

ONE HUNDRED FIRST CONGRESS

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House of Representatives

EMPLOYMENT AND HOUSING SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM 8-349-A
WASHINGTON, DC 20515

July 24, 1990

The Honorable Arlin Adams
Independent Counsel
444 N. Capitol Street, N.W., Suite 718
Washington, DC 20001

Dear Judge Adams:

During the past 14 months, the Employment and Housing Subcommittee has uncovered widespread abuses, influence peddling, blatant favoritism, monumental waste and gross mismanagement at the Department of Housing and Urban Development during the tenure of Secretary Samuel R. Pierce, Jr. We have held 27 hearings which have lasted more than 120 hours. Some 50 witnesses have appeared before the subcommittee. Dozens of other individuals, both inside and outside HUD, have been interviewed by subcommittee staff as part of our investigation. Based on this extensive record, we believe that the jurisdictional mandate of the Independent Counsel should be expanded.

The Court, in its Order of March 1, 1990, appointing the Independent Counsel, limited the jurisdiction to an investigation into whether Samuel Pierce and other officials of HUD conspired to defraud the United States or committed any other Federal crimes relating to the administration of the selection process of HUD's Moderate Rehabilitation Program from 1984 to 1988. By letter of referral dated May 25, 1990, the Attorney General advised the Independent Counsel that it was proper for the investigation to be expanded to include the administration of the selection process of HUD's Urban Development Action Grant (UDAG) program and the programs within the Secretary's Discretionary Fund (Technical Assistance and Special Projects). The Attorney General took this action based on the testimony of former HUD Deputy Assistant Secretary DuBois Gilliam before our subcommittee on April 30, May 2, and May 4, 1990. Earlier this week the Court authorized the Independent Counsel to investigate the UDAG program, the Technical Assistance program, and Special Projects.

After a careful review of the voluminous hearing record and based on our lengthy investigation, we urge and request that the Independent Counsel's investigation into possible criminal wrongdoing by former HUD Secretary Samuel Pierce be further expanded into the following three specific areas: (1) whether

Secretary Pierce committed perjury, in violation of section 1621 of title 18, of the United States Code, during his sworn testimony before the subcommittee on May 25, 1989; (2) the relationship between Secretary Pierce, his former law firm, Battle, Fowler, Jaffin and Kheel, and Lance Wilson, and whether through their actions and dealings the Federal conspiracy statute (18 U.S.C. section 371), bribery statute (18 U.S.C. section 201(b)(2)), conflict of interest law (18 U.S.C. section 208) or any other criminal law was violated; and (3) whether Secretary Pierce and other HUD officials conspired to defraud the United States or committed any other crimes in connection with the administration of the Coinsurance Program from 1983 to 1989.

I. Perjury

On May 25, 1989, former HUD Secretary Samuel Pierce testified under oath before our subcommittee. During this testimony, Secretary Pierce tried to distance and disassociate himself from the abuses and political favoritism at HUD during **his tenure**. **For example, when Secretary Pierce was asked about being in charge of the Moderate Rehabilitation Program, he responded, "No. Actually, in this particular program, it's run by the Office of the Assistant Secretary of Housing." (I Tr. 226)**¹ When it was pointed out to him that the Office of Housing is in HUD and he was the Secretary of HUD, Mr. Pierce likened it to the Defense Department and the Secretary of Defense not knowing all the things that go on there. (Id.)

Secretary Pierce denied any knowledge of his Executive Assistant Deborah Dean directing Assistant Secretary for. Housing Thomas Demery to sign a nine-project Section 8 Moderate Rehabilitation grant. (I Tr. 255) He denied discussing any projects with Lance Wilson. (I Tr. 230) He denied that former Interior Secretary James Watt had used political influence:

Mr. PIERCE. . . . James Watt . . . called me, came in to see me and talked about housing. I don't even remember the details, but I told him the same thing. We will look at his project very carefully and I turned him over to the staff in housing who handled the particular thing. That's all No promises were made to him.

(I Tr. 212)

¹ A Roman numeral preceding a transcript (Tr.) reference refers to the volume number of the printed record of the subcommittee hearings on "Abuses, Favoritism, and Mismanagement in HUD Programs." A hearing date preceding a Tr. reference refers to the stenographic transcript of a hearing that has not yet been printed.

Mr. FRANK. Do you think that the fact that Mr. Watt--

Mr. PIERCE. I don't think Mr. Watt got any special choice, because of any special attention, no.

Mr. FRANK. ...but you really believe that Mr. Watt did not help that project--

Mr. PIERCE. I don't think so.

(I Tr. 219-220)

While most of Secretary Pierce's testimony on May 25 dealt specifically with the Moderate Rehabilitation Program, some of his statements applied to other programs as well. For example, when people would ask him to help them get something, his response would be that it would be given very careful consideration:

Mr. PIERCE. . . . Now, I'd like to make very clear, over time, people ask me to help them get all kinds of benefits and things like that and my answer to them has always been the same thing.

It's been basically that we'll give your request very careful consideration, and if your request suits all of our requirements you'll have a chance of getting what you're seeking, and that's what I did and over and over and geez, in eight years, I'll bet you hundreds of people, perhaps thousands, Republicans and Democrats, Governors, Mayors, Congressmen, Senators-- gee-- developers, contractors and so on and so on have asked me to help them get something.

I've always done this because I say, we'll look at it very carefully and I mean that. We'll look at their project very carefully but they must satisfy whatever the requirements are for them to get the request. If their project does not satisfy those requirements, they can't get their request.

(I Tr. 211)

It is obvious that Secretary Pierce did not give us the full story during his May 25th testimony. However, some of his statements stand out in that they are inconsistent and at odds with the sworn testimony of other witnesses.

1. **I never told these people to fund anything.**

In his sworn testimony, Secretary Pierce stated that he had never directed Deborah Dean or anyone else to fund a particular project:

Mr. SHAYS. . . . Did you ever ask Mrs. Deborah Gore Dean to fund a particular project and convey that to anyone else?

Mr. PIERCE. Not that I recall. I don't remember telling her to fund any-- I never told these people to fund anything. I might give them a-- (emphasis added)

Mr. SHAYS. I'm not sure what--

Mr. PIERCE. Say some project is-- look into it and see what you think of it and if it's a good one. If it's not, don't.

Mr. SHAYS. So--

Mr. PIERCE. That was a general way **in which I approached all of these.**

Mr. SHAYS. You never said, I think this is a good program and I think you should fund it? You never said that?

Mr. PIERCE. No. I don't--

Mr. SHAYS. In your entire eight years there?

Mr. PIERCE. I don't believe so.

(I Tr. 227)

However, at our hearing on July 14, 1989, Shirley Wiseman, former HUD General Deputy Assistant Secretary and Acting Assistant Secretary for Housing, testified under oath that Secretary Pierce had phoned her and directed her to fund a Moderate Rehabilitation project, Durham Hosiery Mill, in North Carolina.

Ms. Wiseman testified that her professional staff had reviewed the Durham Hosiery Mill project and strongly recommended against approval because of cost, site safety, and other factors:

[T]he project . . . was so violently opposed by the professional staff . . . it required separate subsidies, it would have required mod rehab and either HODAG or UDAG, and there would have to be waivers, and the cost appeared to be exorbitant in the opinion of the professional staff. . . .

(7/14/89 Tr. 27)

She reported receiving two telephone calls from Deborah Dean asking that the project be reviewed and "sent forward," i.e.,

approved. According to Ms. Wiseman, in her last conversation with Dean concerning the Durham Hosiery Mill project, she told Dean that she could not approve it:

Mr. LANTOS. What was her response?

Ms. WISEMAN. Just that she thought I should fund it, that I knew the Secretary wanted it funded...

Mr. LANTOS. Ms. Deborah Dean told you that Secretary Pierce wanted the project funded?

Ms. WISEMAN. Yes sir.

(7/14/89 Tr. 24)

Ms. Wiseman testified that she did nothing further on the Durham Hosiery project and between two and five days later, she received a phone call from Secretary Pierce:

Mr. LANTOS. ...Now, can you, to the best of your recollection, tell us what exactly Secretary Pierce told you?

Ms. WISEMAN. Yes, sir. It was a very short conversation. He asked me if I had received the Durham packet and had Deborah spoken with me, and I said yes, I had received it, and yes, Deborah had spoken with me, and he said-- the Secretary said I want the project funded, and-- (emphasis added)

Mr. LANTOS. Those were his exact words, as you recall? "I want that project funded"-- or words to that effect?

Ms. WISEMAN. I believe that is the exact words. You know it could be--

Mr. LANTOS. That is close enough.

Ms. WISEMAN. But he said I want the project funded. I said I can't fund it, Mr. Secretary, and he said, well, I want it funded, and I said, well, I am sorry, I can't fund it, but I will send it upstairs to you, and that was the end of the conversation.

Mr. LANTOS. And you did?

Ms. WISEMAN. Yes, sir.

(7/14/89 Tr. 26)

After Ms. Wiseman left HUD, her successor, Janet Hale was given the funding documents for the Durham Hosiery Mill project on her first day in office, and was asked to formally sign them:

Mr. LANTOS. Alright, so Ms. Dean told you to fund this project?

Ms. HALE. Yes, sir.

Mr. LANTOS. Can you recall the phrasing that was part of that directive?

Ms. HALE. The Secretary wanted the project funded. I had his authorization, and I should move forward with the funding.

Mr. LANTOS. That is what Ms. Dean told you?

Ms. HALE. Yes.

Mr. LANTOS. Your testimony is that Ms. Dean said the Secretary wanted this project funded, and you should sign the funding documents?

Ms. HALE. Yes, sir.

Mr. MARTINEZ. . . . Did she [Ms. Dean] say that the project is approved, sign it and forward it?

Ms. HALE. Congressman, I received a piece of paper called a "rapid reply," a part of our process, that was the authorization to tell our folks to go ahead and cut the funding documents to the field. That had the Secretary's signature on it.

(7/14/89 Tr. 38-39)

Mr. MARTINEZ. . . . But on this project, do you know of anyone other than Mr. Pierce and Deborah Dean who thought the project was good, who wanted the project?

Ms. HALE. To my knowledge, there was no one else in support of the project within the building.

(7/14/89 Tr. 51)

After the Durham Hosiery Mill project was approved, the developers sought several waivers from usual HUD requirements to go forward, one because the project was too close to the railroad tracks, another because it called for rent 132% above ordinary rent levels, and another waiver relating to the occupancy level. Ms. Hale testified that she was concerned about the requested waivers and attempted to talk directly with Secretary Pierce:

Mr. LANTOS. Why did you want to talk to him?

Ms. HALE. I wanted to again express the concerns I had about the waivers that I was being asked to sign.

Mr. LANTOS. And it is reasonable to conclude that you requested the opportunity of meeting with the Secretary . . . because you felt that what you were told to do was really not right?

Ms. HALE. I guess I wanted to be sure that Deborah or the Secretary understood, having it be now my signature that would be on those documents, that there was tremendous opposition and that, in fact, although these waivers were legal, they were within the bounds of the authority for the Assistant Secretary to waive, that, again, the project continued to have opposition from the housing part of the Department.

Mr. LANTOS. And you shared that opposition?

Ms. HALE. I asked to see him. I had told Debbie of that concern, and was told that the Secretary wanted the project done. (emphasis added.)

(7/14/89 Tr. 43-46)

Secretary Pierce's sworn statement that "I never told these people to fund anything" is further contradicted by the documents relating to an award of mod rehab units for "Project Dignity" in St. Louis, MO. Secretary Pierce received a memorandum, dated August 30, 1984, from Thomas B. Evans, Jr. a partner in the law firm of O'Connor and Hannan, urging HUD approval of 303 moderate rehabilitation units for the Homer G. Phillips site, part of the implementation of "Project Dignity" (Attachment 1). On that same day, August 30, 1984, Secretary Pierce sent the following handwritten note to Deborah Dean: (Attachment 2)

To Debbie --

I talked to Barksdale about this. He is to get 203 units for this project by the first part of October. The balance -- 100 units -
- **will be** supplied by the city of St. Louis...

Follow up with Barksdale on this.

SRP

a On October 9, 1984, Ms. Dean sent the following letter to Thomas Evans: (Attachment 3)

Dear Tommy:

We are expecting to send out our Moderate Rehabilitation units for FY 1985 sometime near October 20, 1984. Please make sure that all of the proper requests and applications for the 203 units going to Project Dignity are in the office of Multifamily Housing, U.S. Department of Housing and Urban Development by that date so I can process the papers quickly.

Thank you for dropping in the other day. It is always a pleasure to see you and I'll be speaking to you again sometime near the HoDAG rounds.

With best wishes.

Very sincerely yours,

Deborah

**Deborah Gore Dean
Executive Assistant to the
Secretary.**

At a **subcommittee hearing on October 13, 1989**, Gerald Carmen, former head of the **General Services Administration (GSA)**, testified that he had discussed a mod rehab project with Secretary Pierce, the Pebble Creek project in Arlington, Texas in which he was one of the developers. (10/13/89 Tr. 140-147). At one of the earlier subcommittee hearings we heard testimony about moderate rehabilitation applications languishing at HUD, bureaucratic delays, and too much red tape. James Watt spoke about "paralysis by analysis." (I Tr. 372) Thus, it is noteworthy that the Pebble Creek project was approved by HUD officials in little more than two weeks, and apparently before an application had been filed with HUD by the local public housing authority (PHA). (Attachments 4-16)

In an April 7, 1987, memo, Deborah Dean told Secretary Pierce with respect to Mod Rehab: "Demery, Dorsey and I met today. Brooke and Carmen are set." (Attachment 9) Since mod rehab funds are supposed to be requested by a local PHA and distributed to that PHA for competitive bidding, it should not have even been referred to as "Carmen."

Hunter Cushing, former HUD Deputy Assistant Secretary for Multi-Family Housing Programs, appeared before the subcommittee on June 29, 1989. Prior to that hearing, Mr. Cushing transmitted to the subcommittee staff an advance copy of his prepared statement, with the express understanding that by doing so he did not waive

any rights, and that the statement would not be distributed at the hearing or made part of the hearing record unless he testified. At the June 29 hearing, Mr. Cushing, through his attorney, asked for additional time to prepare for and review all of the materials before Mr. Cushing testified. Chairman Lantos granted that request for an extension of time. Mr. Cushing appeared before the subcommittee again at a hearing on July 17, 1989 and asserted his Fifth Amendment rights in response to questions concerning activities at HUD.

In the statement prepared by Mr. Cushing for the June 29 hearing, which again was neither given by Mr. Cushing nor submitted for the record, Mr. Cushing wrote the following with respect to funding of mod rehab units: (Attachment 47 at page 3)

Similarly, unlike other funding actions, requests for Rapid Replies were not generated by my office. Rapid Replies appeared in my in-box, having been prepared by the Office of the Deputy Assistant Secretary for Policy, Financial Management and Administration upon direct orders from the Assistant Secretary. (I can only recall one instance where I made a request for a Rapid Reply, and that was only after the Secretary personally authorized it in writing). (emphasis added)

At the subcommittee hearings on April 30, May 2, and May 4, 1990, former HUD official DuBois Gilliam testified under oath that Secretary Pierce was directly and intimately involved in decisions to award HUD grants to personal friends and the politically well-connected. Gilliam candidly testified: ". . . The Department of Housing and Urban Development was the best domestic political machine I've seen . . . we dealt strictly in politics. . . ." (4/30/90 Tr. 72).

Some of the letters sent to Secretary Pierce seeking assistance on HUD-related matters suggest that HUD was run politically. (See *e.g.* letters from Luis Ferre, Attachment 17; and letter from Bill Taylor, Attachment 18).

Gilliam recounted in specific detail numerous instances in which Secretary Pierce directed him to fund particular UDAGs, Special Projects, and Technical Assistance applications:

Mr. LANTOS. Did Secretary Pierce tell you to fund a project for Mr. Singletary or did he just tell you to give it careful consideration?

Mr. GILLIAM. He told me to fund the project for Mr. Sam Singletary.

Mr. LANTOS. The reason I am dwelling on this item is because it is a very important item. Secretary Pierce repeatedly

the project." (4/30/90 Tr. 30)

We have reason to believe that the testimony of Deborah Dean would be consistent with Mr. Gilliam's concerning Secretary Pierce's direct and intimate involvement in these programs. Further, with respect to the Section 8 Moderate Rehabilitation Program, we believe that Ms. Dean's testimony would show that in numerous instances Secretary Pierce approved and directed that mod rehab units be given to projects advocated by certain individuals.

2. I do not have a recollection of that [January 13, 1987] meeting

Congressman Morrison questioned Secretary Pierce about a meeting that **Pierce had** with Assistant Secretary for Housing Thomas Demery, with Deborah Dean present, on January 13, 1987:

Mr. MORRISON. Mr. Demery testified before the Housing Subcommittee that he objected to **this process of being directed to sign**, and he insisted **that he have a meeting that included you**. And he says such a meeting took place on January 13, 1987, and that you and Ms. Dean and he were together, and you discussed both specific projects and how this program was to operate. Do you have recollection of that meeting?

Mr. PIERCE. I do not have a recollection of that meeting, no; and certainly not a recollection of the meeting whereby he said to me that she was throwing her weight arou: and making him do things like sign for projects that she approved. (emphasis added)

Mr. MORRISON. Do you deny that such a meeting took place?

Mr. PIERCE. I don't know. There may have been a meeting. But not what was said went on. That's what I'm saying. There could have been a meeting.

* * * *

Mr. MORRISON. . But at this time, you have no recollection of that meeting?

Mr. PIERCE. No.

(I Tr. 256)

Mr. MORRISON. In other words, Mr. Demery has said that you met with him along with Ms. Dean.

Mr. PIERCE. Yes.

Mr. MORRISON. And that at that meeting, you approved projects

in the course of a regular round of projects, not an emergency.

Mr. PIERCE. No. I didn't approve a round of projects in a meeting . .

Mr. MORRISON. . . . What Mr. Demery testified is that you explained how the system would work, which you said that it was discretionary with you, it was a discretionary system; and secondly, that you approved a list of projects to be approved at that time in that round, Janaury, 1987. That's the other thing that he said happened at the meeting.

Mr. PIERCE. I don't recall approving a list of projects.

(I Tr. 266)

As the perjury prosecution of former White House aide Michael Deaver makes clear, the fact that a witness in response to a question says "I don't remember" or "I have no recollection of such a meeting" may nevertheless, in certain circumstances, constitute perjury.

The January 13, 1987 meeting that Assistant Secretary for Housing Thomas Demery had with Secretary Pierce, in the Secretary's office, with Deborah Dean present, was a critical and pivotal meeting. The topic of discussion at this meeting was whose mod rehab program was it. In other words, did the decision-making power and control over millions of dollars of discretionary mod rehab funds rest with the Secretary or with the Assistant Secretary for Housing? It was at this meeting on January 13, 1987 that Secretary Pierce told Demery that he wanted to know who was behind each Section 8 Moderate Rehabilitation project! It was at this January 13 meeting that Mr. Demery asked Secretary Pierce how he would know if there were a project in which the Secretary had an interest, and Secretary Pierce replied that he would speak through Ms. Dean.

At a subcommittee hearing on May 23, 1990, Thomas Demery testified in detail about his January 13, 1987 meeting with Secretary Pierce:

During the first two months as Assistant Secretary for Housing, documentation for mod rehab funding decisions consisted of scraps of paper listing various PHAs which Ms. Dean would hand me and tell me, "The Secretary wants these requests funded," . . . Whenever I challenged her directives, Ms. Dean would question my loyalty to the Secretary.

Finally, after only three months on the job, on

January 12, 1987, I insisted on a face-to-face meeting with Secretary Pierce to discuss mod rehab program authority. The meeting was set for January 13, 1987. The agenda included: how the mod rehab program was supposed to run and who, either Demery or Dean, was to direct my deputy, Hunter Cushing.

At that meeting, when reviewing specific mod rehab program funding recommendations, Secretary Pierce wanted to know "who was behind" each mod rehab request. At that time, I realized that political considerations were to be a factor in the award of mod rehab units as viewed by Secretary Pierce.

(5/23/90 Tr. 9-10)

His responses concerning the question of my program authority centered on the following: One, the mod rehab program was his to run as he wanted; . . . Two, program authority had not been delegated to me as Assistant **Secretary for Hotsing**; three, a selection committee comprised of the Under Secretary, which at that time was vacant, so the General Counsel, Mike Dorsey, would serve as a substitute for the vacant Under Secretary position; the Assistant Secretary for Housing -- me -- and Secretary Pierce's Executive Assistant, Deborah Dean, would meet to review future mod rehab requests; four, Secretary Pierce would speak through Ms. Dean to this committee; and, five, he wanted me to try and work it out with Cushing.

Those were my instructions from Secretary Pierce. These instructions were reiterated in a January 13, 1987 memo from Deborah Dean to Secretary Pierce which stated, "You have all the power authorized to the Department, and even when you delegate authority you still have concurrent authority with the assistant secretaries. In other words, it is so much yours, you can't even give it away. OGC [the Office of General Counsel] can find no document that says you have ever delegated authority over mod rehab to anyone. You have sole responsibility for that program." . . .

(5/23/90/ Tr. 11-12)

Thus, it was Secretary Pierce who controlled the mod rehab program and wanted **to know "who was behind" each mod rehab request:**

Mr. LANTOS. It is my understanding, Mr. Demery, that at the beginning of this meeting Mr. Pierce wanted to know who was the developer or the person behind each mod rehab project. Is that correct?

Mr. DEMERY. Yes.

Mr. LANTOS. In other words, Secretary Pierce, who told this subcommittee that HUD was not run politically, was not only aware of the fact that it was run politically but he wanted to know who specifically was behind every single project. Is that correct?

Mr. DEMERY. He wanted to know who was behind the project, yes.

(5/23/90 Tr. 33)

3. I did not give Miss Dean any permission to say that I wanted certain programs.

During his testimony before the subcommittee on May 25, 1989, Secretary Pierce repeatedly stated under oath that Deborah Dean did not have permission to speak for him:

Mr. SHAYS. . . . The IG report left out people. It left out you, even **though** the report said it was headquarters-driven. It left out Deborah Gore Dean, who was your Executive **Assistant and spoke for you---**

Mr. PIERCE. No, **no, take that--no, she did not speak for me. Nobody speaks for me.** (I Tr. 221) (emphasis added)

* * * *

Mr. SHAYS. . . . He [Demery] said, . . . **three days after I got there---got there to HUD---and Deborah--Deborah Dean---handed me a list of nine projects and said fund them; the Secretary wants them funded, and I did.**

It's reasonable. He was there only three days. Mr. Demery said, sometime later she gave me another list. Now, I want to ask you a question. She's your Executive Assistant. Isn't it logical to you that if an executive assistant went into a room and said, I like these programs, that people could surmise that you liked them as well?

Mr. PIERCE. They may very well surmise that, but I think that what Mr. Demery should have done, he should have come to me and talked to me about that because I did not give Miss Dean any permission to say that I wanted certain programs. If I wanted some protects. if I wanted anything, I'd talk to Demery and the people myself directly but I mean, I wouldn't have somebody---somebody doesn't speak for me. They don't have to talk for me. (I Tr. 225)

(emphasis added)

However, when Demery met with Secretary Pierce on January 13, 1987, and asked how he would know if there was a mod rehab request in which the Secretary had an interest, Secretary Pierce said that he would speak through Ms. Dean:

Mr. LANTOS. Did you ask Mr. Pierce how you would know if there was a project in which he had an interest? What was his response?

Mr. DEMERY. I asked Secretary Pierce how the committee would know if there was a request he had a particular interest in, not a project, a PHA request, and he said he would speak through her, pointing to Deborah Dean. (5/23/90 Tr. 33)

We recognize that the Attorney General, in his application to the Court for the appointment of an Independent Counsel, dated February 1, 1990, found insufficient reason for the Independent Counsel to pursue allegations that Secretary Pierce may have committed perjury while testifying before Congress. However, it does not appear that the Attorney General's review of perjury went beyond the four corners of the November 3, 1989, letter from members of the House Judiciary Committee. As a Justice Department spokesman told the Washington Post (February 6, 1990 at A5, Attachment 19):

Thornburgh based his decision solely on examples cited in the Judiciary Committee's letter and did not consider other evidence that Pierce may have misstated his role in making HUD awards.

Thus, for example, Secretary Pierce's sworn statement, "I never told these people to fund anything" was not referred to in the November 3 Judiciary Committee letter, nor was it discussed in the Attorney General's application to the Court.

Furthermore, in February the Attorney General did not have the benefit of the significant and revealing testimony by DuBois Gilliam and Thomas Demery before the subcommittee in April and May, 1990. In the February 1, 1990, application to the Court, the Attorney General stated that "[t]he record is virtually complete" with respect to the perjury allegations. Had the Attorney General had the benefit of the new testimony, he likely would have concluded that there are "reasonable grounds to believe that further investigation is warranted" with respect of allegations of perjury being committed by Secretary Pierce while testifying before Congress.

II. Secretary Pierce, His Former Law Firm Battle, Fowler and Lance Wilson

Samuel Pierce was a senior partner at the New York law firm of Battle, Fowler, Jaffin, Pierce & Kheel before joining the Reagan Administration as Secretary of HUD. He remained HUD Secretary for the entire eight years of the Reagan Administration. While Secretary Pierce formally severed his ties with Battle, Fowler upon becoming HUD Secretary, it appears that the door was left open for Mr. Pierce to return to the law firm when his government service ended. In fact, Secretary Pierce was planning to rejoin Battle, Fowler in May, 1989, when the HUD scandal erupted.

Lance Wilson was an associate at the New York law firm of Mudge Rose Guthrie Alexander and Ferdon from August, 1972, until November, 1977. He joined the law department of the Equitable Life Assurance Society in December, 1977, and worked there until November, 1980, when he took a leave of absence to work on the Reagan Administration Transition Team for the Securities and Exchange Commission. On January 21, 1981, Wilson joined HUD as a Special Assistant to the Secretary. Less than two months later, on March 8, 1981, Wilson became the Executive Assistant to Secretary Pierce. Secretary Pierce referred to Wilson as his "right hand." Wilson held the position of Executive Assistant until June 1, 1984, when he left HUD to become president of the New York Housing Development Corporation. On March 31, 1986, Wilson joined PaineWebber as a First Vice President. (Attachment 20)

1. What did Secretary Pierce do for Lance Wilson?

Former HUD Deputy Assistant Secretary DuBois Gilliam testified about certain actions that Secretary Pierce had taken to benefit Lance Wilson after Mr. Wilson left HUD. Mr. Gilliam described how Secretary Pierce manipulated the Urban Development Action Grant (UDAG) funding process to fund a project, the Belle Glade Housing Project in Florida, in which Lance Wilson had an interest:

Mr. GILLIAM. . . . Florida did not do well as far as competitiveness in the Urban Development UDAG Program. They were far down on the list . . . I informed Lance that based upon where the project stood on the list at that time, that we would have to, you would have to call the Secretary to encourage him or ask him to reach your project.

. . . . Subsequently I went and met with the Secretary . . . I indicated to him, have you received a call from Lance? He said yes. I said this is Lance's project right here, the Belle Glade project. He indicated to me well, I do not like Leonard Briscoe. He said Leonard Briscoe was a crook and he was greedy. He said you tell Lance this is it; no more. And the Secretary agreed at that point to make the cutoff Belle Glade, FL. . . . And, following my meeting with the Secretary in which we agreed to cut off Belle Glade as the final project, I

took it upon myself to lower the line, to add the additional project, so that there would not be this perception that we reached down and funded Belle Glade, FL for Lance Wilson.

(4/30/90 Tr. 38-40)

(Attachment 21)

Secretary Pierce was well aware of which projects Wilson was involved in:

Mr. WEISS. How would the Secretary know that Lance Wilson was behind some of the projects?

Mr. GILLIAM. I would inform him, and Lance would have already made contact with him.

(4/30/90 Tr. 145)

* * * *

Mr. WEISS. So that the Secretary knew that a number of the projects that Lance Wilson was behind were, in fact, being awarded on a non-meritorious basis but on a personal contact basis. Is that correct? . . . You would just go to him and say this is Lance's project?

Mr. GILLIAM. That is correct.

Mr. WEISS. Were there instances where he would tell you, this is Lance's project, I want this funded?

Mr. GILLIAM. On the Riviera Beach Apartments, in November of 1985, he indicated that he knew those were Lance's projects, because he asked me about it, and I told him it was at the top . . . and the Wedgewood Plaza project that was funded in July of 1986 . . . I indicated to him that was Lance's project, and the Belle Glade project in March 1987, I indicated to him was Lance's project.

(4/30/90 Tr. 146)

Mr. Gilliam also testified that Secretary Pierce had approved the transfer of a career HUD employee upon being informed that the employee had questioned Lance Wilson's authority to commit PaineWebber to fund the Overton Ridge project in Fort Worth, Texas, in the amount of \$79.8 million, and was jeopardizing Wilson's career at PaineWebber:

Mr. GILLIAM. . . . I then went upstairs and saw Deborah Dean and Secretary Pierce, and I informed the Secretary that [David] Sowell had jeopardized Lance's career and future with PaineWebber through making calls on his authorization ability to commit \$79 million.

(4/30/90 Tr. 44)

* * * *

Mr. GILLIAM. I said, Mr. Secretary, we need to move him [David Sowell]. He says, I want you to move him, I want you to work with Tim Coyle, who was a Deputy Under Secretary for Field Operations . . . We were to place Sowell out in the field.

(4/30/90 Tr. 46)

2. What did Lance Wilson do for Secretary Pierce?

In 1988, PaineWebber was awarded a \$1.3 million contract to act as HUD's financial advisor on the sale of HUD loan assets. PaineWebber was selected over Chemical Bank, the firm recommended by a HUD review panel. Goldman Sachs and Salomon Brothers were subsequently selected as underwriters for the sale of these assets. Both of these companies chose the law firm of Battle, Fowler as their legal counsel at the urging of Lance Wilson.

Henry Edelman, former First Vice President for Government Finance at PaineWebber who headed the PaineWebber team that put together the application to be HUD's financial advisor, explained to subcommittee investigators during an interview on October 26, 1989, how Goldman Sachs came to select the law firm of Battle, Fowler to do their legal work in connection with the sale of assets. According to Edelman, he received a phone call from Neil Levin of Goldman Sachs, who told Edelman that Lance Wilson had phoned him, and had encouraged Goldman Sachs to use Battle, Fowler. Levin remarked that this was unusual and asked Edelman whether he was aware Battle, Fowler was Pierce's old law firm. Edelman immediately went to Lance Wilson's office to confront him and ask what was going on. Wilson said that Pierce had severed all connections with Battle, Fowler and that they were a good real estate firm. According to Edelman, PaineWebber itself had never used Battle, Fowler.

On August 30, 1988, Lance Wilson phoned Secretary Pierce's office and left the following message for Secretary Pierce with Starr B. Eckert, the Secretary's Confidential Assistant:

Per Lance:

First round of assets sales- public
facility GNMA deal has closed
Goldman Sachs was manager Battle,
Fowler was counsel

Group II - Multifamily should close at the end of September. Salomon Bros. was selected as lead firm (manager). Salomon selected Battle Fowler as their counsel as well.

Muriel Siebert's firm applied and was selected as one of the underwriters. They did not try to be the manager, requested to be an underwriter. The final group - single family -- will probably happen sometime in October.

The phone message to Secretary Pierce ends by saying that Lance can be reached on vacation in Long Island if you have any questions. (Attachment 22)

This suggests that in 1988, the last year of the Reagan Administration and Secretary Pierce's final year at HUD, Lance Wilson, with the Secretary's knowledge and approval, acted to steer HUD-related legal work to the law firm in which Secretary Pierce had been a partner in the past, and was likely to become a partner again in the future.

Wilson hosted a dinner for Samuel Pierce, at PaineWebber's expense, on February 25, 1988:

Mr. SHAYS. . . . [Wilson] had a dinner for Samuel Pierce at PaineWebber in the Executive Dining Room for 40 participants on February 25th, 1988.

Mr. TREADWAY. Mr. Wilson asked if he could use the facilities to house the function . . . PaineWeber picked up the cost of what would be in effect the rental of the facility and food, about \$3,500 is my recollection.

(9/27/89 Tr. 205)

Wilson also arranged a meeting to try to get Secretary Pierce on the PaineWebber Board of Directors.

Mr. SHAYS. There has been some talk that Lance Wilson may have tried to promote Samuel Pierce to be a member of the Board of PaineWebber; was that just talk? Are either of you aware that there was something that Lance Wilson wanted to see happen?

Mr. [Donald] MARRON. Yes. Lance Wilson, through my staff,

asked if he could bring in Mr. Pierce. I think it was in January or February of 1989. The message was that Mr. Pierce had been on the Board of General Electric, and the Prudential Insurance Company, Scott Paper, and other distinguished corporations before he went in government. He was now out of government and he would like to look around to see what kind of board opportunities were available and would I meet with him.

(9/27/89 Tr. 206-207)

Mr. TREADWAY. Mr. Shays, it is clear to make sure that the concept that you were focusing on, did Mr. Wilson, was this his idea? The answer to that is yes.

(9/27/89 Tr. 207)

3. What did Secretary Pierce do for Battle, Fowler?

Documents sifted from the files of Secretary Pierce and his Executive Assistant Deborah Dean at HUD show that Battle, Fowler frequently sought the assistance of Secretary Pierce in HUD-related matters. These ranged from having Secretary Pierce meet with a client of Battle, Fowler to discuss a UDAG application, to seeking favorable consideration by HUD on the terms of a workout agreement for one of its clients, to securing Rental Rehabilitation Program vouchers, to obtaining Section 8 Moderate Rehabilitation units. (Attachments 23-38)

A February 15, 1985, letter to Deborah Dean with a copy to Starr Eckert, Secretary Pierce's Confidential Assistant, from Martin L. Edelman, a partner in the law firm of Battle, Fowler, raises many serious and disturbing questions. (Attachment 23) In this letter, Mr. Edelman seeks Ms. Dean's assistance in obtaining Section 8 Moderate Rehabilitation funds for some apartments in Amherst, NY. Mr. Edelman writes: "You may remember that you helped us achieve a similar transaction through the New York State Housing Finance Agency last year."

This apparently was a reference to the Allenhurst Apartments project in Amherst, NY which was awarded 316 moderate rehabilitation units by HUD in November, 1984.

The developers of the Allenhurst Apartments project were Stephen Ross of Related Companies, Inc. and Dennis Penman of the Peterson-Allentown Development Corp. Mr. Ross was represented in the project by the law firm of Battle, Fowler, and Henry Edelman, a partner in Battle, Fowler, also served as a director of Related Companies.

The HUD Inspector General found that the selection of the Allenhurst project to receive mod rehab units was made on a preferential and non-competitive basis. According to the HUD IG's audit report,² in late August or early September, 1984, the developer Penman had asked the Belmont Shelter Corp., which acts as the PHA for Erie County which includes the town of Amherst, to serve as the PHA for mod rehab units for Allenhurst Apartments that he was to obtain from HUD. The Belmont Shelter Corp. refused to do so because it was contrary to program procedures and the PHA had other proposals that were more deserving of mod rehab units. It does not appear that the Belmont Shelter Corp. ever received any mod rehab funds from HUD.

In October, 1984, Penman contacted the New York State Housing Finance Agency, at the suggestion of a Buffalo HUD official who said it could act as a PHA to apply for mod rehab funds.

On November 21, 1984, the New York State HFA, in a letter to Assistant Secretary for Housing Maurice Barksdale with a blind copy to Deborah Dean, applied to HUD for 316 mod rehab units for the town of Amherst, N.Y. (Attachment 39) This was the only time the New York State HFA sought funds under the mod rehab program. One week later, on November 30, 1984, a Rapid Reply Letter was sent to the HUD New York office approving funding for 316 mod rehab units to the New York State HFA. (Attachment 40) These units were subsequently awarded to the developers of the Allenhurst Apartments project by the New York State Housing Finance Agency without publicly advertising the availability of these rent subsidy funds.

When the HUD IG's Office uncovered this failure to advertise during an audit in 1987, some HUD staffers recommended cancelling funding for the Allenhurst Apartments.

It appears that the developers hired Lance Wilson who was successful in securing approval of a retroactive waiver of the public notice requirement by HUD officials in 1988. Wilson was paid \$25,000 for his services by check dated March 31, 1988 from Allenhurst Housing Associates. (Attachment 41)

In light of Secretary Pierce's long and close relationship with his former law firm, Battle, Fowler, it defies logic and reason that Ms. Dean would have assisted Battle, Fowler in obtaining these scarce and much-in-demand units for the Allenhurst project on her own without the direct and intimate involvement of Secretary Pierce. As a matter of fact, at the time the February 15, 1985, letter was written, Ms. Dean had never even met Mr.

² Report on Audit, Section 8 Moderate Rehabilitation Program, Buffalo Field Office, New York, New York -- Allenhurst Apartments, Amherst, New York, Project NY06-K108-730, dated January 12, 1989, 89-NY-182-0002.

Edelman. In a letter to Ms. Dean dated April 2, 1985, Mr. Edelman writes: "I look forward to finally meet you." (Attachment 26) Thus, it appears that in this instance, Ms. Dean helped Battle, Fowler secure mod rehab units at the behest of Secretary Pierce.

III. The Coinsurance Program

One of the biggest financial disasters was HUD's coinsurance program [Section 223(f) Program], established in 1983. It is estimated that the losses from the coinsurance program will cost the American taxpayer more than \$1 billion. The HUD Inspector General estimates that some \$370 million of the losses will result from HUD coinsuring loans issued by one company, DRG Funding Corporation.

In April, 1983, DRG was one of the first companies approved by HUD as a coinsurance lender. According to the regulations, it had to clear three "demonstration" projects which it did. After that, DRG was, in effect, given a license to make loans coinsured by HUD.

In September, 1984, DRG issued a loan on a giant 1,818 unit project in Houston, TX named Colonial House. The mortgage on this project totaled \$47.2 million, but at a foreclosure sale in the spring of 1989, the property sold for only \$8.9 million.

When then HUD Assistant Secretary Maurice Barksdale was informed that DRG was about to close on a 1,818 unit project in Houston, knowing how depressed the housing market was in Houston, he "almost fell out of his chair."³ Barksdale testified:

Being from Texas, I know that the Texas housing market was relatively soft at that time and more specifically Houston, TX was extremely soft, so I was very concerned about the possibility of that size project being closed.

I think my concern would have been the same if it had been any of the other coinsurance participants at the time. My concern was about the amount of units.

I immediately confirmed with my staff that this closing was going to occur -- I think this was a couple of days before the scheduled closing. I asked my staff to give me a complete immediate review of what was going on and I asked one of my staff persons to actually go down to Texas -- to Region VI - - to Houston and Fort Worth to find all the details about the

³ Interview with Maurice Barksdale by subcommittee staff on July 15, 1989.

closing because my gut feeling, based on my expertise and my feeling about the Houston market, was that I was not very happy about that size unit closing.

After the first day, and I stopped what I was doing, I mean I literally stopped everything to see what was going on with respect to this Colonial House closing.

(7/31/89 Tr 88)

Barksdale testified about how he tried to prevent it from going forward:

I said, find me a way to keep this loan from closing. I didn't want it to close. Because I just was apprehensive about the market.

It was reported to me that technically there were no reasons to preclude the loan from closing and legally we didn't have any means to stop the loan from closing.

(7/31/89 Tr. 89)

Hunter Bourne, Barksdale's executive assistant at the time of the Colonial House closing, described the project to subcommittee investigators as "active insanity."⁴

Walter Sevier, the Deputy Regional Administrator in the HUD Fort Worth office, traveled to Houston with an appraiser to look at the Colonial House project which he valued at \$13 million compared to the \$60 million value given the project by DRG:

Mr. SEVIER. . . . I first heard of the Colonial House project in the latter part of August, 1984. Our HUD manager in Houston, Jim Wilson called me, and told me that the DRG Company had been into the office saying that they had underwritten Colonial House and would be coming in within a week or two for us to insure the project.

Jim mentioned to me that they had talked in terms of a \$60 million value with a \$47,247,000 mortgage. Being generally familiar with Houston, I agreed with Jim that it seemed outrageous at the time. So, I went to Houston, took an appraiser with me, Jim Wilson and some of his staff. We walked the project, looked at the area, checked the market.

Frankly, at the time, in our opinion, we did not do a complete appraisal but a walk-through. I thought the project was worth somewhere in the neighborhood of \$13 million.

⁴ Interview with Hunter Bourne by subcommittee staff on July 16, 1989.

Mr. LANTOS. Thirteen: one - three million?

Mr. SEVIER. Yes, sir, which would result in about an \$11 million mortgage.

MR. LANTOS. In fact, DRG claimed that it was worth \$60 million?

Mr. SEVIER. That's right.

Mr. LANTOS. And were trying to get, and in fact did get, a \$47 million loan on this?

Mr. SEVIER. Yes, sir.

(9/27/89 Tr. 249)

Mr. LANTOS. ... What did you do, Mr. Sevier, when you confirmed this?

Mr. SEVIER. I called Maurice Barksdale, who was Assistant Secretary for Housing and Commissioner at the time. Maurice was familiar with that area and was very concerned about it. In fact, he sent two of his underwriters from Washington to look at the project to see if they could differ with what we thought it would be worth.

I met them in Houston, we visited the project again. There was really no significant disagreement or any disagreement of any kind.

Mr. LANTOS. They shared your view that the facility was worth about \$13 million, not \$60 million?

Mr. SEVIER. That's correct.

Mr. LANTOS. Okay, go ahead.

Mr. SEVIER. I had several telephone conversations with Maurice Barksdale. He agreed with me, shared the concern of the Houston office and Fort Worth. But the end result, Maurice called me and said that he had discussions with the General Counsel's office in HUD and the Secretary's office, and that, unfortunately, the ruling is that the Department has no choice but to insure this project, and that we were directed to insure the project based on, again, a decision that he had received from the General Counsel's Office and the Secretary's office.

....

My response at the time, and I am not an attorney,

but I told him that in my opinion, the Department could justify and should justify not insuring the project as a result of misrepresentation. Misrepresentation, of course, being the value and the mortgage amount. He said again, the Department had reviewed it very carefully and, unfortunately, there was no choice and we were directed to insure the project ...

(9/27/89 Tr. 250)

Barksdale does not remember whom he spoke to in the Office of the General Counsel:

Mr. BARKSDALE. I talked to representatives of the Office of General Counsel; specifically, I cannot remember.

Mr. LANTOS. But it is your recollection that you did talk to someone in the Office of the General Counsel?

Mr. BARKSDALE. Yes, and at that time I was informed that DRG had complied with all the requirements of the program and they did have the authorization and the authority to close. And they closed.

(7/31/89 Tr. 89)

One of the open and troubling questions is who at HUD, whether in the Secretary's Office or in the General Counsel's Office, made the decision, one which subsequently cost the American taxpayer more than \$30 million, not to attempt to either prevent DRG from closing on the Colonial House loan or to seek to nullify the loan based on evidence of misrepresentation, if not fraud, in inflating the value of the project by some 300 percent. Incredibly, there does not appear to be any record at HUD as to who in fact made the decision not to act on the Colonial House loan or any written opinion to support such inaction.

HUD officials continued to monitor DRG's activities and finding breaches of program requirements, on November 13, 1984, Assistant Secretary Barksdale placed DRG on probation and required pre-commitment review and approval by HUD of all future projects.

Barksdale's successor, Shirley Wiseman, relying on the strong recommendation of HUD career staff, who found that DRG was not performing underwriting in an appropriate manner, rejected a request by DRG and its attorney, former HUD Secretary Carla Hills, to lift the pre-commitment approval requirement.

In April, 1985, Ms. Hills wrote to Secretary Pierce requesting a meeting to discuss DRG's situation. Ambassador Hills testified:

I requested, and was granted, a meeting at which one of my partners and I met with the Secretary and many other HUD personnel.

During this meeting of about one hour, I presented DRG's case in some detail, strictly on its merits. After about a week, with no word having issued from HUD, I wrote again to Secretary Pierce, seeking a resolution of DRG's situation.

(7/17/89 Tr. 19)

On May 4, 1985, Secretary Pierce was the guest of honor at a gala dinner to benefit the Georgetown Preparatory School in Rockville, MD. Companies contributing above a certain amount to the Samuel Pierce Scholarship at Georgetown Prep were invited to meet with Secretary Pierce in his office at HUD on Thursday afternoon, April 25. First on the list of 11 companies who contributed to the Pierce Scholarship and accepted the invitation to meet with Secretary Pierce was DRG Financial Corporation and its President Donald De Franceaux. (Attachment 42)

In a letter dated May 9, 1985, Secretary Pierce lifted the ban on DRG and removed the requirement for pre-commitment review and approval by HUD of DRG loans. (Attachment 43) In this nine-page letter, Mr. Pierce outlined a long list of inappropriate acts by DRG and then in the final paragraph he nevertheless lifted the pre-commitment clearance requirement.

Lynda Murphy, a former HUD employee, a close friend of Deborah Dean, and a partner in the Washington, DC law firm of Barrett, Montgomery & Murphy, who represented clients with a business interest in the outcome of the DRG situation, testified that she was provided a copy of this nine-page letter at HUD in draft form before it was issued. (7/24/89 Tr. 225) In September, 1985, Ms. Murphy was retained by DRG as closing attorney on some of their project loans. (7/24/89 Tr. 218)

These many pages of evidentiary support for enlarging the Independent Counsel's investigative mandate should not be viewed as an indictment of Secretary Pierce, nor as an accusation that Secretary Pierce is guilty of any crime. It does, however, raise serious and troubling questions that require further investigation. At a minimum, we strongly believe that it satisfies the standard for an Independent Counsel investigation, namely, whether there are reasonable grounds to believe that further investigation is warranted." It is in the long-term interest of Secretary Pierce that an investigation be conducted so as eliminate any appearance of criminal wrongdoing. It is also in the public's interest that these matters be fully and thoroughly investigated by the Independent Counsel to determine whether any crimes were committed, and if so, to punish those involved.

Judge Adams, we have been most impressed by the prudent, responsible, and professional manner in which you are conducting this investigation. We stand ready to assist you as best we can.

Sincerely,



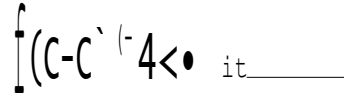
TOM LANTOS
Chairman



DONALD "BU" LUKENS
Ranking Minority Member



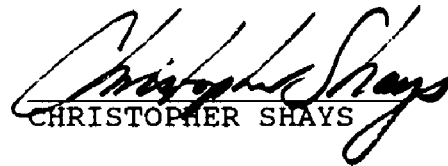
BARNEY FRANK



JON KYL



MATTHEW MARTINEZ



CHRISTOPHER SHAYS

TED WEISS

ROBERT ISE, JR