

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term
Grand Jury Sworn in on December 6, 1990

UNITED STATES OF AMERICA

v.

THOMAS T. DEMERY

and

PHILLIP McCAFFERTY,

Defendants

CRIMINAL NO. 92-0227-SSH

Violations:

18 U.S.C. § 201(c)(1)(A)
(Illegal Giving of a
Thing of Value to a
Public Official)

18 U.S.C. § 201(c)(1)(B)
(Illegal Receipt of a
Thing of Value by a
Public Official)

18 U.S.C. § 208(a)
(Acts Affecting a
Personal Financial
Interest)

18 U.S.C. § 371
(Conspiracy to Defraud
the United States)

18 U.S.C. § 1001
(False Statements)

18 U.S.C. § 1014
(False Statements on
Loan Application to
a Bank)

18 U.S.C. § 1503
(Influencing the
Administration of
Justice)

18 U.S.C. § 1621
(Perjury)

18 U.S.C. §§ 2(a) and 2(b)
(Aiding and Abetting
and Causing an Act
to be Done)

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION TO ALL COUNTS

Unless otherwise alleged, at all times material to this Indictment:

1. HUD Programs and The Defendant DEMERY

1. The United States Department of Housing and Urban Development ("HUD"), an agency and department of the United States, was created by Act of Congress to administer federal programs that provide assistance for housing and development of the nation's communities. 5 U.S.C. § 624. Among the programs administered by HUD pursuant to Section 8 of the United States Housing Act of 1937 were the following:

A) the Moderate Rehabilitation program, which was designed to stimulate rehabilitation of existing substandard rental housing and to provide rental subsidies for low income families living in the rehabilitated units. 42 U.S.C. § 1437(f).

B) the Loan Management Set-Aside ("LMSA") program, whose primary goal was to reduce claims on HUD's insurance fund by aiding housing projects insured by the Federal Housing Administration or held by HUD which had immediate or potentially serious financial difficulties that might result in their default. 42 U.S.C. § 1439(d)(4); 24 C.F.R. § 886.101(c)(1987).

2. From in or about August of 1986 to January 28, 1989, the defendant THOMAS T. DEMERY served as HUD's acting and subsequently confirmed Assistant Secretary for Housing-Federal Housing

Commissioner ("Assistant Secretary for Housing"). In such position, the defendant THOMAS T. DEMERY had the official responsibility for, and was the chief administrator of, the Moderate Rehabilitation and LMSA programs.

2. HUD Standards of Conduct

3. At all times material herein up to and including March 31, 1988, HUD's Standards of Conduct precluded its officials, including the Assistant Secretary for Housing, from engaging in the following actions:

A) "An employee shall avoid any action whether or not specifically prohibited by the regulations in this subpart, which might result in, or create the appearance of:

a) Using public office for private gain;

b) Giving preferential treatment to any person;

* * *

d) Losing complete independence or impartiality;"

24 C.F.R. § 0.735-202.

B) "[A]n employee shall not solicit or accept, directly or indirectly, any . . . thing of monetary value, from a person who:

1) Has, or is seeking to obtain contractual or other business or financial relations with the Department;

2) Conducts operations or activities that are regulated by [HUD]; or

3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official

duty." 24 C.F.R. § 0.735-203.

4. From April 1, 1988 through all times material herein, HUD's Standards of Conduct which are relevant to this matter were redesignated and revised as follows:

A) The Standard of Conduct set forth in paragraph 3 A) remained in force but was redesignated. 24 C.F.R. § 0.735-201.

B) "[A]n employee shall not solicit or accept, directly or indirectly, any . . . thing of value from a person . . . or business entity or a group of persons . . . or business entities, who or which:

1) Has, or is seeking, an[y] contractual or other business or financial relationship with the Department;

2) Conducts operations or activities that are regulated by the Department; or

3) Has interests, or whose members or clients have interests, that may be substantially affected by the activities of the Department." 24 C.F.R. § 0.735-203.

C) "An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his or her official duties and responsibilities." 24 C.F.R. § 0.735-204(d)(1).

I. COUNTS ONE Through THREE - "S & A"

COUNT ONE

5. The paragraphs of the Introduction to this Indictment are realleged and incorporated herein as though fully set forth in this Count.

1. HUD Participant and Projects

6. At all times material herein, Seligman & Associates ("S & A"), which was headquartered in Bloomfield Hills, Michigan and was operated principally by a person whose identity is known to the Grand Jury and who is referred to as Co-conspirator #1, managed, through its affiliate, Scott Management Company of Royal Oak, Michigan (also referred to as "S & A"), the following multifamily housing projects for which S & A sought Section 8 subsidies from HUD and in which Co-conspirator #1 was a part owner:

- A) Southland I, a 424 unit project in Taylor, Michigan;
- B) Southland II, a 96 unit project in Taylor, Michigan;

and

- C) Camelback Towers, a 254 unit project in Phoenix, Arizona.

7. At all times material herein, S & D Mortgage Company ("S & D"), which was headquartered initially at Southfield, Michigan and then at Bloomfield Hills, Michigan and was operated principally by Co-conspirator #1, engaged in the business of lending funds to various partnerships and other entities in which S & A and others closely associated with S & A held ownership interests for the purpose of developing real estate, including multi-family properties.

2. Charge

8. From in or about August of 1986, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the present time, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together with persons known and unknown to the Grand Jury:

A) to defraud the United States and an agency of the United States:

1) by depriving HUD and the citizens of the United States of their right to have HUD's business and affairs, particularly the administration of its LMSA subsidy program, which constitutes a part of HUD's lawful governmental function, conducted in an honest and impartial way, as the same should be, free from deception, fraud, and improper and undue influence; and

2) by depriving HUD and the citizens of the United States of their right to the conscientious, loyal, faithful, disinterested and unbiased services, actions, and performances of official acts by the defendant THOMAS T. DEMERY in his official capacity, free from deception, fraud and improper and undue influence, all in violation of Title 18, United States Code, Section 371.

B) to commit offenses against the United States, that is, the defendant THOMAS T. DEMERY, being a public official, otherwise than as provided by law for the proper discharge of his official duties, willfully and knowingly, directly and indirectly

sought, received and accepted a thing of value personally, that is, \$100,000 from Co-conspirator #1 through S & D, ostensibly in the form of a second mortgage loan, under terms and conditions far more favorable than he could have obtained from sources of such funding usually available to the public, for and because of official acts performed and to be performed by him, including official acts in connection with Co-conspirator #1's requests, and the requests of other officers and employees of S & A, relating to allocation of funds under HUD's funding programs to and for the benefit of projects partly owned by Co-conspirator #1 and managed by S & A, in violation of Title 18, United States Code, Section 201(c)(1)(B).

Goals of the Conspiracy

9. The goals of the conspiracy were:

A) the defendant THOMAS T. DEMERY would receive \$100,000 from Co-conspirator #1 through S & D, ostensibly in the form of a second mortgage loan, under the following terms and conditions: interest at the prime rate; interest to be paid quarterly; no "points" or other fees to be paid at time of closing the loan; no payments of principal required until the end of the term; omission of any requirement to submit a loan application; omission of any fees, charges or penalties for the late payment of interest due; omission of any steps undertaken to promptly collect interest not paid or overdue;

B) S & A-related project owners would receive the benefit of LMSA subsidies awarded through the direction and manipulation of the defendant THOMAS T. DEMERY; and

C) Although ostensibly in the form of a second mortgage loan, the transaction would remain secret and undisclosed, its existence not being recorded, filed or otherwise noted in, among other places, county real estate or land records.

Means and Methods Used in Seeking
to Achieve the Objects of the Conspiracy

10. The defendant THOMAS T. DEMERY together with other persons known and unknown to the Grand Jury as co-conspirators but not named as defendants in this Indictment, used the following means and methods, among others, in seeking to achieve their goals:

A. The \$100,000 to the Defendant:

1) The defendant THOMAS T. DEMERY obtained \$100,000 from Co-conspirator #1 through S & D, ostensibly in the form of a second mortgage loan, under the following terms and conditions: the rate of interest was prime, a rate extended by financial institutions, including mortgage companies, only to their best customers; no payment of any "points" was to be made at closing, contrary to industry practice in which points are customarily charged to home owners by financial institutions at a percentage of the value of the loan, which percentage increases as the rate of interest on the loan decreases toward the prime rate; no payment towards principal was required to be made during the term of the loan.

2) The defendant THOMAS T. DEMERY obtained the \$100,000 from Co-conspirator #1 through S & D, without being required to do the following: make timely payments on the loan; accelerate payments or make full payment of the loan when he failed to make timely payments; pay any penalties and other fees for the late

payment of interest.

3) Although ostensibly in the form of a \$100,000 note and related second deed of trust, the defendant THOMAS T. DEMERY obtained the second mortgage loan from Co-conspirator #1 through S & D, without efforts being undertaken by S & D to record with the proper authorities in the county in which the real estate was located the second deed of trust, note or any other relevant documentation showing S & D's interest in the mortgaged property.

B. LMSA Benefits to S & A Related Projects:

4) The defendant THOMAS T. DEMERY directed officials and employees of HUD to take actions, and to refrain from taking actions, in order to direct LMSA subsidies to the following S & A related projects from a HUD fund under the control of the defendant THOMAS T. DEMERY, which projects failed to qualify for such funds under HUD's non-discretionary program and which projects were also rejected for such funding by HUD regional officials for the following reasons:

-- Southland I & II: Co-conspirator #1 was largely responsible for the projects' problems primarily due to his unwillingness to invest any of his own money and that of his partners in them; and the projects themselves did not qualify for LMSA subsidies because they were not in imminent danger of loan assignment.

-- Camelback Towers: the project had adequate reserve funds to cover any extraordinary costs and was not in imminent danger of loan assignment.

5) The defendant THOMAS T. DEMERY directed officials and employees of HUD to take actions, and to refrain from taking actions, in order to improve the ranking of Southland I to a level at which it would qualify for LMSA subsidies from funds under HUD's non-discretionary program.

Overt Acts

11. On or about the dates set forth in the Overt Acts described below, the defendant THOMAS T. DEMERY and others known and unknown to the Grand Jury, within the District of Columbia and elsewhere, committed and caused to be committed the following overt acts, among others, in furtherance of the conspiracy.

A. The \$100,000 to the Defendant:

1) On or about June 26, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY sent to Co-conspirator #1 a piece of correspondence on his HUD letterhead that stated "Here is a copy of the appraisal we had discussed" and that enclosed an appraisal of the value of his personal residence.

2) On or about July 1, 1987, within the Eastern District of Michigan and elsewhere, Co-conspirator #1 sent to the defendant THOMAS T. DEMERY a letter on blank letterhead that enclosed the following: a second deed of trust on the defendant THOMAS T. DEMERY's personal residence, showing that S & D was securing an interest in the defendant THOMAS T. DEMERY's residence for \$100,000; a note for the \$100,000 between S & D and the defendant THOMAS T. DEMERY and another person; and a check for \$50,000 made payable to the defendant THOMAS T. DEMERY and another person as a

first installment payment of the loan.

3) On or about July 3, 1987, within the Eastern District of Virginia, the defendant THOMAS T. DEMERY caused \$49,900 of the \$50,000 check referred to in Overt Act 2 above, which he had signed, to be deposited into a personal bank account in the names of himself and another person.

4) On or about July 7, 1987, within the Eastern District of Virginia, the defendant THOMAS T. DEMERY signed the note referred to in Overt Act 2 above.

5) On or about August 17, 1987, within the Eastern District of Michigan and elsewhere, Co-conspirator #1 sent to the defendant THOMAS T. DEMERY at his HUD office a letter on S & A's letterhead marked "PERSONAL & CONFIDENTIAL," which contained a check for \$30,000 made payable to the defendant THOMAS T. DEMERY and another person.

6) On or about August 19, 1987, within the Eastern District of Virginia, the defendant THOMAS T. DEMERY, who had signed the check referred to in Overt Act 5 above, caused it to be deposited into a personal bank account in the names of himself and another person.

7) On or about November 5, 1987, within the Eastern District of Michigan and elsewhere, a representative of S & D sent to the defendant THOMAS T. DEMERY a piece of correspondence on the letterhead of S & A, which correspondence contained the salutation "Dear Tom", noted that the defendant THOMAS T. DEMERY owed \$1,405.41 in interest and stated and inquired by separate

attachment as follows:

Tom,

You were out of town when this was due -- then I forgot about it. Do you want this sent to your office in the future?

8) On or about November 14, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY sent to a representative of S & D a piece of correspondence on his HUD letterhead, which requested that all future correspondence be directed to his home and which contained a check made payable to S & D for \$1,405.41.

9) On or about January 19, 1988, within the Eastern District of Michigan and elsewhere, a representative of S & D sent to the defendant THOMAS T. DEMERY a form disclosing that the defendant THOMAS T. DEMERY had paid S & D \$1,405.41 in mortgage interest during 1987.

10) On or about February 10, 1988, within the Eastern District of Michigan and elsewhere, Co-conspirator #1 sent to the defendant THOMAS T. DEMERY a piece of correspondence on the letterhead of S & A, which correspondence contained the salutation "Dear Tom" and enclosed a check for \$20,000 made payable to the defendant THOMAS T. DEMERY and another person.

11) On or about February 22, 1988, within the Eastern District of Virginia, the defendant THOMAS T. DEMERY, who had signed the check referred to in Overt Act 10 above, caused the check to be deposited into a personal bank account in the names of himself and another person.

12) On or about September 23, 1988, within the Eastern District of Michigan and elsewhere, a representative of S & D sent the defendant THOMAS T. DEMERY a piece of correspondence containing the salutation "Dear Tom", notified him that as of September 23, 1988, a total of \$8,290.57 in interest was due as of that date and stated as follows:

It has been brought to my attention that I neglected to contact you concerning interest due on the above loan. According to our records, interest has been paid through October 1, 1987.

13) On or about October 11, 1988, within the Eastern District of Michigan and elsewhere, a representative of S & D sent the defendant THOMAS T. DEMERY a piece of correspondence containing the salutation "Dear Tom" and notified him that the total interest due as of October 1, 1988, was \$8,485.01.

14) On or about November 1, 1988, within the Eastern District of Virginia and elsewhere, the defendant THOMAS T. DEMERY caused to be sent to S & D a check for \$8,485.01 drawn on a personal account in the names of himself and another person.

15) On or about January 17, 1989, within the Eastern District of Michigan and elsewhere, a representative of S & D sent the defendant THOMAS T. DEMERY a letter stating that he owed \$2,567.38 in interest.

16) On or about January 27, 1989, within the Eastern District of Virginia and elsewhere, the defendant THOMAS T. DEMERY caused to be sent to S & D a check for \$2,567.38 drawn on a personal bank account in the names of himself and another person.

B. LMSA Benefits to S & A Related Projects:

1. Southland I & II

17) On or about August 20, 1986, within the Eastern District of Michigan, a representative of S & A requested that HUD award 200 units of LMSA subsidies to Southland I, to be added to 153 units of subsidies that HUD had previously awarded to Southland I.

18) On or about December 17, 1986, within the District of Columbia, at the direction of the defendant THOMAS T. DEMERY, HUD headquarters officials took steps to direct LMSA subsidies to Southland I & II in the amounts listed below, S & A having asked that a previous request for 17 units of LMSA subsidies for Southland II be raised to 30 units.

<u>Project</u>	<u>Units</u>	<u>Yearly Amount</u>	<u>Overall (5 years) Amount</u>
Southland I	200	\$ 650,832	\$ 3,254,160
Southland II	<u>30</u>	<u>101,220</u>	<u>506,100</u>
TOTAL	230	\$ 752,052	\$ 3,760,260

19) On or about January 13, 1987, within the District of Columbia, at the direction of the defendant THOMAS T. DEMERY, HUD headquarters officials took steps to direct that LMSA subsidies for Southland I & II be taken from HUD discretionary funds under the control of the defendant THOMAS T. DEMERY.

20) On or about February 17, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY directed that a memorandum be created justifying his direction that 230 units of LMSA subsidies be awarded to Southland I & II from HUD

discretionary funds under his control.

21) On or about February 27, 1987, within the District of Columbia, at the direction of the defendant THOMAS T. DEMERY, HUD headquarters officials took administrative steps to make available for use on Southland I 100 units of the 200 units of LMSA subsidies that the defendant THOMAS T. DEMERY had approved for use on Southland I and to make available for use on Southland II the 30 units of LMSA subsidies that the defendant THOMAS T. DEMERY had approved.

22) On or about March 19, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY directed a HUD headquarters official to take further administrative steps to make 100 units of LMSA subsidies available for use on Southland I and 30 units of LMSA subsidies available for use on Southland II.

23) On or about March 26, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY notified the HUD Regional Administrator whose region covered the Taylor, Michigan area that the region's yearly contract authority and overall budget authority for Southland I & II had been increased as follows, thereby bringing the total number of units subsidized by HUD to 253 for Southland I and to 78 for Southland II:

<u>Project</u>	<u>Units</u>	<u>Yearly Amount</u>	<u>Overall (5 year) Amount</u>
Southland I	100	\$ 325,416	\$ 1,627,080
Southland II	<u>30</u>	<u>101,220</u>	<u>506,100</u>
TOTAL	130	\$ 426,636	\$ 2,133,180

24) On or about August 14, 1987, within the Eastern

District of Michigan and elsewhere, a representative of S & A requested that HUD award it an additional 72 units of LMSA subsidies for Southland I beyond those granted as set forth in Overt Act 24 above.

25) On or about September 23, 1987, within the Eastern District of Michigan and elsewhere, Co-conspirator #1 sent a letter to a HUD headquarters official serving as an aide to the defendant THOMAS T. DEMERY requesting that HUD grant 101 units of Section 8 funding for Southland I and 20 units of Section 8 funding for Southland II, which units would have been in addition to those previously granted.

26) On or about December 28, 1987, within the Eastern District of Michigan, a representative of S & A requested that HUD award it an additional 86 units of LMSA subsidies for Southland I beyond those granted as set forth in Overt Act 25 above.

27) On or about January 5, 1988, within the Eastern District of Michigan, a representative of S & A increased its request for additional units of LMSA subsidies for Southland I from 86 to 150 units.

28) On or about April 11, 1988, a representative of S & A requested that HUD award it an additional 171 units of LMSA subsidies for Southland I, notwithstanding that S & A had been advised on or about February 22, 1988, by the HUD area office in Detroit, Michigan that its requests for additional units of LMSA subsidies, including those set forth in Overt Acts 26 and 27 above, had been rejected because they did not meet criteria for additional

funding as dictated by HUD headquarters and federal regulations governing the LMSA program.

29) On or about and between February 22, 1988 and September 30, 1988, the exact date being unknown to the Grand Jury, within the District of Columbia and elsewhere, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official directed a HUD regional official to take action that resulted in the inflation of Southland I's rating such that it would become ranked within a level justifying an award of LMSA subsidies from funds not subject to the discretionary control of the defendant THOMAS T. DEMERY.

30) On or about September 30, 1988, within the District of Columbia, the defendant THOMAS T. DEMERY directed HUD headquarters officials to use non-discretionary funds to increase Southland I's yearly contract authority by \$731,316 and its overall budget authority covering a 15-year period by \$10,969,740, thereby approving an increase of 171 units of LMSA subsidies for Southland I.

2. Camelback

31) On or about April 20, 1987, within the District of Arizona, a representative of S & A called a HUD area official in Phoenix, Arizona to request that HUD award Section 8 subsidies for Camelback.

32) On or about May 1, 1987, within the District of Arizona, a representative of S & A applied to the HUD area office in Phoenix, Arizona for an award of Section 8 subsidies for 150

units for housing elderly persons in the Camelback project.

33) On or about June 24, 1987, within the Eastern District of Michigan and elsewhere, a representative of S & A sent a request to HUD headquarters that HUD review S & A's application for HUD subsidies, S & A having received a written rejection on or about May 20, 1987, from the HUD area office of its application for subsidies referred to in Overt Act 32 above because Camelback did not fulfill requirements for the award of such subsidies.

34) On or about July 30, 1987, within the District of Columbia, Co-conspirator #1 met with the defendant THOMAS T. DEMERY, among other persons, S & A having received on or about July 28, 1987 another written rejection for its application for Section 8 subsidies for Camelback -- in this instance from the Director of HUD's Office of Multifamily Housing Management, an office under the direction of the defendant THOMAS T. DEMERY.

35) On or about September 23, 1987, within the Eastern District of Michigan and elsewhere, Co-conspirator #1 requested that an aide to the defendant THOMAS T. DEMERY at HUD headquarters award Camelback 100 units of Section 8 funding.

36) On or about September 30, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY authorized the grant of 75 units of LMSA subsidies from discretionary funds controlled by him, which award was worth \$347,625 to Camelback for the year commencing January 1, 1988, and a total of \$1,738,125 over a five year period beginning with 1988.

37) On or about December 21, 1987, within the Eastern

District of Michigan, Co-conspirator #1 signed a Housing Assistance Payments Contract with HUD, which formally committed HUD to make payments of the LMSA subsidies set forth in Overt Act 36 above.

(In Violation of Title 18, United States Code, Section 371)

COUNT TWO

12. Paragraphs 1 and 2 of the Introduction and paragraphs 6 and 7 and all subparagraphs of paragraph 11 of Count One of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

13. From in or about July 1, 1987 and continuing thereafter up to and including the present time, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY, while a public official, and otherwise than as provided by law for the proper discharge of his official duties, did knowingly and willfully, directly and indirectly, seek, receive and accept a thing of value personally, that is, \$100,000 from Co-conspirator #1, ostensibly in the form of a second mortgage loan under terms and conditions far more favorable than he could have obtained from sources of such funding usually available to the public, for and because of official acts performed and to be performed by him, including official acts in connection with said private individual's requests relating to allocations of funds under HUD's funding programs.

(In Violation of Title 18, United States Code, Section 201(c)(1)(B)).

COUNT THREE

14. Paragraph 2 of the Introduction and paragraphs 6 and 7 and subparagraphs 1 through 16 of paragraph 11 of Count One of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

1. Introduction

15. On or about December 10, 1986, within the Eastern District of Michigan, the defendant THOMAS T. DEMERY entered into a mortgage agreement with Independence One Mortgage Corporation ("IOMC"), an operating subsidiary of the Michigan National Bank, a Federal Reserve Bank. The terms of the agreement were as follows: IOMC issued \$200,000 in mortgage monies for the purchase of a residence by the defendant THOMAS T. DEMERY in the Eastern District of Virginia; the defendant THOMAS T. DEMERY paid IOMC an origination fee based on 2% or 2 points of the loan amount, which was calculated to be \$4,000; the defendant THOMAS T. DEMERY agreed to make 59 monthly payments of \$1,792 and a final payment due on January 1, 1992, of \$195,254.

16. On or about May 19, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY met with a representative of IOMC to discuss refinancing the mortgage on his residence, at which time the defendant THOMAS T. DEMERY gave information on which IOMC relied to prepare the final, written loan application and other documents dated July 26, 1990, portions of which are set forth below.

17. On or about July 26, 1990, within the District of

Columbia, in a meeting relating to the closing of the defendant THOMAS T. DEMERY's application to refinance his mortgage, the defendant THOMAS T. DEMERY gave the following response in writing to the following question set out on an IOMC residential loan application:

Q: "Are you a co-maker or endorser on a note?"

A: No."

18. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY gave no answer in response to the following directions on the IOMC residential loan application referred to in paragraph 17 above:

A) that he list "Other Financing" expenses on his residence besides the first mortgage;

B) that he "Explain Other Financing";

C) that he list "Other Debts"; and

D) that he list "Real Estate Loans."

19. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY signed the residential loan application referred to in paragraph 17 above just below the following statement:

I/We fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statement concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1014.

20. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY submitted to Ticor Title Company a signed, sworn affidavit in which he made the following

representations:

There is no subordinate financing relating to the property . . .

That Borrower Affiant has not given, conveyed, permitted, or contracted for, or agreed to give, convey, or permit any lien upon the Property to secure a debt or loan, . . .

Borrower hereby deposes and says upon oath that those Representations referred to and set forth ... above ... are true and correct.

21. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY signed the sworn affidavit referred to in paragraph 20 on the same page as the following statement in the affidavit:

If any statement in the foregoing Affidavit and Agreement is made under oath by Borrower . . . with knowledge that such statement is false, the person making such false statement may be subject to ... criminal penalties under applicable law.

22. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY signed a Borrower's Closing Certificate relating to the refinancing that he sought from IOMC just below the following statement in the certificate:

Further, I/we acknowledge notice that a false statement violates Title 18 U.S.C. Section 1014 . . .

23. At no time during the process in which the defendant THOMAS T. DEMERY applied to IOMC for the refinancing of his original mortgage did he inform IOMC of the existence of the second mortgage on his residence which the defendant THOMAS T. DEMERY had obtained from S & D on or about July 1, 1987.

24. On or about July 26, 1990, the defendant THOMAS T. DEMERY

entered into a new mortgage agreement with IOMC to refinance the mortgage on his residence, the terms of which were as follows: IOMC issued a mortgage for \$320,000, a portion of which was applied to completely satisfy his first mortgage, the defendant THOMAS T. DEMERY receiving the remainder, or \$114,618.60, for his own purposes; the defendant THOMAS T. DEMERY agreed to pay interest at a rate to be adjusted every three years, the first three years to be at 10.5%; and the defendant THOMAS T. DEMERY paid to IOMC a loan origination fee of 1% and a loan discount fee of 1.25% of the total loan, for a total of \$7,200 in such fees.

2. Charge

25. On or about July 26, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY knowingly made a false statement and report for the purpose of influencing Independence One Mortgage Corporation, an operating subsidiary of the Michigan National Bank, a Federal Reserve Bank, upon an application to refinance a mortgage, that is, as set forth above, the defendant THOMAS T. DEMERY stated, or failed to state, the following:

A) falsely denied that he was a co-maker or endorser on a note;

B) falsely stated that there was no subordinate or other financing relating to the property;

C) falsely stated that he had not given, conveyed, permitted, or contracted for, or agreed to give, convey or permit any lien upon the property to secure a debt or a loan; and

D) failed to disclose on the residential loan

application or any document in support thereof that there existed a second mortgage note on his residence or any other form of loan which he had received beginning on or about July 1, 1987, from S & D Mortgage Company.

(In Violation of Title 18, United States Code, Section 1014)

II. COUNTS FOUR Through FOURTEEN
"IPS" and the "PM Group"

COUNT FOUR

1. HUD Programs and Processes

26. The paragraphs of the Introduction to this Indictment are realleged and incorporated herein as though fully set forth in this Count.

27. In addition to the programs set forth in paragraph 1 of the Introduction to this Indictment, HUD also administered a Flexible Subsidy program that provided assistance to restore or maintain the financial soundness, to improve management and to permit capital improvements to be made to maintain certain projects as decent, safe, and sanitary housing, and to maintain the low to moderate-income character of certain projects assisted or approved for assistance under the relevant legislation. 24 C.F.R. §219.101 (1988).

28. In addition, HUD also administered a Transfer-of-Physical-Assets ("TPA") process that governed the transfer of ownership for multifamily housing projects with HUD-insured or HUD-held mortgages. The TPA process was designed to provide for the orderly processing and approval of these transfers and to assure HUD that the physical, financial, and management needs of the projects were met through the change in ownership. 24 C.F.R. §265.1 (1988).

2. HUD Participants and Projects

29. At all times prior to August 1986 which are material to this Indictment, the defendant THOMAS T. DEMERY was a private

consultant to HUD and owned a real estate and mortgage brokerage business in Birmingham, Michigan known as Income Property Services, Inc. ("IPS").

30. From in or about August of 1986 to January 28, 1989, the defendant PHILLIP McCAFFERTY owned IPS and represented before HUD the PM Group, Inc. and other businesses affiliated through common owners, officers, directors, or investors ("The PM Group" or "PM"); at all times prior to his purchase of IPS which are material to this Indictment, the defendant PHILLIP McCAFFERTY was employed by a PM related entity, and, at all times material to this Indictment, the defendant PHILLIP McCAFFERTY was a director or part owner of some PM affiliated businesses.

31. At various times material herein, the PM Group, which was headquartered in Brighton, Michigan, owned, managed or held partnership interests in the following multifamily housing projects for which the PM Group sought HUD subsidies or workouts:

- A) Woodview North, a 51 unit project in Lansing, Michigan;
- B) Drexel View Apartments, a 100 unit project in Chicago, Illinois;
- C) Baptist Towers Apartments, a 102 unit project in Chicago, Illinois; and
- D) Amy Jo Manor, a 160 unit project in Mount Morris Township, Michigan.

3. Charge

32. From in or about the beginning of 1986, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the present time, within the District of Columbia and elsewhere, the defendants THOMAS T. DEMERY and PHILLIP McCAFFERTY unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other and with other persons known and unknown to the Grand Jury:

A) to defraud the United States and an agency of the United States:

1) by depriving HUD and the citizens of the United States of their right to have HUD's business and affairs, particularly the administration of its Section 8 Moderate Rehabilitation subsidy program, Flexible Subsidy program, TPA process, LMSA subsidy program, and other related programs, all of which constitute a part of HUD's lawful governmental function, conducted in an honest and impartial way, as the same should be, free from deception, fraud, and improper and undue influence; and

2) by depriving HUD and the citizens of the United States of their right to the conscientious, loyal, faithful, disinterested and unbiased services, actions, and performances of official acts by the defendant THOMAS T. DEMERY in his official capacity, free from deception, fraud and improper and undue influence, all in violation of Title 18, United States Code, Section 371.

B) to commit offenses against the United States, that

is:

1) while an officer and employee of the executive branch of the United States government, the defendant THOMAS T. DEMERY, aided and abetted by the defendant PHILLIP McCAFFERTY, unlawfully and knowingly participated personally and substantially, as an officer and employee, through decision, approval, disapproval, recommendation, the rendering of advice and otherwise, in particular matters in which to the knowledge of such officer and employee, the defendant THOMAS T. DEMERY had a financial interest, in violation of Title 18, United States Code, Section 208.

2) the defendant THOMAS T. DEMERY, being a person selected to be a public official and being a public official, otherwise than as provided by law for the proper discharge of his official duties, willfully and knowingly, directly and indirectly sought, received and accepted a thing of value personally, that is, the proceeds from the sale of his business, IPS, to the defendant PHILLIP McCAFFERTY, through the financial support of the PM Group, at an artificially high price set well above the business's fair market value, for and because of official acts performed and to be performed by the defendant THOMAS T. DEMERY, including official acts in connection with the defendant PHILLIP McCAFFERTY's requests, and the requests of the officers and employees of the PM Group, relating to the allocation of funds, subsidies and benefits under various HUD programs to and for the benefit of PM projects, in violation of Title 18, United States Code, Section 201(c)(1)(B).

3) the defendant PHILLIP McCAFFERTY, through the

financial support of the PM Group, willfully and knowingly, directly and indirectly, gave, offered and promised to the defendant THOMAS T. DEMERY, being a person selected to be a public official and being a public official, otherwise than as provided by law for the proper discharge of the defendant THOMAS T. DEMERY's official duties, a thing of value, that is, the purchase of the business, IPS, owned by the defendant THOMAS T. DEMERY, at an artificially high price set well above the business's fair market value, for and because of official acts performed and to be performed by the defendant THOMAS T. DEMERY, including official acts in connection with the defendant PHILLIP McCAFFERTY's requests on behalf of and in connection with the PM Group, relating to the allocation of funds, subsidies and benefits under various HUD programs to and for the benefit of PM projects, in violation of Title 18, United States Code, Section 201(c)(1)(A).

GOALS OF THE CONSPIRACY

33. The goals of the conspiracy were:

A) by directing HUD subsidies and other benefits to the PM Group, which would then pay brokerage commissions and other fees to the defendant PHILLIP McCAFFERTY, the defendant THOMAS T. DEMERY would receive the following benefits and things of value for the sale of IPS to the defendant PHILLIP McCAFFERTY:

-- a total payment in cash and other considerations from the defendant PHILLIP McCAFFERTY, through IPS, in an amount well above the business's fair market value; and

-- the assurance that the defendant PHILLIP

McCAFFERTY, through IPS, would receive sufficient income from PM to make payments in cash and other considerations to carry out and complete the sale;

B) the PM Group would receive the benefit of HUD subsidies and other benefits awarded through the direction and manipulation of the defendant THOMAS T. DEMERY; and

C) the defendant PHILLIP McCAFFERTY would receive brokerage and other fees and benefits from the PM Group in exchange for his efforts in securing HUD subsidies and other benefits for PM Group projects, which he accomplished through the defendant THOMAS T. DEMERY.

**MEANS AND METHODS USED IN SEEKING
TO ACHIEVE THE OBJECTS OF THE CONSPIRACY**

34. The defendants THOMAS T. DEMERY and PHILLIP McCAFFERTY, together with other persons known and unknown to the Grand Jury as co-conspirators but not named as defendants in this Indictment, used the following means and methods, among others, in seeking to achieve their goals:

A. The Sale of IPS

1) The defendant THOMAS T. DEMERY negotiated principally with a PM Group representative for the sale of his business, IPS, to the defendant PHILLIP McCAFFERTY.

2) The defendants THOMAS T. DEMERY and PHILLIP McCAFFERTY and others inflated the value of IPS's assets to set an artificially high price well above IPS's fair market value.

3) Pursuant to a note and other provisions in the sales contract, the defendant PHILLIP McCAFFERTY agreed to convey to the

defendant THOMAS T. DEMERY approximately \$270,000 in cash and other consideration over a period that included the entire term that the defendant THOMAS T. DEMERY served as Assistant Secretary of Housing.

B. The Direction of HUD Subsidies and Other Benefits to the PM Group

4) At the request of the defendant PHILLIP McCAFFERTY, as well as PM Group representatives, the defendant THOMAS T. DEMERY directed officials and employees of HUD to take actions, and to refrain from taking actions, in order to direct HUD subsidies and other HUD benefits to business entities associated with the PM Group for the following projects:

- Woodview North,
- Drexel View Apartments,
- Baptist Towers Apartments, and
- Amy Jo Manor.

5) In the process of directing HUD subsidies and other HUD benefits to these projects, the defendant THOMAS T. DEMERY at times took actions that were contrary to the regulations, rules, policies or customs of HUD and refrained from taking actions consistent with the regulations, rules, policies or customs of HUD, such as --

A) Woodview North - the defendant THOMAS T. DEMERY intervened in the affairs of a HUD program over which he had no authority and for which he had no responsibility; directed the recapture of subsidies made available under the Section 8 Moderate Rehabilitation program from a public housing authority ("PHA")

because it was unable and unwilling to assign such funds to an applicant affiliated with the PM Group; and directed that the recaptured subsidies, along with additional subsidies, be assigned to a different PHA so that they could more easily be awarded to the applicant;

B) Drexel View Apartments - the defendant THOMAS T. DEMERY intervened in the affairs of HUD field and regional offices in a manner contrary to HUD policies; directed HUD officials to approve a TPA for an entity affiliated with the PM Group after the field office had rejected the TPA application; and approved the disbursement of syndication proceeds over the objection of other HUD officials;

C) Baptist Towers Apartments - the defendant THOMAS T. DEMERY intervened in the affairs of HUD field and regional offices in a manner contrary to HUD policies; directed HUD officials to approve a TPA for an entity affiliated with the PM Group after the field office had rejected the TPA application; and approved the disbursement of syndication proceeds over the objection of other HUD officials;

D) Amy Jo Manor - the defendant THOMAS T. DEMERY awarded LMSA subsidies from a HUD discretionary fund to a project that did not qualify for such funds under the non-discretionary program.

C. PM Group Payments to IPS

6) The PM Group paid brokerage and other fees to the defendant PHILLIP McCAFFERTY, through IPS, for his efforts in

obtaining HUD subsidies and other benefits for the projects named in subparagraph 5 of this paragraph.

D. Statements to the U.S. Senate

7) In order to gain confirmation to the position of Assistant Secretary, the Defendant THOMAS T. DEMERY stated to the United States Senate that he was unaware of any potential conflict of interest he might have and, further, testified under oath to the United States Senate that he would refrain from considering any matter affecting the interest of any company or organization in which he had a financial interest.

OVERT ACTS

35. On or about the dates set forth in the Overt Acts described below, the defendants THOMAS T. DEMERY and PHILLIP McCAFFERTY and others known and unknown to the Grand Jury, within the District of Columbia and elsewhere, committed and caused to be committed the following overt acts, among others, in furtherance of the conspiracy.

A. The Sale of IPS

1) In approximately the Spring of 1986, the exact dates being unknown to the Grand Jury, within the Eastern District of Michigan, the defendant THOMAS T. DEMERY at various times discussed with a PM Group representative the sale of IPS to the PM Group.

2) In approximately the Spring of 1986, at times following the events in Overt Act 1, the exact dates being unknown to the Grand Jury, within the Eastern District of Michigan, the defendant THOMAS T. DEMERY negotiated with a PM Group

representative for the sale of IPS to the defendant PHILLIP McCAFFERTY.

3) On or about May 1, 1986, within the Eastern District of Michigan, the defendant THOMAS T. DEMERY caused to be deposited into a bank account \$15,000 in earnest money he received toward the sale of IPS.

4) On or about August 1, 1986, within the Eastern District of Michigan, the defendants THOMAS T. DEMERY and PHILLIP McCAFFERTY entered into a contract and promissory note for the sale of IPS to the defendant PHILLIP McCAFFERTY, which provided that:

A) in addition to the earnest money payment referred to in Overt Act 3, the defendant PHILLIP McCAFFERTY was to pay \$200,000 to the defendant THOMAS T. DEMERY pursuant to the promissory note; such payments were to be made in the amount of \$50,000 on August 1, 1986, January 31, 1987, January 31, 1988, and January 31, 1989;

B) the defendant PHILLIP McCAFFERTY was to pay \$50,000 to the defendant THOMAS T. DEMERY on November 30, 1989, if the defendant THOMAS T. DEMERY did not compete with IPS in the State of Michigan for three years.

5) On or about August 1, 1986, within the Eastern District of Michigan, the defendant PHILLIP McCAFFERTY, in part payment to the defendant THOMAS T. DEMERY for the sale of IPS, assumed \$20,225.37 in expenses for which IPS was liable.

6) On or about August 1, 1986, within the Eastern District of Michigan, the defendant PHILLIP McCAFFERTY paid \$19,203

to the defendant THOMAS T. DEMERY to satisfy a loan previously made by the defendant THOMAS T. DEMERY to IPS.

7) On or about August 1, 1986, within the Eastern District of Michigan, the defendant PHILLIP McCAFFERTY paid \$10,571.73 to the defendant THOMAS T. DEMERY to satisfy a loan previously made by the defendant THOMAS T. DEMERY to IPS.

8 - 19) On or about the dates listed below for Overt Acts 8, 9 and 11 through 19, within the Eastern District of Michigan, and for Overt Act 10, within the District of Columbia, the defendant PHILLIP McCAFFERTY paid to the defendant THOMAS T. DEMERY the sums of money listed below as payments of principal or interest toward the purchase of IPS:

<u>Overt Act</u>	<u>Date</u>	<u>Amount</u>
8	September 1, 1986	\$ 4,802.76
9	November 5, 1986	\$10,000.00
10	January 9, 1987	\$40,000.00
11	April 9, 1987	\$20,000.00
12	January 11, 1988	\$40,000.00
13	April 27, 1988	\$10,000.00
14	June 1, 1988	\$30,000.00
15	August 25, 1988	\$10,000.00
16	September 26, 1988	\$ 7,000.00
17	October 7, 1988	\$22,961.37
18	December 13, 1988	\$ 8,500.00
19	January 6, 1989	\$ 8,651.37

B. The Direction of HUD Subsidies and
Other Benefits to the PM Group

1. Woodview North

20) On or about August 27, 1986, within the Eastern District of Michigan, the defendant PHILLIP McCAFFERTY, along with a PM Group representative and others, entered into an agreement which provided that: the PM Group representative, on behalf of a partnership to be formed, would buy Woodview North, but reserved the right to withdraw from the agreement if HUD subsidies were not received; IPS would receive a commission if the purchase was completed.

21) In or about December, 1986, the exact date being unknown to the Grand Jury, within the Western District of Michigan, PM Group representatives had a meeting with the executive director of the Lansing (Michigan) Housing Commission ("LHC"), a PHA, in which the following occurred: the PM representatives stated that HUD was going to award 44 units of Section 8 Moderate Rehabilitation program subsidies to LHC and suggested that LHC apply for the subsidy.

22) On or about December 4, 1986, within the Western District of Michigan, at the suggestion of PM Group representatives, the LHC applied to the HUD Grand Rapids (Michigan) field office for 44 units of moderate rehabilitation subsidies.

23) On or about January 27, 1987, within the Western District of Michigan and the District of Columbia, at the suggestion of PM representatives, the LHC sent its application for the 44 units directly to the defendant THOMAS T. DEMERY and, in

addition, requested that HUD headquarters reconsider the HUD Grand Rapids office's decision that the LHC return excess funds from a HUD-subsidized project that had no relationship to Woodview North.

24) On or about March 5, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY met with the defendant PHILLIP McCAFFERTY.

25) On or about March 5, 1987, within the District of Columbia and the Western District of Michigan, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official directed a HUD Grand Rapids official not to enter into an agreement for HUD subsidies with the LHC until the HUD Grand Rapids office received approval to do so from HUD headquarters.

26) On or about March 11, 1987, within the Eastern District of Michigan, a PM Group representative informed the Michigan State Housing Development Authority ("MSHDA") that the PM Group had obtained a commitment from HUD for 44 units of moderate rehabilitation subsidy for the Woodview North project.

27) On or about March 12, 1987, within the District of Columbia and the Western District of Michigan, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official directed a HUD Grand Rapids official to seek the return of the excess HUD public housing funds held by the LHC referred to in Overt Act 23, to recapture other HUD funds available to the LHC, and to refrain from awarding the LHC an annual contribution contract for the 44 units and for other HUD funds reserved for the LHC until the defendant THOMAS T. DEMERY approved the award.

28) On or about March 20, 1987, within the District of Columbia and the Western District of Michigan, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official again directed a HUD Grand Rapids official not to award the 44 units to the LHC.

29) On or about April 7, 1987, within the District of Columbia, the defendant PHILLIP McCAFFERTY met with a HUD headquarters official.

30) On or about May 12, 1987, within the District of Columbia and the Western District of Michigan, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official again directed a HUD Grand Rapids official to withhold the 44 units from the LHC.

31) On or about May 28, 1987, within the District of Columbia and the Western District of Michigan, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official directed a HUD Grand Rapids official to transfer the 44 units from the LHC to MSHDA.

32) On or about May 30, 1987, within the District of Columbia, at the direction of the defendant THOMAS T. DEMERY, a HUD headquarters official authorized the transfer of the 44 units from the LHC to MSHDA.

33) On or about June 2, 1987, within the District of Columbia, at the direction of the defendant THOMAS T. DEMERY, officials at HUD headquarters took additional steps to transfer the 44 units from the LHC to MSHDA.

34) On or about July 20, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY directed that 8 units of Section 8 Moderate Rehabilitation program subsidy from the HUD headquarters reserve be added to the 44 units to be transferred from the LHC to MSHDA.

35) On or about August 4, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY signed a document that granted to MSHDA the additional 8 units referred to in Overt Act 34.

36) On or about November 11, 1987, within the Eastern District of Michigan, a PM Group representative applied for the units HUD had awarded to MSHDA.

2. Drexel View/Baptist Towers

37) On or about April 9, 1987, within the Eastern District of Michigan, a PM Group representative signed an option to purchase the Drexel View and Baptist Towers Apartments (Drexel/Baptist), said option providing for the deposit of the option price with the defendant PHILLIP McCAFFERTY through IPS.

38) At some time in 1987, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY introduced a HUD headquarters official to the defendant PHILLIP McCAFFERTY and to a PM Group representative and directed the official to give advice to the defendant PHILLIP McCAFFERTY and the PM representative about submitting a TPA application to acquire Drexel/Baptist.

39) From approximately early Spring of 1987 through

1988, the exact dates being unknown to the Grand Jury, within the District of Columbia, the defendant PHILLIP McCAFFERTY and PM Group representatives spoke with the HUD headquarters official referred to in Overt Act 38 on many occasions about the PM Group's proposal.

40) On or about January 18, 1988, within the Northern District of Illinois, a PM Group representative submitted to the HUD Chicago office the PM Group's TPA application to acquire Drexel/Baptist, advising the field office that HUD had assured the PM Group that certain financial arrangements, such as flexible subsidy loans and modifications to the existing contract for HUD subsidy, had been made.

41) From approximately 1987 through 1988, the exact dates being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY spoke with the HUD headquarters official referred to in Overt Act 38 on many occasions to discuss the proposed purchase by the PM Group of Drexel/Baptist.

42) On or about and between January 18, 1988 and February 3, 1988, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY directed a HUD headquarters official to become involved personally and to direct a HUD Chicago official to become involved personally in resolving the differences between the HUD Chicago office and PM Group representatives about the TPA application, which the HUD field office had rejected.

43) On or about February 3, 1988, within the District of

Columbia and the Northern District of Illinois, at the direction of the defendant THOMAS T. DEMERY, HUD headquarters officials directed HUD Chicago officials to issue a preliminary approval of the TPA no later than February 4, 1988.

44) On or about February 4, 1988, within the Northern District of Illinois, a HUD Chicago official, at the direction of the defendant THOMAS T. DEMERY as relayed by HUD headquarters officials, gave preliminary approval to the PM Group's proposed application.

45) On a date in 1988 following February 4, 1988, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY told a HUD headquarters official that he wanted the PM Group's TPA completed.

46) On a date in 1988 following February 4, 1988, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY approved the disbursement of syndication proceeds to the PM Group.

3. Amy Jo Manor

47) On or about October 9, 1986, within the District of Columbia, a PM Group representative met with a HUD headquarters official to discuss a plan to relieve the financial difficulties of Amy Jo Manor, a project managed by the PM Group.

48) On or about October 9, 1986, within the District of Columbia, the defendant THOMAS T. DEMERY met with the PM Group representative who had earlier that day met with a HUD headquarters official, as referred to in Overt Act 47.

49) On or between October 9, 1986 and August 18, 1987, the exact date being unknown to the Grand Jury, within the Eastern District of Michigan, the defendant PHILLIP McCAFFERTY met with a HUD Detroit official.

50) On or about October 23, 1986, within the District of Columbia, the defendant THOMAS T. DEMERY directed a HUD headquarters official to devise a plan to relieve Amy Jo's financial difficulties.

51) On or about August 18, 1987, within the District of Columbia and the Eastern District of Michigan, a PM Group representative requested that the defendant THOMAS T. DEMERY cause HUD to award LMSA subsidies to Amy Jo.

52) On or about October 1, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY allocated to Amy Jo 44 units of LMSA subsidies from HUD discretionary funds controlled by him.

53) At a time between the allocation by the defendant THOMAS T. DEMERY of the 44 units of LMSA subsidies for Amy Jo referred to in Overt Act 52 and the decision by the defendant THOMAS T. DEMERY to leave office, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant THOMAS T. DEMERY requested that a HUD headquarters official approve a TPA for Amy Jo from the PM Group to a new owner at a time after the defendant THOMAS T. DEMERY would leave office.

C. PM Group Payments to IPS

54 - 72) On or about the dates listed below, within the

Eastern District of Michigan, the defendant PHILLIP McCAFFERTY deposited into an IPS account commissions and various fees in the approximate amounts listed below which the defendant PHILLIP McCAFFERTY had received from the PM Group for his successful efforts in securing subsidies and other benefits for the Woodview North, Drexel View, Baptist Towers, and Amy Jo Manor projects.

<u>Overt Act</u>	<u>Date</u>	<u>Amount</u>
	1. <u>Woodview North</u>	
54)	July 29, 1988	\$21,000
55)	November 17, 1988	\$44,250
56)	December 9, 1988	\$16,047
	2. <u>Drexel View</u>	
57)	July 7, 1988	\$ 6,250
58)	October 11, 1988	\$19,908
59)	December 15, 1988	\$ 3,180
60)	August 25, 1989	\$ 2,700
61)	September 7, 1989	\$ 5,000
62)	September 27, 1989	\$ 5,000
63)	February 26, 1990	\$13,330
64)	April 2, 1990	\$23,331
	3. <u>Baptist Towers</u>	
65)	July 7, 1988	\$ 6,250
66)	October 11, 1988	\$22,591
67)	August 25, 1989	\$ 2,700
68)	September 7, 1989	\$ 5,000

69)	September 27, 1989	\$ 5,000
70)	February 26, 1990	\$16,153
71)	April 2, 1990	\$26,154

4. Amy Jo Manor

72)	June 26, 1990	\$35,000
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D. Statements to the U. S. Senate

73) On or about September 18, 1986, within the District of Columbia, the defendant THOMAS T. DEMERY, while under oath during his confirmation hearing before the United States Senate, stated "I will" in response to the question: "Will you, as an Assistant Secretary of HUD refrain from consideration of any matter affecting the interest of any company or organization in which you have a financial interest."

74) On or about September 18, 1986, within the District of Columbia, the defendant THOMAS T. DEMERY, in his Statement for Completion by Presidential Nominees as submitted to the United States Senate and placed into the record at his confirmation hearing, stated "None" in response to the question: "Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated."

75) On or about September 18, 1986, within the District of Columbia, the defendant THOMAS T. DEMERY, in his Statement for Completion by Presidential Nominees as submitted to the United States Senate and placed into the record at his confirmation

hearing, stated "None" in response to the question: "List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated."

(In Violation of Title 18, United States Code, Section 371)

COUNTS FIVE through EIGHT

36. Paragraphs 1 and 2 of the Introduction to this Indictment and paragraphs 27 through 31 and subparagraphs 1 through 19 and 73 through 75 of paragraph 35 of Count Four, and such other paragraphs and subparagraphs as are set forth below are realleged and incorporated herein as though fully set forth in these Counts.

37. From in or about the dates listed below, the exact dates being unknown to the Grand Jury, to in or about the dates listed below, the exact dates in some cases being unknown to the Grand Jury, within the District of Columbia and elsewhere, the Defendant THOMAS T. DEMERY, being an officer and employee of the executive branch of the United States government, that is, Assistant Secretary for Housing of the United States Department of Housing and Urban Development, did unlawfully and knowingly participate personally and substantially, as an officer and employee, through decision, approval, disapproval, recommendation, the rendering of advice, the dissemination of information and otherwise, in a particular matter at HUD, that is, the award of HUD subsidies for, and the approval by HUD of the transfer of, the projects set forth below, each being a particular matter in which to the knowledge of the defendant THOMAS T. DEMERY, the Defendant THOMAS T. DEMERY had

a financial interest.

<u>Count</u>	<u>Paragraphs and Subparagraph</u>	<u>Dates</u>	<u>Projects</u>
5	31 A), Subparagraphs 20 through 36 and 54 through 56 of paragraph 35	Fall of 1986 to August 4, 1987	Award of HUD Subsidies to Woodview North
6	31 B), Subparagraphs 37 through 46 and 57 through 64 of paragraph 35	Spring of 1987 to September of 1988	Approval by HUD of the Transfer of Drexel View Apartments
7	31 C), Subparagraphs 37 through 46 and 65 through 71 of paragraph 35	Spring of 1987 to September of 1988	Approval by HUD of the Transfer of Baptist Towers Apartments
8	31 D), Subparagraphs 47 through 53 and 72 of paragraph 35	October 1986 to January of 1989	Award of HUD Subsidies to and Subsequent Approval by HUD of the Transfer of Amy Jo Manor

(In Violation of Title 18, United States Code, Section 208(a))

COUNTS NINE Through TWELVE

38. Paragraphs 1 and 2 of the Introduction to this Indictment and paragraphs 27 through 31 and subparagraphs 1 through 19 and 73 through 75 of paragraph 35 of Count Four, and such other paragraphs and subparagraphs as are set forth below are realleged and incorporated herein as though fully set forth in these Counts.

39. From in or about the dates listed below, the exact dates being unknown to the Grand Jury, to in or about the dates listed below, the exact dates in some cases being unknown to the Grand Jury, within the District of Columbia and elsewhere, the defendant PHILLIP McCAFFERTY did aid and abet, counsel, induce, procure, and willfully cause Thomas T. Demery, being an officer and employee of

the executive branch of the United States Government, that is, the Assistant Secretary for Housing of the United States Department of Housing and Urban Development, to unlawfully and knowingly participate personally and substantially, as an officer and employee, through decision, approval, disapproval, recommendation, the rendering of advice, the dissemination of information and otherwise, in a particular matter at HUD, that is, the award of HUD subsidies for, or approval by HUD of the transfer of, the projects set forth below, each being a particular matter in which, to the knowledge of the defendant PHILLIP McCAFFERTY, the defendant THOMAS T. DEMERY had a financial interest.

<u>Count</u>	<u>Paragraphs and Subparagraph</u>	<u>Dates</u>	<u>Projects</u>
9	31 A), Subparagraphs 20 through 36 and 54 through 56 of paragraph 35	Fall of 1986 to August 4, 1987	Award of HUD Subsidies to Woodview North
10	31 B), Subparagraphs 37 through 46 and 57 through 64 of paragraph 35	Spring of 1987 to September of 1988	Approval by HUD of the Transfer of Drexel View Apartments
11	31 C), Subparagraphs 37 through 46 and 65 through 71 of paragraph 35	Spring of 1987 to September of 1988	Approval by HUD of the Transfer of Baptist Towers Apartments
12	31 D), Subparagraphs 47 through 53 and 72 of paragraph 35	October 1986 to January of 1989	Award of HUD Subsidies to and Subsequent Approval by HUD of the Transfer of Amy Jo Manor

(In Violation of Title 18, United States Code, Sections 208(a), 2(a) and 2(b))

COUNT THIRTEEN

40. Paragraphs 1 and 2 of the Introduction and paragraphs 27 through 31 and all subparagraphs of paragraph 35 of Count Four of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

41. From on or about May 1, 1986, and continuing thereafter up to and including January 6, 1989, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY, while a person selected to be a public official and while a public official, otherwise than as provided by law for the proper discharge of his official duties, willfully and knowingly, directly and indirectly, sought, received and accepted a thing of value personally, that is, the proceeds from the sale of his business, IPS, to the defendant PHILLIP McCAFFERTY, through the financial support of the PM Group, at an artificially high price set well above the business's fair market value, for and because of official acts performed and to be performed by the defendant THOMAS T. DEMERY, including official acts in connection with the defendant PHILLIP McCAFFERTY's requests, and the requests of officers and employees of the PM Group, relating to the allocation of funds, subsidies and benefits under various HUD programs to and for the benefit of PM projects.

(In Violation of Title 18, United States Code, Section
201(c)(1)(B))

COUNT FOURTEEN

42. Paragraphs 1 and 2 of the Introduction and paragraphs 27 through 31 and all subparagraphs of paragraph 35 of Count Four of

this Indictment are realleged and incorporated herein as though fully set forth in this Count.

43. From in or about the Spring of 1986, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including January 28, 1989, within the District of Columbia and elsewhere, the defendant PHILLIP McCAFFERTY, through the financial support of the PM Group, willfully and knowingly, directly and indirectly, gave, offered and promised to the defendant THOMAS T. DEMERY, being a person selected to be a public official and being a public official, otherwise than as provided by law for the proper discharge of the defendant THOMAS T. DEMERY's official duties, a thing of value, that is, the purchase of the business, IPS, owned by the defendant THOMAS T. DEMERY at an artificially high price set well above the business's fair market value, for and because of official acts performed and to be performed by the defendant THOMAS T. DEMERY, including official acts in connection with the defendant PHILLIP McCAFFERTY's requests on behalf of and in connection with the PM Group, relating to the allocation of funds, subsidies and benefits under various HUD programs to and for the benefit of PM projects.

(In Violation of Title 18, United States Code, Sections
201(c)(1)(A) and 2(a) & 2(b))

III. COUNTS FIFTEEN Through TWENTY-FOUR
The "Winn Group"

COUNT FIFTEEN

44. Paragraphs 1 through 4 of the Introduction to this Indictment are realleged and incorporated herein as though fully set forth in this Count.

1. HUD Participant and Projects

45. From in or about March of 1982 through in or about January of 1988 a group of persons who at various times referred to themselves as the Winn Group (the "Winn Group") and who were headquartered in Denver, Colorado, were principally led by an individual whose identity is known to the Grand Jury and who is referred to as Co-conspirator #2. Various members of the Winn Group formed a number of real estate partnerships to acquire and develop low-income housing projects located primarily in the central and western portions of the country.

46. At various times material herein, members of the Winn Group had an interest in obtaining Section 8 subsidies for their projects.

2. Charge

47. From in or about March of 1987, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including approximately May of 1988, the exact date being unknown to the Grand Jury, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together with persons known and unknown to the Grand Jury to commit offenses against the

United States, that is, the defendant THOMAS T. DEMERY, being a public official, otherwise than as provided by law for the proper discharge of his official duties, willfully and knowingly, directly and indirectly sought, received and accepted things of value personally, which included, among others, the use for himself and his family of a condominium at Vail, Colorado partly owned by Co-conspirator #2 and a vehicle owned by Co-conspirator #2 for a week during the 1987/1988 New Year's holiday, all without cost, for and because of official acts performed and to be performed by him, including official acts in connection with the requests of Co-conspirator #2 and other members of the Winn Group relating to allocation of funds under various HUD programs, in violation of Title 18, United States Code, Section 201(c)(1)(B).

Goals of the Conspiracy

48. The goals of the conspiracy were that the defendant THOMAS T. DEMERY would seek things of value, including the use for himself and his family of a condominium at Vail, Colorado partly owned by Co-conspirator #2 and a vehicle owned by Co-conspirator #2 for a week during the New Year's holiday, all without cost, from members of the Winn Group for and because of his position as Assistant Secretary of Housing at HUD, and members of the Winn Group would give him such things of value for and because of his position, including acts taken and to be taken by the defendant THOMAS T. DEMERY to influence the award of Moderate Rehabilitation program subsidies.

Means and Methods Used in Seeking
to Achieve the Objects of the Conspiracy

49. The defendant THOMAS T. DEMERY together with other persons known and unknown to the Grand Jury as co-conspirators but not named as defendants in this Indictment, used the following means and methods, among others, in seeking to achieve their goals:

A. The Free Use of the Condominium:

1) The defendant THOMAS T. DEMERY requested that Co-conspirator #2 allow him and his family to use a condominium partly owned by Co-conspirator #2 from December 28, 1987 through January 3, 1988;

2) Co-conspirator #2 agreed to the defendant THOMAS T. DEMERY's request for the use of the condominium, arranged for the meeting of the defendant THOMAS T. DEMERY by a representative of the Winn Group (hereinafter the "Winn Representative") at the airport in Denver, Colorado and arranged for the use of a vehicle by the defendant THOMAS T. DEMERY during the holiday;

3) In an attempt to maintain the appearance of proper dealing with a public official, Co-conspirator #2 caused an invoice to be created purportedly charging the defendant THOMAS T. DEMERY a nominal fee for the use of the condominium and for the use of the vehicle;

4) Co-conspirator #2 thereafter failed to take meaningful steps to collect any payment from the defendant THOMAS T. DEMERY for the use of the condominium and vehicle; and

5) In a further attempt to maintain the appearance of proper dealing, Co-conspirator #2 directed the Winn Representative

to make up a receipt falsely stating that the defendant THOMAS T. DEMERY had paid the nominal fee for the use of the condominium.

B. Moderate Rehabilitation Program Funds to the Winn Group:

6) The defendant THOMAS T. DEMERY directed officials and employees of HUD to take actions, and to refrain from taking actions, in order to direct and to attempt to direct Moderate Rehabilitation program funds to the Winn Group for use in various low-income housing projects, such as Windsor Court in Aurora, Colorado and Richland Manor and North Trace in Richland, Washington, among others, in which members of the Winn Group were owners, builders or sponsors.

Overt Acts

50. On or about the dates set forth in the Overt Acts described below, the defendant THOMAS T. DEMERY and others known and unknown to the Grand Jury, within the District of Columbia and elsewhere, committed and caused to be committed the following overt acts, among others, in furtherance of the conspiracy.

A. The Free Use of the Condominium:

1) On or about June 12, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY requested that the condominium partly owned by Co-conspirator #2 be made available for his use for the period December 28, 1987 through January 3, 1988.

2) On or about October 22, 1987, within the District of Colorado, Co-conspirator #2 directed the Winn Representative to show the condominium to the defendant THOMAS T. DEMERY.

3) On or about October 22, 1987, within the District of Colorado, following the direction given by Co-conspirator #2 as set forth above in Overt Act 2 above, the Winn Representative showed the condominium to the defendant THOMAS T. DEMERY.

4) On or about December 18, 1987, within the District of Columbia, the Winn Representative discussed with the defendant THOMAS T. DEMERY arrangements for the use of the condominium.

5) In or about a day in December of 1987 just prior to December 28, 1987, within the District of Colorado, Co-conspirator #2 notified the Winn Representative to meet the defendant THOMAS T. DEMERY and his family at the airport in Denver, Colorado in a vehicle owned by Co-conspirator #2 and to give the vehicle to the defendant THOMAS T. DEMERY for his use during the holiday.

6) On or about December 28, 1987, within the District of Colorado, the Winn Representative met the defendant THOMAS T. DEMERY and his family at the airport in Denver, Colorado and placed the vehicle owned by Co-conspirator #2 at the disposal of the defendant THOMAS T. DEMERY.

7) From on or about December 28, 1987, through and including January 3, 1988, within the District of Colorado, the defendant THOMAS T. DEMERY and his family stayed at the condominium in Vail, Colorado partly owned by Co-conspirator #2, and used the vehicle owned by Co-conspirator #2.

B. Moderate Rehabilitation Program Funds to the Winn Group:

a) Windsor Court - Aurora, Colorado

8) In or about March of 1987, the exact date being

unknown to the Grand Jury, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY spoke with a member of the Winn Group.

9) On or about March 27, 1987, within the District of Columbia and elsewhere, Co-conspirator #2 requested in writing that the defendant THOMAS T. DEMERY favorably consider the application of the PHA serving Aurora, Colorado for Moderate Rehabilitation Program subsidies.

10) On or about April 30, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY directed that 144 units of Moderate Rehabilitation Program subsidies be allocated for the PHA serving Aurora, Colorado.

11) On or about May 7, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY notified the HUD regional administrator serving Aurora, Colorado that Moderate Rehabilitation Program subsidies for the region had been increased by 144 units, resulting in an increase of \$1,026,432 in contract authority for one year's funding and \$15,396,480 in budgeted authority for 15 years funding.

b. Richland Manor & North Trace - Richland, Washington

12) On or about October 20, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY discussed with the Secretary of HUD the grant of Moderate Rehabilitation Program subsidies to the PHA serving Richland, Washington.

13) On or about October 22, 1987, within the District of Colorado, the defendant THOMAS T. DEMERY discussed the funding of

Winn Group projects with Co-conspirator #2 and other Winn Group officials.

14) On or about November 23, 1987, within the District of Columbia, the defendant THOMAS T. DEMERY discussed with the Secretary of HUD the grant of Moderate Rehabilitation Program subsidies to the PHA serving Richland, Washington.

15) On or about January 29, 1988, within the District of Columbia, the defendant THOMAS T. DEMERY directed a HUD headquarters official to expedite funding 158 units of Moderate Rehabilitation Program subsidies for the PHA serving Richland, Washington.

16) On or about February 2, 1988, within the District of Columbia, the defendant THOMAS T. DEMERY signed a document that expedited funding for 158 units of Moderate Rehabilitation Program subsidies for the PHA serving Richland, Washington.

17) On or about February 4, 1988, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY notified the HUD regional administrator who had jurisdiction over the PHA serving Richland, Washington that Moderate Rehabilitation Program subsidies for the region had been increased by 158 units, resulting in an increase of \$1,274,112 in contract authority for one year's funding and in \$19,111,680 budgeted authority for 15 years funding.

(In Violation of Title 18, United States Code, Section 371)

COUNT SIXTEEN

51. Paragraphs 1 and 2 of the Introduction and paragraphs 45 and 46 and all subparagraphs of paragraph 50 of Count Fifteen of

this Indictment are realleged and incorporated herein as fully set forth in this Count.

52. From in or about June of 1987, the exact being unknown to the Grand Jury, to in or about January 4, 1988, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY, while a public official, otherwise than as provided by law for the proper discharge of his official duties, willfully and knowingly, directly and indirectly, sought, received and accepted things of value personally, including the use for himself and his family of a condominium at Vail, Colorado partly owned by Co-conspirator #2 and a vehicle owned by Co-conspirator #2 for a week during the 1987/1988 New Year's holiday, all without cost, for and because of official acts performed and to be performed by him, including official acts in connection with the requests of Co-conspirator #2 and members of the Winn Group relating to allocations of funds under various HUD funding programs.

(In Violation of Title 18, United States Code
Section 201(c)(1)(B))

COUNT SEVENTEEN

53. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

54. On or about May 2, 1988, within the District of Columbia, during an interview being conducted by persons he knew to be representatives of the Office of Inspector General for the United States Department of Housing and Urban Development, the defendant

THOMAS T. DEMERY knowingly and willfully made a false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of a department and agency of the United States, that is, the defendant THOMAS T. DEMERY did state and represent that he had rented a condominium at Vail, Colorado for \$500 during the 1987/1988 holiday.

(In Violation of Title 18, United States Code, Section 1001)

COUNT EIGHTEEN

55. Paragraphs 1 and 2 of the Introduction, paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen are realleged and incorporated herein as though fully set forth in this Count.

1. The Receipt

56. In or about May, 1988, the exact date being unknown to the Grand Jury, the defendant THOMAS T. DEMERY called the Winn Representative to demand that he create a false receipt stating that the defendant THOMAS T. DEMERY had paid \$500.00 for the use of the condominium at Vail, Colorado.

57. In or about the same discussion set forth above in paragraph 56, the defendant THOMAS T. DEMERY told the Winn Representative that he expected to be interviewed by agents from the HUD Office of Inspector General, and that he needed this receipt for his interview with the agents.

58. When the Winn Representative related to Co-conspirator #2 his conversation with the defendant THOMAS T. DEMERY a short time after the discussion set forth in paragraphs 56 and 57 above, the

exact date being unknown to the Grand Jury, Co-conspirator #2 told the Winn Representative to comply with the demand of the defendant THOMAS T. DEMERY.

59. A short time after the discussion set forth in paragraphs 56 and 57 above, the exact date being unknown to the Grand Jury, the Winn Representative created and caused to be delivered to the defendant THOMAS T. DEMERY a false receipt stating as follows:

Received 500 Dollars Cash from Thomas Demery on February 14, 1988 for the use of Scorpio Condominium unit in Vail, Colorado from December 28, 1987 to January 3, 1988.

2. The Grand Jury Investigation

60. From on or about May 15, 1990, and continuing up to the date of this Indictment, a grand jury and its successor grand jury duly impaneled and sworn in the United States District Court for the District of Columbia, was conducting an investigation into possible violations of United States laws prohibiting the demand and offer of bribes and gratuities (18 U.S.C. § 201), defrauding the United States and HUD of the impartial conduct of HUD's business free from deception, fraud and improper and undue influence (18 U.S.C. § 371), and other statutes, for the purpose of determining whether any persons had violated such statutes.

61. It was material to this grand jury investigation to determine, among other matters, the extent to which the defendant THOMAS T. DEMERY, in his position as Assistant Secretary for Housing-Federal Housing Commissioner, was aware of the identity of developers and consultants involved in particular projects for which they sought Section 8 funding and the extent to which the

defendant THOMAS T. DEMERY was aware of how much influence certain developers had in the award of Section 8 funding.

62. As the defendant THOMAS T. DEMERY well knew, the grand jury duly issued and caused to be served on him a subpoena duces tecum dated May 18, 1990 which directed the defendant THOMAS T. DEMERY to return documents to the grand jury on June 13, 1990, including but not limited to the following:

6. All documents relating to any of the persons (other than yourself) listed on Exhibits A or B hereto.

Among the names listed on the attached Exhibits were those of Philip Winn, Philips Development Corp., Philip Winn & Associates and Winn Development Co.

63. On or about July 13, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY caused to be returned to the grand jury the document described in paragraph 57 above, that is, a receipt falsely stating as follows:

Received 500 Dollars Cash from Thomas Demery on February 14, 1988 for the use of Scorpio Condominium unit in Vail, Colorado from December 28, 1987 to January 3, 1988.

3. The Charge

64. On or about July 13, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY corruptly influenced, obstructed and impeded and endeavored to influence, obstruct and impede the due administration of justice by causing the document described in paragraph 63 to be returned to the grand jury.

(In Violation of Title 18, United States Code, Section 1503)

COUNT NINETEEN

65. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen and paragraphs 56 through 63 of Count Eighteen of the Indictment are realleged and incorporated herein as though fully set forth in this Count.

66. On or about November 16, 1990, within the District of Columbia, during an interview being conducted by a person he knew to be a duly authorized, federal investigative agent assigned to aid the Office of Independent Counsel in, among other matters, the grand jury investigation, the defendant THOMAS T. DEMERY made the following statement, among others, to the agent: that while at the Winn Group offices while in the Denver area in February of 1988, the Winn Representative gave him a receipt for the \$500 payment.

67. On or about November 16, 1990, within the District of Columbia, during an interview being conducted by a person he knew to be a duly authorized, federal investigative agent assigned to aid the Office of Independent Counsel in the grand jury investigation, the defendant THOMAS T. DEMERY corruptly influenced, obstructed and impeded and endeavored to influence, obstruct and impede the due administration of justice by vouching for the authenticity and reliability of the document described in paragraph 63, which document he had caused to be returned to the grand jury.

(In Violation of Title 18, United States Code, Section 1503)

COUNT TWENTY

68. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46, all subparagraphs of paragraph 50, paragraphs 56 through 63 and paragraph 66 of Count Eighteen of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

69. On or about November 16 and 20, 1990, within the District of Columbia, during interviews being conducted by a person he knew to be a representative of the Office of Inspector General of the United States Department of Housing and Urban Development assigned to aid the Office of Independent Counsel in its investigation of, among other matters, the administration of the Moderate Rehabilitation program at a time when the defendant THOMAS T. DEMERY served as Assistant Secretary of Housing, the defendant THOMAS T. DEMERY knowingly and willfully made false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of a department and agency of the United States, that is, the defendant THOMAS T. DEMERY did state and represent, among other matters:

A) that he paid \$500 for the use of the Vail condominium partly owned by the Winn Group member by giving five \$100 bills to the Winn Representative during a visit to the Winn Group's offices while in the Denver area in February of 1988; and

B) that the car he used during his stay at the condominium was loaned to him by a childhood friend who lived in the Denver area.

(In Violation of Title 18, United States Code, Section 1001)

COUNT TWENTY-ONE

70. Paragraphs 1 and 2 of the Introduction, paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen are realleged and incorporated herein as though fully set forth in this Count.

71. On or about May 2, 1988, within the District of Columbia, during an interview being conducted by persons he knew to be representatives of the Office of Inspector General of the United States Department of Housing and Urban Development then undertaking an investigation of, among other matters, the administration of the Moderate Rehabilitation program at a time when the defendant THOMAS T. DEMERY served as Assistant Secretary of Housing, the defendant THOMAS T. DEMERY knowingly and willfully made a false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of a department and agency of the United States, that is, the defendant THOMAS T. DEMERY did state and represent that he did not know the Winn Group to be involved in Moderate Rehabilitation program projects.

(In Violation of Title 18, United States Code Section 1001)

COUNT TWENTY-TWO

72. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

73. On or about May 11, 1989, within the District of Columbia, the Subcommittee on Housing and Community Development of

the Committee on Banking, Finance and Urban Affairs of The House of Representatives of the United States Congress (the "Subcommittee on Housing and Community Development") was conducting an investigation into allegations of irregularities in the allocation of funds under the Section 8 Moderate Rehabilitation Funding program.

74. It was material to the Subcommittee on Housing and Community Development's investigation to determine the extent to which the defendant THOMAS T. DEMERY, in his position as Assistant Secretary for Housing-Federal Housing Commissioner, was aware of the identity of developers and consultants who were seeking Section 8 Moderate Rehabilitation subsidies.

75. At the time and place set forth in paragraph 73 above, the defendant THOMAS T. DEMERY, having taken an oath that he would testify truthfully before the Subcommittee on Housing and Community Development, did willfully and contrary to such oath testify to a material matter that he did not believe to be true and did knowingly make false, material declarations which are set forth below in underscoring:

MS. OAKAR. Were you ever aware of Philip Winn, Philip Abrams, Michael Queenan and Silvio deBartolomeis were all sort of in partnership with each other? Were you aware of their applications? I am not saying it is wrong if you were.

MR. DEMERY. No. Let me explain my understanding of that relationship. I thought Silvio was the management agent for the multifamily holdings of Winn and Abrams. Queenan was an employee of theirs, but did some -- Queenan was never a player in my understanding as to who he was or what he did. I met him, as I stated earlier, for the first time in February 1988.

Obviously, I knew Phil Winn and Phil Abrams. But when I asked Abrams what it was he was doing, he explained to me that he was developing industrial buildings --

MS. OAKAR. On what occasion did you ask him?

MR. DEMERY. Shortly after I got to HUD. Or maybe shortly before. Because he would, from time to time, be in Washington. I would ask him what brought him there, and he would say his industrial buildings out by Dulles Airport. I thought he was in the industrial development business. HH 99.

(In Violation of Title 18, United States Code, Section 1621)

COUNT TWENTY-THREE

76. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

77. On or about May 23, 1990, within the District of Columbia, the Subcommittee on Employment and Housing of the Committee on Government Operations of the House of Representatives of the United States Congress (the "Subcommittee on Employment and Housing"), was conducting an investigation into allegations of irregularities in the allocation of funds under the Section 8 Moderate Rehabilitation Funding program.

78. It was material to the Subcommittee on Employment and Housing's investigation to determine the extent to which the defendant THOMAS T. DEMERY, in his position as Assistant Secretary of Housing-Federal Housing Commissioner, was aware of the identity of developers and consultants who were seeking Section 8 Moderate Rehabilitation subsidies.

79. At the time and place set forth in paragraph 77 above, the defendant THOMAS T. DEMERY, having taken an oath that he would testify truthfully at a proceeding before the Subcommittee on Employment and Housing, did willfully and contrary to such oath testify to a material matter that he did not believe to be true and did knowingly make false, material declarations which are set forth below in underscoring:

MR. DEMERY. Mr. Chairman, as I said in my testimony before this committee as well as the [Subcommittee on Urban and Community Development] with respect to Phil Winn, I thought Phil Winn and Phil Abrams were developers, commercial developers, of office buildings and so on in the Washington, D.C. area. I did not know that they were developers of mod rehab or they had interests in mod rehab programs. HH343

(In Violation of Title 18, United States Code, Section 1621)

COUNT TWENTY-FOUR

80. Paragraphs 1 and 2 of the Introduction and paragraphs 45, 46 and all subparagraphs of paragraph 50 of Count Fifteen of this Indictment are realleged and incorporated herein as though fully set forth in this Count.

81. On or about August 20, 1990, within the District of Columbia, during an interview being conducted by persons he knew to be representatives of the Office of Independent Counsel the defendant THOMAS T. DEMERY knowingly and willfully made a false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of a department and agency of the United States, that is the defendant THOMAS T. DEMERY did state and represent that he did not know that Philip D. Winn of the Winn

Group and other members of the Winn Group who had been employed by HUD were involved with the Moderate Rehabilitation Funding Program after leaving HUD, and that it was, instead, his understanding that Philip D. Winn and another representative of the Winn Group were involved with industrial real estate development in the vicinity of Dulles Airport.

(In Violation of Title 18, United States Code, Section 1001)

A TRUE BILL

Walter C. Lyffall
Foreperson

Arlin M. Adams
Arlin M. Adams
Independent Counsel log DE