IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
v.	)	CR 92-181-TFH
DEBORAH GORE DEAN	)	

GOVERNMENT'S OPPOSITION TO DEFENDANT DEAN'S MOTION FOR JUDGMENT OF ACQUITTAL PURSUANT TO FED. R. CRIM. P. 29(c) AND (d)

Introduction and Summary of Argument

The United States, by and through the Office of Independent Counsel, hereby opposes defendant Deborah Gore Dean's motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29(c) and (d). Defendant's motion makes two major arguments: first, that the evidence at trial was insufficient to permit the jury to find her guilty either of the conspiracy counts or of the perjury and concealment counts; and, second, that the conspiracy and gratuity counts were barred by the statute of limitations. As we have shown previously, and show again below, defendant's arguments are completely without merit.

1. Defendant has not carried, and could not possibly carry, her heavy burden under Rule 29, which requires a showing that "'a reasonable jury must necessarily entertain a reasonable doubt on

the evidence presented'" in this case. United States v. Johnson, 952 F.2d 1407, 1409 (D.C. Cir. 1992). This Court already has held that the evidence adduced by the government in its case-in-chief was sufficient to permit the case to go to the jury; and the evidence subsequently introduced in defendant's case and the government's rebuttal only reinforces the holding of the Court.

Rather than addressing the Court's reasoning, defendant seeks to reargue the facts, and to substitute her view of the evidence, and the inferences to be drawn therefrom, for that of the jury. But as this Court has previously recognized, in ruling on a Rule 29 motion, "'the trial court must view the evidence in the light most favorable to the Government giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact.'" United States v. Treadwell, 760 F.2d 327, 333 (D.C. Cir. 1985), cert. denied, 474 U.S. 1064 (1986).

Applying that standard here, there was more than sufficient evidence to permit a reasonable jury to conclude that defendant entered into the charged conspiracies to defraud the United States, and that she thereafter committed perjury and unlawful concealment when she was questioned by the Senate about her actions. As to each conspiracy, the evidence shows that the defendant agreed to take official actions in matters in which she and her family had hidden interests, including financial interests; the evidence also shows that the defendant sought to conceal her actions and to mislead Congress, as well as the public and non-favored developers, as to the manner in which HUD funding awards were being made.

2. Defendant's statute of limitations arguments are equally unavailing. She asserts, for the first time, that counts one and two are barred by the statute of limitations because no overt acts were committed in furtherance of the conspiracy within five years of the superseding indictment. Defendant is simply wrong on the facts. As the indictment charged, and the government proved with regard to each of these counts, numerous overt acts were performed both by defendant and her co-conspirators within this five-year period; those acts included meetings between the co-conspirators, defendant's Senate testimony, and her co-conspirators' receipt of payments from the developers for whom they obtained the Mod Rehab units. In any event, even if this statute of limitations argument had any validity, it would have been waived by defendant's failure to raise it until after the conclusion of the trial.

Defendant also repeats her claim that counts three and four are barred by the statute of limitations. But as we have demonstrated in prior filings, this statute of limitations claim is likewise both untimely and without legal merit. Defendant mistakenly argues that the superseding indictment materially broadened count four, the gratuity count; the superseding indictment in fact simply added factual detail to the original charge, and thus it did not render the gratuity charge outside the statute of limitations. Defendant's alternative argument that the gratuity charge was itself untimely is equally mistaken, resting as it does on a theory that is contrary to both the language of the gratuity statute and the case law interpreting that statute.

Finally, the record refutes defendant's unsupported assertion that no overt act of the conspiracy charged in count three took place within five years of the indictment.

ARGUMENT

I. THIS COURT PROPERLY SENT THE CASE TO THE JURY.

A. Defendant Cannot Meet The Rigorous Legal Standard For Judgments of Acquittal Under Rule 29.

In her motion for judgment of acquittal, defendant fails to discuss, far less to meet, the legal standard this Court must apply in ruling on a Rule 29 motion. That standard requires the Court to determine whether,

> 'viewing the evidence in the light most favorable to the Government, ... and recognizing that it is the jury's province to determine credibility and to weigh the evidence, a reasonable jury must necessarily entertain a reasonable doubt on the evidence presented.'

United States v. Johnson, 952 F.2d 1407, 1409 (D.C. Cir. 1992) (quoting United States v. Singleton, 702 F.2d 1159, 1163 (D.C. Cir. 1982))(emphasis in original).[1]

Thus, when a criminal conviction is challenged for sufficiency of the evidence, the jury's verdict is reviewed "very deferentially." United States v. Harrison, 931 F.2d 65, 71 (D.C. Cir.), cert. denied, __ U.S. __, 112 S. Ct. 408 (1991). The reviewing court "do[es] not determine whether [it] would find guilt beyond a reasonable doubt, but only whether any reasonable jury

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[1] Johnson noted that this is the standard to be employed both by the trial court in passing on the motion, and by the court of appeals on review. 952 F.2d at 1409.

could find guilt beyond a reasonable doubt." Id. (emphasis in original).[2] It follows that "[w]hen a reasonable mind might fairly have a reasonable doubt of guilt or might fairly have none, the decision is for the jurors to make." United States v. Herron, 567 F.2d 510, 514 (D.C. Cir. 1977). In other words, if the court "concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter." Curley v. United States, 160 F.2d 229, 233 (D.C. Cir.), cert. denied, 331 U.S. 837 (1947). See generally Wright, Federal Practice and Procedure: Criminal §467, at 668-670 (2d ed.).

Moreover, as this Court already has recognized (Tr. 2040), "[i]n determining whether the government has met its burden of proof ... no legal distinction may be drawn between direct and circumstantial evidence ... since it is 'the traditional province of the jury to assess the significance of circumstantial evidence, and to determine whether it eliminates all reasonable doubt.'" Treadwell, 760 F.2d at 333. In addition, "the government, when using circumstantial evidence, need not negate all possible inferences of innocence that may flow therefrom." Id. In particular, "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances.'"

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[2] See Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)(court is not to "'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt'"; "[i]nstead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt")(emphasis in original)

Glasser v. United States, 315 U.S. 60, 80 (1942)(citation omitted); see Treadwell, 760 F.2d at 333.

Finally, in ruling on a Rule 29 motion made at the close of the evidence, the Court must "take into account all evidence" introduced at trial, including evidence that was elicited in defendant's case and on rebuttal. United States v. Foster, 783 F.2d 1082, 1085 (D.C. Cir. 1986). That evidence may include defendant's own testimony and demeanor; indeed, while it is not sufficient to allow a case to go to the jury where the only evidence of guilt is the demeanor of a defendant who testifies in her own defense, United States v. Zeigler, 994 F.2d 845 (D.C. Cir. 1993), "[t]he situation would be different if the defendant's testimony, on its face, were utterly inconsistent, incoherent, contradictory or implausible." Id. at 849.[3]

Defendant fails to address these legal principles. That is not surprising, for defendant cannot possibly demonstrate here that "'viewing the evidence in the light most favorable to the Government, ... and recognizing that it is the jury's province to determine credibility and to weigh the evidence, a reasonable jury must necessarily entertain a reasonable doubt on the evidence presented.'" Johnson, 952 F.2d at 1409. Instead, defendant seeks to cast the evidence in the light most favorable to her, and to substitute her judgment of the credibility of the witnesses, and

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[3] See Wright v. West, __ U.S. __, 112 S. Ct. 2482, 2492 (1992)(plurality opinion)(jury could have considered defendant's testimony perjured, and therefore affirmative evidence of guilt), discussed in Zeigler, 994 F.2d at 849.

the inferences to be drawn from the evidence, for the judgment of the jury. But this she may not do. Accordingly, as this Court already has found, and as we demonstrate again below, it is clear that this case was properly submitted to the jury.

B. There Was More Than Sufficient Evidence That Defendant Intentionally Entered Into The Three Charged Conspiracies.

With regard to each conspiracy charged in this case, there is more than sufficient evidence -- both direct and circumstantial -- that would permit a reasonable jury to conclude beyond a reasonable doubt that the conspiracy existed and that defendant intentionally joined that conspiracy. The evidence establishes that defendant entered into classic self-dealing conspiracies. Federal courts have uniformly approved §371 prosecutions against public officials or others entrusted with federal funds who have hidden personal interests that are affected by their decisions regarding those funds. See, e.g., United States v. Gallup, 812 F.2d 1271, 1276 (10th Cir. 1987) (PHA official secured HUD financing for property, thereby ensuring that brother-in-law would receive finder's fee); United States v. Conover, 772 F.2d 765, 770-71 (11th Cir. 1985) (employee of rural electric cooperative steered contract to friend with whom he had business dealings), aff'd in part and remanded on other grounds, 483 U.S. 107 (1987); Treadwell, 760 F.2d at 334 (managers of HUD property engaged in "general pattern of self-dealing, conflicts of interest and shoddy management practices," such that in "every transaction there was a potential for improper favoritism"; defendant also conspired to conceal these activities).

The conspiracies charged here fall squarely within this well-established category of §371 cases; indeed, the evidence is significantly stronger than in many of those cases. As to each of the conspiracies charged, there is ample evidence that defendant agreed to and did take official actions to advance the interests of her alleged co-conspirators; that defendant had hidden personal interests in these official decisions, including the financial interests of herself and her family; and, finally, that defendant deceitfully sought to conceal from outsiders -- including Congress, the public, and non-favored developers -- that Mod Rehab awards were being made not through the regularized and open process described by defendant in her Senate testimony and other public pronouncements, but in an irregular and closely-held manner designed to benefit her co-conspirators and herself. On its face, this proof is sufficient to allow a reasonable jury to find defendant guilty beyond a reasonable doubt on each of the conspiracy counts.[4]

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[4] Section 371 also forbids conspiracies by public officials to subvert governmental functions by "deceit, craft or trickery, or at least by means that are dishonest," even absent proof that the official had a hidden personal interest in the official decision. See, e.g., Hammerschmidt v. United States, 265 U.S. 182, 188 (1924). The evidence here shows that the Mod Rehab funding process was subject both to a prohibition against project-specific awards, see, e.g., Tr. 148-49, 155 (Greer), Tr. 163-67 (Hastings), and to the restrictions imposed by the HUD Standards of Conduct, see, e.g., Tr. 155, 119 (Greer), Tr. 1742 (Zagame). See generally Tr. 3186-87 (Dorsey)(Mod Rehab program subject to regulations). Quite apart from the evidence of defendant's hidden personal interests in the charged Mod Rehab awards, there is abundant evidence that defendant entered into a scheme to subvert these restrictions for the benefit of her co-conspirators, at the same time that she deceitfully sought to convince Congress and the public that Mod Rehab awards were made through a fair and regularized process. She

We discuss below each of the conspiracy counts in turn. As to each count, we first summarize this Court's prior ruling. We then show that defendant's arguments are simply an attempt to substitute her judgment of the evidence for that of the jury. Finally, we briefly summarize the evidence before the jury with regard to defendant's role in each of the conspiracies.[5]

1. Count One: On October 4, 1993, the Court denied defendant's first motion for judgment of acquittal on count one. The Court concluded that "that there can be inferred ... sufficient evidence that there was an arrangement where she would receive at least intangible benefits from the relationship and the favoritism ... through helping her surrogate father [John Mitchell] and her friend Mr. Shelby." Tr. 2048.[6] With regard to the Marbilt and Arama projects, the Court noted that "[t]here is evidence that documents were exchanged and information given to Miss Dean from Mr. Mitchell," that correspondence was delivered from HUD to Mr.

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thus violated §371 for this reason as well.

[5] Because defendant's arguments in large part are identical to those made in her earlier Rule 29 filings, our response necessarily tracks our previous filings, portions of which we repeat here for the convenience of the Court. Fuller discussions of many of these issues may be found in the government's opposition to the defendant's first Rule 29 motion, filed October 4, 1993 (First Gvt. Opp.), the government's opposition to defendant's renewed motion for judgment of acquittal, filed October 22, 1993 (Second Gvt. Opp.), and the government's supplemental opposition, filed November 1, 1993 (Third Gvt. Opp.). We respectfully incorporate each of these filings by reference.

[6] The citation "Tr." refers to the trial transcript, portions of which are reproduced in page-number order in volumes I and II of the government's appendix. Selected government exhibits ("G. Ex.") are reproduced in exhibit-number order in volume III of the government's appendix.

Nunn at Mr. Mitchell's office, and that substantial payments eventually went to Mr. Mitchell. Tr. 2045. As to South Florida, the Court observed that defendant forwarded correspondence regarding the project to HUD's housing office, and that Mr. Brennan was involved. Tr. 2046. In connection with Park Towers, the Court noted that there was evidence of meetings among or between defendant, Shelby, and Mitchell, and of payments to Mitchell. Tr. 2046-47. Finally, the Court stated that "[t]he evidence shows, I think in the light most favorable to the Government, the awards of these units to the respective Housing Authority were framed in such a way they would of necessity have to go to a particular developer that these consultants were representing." Tr. 2048.

In her renewed motion, defendant again argues that the Court's assessment of the evidence was wrong both as to the benefits her family received and the actions she took. She repeats her assertion that "the evidence does not show that her family was benefitted in any way." Deft. Third Motion at 59 (emphasis added); see Deft. Second Motion at 41. Likewise, defendant once more argues that there is no evidence she took official actions to assist John Mitchell, and that accordingly the Court erred in holding that there was evidence from which the jury could conclude that she knowingly and intentionally joined in the charged conspiracy.

The Court's findings are fully supported by the record. Turning first to the issue of benefit to the defendant, the proof shows that defendant's family was benefitted -- most obviously

because she considered Mitchell to be her stepfather, and thus part of her family. It is undisputed that Mitchell and his company, Global Research, earned over $200,000 in Mod Rehab consulting fees while defendant was at HUD. There is also extensive testimony that Mitchell was the companion of defendant's mother and lived with her at her home. See, e.g., Tr. 316 (Brennan); Tr. 388 (Gauvry); Tr. 2960 (Dean); SF 186 contained in G. Ex. 256. Mitchell referred to Dean as his daughter, see Tr. 1367-68 (Nunn), and there also are exhibits in which defendant -- forwarding HUD documents to Mitchell -- refers to Mitchell as "Daddy" and "Dad." See G. Exs. 17, 18.

In addition, there is testimony that Mitchell's financial situation during this time period was poor, and that defendant attributed her mother's decision not to marry Mitchell to her fears that his financial condition might incumber the family. See Tr. 819 (DeBartolomeis). Defendant herself testified that "I felt terribly sorry for him and what was going on in his life and I tried to be kind to him and he was very kind to me." Tr. 2596-97. See also Tr. 2591, 2592, 2595, 2960 (Dean) (Mitchell and mother "were very good friends" and he acted as an advisor to defendant, her mother, and her brother). Defendant also testified that her mother paid Mitchell's living expenses. Tr. 3164. Defendant fails to recognize that her own testimony in this regard, if credited by the jury, permitted the inference that defendant was able to limit

the financial burden on her mother by generating income for Mitchell.[7]

Furthermore, contrary to defendant's additional claim (Deft. Third Motion at 60), there is also proof that Dean herself benefitted directly from her relationship with Mitchell. For instance, Mitchell gave her $500 on December 25, 1986. G. Ex. 236. Dean so admitted.[8] Tr. 3013-14 The following year, Mitchell paid over $3,300 for a birthday party that was held for defendant at the Georgetown Club.[9] See G. Ex. 238 and stipulation regarding testimony of Norman Larsen. Indeed, defendant cannot have it both ways: either there was a "family" relationship with Mitchell that explains these payments -- in which case defendant helped her family by helping Mitchell -- or they were simply direct payments to or for her by a HUD consultant.

Likewise, the evidence establishes that Mitchell, whether or not a family member, also sought to advance defendant's career and her political aspirations. See SF 186 in G. Ex. 236; Tr. 3014-15,

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[7] Since Dean also looked to her mother for financial support, see Tr. 1561 (Nettles-Hawkins); see also Tr. 3159 (Dean), she was also personally benefitted when her mother was less burdened by expenses associated with Mitchell.

[8] Dean also admitted on cross-examination receiving a $500 check from Mitchell in 1987, but claimed that Mitchell gave her the money so that she could buy presents for others from him. Tr. 3013-14. It was for the jury, of course, to decide the credibility of that explanation.

[9] Here again, defendant sought to explain away this payment, by claiming that her mother was going to reimburse Mitchell for this amount. Tr. 2672-73. Whether that explanation was plausible was for the jury.

2600.[10] In addition, defendant admitted that Mitchell interceded on her behalf with the Director of the FBI when defendant complained of the manner in which the FBI was conducting her background investigation for her nomination to be Assistant Secretary. Tr. 3017-19.

Thus, defendant could hardly be more incorrect when she asserts that "[t]he evidence only showed that Deborah Gore Dean's mother provided John Mitchell with companionship and a roof over his head and that John Mitchell and Deborah Gore Dean thought highly of each other in the last years of his life." Deft. Third Motion at 60. There was more than enough evidence from which a reasonable jury could conclude that by benefitting Mitchell defendant was benefitting someone she considered to be a family member, and that those benefits also redounded to the benefit of herself and her mother in both tangible and intangible ways.[11]

Indeed, defendant herself testified that she knew at the time that it would be wrong to use HUD funds to benefit family members.

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[10] Defendant admitted that Mitchell had helped her obtain her first government job at the Department of Energy. Tr. 2166, 2599, 2963, 3013. While she denied that Mitchell had helped her obtain her HUD job (Tr. 2600), the jury was entitled to disbelieve that testimony. Mitchell also supported defendant's attempt to become Assistant Secretary. Tr. 581 (Shelby).

[11] In any event, as we have previously demonstrated, and as this Court has noted (Tr. 2048), it is not necessary as a matter of law that the government prove that defendant or her family benefitted personally from any of her decisions; it would be enough to show -- as was clearly shown here -- that she had a hidden personal interest in helping Mitchell. See, e.g., Gallup, 812 F.2d at 1278 (upholding §371 conviction of PHA official who benefitted brother-in-law; not necessary that government prove that official directly benefitted), and cases cited in prior briefs.

Tr. 2726. Thus, the only real issue here was whether she did so attempt to benefit Mitchell. That was quintessentially a question for the jury; and there was ample evidence from which the jury could have concluded that defendant agreed to, and did, benefit Mitchell by seeking to advance his interests at HUD. Her argument to the contrary -- which is the heart of her argument that there is no evidence that she joined the charged conspiracy -- takes several forms: with regard to the Marbilt and Arama projects, she claims that she could not have aided Mitchell, because she lacked official power to do so (Deft. Third Motion at 3-7); with regard to the South Florida I and Park Towers projects she claims to have been unaware of Mitchell's involvement, and in any event to have done nothing to help ensure the funding of those projects (id. at 10-13, 13-18); and with regard to all four of the projects, she claims to have been unaware that Mitchell was being paid as a HUD consultant (id. at 8-9, 20-21).

In making these arguments, defendant ignores certain critical evidence that undercuts her claims. Furthermore, as to the evidence she does cite, she fails to recognize that, for Rule 29 purposes, "'the trial court must view the evidence in the light most favorable to the Government giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact.'" Treadwell, 760 F.2d at 333.[12]

[12] Defendant also fails to take into account the "universally accepted proposition that the [conspiratorial] agreement need be neither formal nor express"; thus, "the agreement may consist of nothing more than a tacit understanding," and need not be verbal at all. 1 L. Sand et al., Modern Federal Jury Instructions ¶19.01 at

Thus, defendant's argument that she was not in a position to advance Mitchell's interests with regard to Marbilt and Arama founders both on documentary and testimonial evidence, including her own testimony. Beginning while she was a Special Assistant to HUD Secretary Pierce, defendant was aware of, and obtained information regarding, projects in which Mitchell was interested. For example, a handwritten notation on G. Ex. 18 -- a memorandum from the Under Secretary of HUD to a HUD Regional Administrator concerning projects being developed by Art Martinez -- indicates that the memorandum was sent to two places -- "Special File" and "Copy for Debbie Dean." Defendant in turn sent this and other documents of interest to Nunn and Martinez. G. Exs. 16, 17, 18.

Moreover, in her direct testimony, defendant confirmed that, within weeks of becoming a Special Assistant and Director of the Executive Secretariat, she interjected herself into program matters, and would call other officials for explanations of their actions.[13] Tr. 2177-78. Indeed, there is documentary proof that

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19-18, 19-19 (1993)(citing cases).

[13] Defendant sought to create the impression that, prior to her becoming Executive Assistant, she had merely a "mailroom" job. In fact, however, the evidence shows that defendant was both a Special Assistant and Director of the Executive Secretariat. Even in the latter position, defendant was concerned with correspondence only at the very highest level, that prepared for the signature of the Secretary or the Under Secretary or "highly sensitive communications." Work Planning and Performance Appraisal dated October 1983 contained in G. Ex. 256. This position also required knowledge of HUD "policies, positions, and programs." Id. Moreover, in her statement to the Senate, defendant described her role as a Special Assistant as having substantive responsibilities. See G. Ex. 212.

defendant wrote to Mitchell about Marbilt, and advised him that she had discussed the project with relevant HUD officials. The very wording of the letter -- which suggests that "[i]t's time we say 'adios'" to Martinez, G. Ex. 17 (emphasis added) -- would justify the jury in concluding that defendant and Mitchell were working together.

Shortly thereafter, in late January 1984, Martinez retained Nunn in connection with the Arama project and agreed to pay him $375,000 to obtain 300 mod rehab units. G. Exs. 20, 21. Mitchell was to share in the consulting fees but significantly -- in a pattern that appears in all three of the projects charged in count one and shows the secrecy in which the conspiracy operated -- Mitchell's role was omitted from the contracts and related materials.[14] Rather, Nunn annotated his consultant agreement: "1/25/84 In event of death or disability 1/2 of above amount belongs to John Mitchell. Louie B. Nunn." G. Ex. 20.

By April 1984, Nunn negotiated a $50,000 increase in the fee, G. Ex. 25, even though in his testimony he admitted that neither he nor Mitchell spent more than a couple of hours on the Arama project. Tr. 1370-71. In June 1984, defendant assumed the position of Executive Assistant to the Secretary. G. Ex. 256. Documents show that while in that position she spoke directly with Mitchell about the Arama project. In her letter to Nunn dated July 5, 1984, defendant confirmed her recent telephone conversation with Mitchell

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[14] See G. Exs. 20, 21, 22 (Arama); see also G. Exs. 37, 46 (S. Fla.).

concerning the Arama Partnership's request for "additional Mod-Rehab units," and she "assure[d] [Nunn] that all the necessary paperwork for the units will be transmitted by the end of this week and that Arama Partnership will definitely receive these units from HUD."[15] G. Exs. 27, 28. In that letter, defendant further stated that "I hope that the additional units will make the partnership a viable venture." Id. Thereafter, when the Rapid Reply, the internal HUD document that transmitted the funds from HQ to the regional office, was cut, defendant obtained a copy of it and had it hand-delivered at government expense to Arama at Mitchell's office. G. Ex. 30;
Tr. 2986 (Dean).

Defendant admitted sending these materials to Mitchell and Nunn. Tr. 2970-71, 2981-82, 2986. At the outset, then, defendant's claim that she had no role in the Marbilt or Arama matters is belied by her own writings. Her purported explanation of these letters -- which is that they simply conveyed information decided by others at HUD, or forwarded materials given to her by others -- presented at most a jury issue. Moreover, there are good reasons why the jury rejected this explanation. As noted above, Dean's own testimony, as well as the Marbilt correspondence, establishes that she became involved in program issues when still a Special Assistant. Her power only increased when she became Executive Assistant, as was established both through testimony of

[15] Nunn in turn thereafter assured Martinez that the "Arama project has been approved in the Washington office...." G. Ex. 29.

such witnesses as Janet Hale and Susan Zagame, and through documents such as G. Ex. 147, in which defendant instructed Acting Assistant Secretary Wiseman that the Office of the Secretary "will concur on all funding decisions regarding Mod Rehab funds not previously approved by both Maurice and myself, until a new Federal Housing Commissioner is named." (Emphasis added).

Against this, defendant claims that DeBartolomeis, Barksdale, Martinez, and Nunn all gave testimony that would preclude any finding that she entered into a conspiracy regarding the Marbilt and Arama projects. Deft. Third Motion at 4-6. But that claim cannot withstand inspection. The cross-examination testimony of DeBartolomeis cited by defendant (id. at 4, n.1) in terms refers to defendant's authority in 1983, the year before Arama was in fact funded; in any event, that testimony does not suggest that defendant could not have influenced Mod Rehab funding decisions even in 1983. Similarly, Barksdale testified that he did not "remember Deborah Dean asking me" to fund Arama (see id. at 5, n.3); but this is not proof that she did not do so, or that she did not seek to advance Mitchell's interests by making inquiries that would let Barksdale know that she was interested in the project.[16]

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[16] Furthermore, the jury could weigh Barksdale's testimony in this regard against documents such as G. Ex. 147, cited above, in which defendant makes clear that Mod Rehab decisions were approved by Barksdale and herself. The jury also had before it Barksdale's testimony that defendant was "running the Department" (Tr. 464, 527); that she would contact him about "almost everything that would be involved in the day-to-day operations of the Department up to and including funding decisions" (Tr. 464); that she would "often" ask about particular funding decisions (Tr. 465); and that he took what defendant said as being essentially instructions from the Secretary of HUD (Tr. 528).

Even more strikingly, Nunn's testimony that he had no knowledge of Mitchell contacting anyone about these projects other than Lance Wilson (see id. at 5) -- upon which defendant so heavily relies -- is directly contradicted by defendant's own letter to Nunn regarding Arama, in which, as noted above, she referred directly to having had a conversation with Mitchell about Arama.[17] G. Ex. 27. Defendant also misses the point of Martinez's testimony that he did not know that Mitchell was involved in the Arama and South Florida I projects. Deft. Third Motion at 5-6. Rather than establishing defendant's innocence, it suggests that the co-conspirators were anxious to hide the Mitchell-Dean connection.

Yet even if the foregoing testimony were favorable to defendant, she fails to recognize that it would be for the jury to resolve any conflict between that testimony and the other evidence discussed above. On the basis of all the evidence, a reasonable jury surely would be entitled to conclude that defendant could, and did, involve herself in matters involving Mitchell from the time she began at HUD. Indeed, that much is established by defendant's own letters to Mitchell and Nunn. As a legal matter, it is irrelevant, even assuming it to be true, that defendant may not have been the ultimate decision-maker with regard to these matters;

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[17] In addition, Defendant's letter to Nunn regarding Arama ended "Please keep in touch" (G. Ex. 27 (emphasis added)) -- which would have allowed the jury to conclude that Nunn and Dean already were "in touch".

it is enough that she took actions designed to advance the interests of her co-conspirators.[18]

The evidence is equally telling with regard to defendant's involvement in the South Florida I project. Brennan testified that he contacted defendant directly to request Mod Rehab units for Nunn and Martinez, even though he had no knowledge of the Mod Rehab program. Tr. 322-23. He further testified that he spent just a few minutes with defendant, and that the units were thereafter awarded. Tr. 323, 326. Brennan then called defendant to thank her. Tr. 326. For this, Global Research International -- Mitchell's company -- was paid $109,000.[19] Tr. 326-27; G. Ex. 51.

The evidence is clear that defendant was aware that Brennan worked with Mitchell. According to defendant's official personnel file, she worked for Global prior to entering federal service and listed Brennan as her supervisor. See SF 86 and 171 contained in

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[18] See, e.g., United States v. Smith, 496 F.2d 185 (10th Cir.), cert. denied, 419 U.S. 964 (1974) (§371 prosecution of mid-level loan officer in SBA); see also United States v. Heffler, 402 F.2d 924 (3d Cir. 1968), cert. denied, 394 U.S. 946 (1969)(in bribery prosecution, it was not essential that defendant have authority to make the final decision); United States v. Raff, 161 F. Supp. 276, 280 (M.D. Pa. 1958) (bribery prosecution: government official need not be final authority; "[h]onesty at the top is not enough; it must run through the whole service").

[19] Defendant notes that Brennan testified that Mitchell said he would not participate in this project because defendant worked at HUD. Deft. Third Motion at 10. But defendant fails to note that Mitchell did in fact profit from this project through Global Research. She also makes no effort to explain why Mitchell would have recused himself on this project, in light of the fact that it is undisputed that he previously had contacted defendant with regard to Marbilt and Arama, and had agreed to work with Shelby on Park Towers.

G. Ex. 256. Defendant admitted that she knew Brennan worked with Mitchell, although she claimed not to know their exact relationship.[20] Tr. 2598, 2627. Frank Gauvry, a long-time social and business friend of Mitchell, and a friend and business associate of Brennan (Tr. 387-89), testified that Brennan subsequently told him that the defendant "just about runs" HUD. Tr. 396. Gauvry further testified that Brennan asked Gauvry to refer development business to Brennan so that Brennan "can be named a consultant." Tr. 396.

Significantly, defendant admitted that she had met with Brennan. Tr. 2622-23. Defendant also admitted that she did not tell Secretary Pierce about Brennan, since he allegedly would not have been interested. Tr. 2625, 2868. ("A friend of mine asking me for something at HUD hardly required Secretary Pierce's attention"). She likewise admitted that she had forwarded Brennan's request for units to Housing, although she claimed that this merely meant that she had put it into "the system." Tr. 2625; see also Tr. 2868.

Far from showing, as defendant suggests, that she did nothing to aid South Florida I, this evidence demonstrates just the opposite. Defendant ignores the extensive testimony from, among others, Hale, Zagame, and DeBartolomeis, that there was no "system" for awarding Mod Rehab units during this time period. Tr. 726, 754, 762, 789 (Hale); Tr. 825-26, 951, 957, 995 (DeBartolomeis);

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[20] Again, the jury could interpret this testimony as untrue, and could weigh it as evidence that defendant sought to distance herself from Brennan and Mitchell.

Tr. 1724, 1729-30 (Zagame). Instead, defendant would announce which projects would receive Mod Rehab funding at ad hoc meetings conducted in her office. By admitting that she did not tell Secretary Pierce about Brennan's request, defendant herself provided the jury with a basis for concluding that she was the one who made the decision to award these units.

The evidence also establishes defendant's involvement with Park Towers. Shelby testified that he met with defendant regarding the allocation of units for this project. Tr. 553. The memorandum to file of the developer -- Martin Fine -- also indicated that Shelby met with "his friend at HUD" and "she indicated that this matter [the post-allocation waiver] could be dealt with in a favorable manner." G. Ex. 85 (emphasis added).[21] Significantly, Shelby avoided identifying "his friend" in his dealings with Fine and Feinberg.[22] Moreover, neither Fine nor Feinberg was aware that Mitchell was involved in the Park Towers project, even though,

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[21] Dean's calendars show that she had lunch with Shelby on the same day that Fine's memorandum (G. Ex. 85) stated that Shelby had met with "his friend at HUD".

[22] Defendant fails to address this evidence in her motion. Instead, she quotes Fine's testimony that Shelby told him that the waiver was signed by DeBartolomeis, and that he did not remember hearing defendant's name in connection with Park Towers. Tr. 687. But this evidence in fact cuts against defendant, or so the jury was entitled to conclude: that Fine was not told the name of Shelby's "friend at HUD" -- who was clearly female -- coupled with the other evidence of defendant's involvement (including Shelby's testimony) supports the conclusion that Dean's involvement was deliberately kept secret to the extent possible.

through Shelby's company, Fine paid Mitchell $50,000.[23]. Tr. 657-58 (Fine). Although Shelby denied discussing this project with Mitchell and Dean at the same time, on September 9, 1985, Mitchell's and defendant's calendars reflect that defendant, Mitchell, and Shelby were to meet for lunch; and the next day, on September 10, 1985, Shelby forwarded information on "the Miami Mod Rehab," which clearly suggests that project had been discussed. G. Exs. 5k, 9g & 76 (emphasis added).

Dean admitted meeting with Shelby on a regular basis, although at times she denied that he ever requested units from her until 1987,[24] when he requested units in connection with Prince George's County. Tr. 2576-77, 2643. Against this testimony, the jury was entitled to weigh, among other things, not only Shelby's own testimony, but the rebuttal testimony of Pam Patenaude that, sometime after Patenaude started working for Dean in 1985, Dean

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[23] As the foregoing suggests, defendant's reliance on Fine's testimony that he was unaware of Mitchell's involvement is completely misplaced. See Dean Second Motion at 20-21, n.7. Far from suggesting, as defendant would have it, the innocence of Mitchell's involvement, this testimony in fact suggests just the opposite: at a minimum, this evidence demonstrates that Mitchell's involvement was kept a secret even from the developer. As noted above, this point was also established by Martinez' testimony -- upon which defendant also mistakenly relies, see Dean motion at 34-35 -- that he was unaware that he was hiring anyone other than Nunn. Tr. 250-51. The jury was entitled to infer from this evidence that Mitchell's role was deliberately hidden, and that this was evidence of the conspiratorial nature of these arrangements.

[24] Her denial at other times was equivocal at best. For example, she stated that she didn't recall any "specific conversations" about "Park Towers," but went on to state "[h]e [Shelby] may have asked me a question about something to do with it. ...he may have said to me I'm working on a project in wherever. I just don't recall." Tr. 2696.

instructed her to "take good care" of Shelby, and then, during a funding round in 1986, his name came up and "it was made clear that he was to be taken care of." Tr. 3247, 3249.

By the same token, it was for the jury to decide the credibility of defendant's alternative defense -- which she raised as to all these projects -- that she was unaware that Mitchell (and later Brennan) were being paid to act as consultants on these projects and that Mitchell and Brennan lied to her regarding Mitchell's role. See Tr. 2989-90, 3003. In this regard, the jury was entitled to consider defendant's testimony that she was shocked upon learning of the payments to Mitchell when she received the HUD-IG Report, and that she expressed her anger to HUD IG agent Al Cain, Tr. 2617; and the jury was further entitled to consider Agent Cain's testimony on rebuttal that to his recollection this conversation never occurred.[25] Tr. 3199. Likewise, the jury was entitled to weigh defendant's testimony that her best recollection was that she had met Nunn only after leaving HUD against her admission on cross-examination that she had told a reporter in 1989 that she had known Nunn since she was a little girl. Tr. 3029.[26]

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[25] In addition, it was well within the jury's province to conclude that defendant could not plausibly have believed that Mitchell was performing pro bono services for Martinez and Nunn, particularly in light of defendant's own testimony regarding Mitchell's business difficulties and need for money.

[26] Similarly, on cross-examination, defendant sought to distance herself from Mitchell by claiming that she did not know him well until leaving HUD. Given the extensive evidence to the contrary -- including the HUD letters to him addressed to "Dad" or "Daddy" -- the jury was entitled to disbelieve this testimony, and to infer from it that defendant was seeking to hide her conspiratorial dealings. See Ziegler, 994 F.2d at 849, and

In sum, the evidence regarding count one demonstrates defendant's direct involvement with her co-conspirators' requests for Mod Rehab units. That evidence also shows that defendant and her co-conspirators, particularly after the Arama project, took pains to avoid referring to Mitchell's or defendant's involvement in these projects in any documents; indeed, as noted above, neither the developer of Park Towers, nor his Florida consultant, even knew that Mitchell was involved. Similarly, the evidence suggests that Shelby avoided using defendant's name -- even though the Fine memorandum discussed above indicates that defendant was his "friend" at HUD -- but freely told his clients about DeBartolomeis and others. Accordingly, defendant is mistaken when she asserts that "there is no testimony that Deborah Gore Dean's role was ever kept a secret by any consultant, developer, or co-worker at HUD."[27] Deft. Third Motion at 21 (emphasis in original).

Moreover, at the same time defendant was secretly acting to further the interests of her co-conspirators with regard to Mod Rehab allocations, she was asserting publicly that "HUD does not allocate Section 8 moderate rehabilitation funds on a project specific basis," (G. Ex. 31a (letter to Government Development Bank of Puerto Rico, 8/15/84)), and that "[f]ederal regulations prohibit HUD from making project specific allocations," so "[t]herefore, HUD has no direct role in providing Moderate Rehabilitation funds to a

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discussion at n. 3, supra.

[27] Defendant's statement also is directly contradicted by James Wilson's testimony that Broussard refused to reveal his contact at HUD, which is discussed below.

specific project" (G. Ex. 31b (letter to Sister Schulte, 1/2/85)). The nature of the conspiracy here is succinctly illustrated by contrasting these letters, and defendant's Senate testimony concerning how the Mod Rehab process was supposed to work, with defendant's July 5, 1984 letter to Nunn, G. Ex. 28, in which she states, "[l]et me assure you ... that Arama Partnership will definitely receive these units from HUD."

In short, defendant would have this Court hold as a matter of law that she was free not only to act in matters in which she had a hidden financial interest, but to do so in a way that was directly contrary to the manner in which -- by defendant's own testimony -- federal regulations and practices required the Mod Rehab program to function. The very statement of this claim is its own refutation. Accordingly, this count was properly submitted to the jury.

2. Count Two: With regard to Count Two, this Court held on October 4, 1993, that judgment of acquittal could not be granted, since there were "the same factors the Court considered in count one as for the relationship between the parties, Mr. Sankin entertaining [defendant] and contributing monies to the Maryland Senatorial candidate on the Republican side, the purchase of gifts, and the doing of services ...." Tr. 2053. The Court also pointed to the evidence of defendant's "relationship with Shelby, entertaining her as well, providing support for her in her Assistant Secretary's position as well as her desire to curry favor with the Republican side on her own aspects of running for office

in the future ...." Id. The Court summarized the evidence that showed defendant had taken action with regard to the Necho Allen Hotel project, the Regent Street project, the Alameda Towers project, the Foxglenn project, and the Eastern Avenue project. Tr. 2049-52. After reviewing this evidence, the Court concluded that "[i]t seems to me the evidence is sufficient in the inference in favor of the Government that there's conspiracy for the purpose of impairing the lawful function of the Department of Housing and Urban Development and in the awarding of these projects even though it did not incur any monetary loss to the Government." Tr. 2053.

Here again, defendant argues that the Court erred, and that there is no evidence either that she benefitted from the charged conspiracy, or that she intentionally and knowingly entered into such a conspiracy. In particular, defendant repeats verbatim her earlier argument that "the benefits flowed from [defendant] to [Sankin] rather than her receiving benefits from Mr. Sankin"; thus, she asserts, "[n]o where in the prosecution[']s case did they once show that Deborah Gore Dean ever entered into a conspiracy with Andrew Sankin for her benefit or for any illegal purpose." Deft. Third Motion at 60; Dean Second Motion at 41.

Defendant is wrong about what the evidence shows, as we have demonstrated in our prior briefs. Of equal importance, defendant fails to understand that, at most, the question whether she benefitted Sankin, or he her, was for the jury to decide. Certainly, there was ample evidence from which the jury could have concluded that Sankin provided benefits to defendant and her

family. Sankin took over the management responsibilities of her family's troubled Stanley Arms Apartments. Tr. 1125-26. When the operating reserves fell, Sankin dipped into the tenants' security deposits to pay the Stanley Arms bills. Tr. 1127-28. Moreover, he prepared a lengthy hardship rents petition. Tr. 1134-36. The petition was successful and earned the Dean/Gore family considerable additional rental revenues. Tr. 1136.[28] Sankin also attempted to find a buyer for the Stanley Arms and even approached Berel Altman, one of the developers of the Foxglenn and Eastern Avenue projects, to interest him in helping the Dean family. Tr. 1137-38 (Sankin); 1303-04 (Altman).

Sankin testified that his services on the hardship rent petition had substantial value, Tr. 1136, and he candidly stated that, when defendant indicated that she was not going to pay him, he did not push the point because at that very time he was successful in obtaining HUD funds through her. Tr. 1286-87. Sankin also recognized the relationship between his work for the Dean family and his Mod Rehab success in his method of compensating his property management staff. Tr. 1138-39.

Moreover, the Stanley Arms services were not the only benefits accruing to defendant. Indeed, Dean acknowledged that she could

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[28] Dean herself admitted that before Sankin took over management "the building was running in the red because it was being run by the trust department of a bank and they were charging a lot, and so it was losing money...." Tr. 2698. She went on to acknowledge the financial benefit to the family accruing from Sankin's work: "just actually by getting it out of the trust department of the bank and running it ourselves would actually sort of move it into just losing a little bit of money as opposed to losing a lot of money." Tr. 2698-99.

request services of Sankin because he was essentially on the family "payroll". Sankin, who attended law school, testified that he accompanied her to a real estate closing. Tr. 1139. He made a political contribution to the Chavez campaign at defendant's request. Tr. 1140-41. He took defendant to expensive lunches and dinners, G. Exs. 11C-H, 11J-Q; sent her flowers, Tr. 1140, 1288; bought her gifts, including an expensive antique cup and saucer,[29] Tr. 1282, 1245-46, and expensive bottles of port, Tr. 1288-89.

Defendant's only answer to all this, and the major thrust of her brief, is that Sankin could not link her with certainty to all of the meals with HUD officials reflected on his credit card slips. See Deft. Third Motion at 28-33. But it was for the jury to weigh the validity of those receipts. More importantly, as the foregoing suggests, these meals were only a portion of the benefits Sankin provided defendant and her family. While defendant chooses not to discuss those other benefits, they were before the jury, and provided more than a sufficient basis for the conclusion that defendant was acting under circumstances in which "[i]t cannot be supposed that [defendant's] duty could be fully, impartially and

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[29] Tellingly, Dean described her long-time interest in antiques when she thought it suited her purpose regarding Counts 3 and 4 (the Kitchin counts), but here -- in an attempt to minimize the value of Sankin's services and gifts -- she claimed a complete lack of appreciation of the value of this antique cup and saucer until discovery in this case: "...it was a cup and a saucer. I didn't know what to do with it....I didn't realize that it was a very nice cup and saucer until I saw the Government's receipt. I just -- it just looked like a cup and saucer." Tr. 2704.

honestly discharged." Crawford v. United States, 212 U.S. 183, 191 (1909).[30]

The evidence is equally compelling as to the actions defendant agreed to take, and did take, to benefit Sankin and their other co-conspirators. Those actions begin with the Necho Allen Hotel, a Mod Rehab project. Defendant claims that the evidence showed only that she assisted the developer through what he called the "bureaucratic maze" and that she never suggested any payments be made to Sankin. Deft. Third Motion at 23-24. In fact, however, the evidence showed defendant directly overruled HUD officials in order to aid a developer who had gained access by hiring Sankin, who at that very time had begun providing benefits to defendant and her family in connection with the Stanley Arms.

The evidence was that, in late 1984, John Rosenthal, a Philadelphia developer, was seeking exception (i.e., increased) rents for the Necho Allen Hotel. G. Ex. 101, Tr. 689 (Rosenthal). Career staff at both the HUD regional office and HUD Headquarters disapproved the request. G. Exs. 102, 106. Rosenthal turned to defendant's friend, Andrew Sankin, and, on December 17, 1984, agreed to pay him $10,000 if the exception rents were granted. G. Ex. 105.[31]

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[30] Of course, defendant was free to argue to the jury that these benefits were de minimis, and did not influence her actions; but, here again, that would be a jury issue, not a Rule 29 argument.

[31] Sankin at this time was very young and had recently graduated from law school. Tr. 1101 (Sankin). Rosenthal candidly admitted at trial that he hired Sankin for his access to Dean. Tr. 690-91.

Five days later, the defendant scheduled a brunch with Sankin on a Saturday in Rehoboth Beach. G. Ex. 5a. A month later, Sankin was again on defendant's calendar, this time for lunch, G. Ex. 5b, and, two days after this, the entire afternoon was blocked off on defendant's calendar for a discussion between Sankin and Dean regarding the Stanley Arms. G. Ex. 31; Tr. 1592. The essential nature of this conspiracy is illustrated by the fact that defendant was privately dealing with Sankin with regard to her family's business at the very same time that she agreed to take, and did take, official actions to benefit him. Again, this is precisely the kind of hidden personal interest that §371 forbids.

Within two weeks, by February 12, 1985, Sankin informed Rosenthal that exception rents had been secured, and Rosenthal in turn asked defendant "to provide evidence that exception market rents have been granted" prior to the scheduled closing date of his project. G. Ex. 108. The Regional Administrator, a political appointee, then requested exception rents. G. Ex. 108a; Tr. 1788 (Golec). Once again, HUD Headquarters career staff drafted a denial. G. Ex. 109a. The evidence shows that before that denial could be sent, however, the defendant had it pulled. See post-it note on G. Ex. 109a. A day later, defendant complied with Rosenthal's request and authorized use of the autopen to place Secretary Pierce's signature on a memo granting exception rents.[32]

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[32] Sherrill Nettles-Hawkins described the autopen and identified this particular authorization as being made by Dean. Tr. 1558-59.

Rosenthal paid Sankin $10,000, G. Ex. 111, and on that same day Sankin was scheduled on defendant's calendar for lunch. G. Ex. 5d.[33]

This pattern continued with the Regent Street project. Even before he paid Sankin for Necho Allen, Rosenthal sent him material for his next project, which was to obtain Mod Rehab units for Regent Street. G. Ex. 113. Subsequently, Rosenthal asked Sankin to arrange a meeting with "Deborah" regarding 26 additional Mod Rehab units. G. Exs. 114, 115. Following a lunch meeting, Rosenthal wrote to defendant a few more times, G. Exs. 116, 117, 120, and then asked Sankin to intercede. G. Ex. 121. In mid-July, the defendant informed Rosenthal that Sankin had broached the subject of Mod Rehab for Regent Street on several occasions and she had agreed to discuss it in fiscal year 1986. G. Ex. 122. In late August, defendant scheduled a meeting with Sankin, G. Ex. 5j, and a week later 13 Mod Rehab units were sent to Philadelphia. G. Exs. 124, 124a, 125.

On September 20, 1985, Rosenthal acknowledged receipt of the 13 Mod Rehab units in a letter to defendant and stated that he hoped he could count on her for the balance of 13 more units. G.

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[33] Rosenthal later acknowledged and thanked defendant for her assistance on the Necho Allen project. G. Ex. 116.

Ex. 126.[34] Early in fiscal year 1986, the balance of 13 units was sent to Philadelphia.[35]

Defendant's only response to this evidence is to cite Rosenthal's testimony that the United States Senators from Pennsylvania supported Regent Street, as well as his testimony that defendant did not tell him to pay Sankin. See Deft. Third Motion at 25. But she misapprehends the import of this testimony. Even with the support of both Senators, Rosenthal was unable to obtain the Mod Rehab units for this project without retaining a consultant who had access to defendant.[36]

The evidence regarding the Alameda Towers project is equally telling. While he was working for Rosenthal, Sankin learned that an allocation of 600 units previously made to Puerto Rico was being recaptured, and he asked defendant about getting some of these

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[34] Rosenthal and Sankin had a fee dispute regarding Regent Street. G. Exs. 131, 132. On the same day he wrote to thank Dean, Rosenthal paid Sankin $1,000. G. Exs. 127, 128. Tr. 706, 1157. Later, he told Sankin that Regent Street "could not afford the 'consulting fees' that sometimes are requested by well-connected Washington-based individuals for securing Section 8 Mod Rehab units." G. Ex. 132. Three years later, however, Sankin was paid a final $10,000 for Regent Street. G. Ex. 134. Tr. 1107, 1159-60.

[35] Janet Hale, the General Deputy Assistant Secretary and Acting Assistant Secretary at the time, testified generally that she signed funding documents only at defendant's direction. Tr. 804-05 (Hale). With regard to G. Ex. 129, Hale stated that she did not know Sankin or Rosenthal or anything else about this allocation. Tr. 738.

[36] In any event, Dean herself admitted that it was she who told consultants and developers to have their Senators write. Tr. 2724. Thus, the jury could conclude that defendant sought to cover her tracks by generating congressional support for the projects where she had personal dealings with favored consultants and developers.

units. Tr. 1108-09. At the defendant's urging, Sankin approached Thomas Broussard, a Los Angeles attorney, and the two men agreed, with defendant's blessing, to work together. Tr. 1008 (Broussard); 1109 (Sankin).

Moreover, the testimony and correspondence regarding Alameda Towers provides direct and compelling evidence that defendant knew precisely what the consultants she favored were doing. For example, on June 7, 1985, Broussard wrote to her that he

> spoke to Joe Monticiollo [the Regional Administrator in New York] regarding P.R. and he is putting me in contact with a group in Old San Juan that is working on units through Joe [and] D'Amato. I think Andy S. and I will be better with them than Andy's first contact. I'll speak to you when I return from Europe on June 24.

G. Ex. 137.

In fact, the evidence establishes that defendant assigned Broussard and Sankin a set number of Mod Rehab units for use in Puerto Rico to peddle to the highest bidder. James Wilson, a developer, testified that Broussard approached him and said that he had 300 units to be used in Puerto Rico. Tr. 1076-77. Similarly, Cleofe Rubi testified that Broussard told him that he had been "assigned" 150 Mod Rehab units by Dean in Puerto Rico. Tr. 1043. After some quibbling over price,[37] Rubi agreed to pay Sankin and Broussard $100,000 each for 150 units. Tr. 1047.

Defendant addresses none of this evidence. Instead, she asserts that no conspiracy could be found here for three reasons: Broussard testified that he earned his fee by working "every step

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[37] Rubi testified, as did Wilson, that at first Broussard wanted a partnership or joint venture role. Tr. 1044.

of the process"; he also testified that he never concealed his relationship with defendant, and they did nothing illegal; and Rubi's testimony establishes that the award of units was secured by political contributions, not contacts with defendant. Deft. Third Motion at 36-40.

What defendant does not recognize is that there was evidence directly contradicting each of these points, and that it was for the jury to weigh that evidence. Moreover, the evidence that defendant overlooks is by far the more compelling. Thus, in contrast to Broussard's testimony that he earned his fee by working "every step of the process," Rubi testified that the agreements with Broussard and Sankin were drafted to make it appear as though Broussard and Sankin were performing services when in actuality Rubi was simply paying them for their units.[38] Tr. 1047.

Similarly, Broussard's testimony about concealment was directly contradicted by James Wilson, a builder and developer for over 30 years. Tr. 1066-67. Wilson testified that Broussard approached him and said he had 300 mod rehab units to use in Puerto Rico and wanted to find a developer for a 50-50 partnership. Tr. 1080. Suspicious about the allocation, especially in light of Broussard's lack of expertise in the development field, Wilson asked Broussard how he had obtained the commitment of federal subsidies. Because Broussard would not disclose more details about

[38] This is also further evidence that the conspirators sought to conceal their activity.

the allocation, their negotiations came to an abrupt termination.[39] Tr. 1078-80.

Finally, Rubi candidly admitted that he had made political contributions in an effort to win Mod Rehab awards. Tr. 1061-62. But, as was the case with Regent Street, defendant misapprehends how this testimony cuts. Rubi's testimony reconfirms that even with the support of powerful Republican senators, a developer like Rubi could not get all the Mod Rehab units he needed for his project without dealing with the consultants favored by Dean. This testimony undercuts Dean's position.

In short, there was more than enough evidence regarding Alameda Towers from which a reasonable jury could have concluded that defendant assigned federal funds to two consultants she favored, for them to dispose of at the highest price they could obtain. Even if defendant had no hidden personal interest in this matter -- and she did -- it would be hard to imagine a more serious interference with the lawful operations of the Mod Rehab program, which defendant herself described in her public statements. See Hammerschmidt, supra. It bears emphasis that defendant's motion in effect asks this Court to hold, as a matter of law, that she was free to agree to give consultants the power to assign federal funds to the highest bidder. But again, this cannot be the law.

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[39] With regard to Broussard's statement that defendant did not admit inappropriate or illegal activity to him, it is hardly surprising that Dean, at the time a high government official, would not make such an admission. Surprising or not, however, at most, this presented a jury issue, and the jury could weigh this testimony against Broussard's secrecy at the time of the events at issue.

The same pattern of conduct is revealed by the evidence as to the Foxglenn and Eastern Avenue projects, with the exception that, as to these projects, Sankin, at defendant's urging, teamed up with Shelby. Tr. 1118-19. Here again, defendant essentially gave federal funds to her favored consultants. And here again, defendant had a hidden personal interest, not only with regard to the financial benefits Sankin was affording her, but with regard to the political support Shelby could give her.[40]

Shelby testified that his principal contact on Foxglenn and Eastern Avenue was Dean; that he was paid a lot of money in part for his access to high-ranking government officials, including Dean; that it was wrong for him to use his influence with her; that as early as 1989 he came to understand that what he had done was wrong; and that he had previously admitted to a federal grand jury that the system was wrong. Tr. 606-09.

In light of all the evidence -- including the testimony of Shelby, Sankin and Patenaude, see supra -- the jury was entitled to disbelieve Dean's testimony that she did not assist Shelby or Sankin to obtain Mod Rehab units for these or other projects. See Tr. 2700. In any event, the direct contradiction presented by this testimony was for the jury to resolve.

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[40] Defendant's motion to the contrary, Deft. Third Motion at 61, Dean's nomination for the Assistant Secretary slot was contemplated as early as 1986, and she began gathering support at that time, as the Shelby/Kitchin telegram to the White House -- dated 11/4/86 -- demonstrates. See G. Ex. 91. That defendant, in the face of this clear evidence, would argue that her promotion was "never in the offing until 1987," Deft. Third Motion at 61, shows again how reckless she is with the facts.

In sum, the evidence as to this count fully establishes that defendant agreed to help award federal funds to individuals who provided benefits to her family and herself; and, in fact, she gave those individuals control over those funds, thereby completely subverting the lawful operation of the Mod Rehab program. This is more than sufficient to make out a violation of 18 U.S.C. §371.

3. Count Three: In its October 4, 1993 ruling, the Court also denied the motion for judgment of acquittal as to the conspiracy charged in Count Three. Tr. 2054-55. The Court noted the evidence that defendant dealt with Lou Kitchin on HUD matters, and held that "[a]gain, for the reasons stated in the first two counts I believe that the Government has shown sufficient information and it would be concluded, giving inference to the Government of these facts that have been shown, that Miss Dean agreed with Mr. Kitchin in exchange for his support and favoritism in supporting her for her Assistant Secretary's position, and the $4000 loan and the gratuities such as the dinners and lunches, that could be seen to deprive the United States of ... her loyalty and interfere with the lawful Government functions under 371." Tr. 2055.

Defendant argues that "the Court misstated the evidence" in this regard, since there was no testimony either that defendant asked Kitchin to support her nomination, or that she took any official actions on his behalf. Deft. Third Motion at 46. Furthermore, defendant asserts that "[a]s to the $4,000 check from Lou Kitchin, the Government has failed to show that Mr. Kitchin

received anything from HUD via Deborah Gore Dean for these monies."[41] Id. at 45.

In fact, however, the Court correctly stated the evidence. Kitchin testified that he asked defendant for blocks of Mod Rehab units not tied to particular projects; that she assured him the requests were "reasonable"; that he then found developers and received the units; and that he thereafter gave defendant $4,000 at her request. Tr. 1431-47. Defendant admitted having received the $4,000, but claimed it had nothing to do with HUD. Tr. 2744. On its face, this was an issue of credibility for the jury to decide.

Moreover, there is abundant evidence that would lead a reasonable jury to disbelieve defendant, as this jury did. Kitchin testified that defendant was facing financial problems in the spring of 1987, at a time when she was being considered for nomination as Assistant Secretary for Community Planning and Development. Tr. 1443-44. Defendant herself, on cross-examination, admitted that she was in arrears with regard to credit card bills and had insufficient funds in the bank; she also admitted that she had bought a piano shortly before the $4,000 payment. Kitchin further testified that defendant asked him for money, and that he provided her with $4,000, but marked the check as a loan. Tr. 1444. Kitchin testified that the loan was never

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[41] Defendant's argument here appears to be premised on the erroneous notion that the government was required to show a quid pro quo. No such showing is required for a gratuity offense. See, e.g., United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974). Thus, defendant's argument fails for legal as well as factual reasons.

fully repaid. Tr. 1445. Jennings, Kitchin's associate, corroborated Kitchin's testimony that he had given defendant $4,000. Tr. 1523. Kitchin also supported defendant for her nomination to be Assistant Secretary. Tr. 1446-47, 1527.[42]

Beginning shortly before this time, in the fall of 1986, Kitchin had approached defendant for Mod Rehab units for use in Atlanta. Tr. 1431.[43] She agreed to give him these units, as she did subsequently when he asked for units for Metro Dade in the spring of 1987. Tr. 1436-37 (Kitchin). In both instances, defendant in essence gave control over federal funds to Kitchin -- as she earlier had to Sankin and his partners -- and allowed him to seek out interested bidders for these funds. Jennings also testified that Kitchin had obtained Mod Rehab units through the defendant while she served as Executive Assistant. Tr. 1524-25 (Jennings); see also Tr. 1551 (Nettles-Hawkins)(Kitchin would call defendant about Mod Rehab). Jennings further stated that the defendant provided Kitchin with HUD funding documents. Tr. 1524-25 (Jennings).

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[42] Defendant seeks to make much of Kitchin's professed inability to remember whether defendant asked him to support her nomination to be an Assistant Secretary. See Tr. 1446-47. But there is no dispute that he "certainly supported her for it," as both he and Jennings testified. Tr. 1446-47, 1526-27. Nor can there be any doubt that defendant was aware of Kitchin's support, since he signed the 1986 telegram sent to the White House. Gvt. Ex. 91. Thus, as the Court correctly recognized, the jury could conclude that defendant took official actions to benefit Kitchin in part because of the support he gave her nomination. Tr. 2055.

[43] Kitchin also obtained defendant's assistance with regard to the Woodcrest Retirement Center and other matters. Tr. 1442-43. (Kitchin).

The jury also had before it the testimony of Claude Dorsy, the developer of the Springwood and Cutlerwood projects. Dorsy testified that he and his partner were approached by Kitchin, who stated that he could procure Mod Rehab units for them. Tr. 1332-35. The developers paid Kitchin for these units.[44]

Finally, in considering count three, the jury had before it evidence that directly contradicted Dean's testimony regarding these charges. Dean testified that she "never discussed his [Kitchin's] having anything to do with mod rehab with him ever." Tr. 2761. Yet, as noted above, this testimony was contradicted not only by Kitchin, but by Jennings and Sherrill Nettles-Hawkins, defendant's secretary. Even more significant, the government was able to establish through documentary proof, and the rebuttal testimony of Ms. Whitington, that defendant's testimony regarding her supposed repayment of Kitchin was false in a critical respect. On direct, defendant testified that she had repaid Kitchin on June 15, 1987, after a discussion on that day regarding whether he was going to buy her brother's apartment: "And we were driving down Wisconsin Avenue, and I was discussing with him basically where -- what I had bought and what we were doing and the fact that my brother was getting antsy about, you know, had he signed a contract." Tr. 2745. As the government established on cross-

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[44] Defendant also argues that Bazan, the Atlanta developer, did not receive the 200 Mod Rehab units Kitchin requested from defendant, and that this shows that there was no conspiracy. Deft. Third Motion at 43. To the contrary, the 200 units were awarded to Atlanta, just as Kitchin had requested; that Bazan subsequently was unable to obtain those units from the PHA in no way exonerates defendant.

examination and rebuttal, however, defendant's brother had sold his apartment several months prior to this conversation, in April 1987. Based on this, the jury could conclude that defendant's testimony was false. See Zeigler, 994 F.2d at 849.

C. There Was More Than Sufficient Evidence that Defendant Perjured Herself And Covered Up Material Facts.

Defendant also briefly argues that the evidence was insufficient to allow the jury to consider the indictment's perjury and concealment counts. But here again, defendant utterly fails to show that "'viewing the evidence in the light most favorable to the Government, ... and recognizing that it is the jury's province to determine credibility and to weigh the evidence, a reasonable jury must necessarily entertain a reasonable doubt on the evidence presented.'" Johnson, 952 F.2d at 1409.

1. Counts Five and Six: With regard to these counts -- which charged as perjurious and as a scheme to conceal defendant's Senate testimony that the Mod Rehab panel "goes solely on information provided by the Assistant Secretary of Housing" -- this Court held that "[t]here's no question that the information was solely not from, at least from the Government's evidence given these inferences now in their favor, was solely not from the Assistant Secretary for Housing ...." Tr. 2058. The Court further stated that "although it may be limited to 1987 strictly, in her answer there's information ... for the Court which indicates in favor of the Government at this time that she meant to conceal and falsify her answer as to how the process went forward and what information

she relied upon and the input of this information to this panel." Tr. 2059.

This conclusion was clearly correct. Defendant asserts that "the evidence shows that [Demery] was the sole presenter" at the Mod Rehab meetings. Deft. Third Motion at 90-91. Yet defendant can hardly have failed to note that one of her own witnesses -- Michael Dorsey -- testified directly to the contrary. Mr. Dorsey, a former General Counsel at HUD, described the defendant's actions at a Mod Rehab funding meeting he attended in the spring of 1987. Dorsey stated that the defendant commented on the projects on a funding list by identifying "[b]asically who had called her or somebody who was interested in those specific projects."[45] Tr. 3180, 3182.

In any event, even if Demery had been the "sole presenter" at the meetings, defendant's statement -- which was that the committee went solely on information provided by the Assistant Secretary -- would remain perjurious. Several former Acting Assistant Secretaries for Housing and/or Deputy Assistant Secretaries for Housing described the extent of defendant's decision-making role in the Mod Rehab program and the lack of any selection criteria. Tr.

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[45] Mr. Dorsey also testified that while he served on the Mod Rehab committee he never received any phone calls from developers or consultants, while the defendant told him that she was contacted about Mod Rehab. Tr. 3181. Significantly, he recalled no instance where defendant said that Secretary Pierce had conveyed an interest in any specific projects, Tr. 3182, and, in contrast to his observation of Secretary Pierce's involvement in other program areas, he saw no evidence that Secretary Pierce was involved in making any funding decisions on individual projects in the Mod Rehab program. Tr. 3184.

726, 754, 762, 789 (Hale); Tr. 825-26, 951, 957, 995 (DeBartolomeis); Tr. 1724, 1729-30 (Zagame).

Thomas Demery, who was confirmed as Assistant Secretary for Housing in late October 1986, also testified that defendant Dean made funding decisions regarding the Mod Rehab program. In late October or early November 1986, defendant Dean gave to Demery a list of nine public housing authorities and told Demery to fund these entities. Tr. 1882-83 (Demery). It was not until Demery complained to Secretary Pierce, sometime after December 1986, that Secretary Pierce established a committee to make Mod Rehab funding decisions. Tr. 1895-97 (Demery). That committee, which included defendant Dean, met twice while she was Executive Assistant in March and April 1987. Tr. 1897 (Demery).

Demery described a two-step process that undercuts in part defendant's description of the process in her Senate testimony. Prior to the "formal session," the defendant and Demery would meet and discuss PHA requests that had come to the attention of either one of them; they would come to a consensus; and that consensus was presented by Demery to the third committee member. Tr. 1898, 1937.

The testimony of DeBartolomeis and Demery as to Dean's role in Mod Rehab decision-making was corroborated by the testimony of Nettles-Hawkins that on several occasions, during the course of conversations about Mod Rehab, Dean got angry with both DeBartolomeis and Demery, and that the defendant told her that she was the Executive Assistant and they should do what she wanted them to do. Tr. 1555-56 (Nettles-Hawkins).

2. Counts Seven and Eight: Counts Seven and Eight charged as perjurious, and as a scheme to conceal, defendant's Senate testimony that she had "never given or approved or pushed or coerced anyone to help any developer" and that it was "a tremendous waste of time" for developers to meet with people at HUD. In denying defendant's initial motion to dismiss, the Court held that "[a]gain, it appears to the Court there's sufficient evidence to go to the jury on that count on the basis of the testimony that was given at that hearing and the testimony here at trial, as to the meetings with the developers and the input they may have had into the process directly or indirectly." Tr. 2060.

The testimony that supports the Court's conclusion in this regard is overwhelming and includes that of developers who met with the defendant, such as Phil Winn, Berel Altman and John Rosenthal; that of consultants who met with defendant on behalf of their developer-clients; and that of other political appointees who worked at HUD while defendant was Executive Assistant. The government introduced entries from the defendant's calendars showing scheduled meetings with developers[46] or their consultants as well as documentary evidence showing contacts by developers and subsequent thank you notes from them.

Defendant's argument to the contrary is disingenuous. She ignores the testimony of Mr. Winn; suggests that she simply helped

[46] The exhibits and testimonial evidence established that Dean held and/or scheduled meetings with at least all of the following individuals who were identified at trial as developers: Phil Winn, Phil Abrams, Lance Wilson, David Gitlitz, Bob Tuttle, John Allen, and John Rosenthal.

Mr. Rosenthal "cut through the bureaucracy"; and met with Mr. Altman for lunch and dinner only because he wanted to let her know who he was. She does not deal with the testimony of the political appointees regarding the steps she took to aid favored developers. In short, she again does nothing more than assert that her testimony should be credited, and all other evidence disregarded. But any such determination was obviously for the jury to make.

6. Counts Nine and Ten: In these two counts, defendant is charged with perjury and concealment based on her repeated denials of any knowledge about a project referred to as Baltimore Uplift One. This Court previously held that "[t]here was testimony that that name was used and she was familiar with it although she's testifying sometime later after this had arisen." Tr. 2061.

As this Court found, there was more than sufficient evidence from which the jury could conclude beyond a reasonable doubt that defendant Dean lied to the Senate Banking Committee when she twice denied any knowledge of Baltimore Uplift One. In fact, two witnesses, Janice Golec and Silvio DeBartolomeis, testified that they spoke with the defendant about Baltimore Uplift. Tr. 829 (DeBartolomeis); Tr. 1785 et seq. (Golec).

Golec's testimony is particularly compelling. She described the project known as Baltimore Uplift as scattered housing that utilized a number of different kinds of subsidies. Tr. 1785 et seq. She stated that, while employed as a Special Assistant in the Secretary's office, she saw newspaper articles about Baltimore Uplift among the daily news clippings "about HUD-related projects"

that came to the Secretary's office. Id. Golec stated that the defendant asked her to attend a meeting with the developer and Baltimore officials about the project. Tr. 1785. Golec, who at the time was the Special Assistant handling community planning and development programs, testified that she told the defendant that she did not want to go to the meeting, because she (Golec) had no expertise or familiarity with the programs that were involved, Tr. 1786, and that the defendant told her that "there were issues related to the Uplift project that needed to be resolved before [Golec's boyfriend's] project could go forward."[47] Tr. 1785.

Golec testified that, prior to the meeting, Dean gave her a brief overview of the project and the issues. Tr. 1787. She described her role as "to serve as their representative from the office of the secretary." Tr. 1787. Golec also testified to a subsequent conversation with the defendant about the meeting during which Dean told her that the developer (whom Golec identified as the Bob Tuttle who did not work at the White House) had stated to Dean that Golec cost him a million dollars.[48] Tr. 1786-87.

The testimony of DeBartolomeis and Golec was corroborated by the defendant's personal secretary, Sherrill Nettles-Hawkins, who stated that the Bob Tuttle who did not work at the White House

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[47] Golec also testified about another project in Baltimore, the Patriots project, in which her boyfriend had an interest. See discussion below relating to Counts Eleven and Twelve.

[48] Dean admitted that she spoke with Bob Tuttle about his contacts with Golec. Tr. 2803. She denied knowing, however, that he was talking about Baltimore Uplift. Tr. 3130.

called the defendant "[o]ccasionally, probably when funding was becoming available." Tr. 1556-57. Nettles-Hawkins also placed calls for defendant to that same Bob Tuttle. Tr. 1557. In addition, the government introduced a number of "Bob Tuttle" entries from defendant's calendars. G. Exs. 6z, 7dd.

In response to this extensive evidence, defendant does nothing more than cite her own trial testimony denying knowledge of Baltimore Uplift One, along with that of James Baugh. Defendant called Mr. Baugh to testify about "Uplift." Mr. Baugh was unfamiliar with any project called "Uplift", Tr. 2146, 2152, and therefore was unable to provide any testimony favorable to the defense on the Baltimore Uplift counts. That Mr. Baugh was unfamiliar with this name in no way contradicts the government's evidence that defendant knew the name. Even if Mr. Baugh's testimony had contradicted that of other witnesses, the issue would be one for the jury to resolve.

7. Counts Eleven and Twelve: In these counts, defendant was charged with perjury and concealment based on her gratuitous statement that no Mod Rehab units "unless they were sent directly by the Secretary, have ever gone to my home State of Maryland, simply for that reason -- that I sat on the panel." The Court held that "[a]gain, we're talking about the '87 time-frame that may limit that question somewhat in its implication, but at this point it seems to the Court the Government has produced evidence from witnesses who indicated she was involved in Maryland projects and knew that and that the caveat unless sent directly by the Secretary

does not seem to me [to] mean that she cannot be charged as she has in these counts with the evidence before this Court at this stage of the case." Tr. 2062.

Here again, the evidence fully supports the Court's conclusion. At trial, the Government introduced substantial evidence that proved that defendant participated in Mod Rehab funding allocations to projects in Maryland both before and during 1987.

For example, Maurice Barksdale testified that, during his tenure as Assistant Secretary for Housing from 1984 through January 1985, defendant discussed with him units being sent to the Baltimore Housing Authority. Tr. 468 (Barksdale). According to Barksdale, defendant mentioned that one of Janice Golec's friends was involved in the project. Id. Barksdale also stated that, to his knowledge, defendant did not recuse herself from any involvement in matters concerning the award of units to Maryland. Tr. 470 (Barksdale).

Similarly, Silvio DeBartolomeis also testified that defendant was involved in both the Baltimore Uplift One project and in the Patriots project, both of which are located in Maryland, and was involved in Mod Rehab units being sent to the State of Maryland. Tr. 829-30 (DeBartolomeis).[49]

In addition, as to the 1987 time period, the evidence demonstrated that defendant was involved in the Foxglenn project,

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[49] The testimony of Barksdale and DeBartolomeis is corroborated by Golec's testimony about Patriots. Tr. 1781-84, 1791.

which was located in Prince George's County, Maryland, Tr. 558-59 (Shelby); Tr. 1120-21 (Sankin), and the Eastern Avenue project, a portion of which was in Maryland.[50] Tr. 563 (Shelby); Tr. 1122-23 (Sankin). Defendant Dean met with Shelby on three or four occasions to discuss the Foxglenn project. Tr. 559-60 (Shelby). Shelby had two or three meetings and numerous telephone conversations concerning Eastern Avenue; his primary contact was defendant Dean. Tr. 563-64 (Shelby).

II. DEFENDANT'S STATUTE OF LIMITATIONS ARGUMENTS ARE WITHOUT MERIT.

Defendant also argues that counts one through four are barred by the statute of limitations. She is wrong. Counts one and two on their face charge, and the government proved, that numerous overt acts were performed by defendant and her co-conspirators within five years of the superseding indictment; in any event, defendant waived any challenge to these counts on statute of limitations grounds. Similarly, counts three and four were brought within the statute of limitations, as is evident from the acts charged and proved; moreover, defendant's challenge to these counts also comes too late.

A. Counts One and Two Were Not Barred By the Statute of Limitations.

As to counts one and two, defendant claims that no overt acts "done by" her occurred within five years of the superseding indictment, which was returned on July 7, 1992. Deft. Third Motion

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[50] Shelby testified specifically that defendant Dean was aware that the Eastern Avenue project was located in Maryland. Tr. 564 (Shelby).

at 64-71. This claim shows again the extent to which defendant is willing to misrepresent the facts. As we show below, counts one and two both charge, and the government proved, that defendant herself committed overt acts in furtherance of the conspiracies within the limitations period.

Defendant's argument is also defective as a matter of law. Defendant to the contrary, the test here is not whether any overt acts were "done by" defendant within the limitations period. It is rather whether any overt acts in furtherance of the conspiracy were committed by any of the co-conspirators within the limitations period. See Grunewald v. United States, 353 U.S. 391, 397 (1957).[51] Here again, the facts are entirely against defendant. As we demonstrate, the indictment charges, and the government proved, that defendant's co-conspirators also committed numerous overt acts in furtherance of the conspiracy within this period.

Finally, defendant also errs in suggesting that she preserved this statute of limitations issue. In fact, defendant first raised this challenge to counts one and two post-trial. As shown in the final part of this section, she has thus waived any such challenge.

1. Count One: Count one of the indictment charged that, beginning in and around 1983, and continuing thereafter up to the date of the indictment, defendant conspired to defraud and commit

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[51] In Grunewald, the Supreme Court stated that "the crucial question in determining whether the statute of limitations has run is the scope of the conspiratorial agreement, for it is that which determines both the duration of the conspiracy, and whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy." 353 U.S. at 397 (footnote omitted).

offenses against the United States in connection with the award of funds under HUD's Moderate Rehabilitation Program ("Mod Rehab Program"). The indictment charged that the goals of this conspiracy were that defendant would use her official position to benefit herself, her family, and her co-conspirators; that the co-conspirators would in fact be benefitted and enriched; that the co-conspirators would provide tangible and intangible benefits to defendant; and that defendant would "falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy." Count one, ¶¶10-13.

The government proved at trial that this conspiracy was an ongoing one, and that it in fact has not yet been completed. As the parties stipulated at trial (Tr. 2138), HUD Mod Rehab funds continue to be paid out on a monthly basis to the projects that received awards as a result of the conspiracy. The indictment charged (count one, ¶¶ 9, 17), and the government proved, that it was a part of the conspiracy that the developer clients of the co-conspirators would receive these funds for a fifteen-year period. The conspiracy thus cannot be considered complete while those federal funds continue to be paid out.[52]

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[52] See, e.g., United States v. Girard, 744 F.2d 1170 (5th Cir. 1984)(statute of limitations does not begin to run until contractor received last payment from HUD pursuant to contract obtained by bid-rigging); United States v. Northern Improvement Co., 814 F.2d 540 (8th Cir.), cert. denied, 484 U.S. 846 (1987)(bid-rigging; same); cf. United States v. Nazzaro, 889 F.2d 1158, 1162-64 (1st Cir. 1989)(series of payments, standing alone, will not extend statute if "lengthy and indefinite")(emphasis added).

But the Court need not reach this issue to reject defendant's claim, for there is a more fundamental basis for decision. Defendant herself committed overt acts in furtherance of the conspiracy within the limitations period. Defendant fails to note that count one charges as an overt act that on August 6, 1987, defendant testified falsely before the Senate Banking Committee. ¶88. Defendant's act brings this count squarely within the limitations period, since her testimony was in furtherance of the conspiracy's goal that defendant would conceal the manner in which HUD funding awards were actually made in order "to hide the existence and ongoing nature of the conspiracy."[53] ¶13. Furthermore, on December 15, 1987, Mitchell paid $3,324.83 for defendant's birthday party, another overt act that directly

[53] See United States v. North, 708 F. Supp. 375, 377 (D.D.C. 1988)("The indictment clearly alleges a conspiracy which involved concealing the very existence of the profits of the enterprise from the start and hiding from Congress information relating to the conspirators' assistance for the contras. Its purpose depended on deceit from the start, and acts of concealment were actually part of the commission of the substantive crime."); see generally Grunewald, 353 U.S. at 408-09 ("The many overt acts of concealment occurring after 1949 could easily have been motivated at least in part by the purpose of the conspirators to deliver the remaining 'installments' owing under the bargain -- to wit, the safeguarding of the continued vitality of the 'no prosecution' rulings.")

involved defendant.[54] ¶80. Finally, defendant met with Shelby on October 30, 1987. ¶79.

Furthermore, it cannot seriously be disputed that numerous overt acts in furtherance of the conspiracy were committed by defendant's co-conspirators within the limitations period. The indictment alleged, and the proof showed, that it was a goal of the conspiracy that defendant's co-conspirators would be benefitted and enriched by the conspiracy, through receiving payments from developers for whom they had obtained Mod Rehab funds. See, e.g., count one, ¶11, ¶20. As a result, those payments were central to the conspiracy.

Accordingly, at the very least, the conspiracy here continued until defendant's co-conspirators received the payments that the conspiracy was intended to provide them. At trial, the government proved, as the indictment charged, that a number of those payments occurred after July 7, 1987. With regard to the Arama Project, co-conspirator Nunn entered into a "Memorandum of Understanding" on or about June 14, 1985, with the developer, Art Martinez, that

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[54] The indictment charged, and the trial established, that it was a goal of the conspiracy that defendant would seek to use her official position to benefit and enrich Mitchell; and that it was a further goal of the conspiracy that Mitchell would in turn provide tangible and intangible benefits to defendant. Count one, ¶10, ¶12. Defendant testified that while Mitchell lived in her mother's house, he "had absolutely no income to speak of," and that it was her impression that his business was "very unsuccessful." Tr. 3164, 2597. Yet as a result of this conspiracy, Mitchell and his company were paid at least $234,000. Thus, it was entirely foreseeable, and squarely within the scope of the conspiracy, that Mitchell would, as a result of the conspiracy, be able to provide the kind of financial benefits to defendant and her family that he otherwise could not have given. One of those benefits was the payment for this expensive birthday party.

provided that payments of Nunn's fee of $275,000 would be made from an escrow account, at such time and in such manner as agreed by Nunn and Martinez. See Count one, ¶40; G. Ex. 32; Tr. 1375 (Nunn). Co-conspirator Nunn entered into a similar escrow agreement on or about December 19, 1986, in connection with the South Florida I project. See Count one, ¶52; G. Ex. 45; Tr. 1385-86 (Nunn).

Nunn received interim payments under these agreements in 1985 and 1986. See Count one, ¶41, ¶53; G. Exs. 50, 51, 57; Tr. 1390 (Nunn). It was not until after July 7, 1987, however, that he received the final payments called for by the agreements. The government proved at trial that on or about March 8, 1989, Nunn wrote to Martinez enclosing the authorization for payment of $160,000 from the escrow account that Martinez had executed on February 17, 1989. See G. Ex. 60. Thereafter, on or about May 11, 1990, Nunn wrote to Martinez seeking final payment of the total fees due and owing on the Arama and South Florida I projects. See Count one, ¶57; G. Ex. 61. That letter included an authorization for payment executed by Martinez on or about May 16, 1990. See Count one, ¶58; G. Ex. 61A. Nunn received these amounts. See Tr. 255 (Martinez); Tr. 1386, 1391-92 (Nunn).

On their face, these overt acts bring this conspiracy within the limitations period. Defendant's argument that she could not have "foreseen or depended" on these payments being made (Third Deft. Motion at 66) is wholly without merit. These payments were entirely foreseeable, since they were her co-conspirators' compensation for securing the HUD funds. It is irrelevant -- even

assuming it to be true -- that defendant may not have known the exact schedule under which her co-conspirators were to be paid, or that she was no longer active in the conspiracy when those payments finally were made. Absent proof that defendant affirmatively withdrew from the conspiracy -- and there was no such proof here -- defendant was bound by the acts of her co-conspirators.[55]

2. Count Two: Count two of the Indictment falls within the limitations period for the same reasons that count one does. Count two charged that defendant conspired to defraud and commit offenses against the United States by facilitating the award of HUD Mod Rehab funds for the clients of her co-conspirators, Andrew Sankin, Thomas Broussard, and Richard Shelby. Count two, ¶11, ¶15. Like the Mod Rehab awards in Count one, these funds are awarded for a 15-year period, and -- as the parties stipulated at trial, Tr. 2138 -- continue to be paid out, on a monthly basis, at the present time.[56] Thus, count two also is within the limitations period,

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[55] "The statute of limitations begins to run for an individual defendant involved in a continuing conspiracy from the conclusion of the conspiracy unless an individual can show that he withdrew from the conspiracy by an affirmative act designed to defeat the purpose of the conspiracy." In re Corrugated Container Antitrust Litigation, 662 F.2d 875, 886 (D.C. Cir. 1981). Accord, e.g., United States v. Adams, 1 F.3d 1566, 1582 (11th Cir. 1993). Thus, "[b]efore the statute runs out the individual remains liable for his own criminal acts, and also for the acts of his co-conspirators, including those acts occurring after the individual's own last overt act in furtherance of the conspiracy." In re Corrugated Container Antitrust Litigation, 662 F.2d at 886.

[56] See Count Two, ¶11 ("These Awards authorized expenditures by HUD in excess of $3,000,000 in yearly contract payments, and in excess of a total of $52,000,000 in Mod Rehab payments over the 15-year period of the Mod Rehab contracts"); ¶57 ("On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the

since the HUD payments were intended to, and did, continue after July 7, 1987.

But here again, it is clear that the statute of limitations was satisfied even apart from the ongoing nature of the Mod Rehab payments to the developers. This is so because, as in count one, defendant herself committed overt acts within the limitations period, including testifying before the Senate on August 7, 1987 (count two, ¶108), meeting with Shelby on July 7, 1987 (¶102), and meeting with Sankin on September 27, 1987 (¶105).

Furthermore, again as in count one, defendant's co-conspirators also committed overt acts in furtherance of the conspiracy after July 7, 1987. One of the chief goals of the conspiracy was that defendant's co-conspirators would enrich themselves by collecting payments from their developer clients for having obtained Mod Rehab funds for them.[57] But this goal was not completed until after July 7, 1987.

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most recent of the monthly Mod Rehab payments of federal monies in connection with the Regent Street project, in the approximate amount of $11,000."); ¶68 ("On or about June 1, 1992, as a result of the foregoing acts of the defendant **DEBORAH GORE DEAN** and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Alameda Towers Project in the approximate amount of $99,000."); ¶92 ("On or about June 1, 1992, as a result of the foregoing acts of the defendant **DEBORAH GORE DEAN** and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Foxglenn Project, in the approximate amount of $101,000.")

[57] Count Two charged, and the proof established, that it was a goal of the conspiracy that defendant's co-conspirators "would in fact be benefitted and enriched" by the conspiracy, and that they would achieve this goal "by charging developer/clients for obtaining HUD benefits, including Mod Rehab funds and units." Count Two, ¶13, ¶22.

For instance, with regard to the Alameda Towers Project, the government charged and proved that on or about October 22, 1985, co-conspirators Sankin and Broussard agreed with the developer that they were each to be paid $100,000 for obtaining 300 Mod Rehab funding units for the Alameda project (count two, ¶62); the agreement provided for payments of $25,000 a year over a period of four years (Tr. 1019 (Broussard); G. Exs. 140, 141). These amounts all were paid after July 7, 1987.[58] On or about December 4, 1987, the conspirators received their first $25,000 installment payments. Count two, ¶65; see G. Ex. 144 (December 1, 1987 letter from developer to Sankin, enclosing check for $25,000; check stub sets out schedule of payments); G. Ex. 144B (Sankin's December 4, 1987 deposit slip); Tr. 1170 (Sankin).[59] The next $25,000 installment payment was received on or about March 21, 1990. Count two, ¶66; G. Ex. 146 (March 19, 1990 check for $25,000 to Sankin); G. Ex. 146 (deposit slip); Tr. 1171 (Sankin). The final $25,000 installment payment was made on or about December 3, 1990. Count two, ¶67; G. Ex. 146C; Tr. 1172 (Sankin).

These payments were at the heart of the conspiracy and -- because they were set up as installment payments -- it was not only foreseeable, but in fact foreseen, that they would be made over

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[58] Broussard and Sankin did not receive their final $25,000 installments. See Tr. 1118 (Testimony of Sankin).

[59] Thereafter, on or about September 9, 1988, in fulfillment of the terms of the original agreement, Sankin received a personal guarantee from the developer regarding payment of the remaining installment payments. G. Ex. 145.

time. They therefore are another reason that this count is well within the limitations period.[60]

3. Waiver: The foregoing statute of limitations challenges are also procedurally defective. By failing to raise these claims until her post-trial motion, defendant waived them. Defendant's pretrial motion to dismiss sought to preserve the statute of limitations only as to claims that might arise thereafter: the motion stated that "[t]hrough appropriate discovery and as the case progresses, evidence may be adduced which shows that some or all of the charges contained in the Superseding Indictment were not returned within the five (5)-year statute of limitations." But none of the statute of limitations claims that defendant raises here was revealed through discovery: these claims were presented by the indictment itself. Defendant's claims are in fact facial challenges to the indictment, which charged each and every one of the overt acts she now claims to be inadequate.

As such, these claims should have been made within the time set by Judge Gesell for pretrial motions. Defendant's failure to

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[60] The statute also is satisfied here by the January 12, 1989 payment of $10,000 to Sankin by the developer of the Regent Street Project. Count two, ¶56; G. Exs. 134, 135; Tr. 1167, 1159 (Sankin). Sankin had been paid $1,000 in connection with this project in 1985. Count Two ¶52; G. Exs. 127, 128. Thereafter, in 1985, he sought additional payment from the developer. Count two, ¶55; G. Ex. 131; Tr. 1158-59 (Sankin). That final payment was not made until 1989. Even if it were true that Sankin had given up hope of receiving this payment, that would not suggest that his actual receipt of the payment cannot serve as an overt act. To the contrary, as Sankin's 1985 demand makes clear, he did not consider his payments complete with regard to this project, and thus his acceptance of the payment, whenever it might be made, was a foreseeable act in furtherance of the conspiracy.

do so constitutes a waiver under Fed. R. Crim. P. 12(f). Moreover, even apart from defendant's failure to abide by the pretrial order, these arguments are barred by Fed. R. Crim. P. 12(b)(2), which requires that all "[d]efenses and objections based on defects in the indictment or information," with the exception of failure of jurisdiction and failure to charge an offense, must be raised prior to trial. See generally Davis v. United States, 411 U.S. 233, 241 (1973)(if time limits of rule are followed, inquiry into alleged defect may be concluded before burden and expense of trial). While normally statute of limitations claims may be made before or at trial, here the alleged statute of limitations issues raised by defendant are in fact simply claims that the indictment is defectively pled. As such, they should have been raised prior to trial.

B. Counts Three and Four Were Not Barred By the Statute of Limitations.

Defendant's statute of limitations challenge to counts three and four repeats verbatim the arguments she made in her Rule 29(b) motion, filed on October 19, 1993. In response, we respectfully refer the Court to our memorandum in opposition, filed on October 22, 1993, at 1-17. As that memorandum shows in detail, the superseding indictment did not substantially broaden the illegal gratuity charges set forth in the original indictment; instead, the superseding indictment simply added additional details of the charged offense, and therefore cannot form the basis for a statute of limitations objection. Nor was the original gratuity charge, which was brought on April 28, 1992, itself time-barred; under the

gratuity statute and controlling case-law, the statute of limitations must be measured from -- at the earliest -- the date the Kitchin check was deposited, which is May 5, 1987.[61] Finally, our opposition showed that these statute of limitations claims were in any event untimely.[62]

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[61] This also disposes of defendant's new argument that the Court erred in not instructing the jury on the defense theory that defendant was entitled to a verdict of not guilty if the jury found that the Kitchin check was dated prior to April 28, 1987. Deft. Third Motion at 89. Such an instruction would have been a misstatement of the law.

[62] In her latest motion, defendant also adds an argument that the conspiracy charged in count three is time-barred, since allegedly no overt acts in furtherance of the conspiracy occurred within the limitations period. But here again, defendant ignores the fact that the indictment charged, and the government proved, that the conspiracy continued well into the limitations period, for several reasons: Mod Rehab awards and payments to the developers continued to be made, in accordance with the conspiracy's objectives (count three ¶¶58, 61, 62); defendant herself committed overt acts in furtherance of the conspiracy, including testifying before Congress on August 6, 1987 (¶65) and meeting with co-conspirator Kitchin (see ¶60 and defendant's own testimony that she met with Kitchin in the fall of 1987 in connection with her alleged payments to repay the $4,000); and Kitchin received payment from the developers -- one of the chief objectives of the conspiracy -- on July 21, 1987 (¶59).

CONCLUSION

For the foregoing reasons, defendant's motion for judgment of acquittal should be denied.

Respectfully submitted,

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