters files bearing the

²⁶ It is difficult to know what other purpose the OIC the OIC had in putting that document into evidence. The letter was, of course, used to show the increase in the attorney agreement, though falsely indicating that the increase was transmitted with the letter. But Government Exhibit 22 adequately documented the increase in the attorney agreement without raising the problem of the discrepancy between the date of the increase and the date of the letter. Otherwise Government Exhibit 25 was just one more instance where Martinez contacted Nunn at Mitchell's office.

²⁷ The copy of that letter in Government Exhibit 25 (Attachment 5e hereto) provides a clearer image (though not an entirely legible image) of the second receipt stamp.

same receipt stamp markings as the copy of the letter found in Nunn's files. Attachment 16 is a copy of the letter bearing those markings found in Mitchell's files.²⁸ The copy of the letter from Adams to Sharrott actually enclosed with Martinez' April 3, 1984, would not bear those markings, since Martinez would have secured it from Adams rather than from HUD. That copy, however, was no longer available in Nunn's files, apparently having been given to Mitchell, in whose files it would appear as it now appears in Attachment 9.²⁹ So the OIC used the only copy of the letter available in

²⁸ Wilson was still at HUD in March-April 1984.

²⁹ Note that the attachments to the letter from Adams to Sharrott that appears in Attachment 9 hereto bear in their upper right-hand corners handwritten project numbers from "Project I" through "Project XI." In Martinez' April 3, letter to Nunn, Martinez said that he (Martinez) had so labeled the Fact Sheets "for our mutual reference." By contrast, the attachments to letter in HUD headquarters files (Attachment 15 hereto) do not contain the handwritten project numbers. A further reason to believe that the labeling was done by Martinez is that each of the eleven (11) attached pages is labeled as a separate project, while in Adams' letter he had referred to only nine (9) projects. (The attachments in fact appear to reflect ten (10) projects, with those that Martinez had labeled as "Project IX" and "Project X" actually being a single project.) It is not known to be of any consequence, but it is noted for purposes of completeness that the copy of the Adams-Sharrott letter with attachments that the OIC introduced into evidence, through the testimony of Adams, as Government Exhibit 36 could not have been Dade

Nunn's files even though it was not the copy that had actually been enclosed with Martinez' April 3, 1984 letter.

- E. OIC's Revised Theory Regarding Martinez' Knowledge of Mitchell's Involvement with Arama

County's file copy of the letter, since it bears the handwritten project numbers added by Martinez. Rather, that document is either from Martinez' files or Mitchell's files (see Attachment 9). The attachments to Dade County's file copy, like the attachments to the HUD headquarter's copy (Attachment 15), would not have borne Martinez' handwritten project numbers.

Despite the pains the OIC took to make it appear that Nunn had annotated a copy of the consultant agreement that was retained by Martinez, the OIC ultimately would argue that Nunn had concealed Mitchell's involvement from Martinez. Perhaps, after the court refused to allow O'Neill to elicit Martinez' testimony about being told that Mitchell was Dean's stepfather, and after the OIC had successfully elicited Feinberg's testimony that he was unaware of Mitchell's involvement with Park Towers without it being brought out that the OIC's immunized witness Richard Shelby had three times informed the OIC that he (Shelby) had told Feinberg of Mitchell's involvement,³⁰ the OIC then decided that the better approach was to argue that Mitchell's role was concealed from both developers involved in Count One. In any case, once that decision was made, the various exhibits indicating that Martinez possessed a copy of the consultant agreement containing Nunn's annotation became a hindrance. The OIC's effort to show that Nunn had concealed Mitchell's involvement with Arama from Martinez has been discussed in a number of places. There nevertheless some value in setting out the evolution of that argument here for the way it reflects both on the OIC's willingness to mislead the courts and on the OIC's knowledge of the actual facts concerning Nunn's annotation regarding Mitchell.

When Martinez testified on the first day of trial, O'Neill sought to elicit testimony that at a meeting with Nunn and Mitchell at Mitchell's office, either Mitchell or Nunn had told Martinez words to the effect, as described by O'Neill, that Mitchell "had some sort of relationship to Dean and she's at HUD and important to know" (Tr. 232), or that "John Mitchell is related to Deborah Dean and that she is an important person at HUD." Tr. 246-47. The court refused to permit the questioning because of the absence of evidence that the statements were part of a conspiracy. Tr. 228-35, 245-50.

Following the court's second refusal to permit that questioning (Tr. 246-50), O'Neill conducted this questioning of Martinez:

³⁰ As discussed in the Introduction and Summary and the 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," Fine learned most of what he knew about Shelby's actions from Feinberg. Hence, Feinberg's testimony was crucial to the OIC's argument that Shelby had concealed Mitchell's role in Park Towers from Fine.

Q. Mr. Martinez, you mentioned your meeting with John Mitchell at Global research. Was that the only time that you met with John Mitchell in relation to Arama?

A. Yes.

Q. Now, when you hired Mr. Nunn to represent you as a consultant and attorney in order to get moderate rehabilitation units for Arama, to your knowledge, were you hiring anyone else?

A. No.

Q. Did know whether Mr. Nunn was hiring anyone else?

A. No.

Tr. 250-51 (emphasis added).

Though it would be upon this testimony that the OIC ultimately would rely as evidence that Nunn had concealed Mitchell's involvement from Martinez, it is not clear whether that had been O'Neill's intention at the time he elicited the testimony. Several minutes later, consistent with the original theme that Martinez was aware of Mitchell's role, O'Neill would introduce Government Exhibit 25 through Martinez. Tr. 257-58. As already noted, Government Exhibit 25 would seem to conclusively show that Martinez possessed a copy of the consultant agreement that bore Nunn's notation regarding Mitchell.

Similarly, when Nunn testified ten days later, O'Neill would make a special point of the annotation without eliciting from Nunn anything contradicting the inference that Martinez had possessed a copy of the agreement bearing the annotation. O'Neill also elicited at length testimony from Nunn regarding his discussion with Martinez about involving Mitchell with Arama. O'Neill did not there question Nunn's statement that he had discussed Mitchell's involvement with Martinez, but merely sought to cause Nunn to state, as Nunn had stated to the grand jury before, that he had told Martinez he wanted to involve Mitchell because of Mitchell's Washington contacts. Tr. 1359-62.

The first suggestion of an OIC argument that Nunn concealed knowledge of Mitchell's involvement from Martinez, and that Nunn's annotation regarding Mitchell appeared only on Nunn's copy of the consulting agreement, would be found in the Government's Opposition to Defendant Dean's Motion for Judgment of Acquittal, which the OIC filed on October 4, 1993. Ignoring Nunn's testimony and Government Exhibit 25 that would seem to establish both that Martinez was aware of Mitchell's involvement and that Mitchell's name was included on Martinez' copy of the consultant agreement with Nunn, the OIC, relying on Government Exhibit 20, argued:

... John Mitchell was to share in the consulting fee but significantly -- in a pattern that appears in all three of the projects charged in Count I -- Mitchell's role was omitted from the contracts and related materials. Rather, Nunn annotated his consultant agreement: "1/25/84. In event of death or disability 1/2 of above amount belongs to John Mitchell. Louie B. Nunn."

Id. at 14-15 (emphasis added). Notably, the OIC would not assert that Nunn had annotated the agreement on January 25, 1984, as it had in the Superseding Indictment and in the Arama charts, but would instead quote the annotation, including its date. Further, the use of the word "his" suggested that Nunn had annotated only his own copy of the agreement. This manner of presenting the issue suggested that the OIC did know both that Nunn had not annotated the document on January 25, 1985, and that he had annotated only his own copy of the document. Both of those facts would tend to support the argument that the OIC had now apparently decided to pursue, but both were contrary to arguments the OIC had previously been making. And any suggestion that Martinez did not possess a copy of the consulting agreement bearing the annotation was specifically contradicted by Government Exhibit 25, which the OIC avoided citing in this context.³¹

Somewhat inconsistently, however, later in the same document, the OIC would state that the evidence in its summary charts "shows that defendant and her co-conspirators, particularly after the Arama project, took pains to avoid referring to Mitchell's or defendant's involvement in these projects in any documents." Id. at 17 (emphasis added). This may reflect ambivalence on the part of the OIC as to how to treat Government Exhibits 20 and 25.

In any case, on the same day that the Opposition to the Motion for Judgment of Acquittal was filed, during oral argument on Dean's motion for acquittal at the close of the OIC's case, Associate Independent Counsel Paula A. Sweeney would commence her argument regarding the concealment of Mitchell's role on Park Towers as follows:

As was the case in the Nunn matters, Mr. Mitchell is getting a fee from Mr. Shelby but doesn't appear in any of the documents. His role is concealed from anybody -- from everybody, including the individual who ultimately is paying his fee, that being Mr. Fine.

Tr. 2029-30 (emphasis added).

³¹ The OIC would, however, cite Government Exhibit 25 for the proposition that Nunn's fee had been increased by \$50,000 in April 1984. Id. at 15.

In closing argument, however, while O'Neill would emphasize the Feinberg and Fine testimony that they did not know Mitchell was involved in Park Towers, O'Neill did not make a similar point about Martinez. Tr. 3519.

On October 29, 1993, immediately following the verdict, the OIC filed Government's Supplemental Opposition to Defendant Dean's Motion for Judgment of Acquittal (Gov. Supp. Acq. Opp.). In that document (at 13) the OIC made the same point quoted above from its opposition filed on October 4, 1993, again using the word "his" to modify "consulting agreement." Here, however, the OIC added an additional point. In arguing that the circumstantial evidence did not establish a conspiracy, Dean had summarized much of the relevant testimony regarding Count I, including Fine's testimony regarding his unawareness of Mitchell's involvement and Martinez' statement quoted earlier in this section that he thought he was hiring only Nunn.³² The OIC argued that this testimony in fact supported a conspiracy. After noting that Fine's testimony "demonstrates that Mitchell's involvement was kept a secret even from the developer," the OIC stated:

This point was also established by Martinez' testimony -- upon which defendant also mistakenly relied, see Dean Motion at 34-35 -- that he was unaware that he was hiring anyone other than Nunn. Tr. 250. The jury was entitled to infer from this evidence that Mitchell's role was deliberately hidden, and that this was evidence of the conspiratorial nature of these arrangements.

Gov. Supp. Acq. Opp. at 17 n.18.

³² Memorandum of Law in Support of Deborah Gore Dean's Motion for Judgment of Acquittal Pursuant to F. R. Crim. P. 29(b) at 19 n.7 on 20, 34 n.11 (Oct. 19, 1993).

On December 21, 1993, when the OIC filed Government's Opposition to Defendant Dean's Motion for Judgment of Acquittal Pursuant to Fed. R. Crim. P. 29(c) and (d), using the same language that it had used in the two earlier oppositions, including the reference to Nunn's annotating "his consultant agreement," the OIC would again rely on Government Exhibit 20. *Id.* at 16.³³ As in the earlier oppositions, the OIC would cite Government Exhibit 25 for the proposition that the attorney agreement had been increased by \$50,000. *Id.* The OIC provided copies of all cited exhibits with this Opposition, but for Government Exhibit 25, it provided only the first page, and not the attachments that (if they were replicas of the actual attachments) showed that Nunn's annotation appeared on Martinez' copy as well. The OIC also referred to "Martinez's testimony that he did not know that Mitchell was involved in Arama" (*id.* at 19) and asserted again that "that Mitchell's involvement was kept a secret even from the developer ... was also established by Martinez' testimony," and that "[t]he jury was entitled to infer from this evidence that Mitchell's role was deliberately hidden, and that this was evidence of the conspiratorial nature of these arrangements." *Id.* at 23 n.23.

In the court of appeals, the OIC again asserted that the record showed that Nunn had concealed Mitchell's involvement from Martinez, relying both on Martinez' testimony and on Government Exhibit 20.³⁴ The OIC first stated:

Mitchell and his company were secretly hired by two "consultants" -- unindicted coconspirators Louie Nunn, a former state governor, and Rick Shelby, a political consultant who subsequently supported Dean's political ambitions -- to secure Mod Rehab funding for the developer clients, neither of whom were [sic] informed of Mitchell's role. *See, e.g.*, Tr. 250-51 (Martinez), 657-58 (Fine).

Brief of the United States of America as Appellee, United States v. Deborah Gore Dean, No. 94-3021 (D.C. Cir., Sep. 16, 1994) at 5.

The OIC would make the point again, this time specifically citing the absence of any reference to Mitchell in Nunn's consulting contracts with Martinez:

³³ Whereas in her earlier brief Dean had merely included Martinez' testimony about not knowing that he was hiring anyone besides Nunn in a general discussion of the testimony, in support of her post-trial motion under Rule 29, Dean would specifically cite the Martinez testimony elicited by O'Neill as evidence that Martinez did not know that Mitchell was involved as a consultant on his projects, arguing that such testimony was exculpatory. 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 6 (Nov. 30, 1993).

³⁴ Dean's opening brief in the court of appeals did not discuss whether Martinez knew of Mitchell's involvement with Arama.

... Martinez (the developer of Arama and South Florida I) and Fine (the developer of Park Towers) testified that they were never told that Mitchell was involved in obtaining funding for these projects. Tr. 250-51, 657-58. Nunn and Shelby omitted all references to Mitchell in their discussions and consulting contracts with Martinez and Fine, even though Mitchell was to share in their fee for obtaining units.

Id. at 24.³⁵

Thus, in the court of appeals, in support of its revised theory, the OIC in the text of its brief would indicate unequivocally that Nunn had omitted reference to Mitchell in any version of the consulting contract possessed by Martinez. This statement was true, and presumably it was known by the OIC to be true at the time that OIC attorneys crafted the Superseding Indictment to suggest the exact opposite; at the time OIC attorneys crafted the Arama summary chart to indicate the exact opposite; and at the time OIC attorneys introduced Government Exhibits 20 and 25 to in a manner to lead the jury to believe the exact opposite.

The statement that Nunn omitted any reference to Mitchell in his consulting contract with Martinez was false, however, and the OIC knew it was false from Martinez' interview, from Nunn's grand jury testimony, and from Nunn's in-court testimony. As it had done in the district court, however, the OIC omitted any reference to the unchallenged in-court statement of its immunized witness Nunn that he had discussed Mitchell's involvement with Martinez.

³⁵ In a footnote to the second sentence in this passage, the OIC (id. at 24 n.10) would point out with regard to Arama that Government Exhibit 20 was an "agreement by Martinez to pay Nunn \$375,000 for obtaining Arama units; annotated by Nunn '[i]n event of death or disability, 1/2 above amount belongs to John Mitchell.'" This statement is fairly neutral with regard to whether Nunn annotated only his own copy of the agreement. The statement does, however, wrongly indicate that Mitchell was to receive half of a \$375,000 fee rather than half of a \$150,000 fee.

With regard to Government Exhibit 25 on which the OIC had relied in the district court to show that Nunn's attorney agreement had been increased by \$50,000 on April 3-4, 1984, and which the OIC had introduced in a manner to conclusively establish that Martinez possessed a copy of the consulting agreement bearing Nunn's annotation regarding Mitchell, the OIC made no reference to it. The OIC did not mention the increase in the attorney fee at all, and hence had no need to cite Government Exhibit 25 or to include it in the Joint Appendix.

F. Comments

The OIC's effort to lead the district court and the court of appeals to believe that Nunn had concealed Mitchell's role from Martinez is itself remarkable. Apart from the ethical issues raised by the OIC's actions in light of the knowledge from Martinez' interview and Nunn's in-court testimony that Nunn had informed Martinez of Mitchell's involvement, given Nunn's testimony, those actions suggest both a contempt for the intelligence of the district court who heard Nunn's testimony and a recklessness in the presentation of the OIC's case in the court of appeals. Notably, the OIC would never suggest to the jury that Nunn had concealed Mitchell's involvement, perhaps concerned that at least one juror would recall Nunn's testimony about his conversations with Martinez about involving Mitchell.

Remarkable, too, is that the OIC, after being denied the opportunity to elicit testimony that Nunn had used Mitchell's relationship to Dean as a selling point to Martinez, considered it legitimate to maintain that Nunn had concealed Mitchell's involvement from Martinez.

With regard to the OIC's effort when pursuing the original approach to create a record showing that Nunn had annotated a copy of the consultant agreement on the day it was executed and that Martinez retained a copy, these things seem clear. First, Nunn definitely did not annotate the agreement on January 25, 1984; Nunn did not in fact annotate the agreement until he received a guaranteed agreement with Martinez' April 3, 1984 letter; there is no reason to believe that Martinez ever saw a copy of the agreement bearing Nunn's annotation. Second, the entries in the Superseding Indictment and the OIC's charts, as well as every action the OIC took in selecting, introducing, and calling attention to the various copies of the agreements introduced into evidence, appear to be calculated to support the interpretation that Nunn had annotated the consultant agreement on January 25, 1984, and that, consistent with Nunn's annotating the agreement at the time it was originally executed, Martinez possessed a copy of the agreement bearing the annotation. In the latter regard, it is perhaps noteworthy that in the probation officer's summary of the evidence, he would describe the facts as follows:

In January 1984, Mr. Nunn entered into an agreement with Art Martinez to assist him in obtaining the 300 Mod Rehab units for Arama, Ltd. in Dade County, Florida. The agreement specified that Arama would pay Louis Nunn \$375,000

for services, \$225,000 in legal fees, and \$150,000 in consulting fees. At the time, Mr. Nunn wrote a note on the contract indicating that Mr. Mitchell would receive one-half of the \$150,000. Subsequently, in April 1984, an amendment to the original contract increased the fees by \$50,000.

Revised Presentence Investigation Report at 4 (February 7, 1994).

The OIC's charts warrant special comment. Like the Superseding Indictment, the charts explicitly indicated that Nunn annotated the consultant agreement on January 25, 1984. Further, even more so than in the Superseding Indictment, by the placement in the charts of the reference to Nunn's annotation between Government Exhibits 20 and 21, the OIC strongly suggested that Nunn annotated the consultant agreement in Martinez' presence. That is, the parties signed the consultant agreement (Government Exhibit 20); Nunn then wrote on the agreement the notation regarding Mitchell; then the parties signed the attorney agreement (Government Exhibit 21). With that context in mind, it is useful to reflect on Paula Sweeney's vigorous arguments to have the charts admitted into evidence, maintaining that the charts merely reflected a neutral summarizing of the evidence. See Tr. 2917-19, 2947, 2959-60.

To the extent that there is any question whether OIC attorneys in fact intended to cause documents to be perceived to be other than what the OIC knew them to be, or whether, on the contrary, those attorneys were merely confused about the documents and events, such question must be approached with an appreciation of the OIC's action discussed throughout the Introduction and Summary and the ten original Narrative Appendixes.

Much of the discussion in the Park Towers appendix is especially relevant in this regard.³⁶ Of particular note is the OIC's use of Government Exhibit 72, the July 31, 1985 Martin Fine memorandum that contained a reference to Richard Shelby's upcoming meeting with "the contact at HUD," a reference Shelby had informed the OIC referred not to Dean, but to a HUD official named Silvio DeBartolomeis, who was the person at HUD with whom Shelby stated he had principally dealt on Park Towers. At trial, the OIC would not confront Shelby with the document, but instead would introduce it later through its author, Martin Fine, without eliciting testimony as to its content. Ultimately, the OIC would attempt to cause the jury to believe that the conspiratorial reference to "the contact at HUD" was a reference to Dean.

Also of note is the OIC's introduction of Government Exhibit 85, the February 3, 1986 Martin Fine memorandum in which Fine recorded a conversation with Feinberg discussing Shelby's lunch with "his friend at HUD," who in this instance happened to be

³⁶ 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."

Dean. Though knowing from both Shelby and Feinberg that Shelby had not concealed his contacts with Dean from Feinberg, the OIC would ask neither Shelby nor Feinberg about this reference. Instead, the OIC would introduce the memorandum through Fine and cite the failure of the memorandum to mention Dean by name as evidence that Shelby had concealed his contacts with Dean.

And also of note is the OIC's asking Shelby to review documents on the evening before he testified in order "to refresh [his] recollection as to who he dealt with at HUD" on the Park Towers project, and then providing him documents that mentioned Dean, but none of the documents that mentioned DeBartolomeis. The OIC would then elicit testimony that when Shelby reviewed documents "to refresh [his] recollection as to who he dealt with at HUD" on Park Towers, he had seen documents that mentioned Dean but no documents that mentioned DeBartolomeis. The OIC would then rely on this testimony and the supposed absence of documentation with regard to Shelby's contacts with DeBartolomeis to justify its acknowledged attempt to lead the jury to believe that the conspiratorial reference to "the contact at HUD" was a reference to Dean.³⁷

Yet, even without consideration of the OIC's general pattern of behavior, it seems clear enough that from the OIC's initial drafting of the Superseding Indictment that explicitly stated that Nunn annotated the contract on January 25, 1984, and that employed the words "was to be paid to" instead of the actual words of the annotation, the OIC had calculatedly sought to lead the jury to believe things OIC attorneys knew to be false. It seems probable that the decision to treat April 3, 1984 as the date of the increase in the attorney agreement that actually occurred eight days later was part of this effort.³⁸ By making it seem that the reference to the "amended agreement" in

³⁷ Also of particular relevance here are the OIC's actions in introducing receipts in a manner to lead the jury to believe that the receipts reflected meals or gifts purchased for Dean when the OIC had overwhelming reason to believe that various of the receipts did not relate to Dean. See Narrative Appendix styled "The Andrew Sankin Receipts."

³⁸ As noted earlier, at the time of the issuance of the Superseding Indictment,

Martinez' April 3, 1984 letter was a reference to the increase in the attorney agreement, the OIC diverted attention from the actual nature of the documents transmitted with the letter and reduced the danger that anyone would recognize that the guaranteed agreement on which Nunn had made his annotation did not come into Nunn's possession until after April 3, 1984. Further, by creating the impression that the handwritten notation on the attorney agreement regarding the increased fee was on the agreement when Martinez transmitted it to Nunn, the OIC discouraged speculation of whether, like the handwritten annotation increasing the fee on the attorney agreement, the handwritten annotation regarding Mitchell had been placed on the consultant agreement after it had been received by Nunn with the April 3, 1984 letter from Martinez.

As noted above, even after Martinez noted that the date of the modification to the attorney agreement was indicated on the bottom of the attachment to Government Exhibit 25, O'Neill would not address what the date was until the court specifically asked the question, and would ignore Martinez' statement that the increase in the agreement coincided with a meeting of that date. By itself, O'Neill's reference to "the date of the addendum" would not suggest any effort to mislead, since that annotation regarding the increase is in fact an addendum. But that statement by O'Neill must be evaluated in the context of the OIC's reference to the annotation as the "addendum" in its list of exhibits, the OIC's failure to include the actual addenda with Government Exhibits 20, 21, or 22, and the OIC's excluding from its preliminary exhibit production every copy of the addenda. In whatever way the OIC specifically felt the addenda, if given careful attention, might make it evident that the OIC's exhibits were not what the OIC represented them to be -- most obviously by highlighting the fact that the consulting agreement evolved into the form that Nunn ultimately annotated -- the OIC apparently felt a need to disguise the meaning of the addenda. In that context, O'Neill's choice of words seems part of that effort.

This interpretation of the OIC's actions with regard to the April 3, 1984 letter, though reasonable, is not necessarily correct. Whether the interpretation is or is not correct, however, the overall picture of the OIC's conduct changes little. The OIC would in any event appear to have calculatedly sought to lead the jury and the court to believe that documents introduced into evidence were things that they were not.

There is another matter worth considering because of the possibility that it potentially involves an OIC failure to provide the defense with significant impeachment

the OIC had recognized that the increase in the attorney fee had been dated April 11, 1984.

information with regard to Nunn. If, as the Mitchell telephone messages suggest, Mitchell secured the funding for Arama as a result of a contact he made to Wilson in January 1984 -- or even if, as the OIC maintained, Mitchell secured the Arama funding through Dean -- a question arises as to why Mitchell should receive only \$75,000 of a total fee of \$375,000, later raised to \$425,000.

A possible answer to that question may be reflected in the following facts. The \$150,000 consultant fee is exactly \$500 per unit, a round number. There is no evidence that either Mitchell or Martinez had been involved in securing moderate rehabilitation funding prior to Arama. Nunn told HUD IG investigators that he had asked Martinez what the going rate was and had been told it was \$1000 per unit, and that he had then negotiated a total figure of \$1,250 per unit (before the \$50,000 increase). See Attachment 12 (p. 794). As discussed supra, Nunn reached that agreement in a January 25, 1984 meeting with Jiminez and Martinez in Atlanta. The amount was split between an \$75,000 consultant agreement attorney and a \$225,000 attorney agreement with no reason being offered for its being so split. On the day of the initial agreement, a provision was added whereby, in the event that more than 300 units were obtained, the fee would be increased at the rate of \$1,250 per unit, but that increment was to be entirely part of the attorney fee. See Attachment 7, MN 863. When a decision was made to increase the fee by \$50,000 (which may have occurred at an airport meeting prior to the meeting with Mitchell) the increase was made to apply solely to the attorney agreement. There is no reference in Mitchell's files to the attorney agreement, and no indication of there being in Mitchell's files even a copy of the consultant agreement prior to the forwarding of a copy of the agreement with Mitchell's payment in July 1985.

Most significant, however, in the July 1, 1985 letter from Nunn's secretary to Mitchell enclosing Mitchell's fee, which merely referred to the enclosed "Copy of Agreement between Jiminez, Martinez and Nunn," Nunn's secretary attached a copy of Nunn's out-of-pocket expenses for \$2,223.50, and stated: "The Governor says if you see fit, you can reimburse him for half of the expenses." Attachment 6. It would have made no sense to request that Mitchell pay half the expenses unless Mitchell was under the impression that he was receiving half the total fee.³⁹ Notably, in Nunn's next moderate rehabilitation deal with Martinez, though Mitchell would refuse to be involved, Mitchell's company would receive half of the total \$1,000 per unit fee secured by Nunn.

³⁹ It must be noted, however, that Nunn's secretary enclosed the Addendum to the consultant agreement, which referenced a reduction of \$1250 per unit in the event that not all 300 units were secured. If Mitchell had been unaware of the total fee, there would have been reason to be concerned that the Addendum would have raised a question in his mind. Of course, the failure to enclose the addendum to a document that referenced an addendum would seem even more likely to raise a question in Mitchell's mind.

If Nunn had led Mitchell to believe that the entire fee was \$150,000, that might also account for Nunn's placing the date of the original agreement on an annotation that he made much later. Apparently seeing some need to provide Mitchell a copy of the consultant agreement at the time of the payment to Mitchell, Nunn obviated any questions by Mitchell as to why a written agreement had mentioned only Nunn.

In any case, if Nunn did mislead Mitchell, the matter would be relevant to prosecutorial misconduct issues if the OIC was aware of Nunn's action. For, at a minimum, information to that effect would have provided the defense a basis for impeaching the OIC's immunized witness Nunn. If the OIC did have such information, however, the OIC never disclosed it to the defense.

Finally, it might be observed that, given that Martinez plainly was aware of Mitchell's involvement with Arama, whether Martinez had ever seen Nunn's annotation regarding Mitchell's entitlement to half the consultant fee seems a very minor matter. In this regard, it is useful to consider O'Neill's statements, made when arguing to be allowed to elicit testimony from Martinez about what he (Martinez) had been told about Mitchell's relationship to Dean, regarding how "entirely circumstantial" was the OIC's evidence of a conspiracy relating to Arama. Tr. 247. The OIC evidently regarded Nunn's having made the annotation regarding Mitchell in Martinez' presence on January 25, 1984, to be an additional piece of circumstantial evidence of potentially sufficient consequence that the OIC was willing to attempt to establish that such was the case, even though the OIC knew it was not the case, just as the OIC evidently regarded numerous points with regard to the Park Towers project of potentially sufficient consequence that the OIC was willing to make those points when they were certainly false and even when making the points entailed the eliciting of sworn testimony that OIC attorneys had to believe was almost certainly false.⁴⁰

The greatest significance of the matters discussed in this document, however, may arise from the opportunity they offer for determining how truthfully OIC attorneys would respond to questions by the government itself. Since OIC attorneys have not been previously confronted with the points made in this document, the responses of those attorneys to questions regarding their understanding of the underlying facts, and their reasons for the various actions they took in light of those understandings, may offer much insight into how truthfully those attorneys will respond to inquiries on other matters.

⁴⁰ See Introduction and Summary and 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."

ADDENDUM TO NARRATIVE APPENDIX STYLED
"NUNN'S ANNOTATION REGARDING MITCHELL'S
RIGHT TO HALF THE ARAMA CONSULTANT FEE"
(September 1995)

At pages 31-32, the point is made that the copy of the March 29, 1984 letter from Melvin Adams, Director, of the Metro Dade housing authority, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office, that was attached to the April 3, 1984 letter from Martinez to Nunn in Government Exhibit 25 had not actually been attached to Martinez' letter. The letter that actually was attached is the copy appearing in Attachment 9 hereto (SMN 19). There appears to be an additional problem with the OIC's exhibits concerning the Melvin Adams letter. Specifically, the Fact Sheet attached to the Adams-Sharrott letter introduced into evidence as Government Exhibit 36 through the testimony of Melvin Adams was not attached to that letter when Adams sent it. This is demonstrated by the fact that the Fact Sheet in Government Exhibit 36 bears the project numbers in Roman numerals later added by Martinez. That these markings were not on the Fact Sheet when it was sent by Adams is demonstrated by the fact that the markings were not on the Fact Sheet attached to the letter when it was received at HUD, as shown in Attachment 15. Further, the Fact sheet received at HUD is a 22-page document; the Fact Sheet in Government Exhibit 36 is an 11-page document, which also is ordered differently from the Fact Sheet received at HUD. The similarity between the copying quality of the letter itself in Government Exhibit, as well as various copying marking on the Fact Sheet, suggest that Government Exhibit 36 was taken from Mitchell's files. See Attachment 9, SMN 19-31. In any case, the Fact Sheet attached is not a true copy of the Fact Sheet Adams had attached to his March 29, 1984 letter to Jacksonville HUD.