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 SUPPLEMENTAL OPPOSITION TO DEFENDANT DEAN'S SECOND MOTION FOR JUDGMENT OF ACQUITTAL

Introduction and Summary of Argument

The United States, by and through the Office of Independent Counsel, files this supplemental opposition to defendant Dean's motion for judgment of acquittal made at the close of all the evidence. In accordance with the Court's direction of October 25, 1993 (Tr. 3617), this supplemental opposition sets out record citations that show that there was more than sufficient evidence to allow the conspiracy and perjury counts to go the jury. Indeed, as we show below, the additional evidence that was received on defendant's case and in rebuttal only reinforces the conclusion that this Court reached at the close of the government's case: defendant's motion for judgment of acquittal must be denied.

ARGUMENT

I. Defendant's Motion Is Defective On Its Face Because It Fails to Consider All The Evidence.

On October 4, 1993, this Court denied defendant's motion for judgment of acquittal made at the close of the government's case. See Tr. 2040 & ff. In that ruling, the Court set out this Circuit's standard for ruling on Rule 29 motions, and then carefully described the evidence introduced by the government in its case-in-chief that showed that each count was appropriately submitted to the jury.

Defendant subsequently moved for judgment of acquittal at the close of all the evidence. Rather than presenting any new arguments as to sufficiency, however, defendant merely repeated -- virtually verbatim -- the arguments already rejected by this Court in ruling on defendant's prior Rule 29 motion.[1] Likewise, defendant did not rely on any different or additional testimony or other evidence; to the contrary, she cited exactly the same transcript excerpts, with the exception of some testimony by Silvio DeBartolomeis that was left out of the second motion.

This alone provides sufficient basis to deny defendant's second motion for judgment of acquittal. In view of defendant's failure to cite any new or additional evidence, there is simply no basis even to revisit the Court's prior ruling, which is the law of the case.

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[1] See Government's Opposition to Dean's second motion, filed October 22, 1993 [hereinafter Gvt. Second Opp.] at 18-20 (comparing defendant's filings).

Moreover, this failure to cite new evidence reveals a more fundamental defect in defendant's renewed motion. Defendant fails to recognize that the Court, in ruling on her motion, must consider all the evidence that was presented in this case, not simply the evidence that was presented during the government's case-in-chief. By proceeding with her case after the denial of her initial Rule 29 motion, defendant waived her objection to that denial; as a result, in ruling on her 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). As we show below, it follows a fortiori from this additional evidence that the Court correctly sent this case to the jury.

Indeed, even were there no other evidence, defendant's own testimony at trial would render it impossible to grant her Rule 29 motion. As we show at greater length below, defendant's testimony on key points was inconsistent and implausible. 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.[2] That is precisely the

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[2] 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),

situation here. Thus, even if all the Court had before it was defendant's own testimony -- and that is far from the case -- defendant's motion would have to be denied.

In sum, defendant's renewed motion, like her first motion, cannot meet the high standards for Rule 29 motions set by the law of this Circuit. The jury has found defendant guilty beyond a reasonable doubt on each of the charged counts, and that decision must be reviewed "very deferentially." United States v. Harrison, 931 F.2d 65, 71 (D.C. Cir., cert. denied, 112 S. Ct. 408 (1991). Judgment of acquittal can be entered notwithstanding the jury's verdict only if it can be said that "'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)(citation omitted)(emphasis in original).[3] And, as this Court has already held (Tr. 2040), in making this determination, "'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

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discussed in Zeigler, 994 F.2d at 849.

[3] Furthermore, "[w]hen a reasonable mind might fairly have a reasonable doubt of guilt or might fairly have none, the decision is for the jury to make." United States v. Herron, 567 F.2d 510, 514 (D.C. Cir. 1977).

(1986)(citation omitted); Johnson, 952 F.2d at 1409.[4]

When measured by these standards, it is patent, as this Court already has found and as we show again below, that this case was properly submitted to the jury.

II. Defendant's Motion Must Be Denied In Light of All The Evidence.

A. 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 the conspiracy existed and that defendant intentionally joined that conspiracy. As we have shown in our prior submissions, the evidence here establishes that defendant entered into classic self-dealing conspiracies. The 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 federal funds. See, e.g.,

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[4] In addition, as this Court also 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 (quoting United States v. Staten, 581 F.2d 878, 883 (D.C. Cir. 1978)). Furthermore, Treadwell held that "the government, when using circumstantial evidence, need not negate all possible inferences of innocence that may flow therefrom." 760 F.2d at 333 (citing Holland v. United States, 348 U.S. 121, 139-40 (1954); United States v. Lewis, 626 F.2d 940, 951 (D.C. Cir. 1980)). As further support for its conclusion, Treadwell cited Glasser v. United States, 315 U.S. 60, 80 (1942), wherein the Supreme Court stated that "[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.'" See Treadwell, 760 F.2d at 333.

United States v. Gallup, 812 F.2d 1271, 1276 (10th Cir. 1987); United States v. Conover, 772 F.2d 765, 771-72 (11th Cir. 1985), aff'd in part and remanded on other grounds, 483 U.S. 107 (1987); Treadwell; see generally Government's Opposition to Dean's Motion for Judgment of Acquittal, filed October 4, 1993 [hereinafter First Gvt. Opp.] (discussing case law).[5]

The conspiracies charged here fall squarely within this well-established category of §371 cases; indeed, the evidence here is significantly stronger than in many of those cases. As we show below, as to each of the conspiracies charged here, 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 sought to conceal from outsiders -- including the 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 make out

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[5] It is, of course, a "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 19-18, 19-19 (1993)(citing cases).

violations of §371 as to each conspiracy count.[6]

In the remainder of this section, we discuss each of the conspiracy counts in turn. As to each count, we first note this Court's prior ruling; we then summarize the evidence before the jury with regard to defendant's role in each of the conspiracies. In addition to the citations set forth herein, we respectfully direct the Court's attention to the evidence set out in our prior briefs as well as to the summary charts previously filed with the Court. The summary charts are based on and cite Government

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[6] Moreover, a conspiracy to defraud the United States also will be made out if a public official acts to subvert governmental functions, even absent proof like that here that the official had a hidden personal interest in the official decision. The indictment here charges, and the proof establishes, that defendant did so seek to interfere with the lawful operations of the Mod Rehab program. The evidence has shown that there were at least two sets of legal constraints on how HUD officials awarded Mod Rehab funds. First, it has been the consistent testimony of the witnesses that, under HUD regulations, HUD could not make project-specific awards, and that PHAs were required to choose projects for Mod Rehab funding on a competitive basis; in turn, Dean herself, in her Senate testimony and in her testimony at trial, described a fair and regularized process by which HUD was to select PHAs to receive funding. See, e.g., Tr. 148-49, 155 (Greer); 163-67 (Hastings). Second, it also has been the consistent testimony of the witnesses that the HUD Standards of Conduct, which were and are embodied in regulations, forbade HUD employees to make funding decisions in violation of those standards. See, e.g., Tr. 155, 119 (Greer); Tr. 1742 (Zagame) Finally, defendant's own witness -- Michael Dorsey, former General Counsel at HUD -- testified that the Mod Rehab program was subject to HUD regulations, and that those regulations had not been followed for years. Tr. 3186-87.

A conspiracy to subvert such regulatory guidelines is directly within the reach of 18 U.S.C. §371. See, e.g., Hammerschmidt v. United States, 265 U.S. 182, 188 (1924)(to conspire to defraud United States "means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest"); Haas v. Henkel, 216 U.S. 462, 478 (1910)(upholding conviction under §371 where information was divulged contrary to "custom, practices and regulations of the Secretary of Agriculture").

exhibits admitted into evidence. They integrate the documentary evidence admitted through various witnesses and organize the documents chronologically by project. In this fashion, they illustrate the circumstantial links established and inferences which may be drawn from the documentary evidence.

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. 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. 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 simply ignores these findings, and instead repeats verbatim her claim that the evidence shows only that she "knew and socialized with persons who she knew or had been introduced to by others ...." Dean Second Motion at 37; Dean First Motion. Likewise, disregarding this Court's finding that there was sufficient evidence that defendant derived at least intangible benefits from this arrangement, she repeats her assertion that "the evidence does not show that her family was benefited in any way." Dean Second Motion at 41; Dean First Motion.

But the Court's finding is amply supported by the record. 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. The record is replete with 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). Indeed, 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 testimony)(Mitchell and mother "were very good friends" and he acted as an advisor to defendant, her mother, and her brother).[7] Defendant also testified that her mother paid Mitchell's living expenses. Tr. 3164. If this was so, the clear inference is that by generating income for Mitchell the defendant was able to limit the financial burden on her mother.[8]

Furthermore, there is 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. Tr. 3013-14.[9] The following year, Mitchell paid over $3,300 for a birthday party that was held for defendant at the Georgetown Club. See G. Ex. 238 and stipulation regarding

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[7] 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 that she had a hidden personal interest in helping Mitchell, and that she agreed to do so.

[8] Since Dean also looked to her mother for financial support, see testimony of Nettles-Hawkins, she was also personally benefitted when her mother was less burdened by expenses associated with Mitchell.

[9] 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 him for others. Tr. 3013-14. It was for the jury, of course, to decide the credibility of that explanation.

testimony of Norman Larsen.[10] Indeed, defendant cannot have it both ways: if, as her motion now seeks to suggest, she had no "family" relationship with Mitchell that would explain these payments, then they must be seen simply as 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, 2600, 2964.[11] In addition, defendant admitted that Mitchell interceded on her behalf with the Director of the FBI when defendant complained of the manner in the FBI was conducting her background investigation for her nomination to be Assistant Secretary. Tr. 3017-19.

As a matter of §371 law, these various benefits are more than sufficient to establish a personal interest on defendant's part in helping Mitchell; her argument that she had in fact no interest in doing so presents only a jury issue, not a basis for a judgment for acquittal. See, e.g., Gallup, supra (upholding §371 conviction of PHA official who benefitted brother-in-law; not necessary that government prove that he directly benefitted), and other cases

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[10] Here again, defendant sought to explain away this payment, claiming that her mother was going to reimburse Mitchell for this amount. Tr. 3014-15. Again, whether that explanation was plausible was for the jury.

[11] 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.

cited above, and in prior briefs.

There is likewise extensive evidence that defendant took official actions to advance Mitchell's interests at HUD. 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.[12]

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[12] 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. Finally, on the stand, defendant testified that she began becoming involved in program matters shortly after joining the Executive Secretariat.

In any event, it is legally irrelevant whether defendant had ultimate decisionmaking authority, either as a Special Assistant or as Executive Assistant; it is enough that she used what authority she did have to advance the interests of her co-conspirators. 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

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 John Mitchell was to share in the consulting fees but significantly -- in a pattern that appears in all three of the projects charged in Count I -- Mitchell's role was omitted from the contracts and related materials.[13] 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."

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 confirming her recent telephone conversation with General Mitchell concerning Arama's request for "additional Mod-Rehab units," 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." G. Exs. 27, 28.[14] In

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must run through the whole service").

[13] See G. Exs. 20, 21, 22 (Arama); G. Exs. 37, 46(S. Fla.); G. Exs. 71 (Park Towers).

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

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 which 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 materials to Mitchell and Nunn. Tr. 2970-71, 2981-82. Her claim that the materials were simply public records, or were materials given to her by others, presented at most a jury issue. Similarly, it was for the jury to decide the credibility of defendant's central defense, which was that she was unaware that Mitchell (and later Brennan) were being paid to act as consultants on these housing projects and that Mitchell and Brennan lied to her regarding Mitchell's role. See Tr. 2989-90, 2996-96, 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 this conversation never occurred. 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.[15]

The evidence is equally telling with regard to the South Florida 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. Brennan then called defendant to thank her. Tr. 326. For this, Global Research International -- Mitchell's company -- was paid $109,000. Tr. 326-27; G. Ex. 51. Here again, the evidence is clear that defendant was aware that Brennan worked with Mitchell. Indeed, 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 G. Ex. 256.

Frank Gauvry, a long-time social and business friend of Mitchell, and a friend and business associate of Brennan (Tr. 387-88, 389), 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

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[15] 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 hid her conspiratorial dealings.

Brennan. Tr. 2622-23. She also admitted that she had forwarded his 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. Finally, defendant admitted that she did not tell Secretary Pierce about Brennan, since he would not have been interested. Tr. 2625. ("A friend of mine asking me for something at HUD hardly required Secretary Pierce's attention").

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 memoranda of the developer -- Martin Fine -- to file 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).[16] Significantly, Shelby avoided identifying "his friend" in his dealings with Fine and Feinberg.[17] Moreover, neither Fine nor Feinberg were aware

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[16] The project summary chart for Park Towers illustrates the strength of the circumstantial evidence by placing Fine's memos to file chronologically with Dean's scheduled meetings and correspondence with Shelby. See Park Towers chart. Indeed, 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".

[17] 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, Tr. 674, 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: the fact 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.

that Mitchell was involved in the Park Towers project, even though, through Shelby's company, Fine paid Mitchell $50,000. Tr. 657 (Fine).[18] Finally, although Shelby denied discussing this project with Mitchell and Dean at the same time, on September 9, 1985, Mitchell and defendant's calendars reflect that defendant, Mitchell, Shelby and defendant were to meet for lunch; and on September 10, 1985, Shelby forwarded information on "the Miami Mod Rehab" which clearly suggests that project had already been discussed. G. Ex. 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,[19] when she allegedly was shocked by his request for units in connection with Prince George's County. Tr. 2567, 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

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[18] 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. 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. 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.

[19] 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.

Patenaude that, sometime after Patenaude started working for Dean in 1985, Dean had 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.

In sum, this evidence, among much else, demonstrates defendant's direct involvement with her co-conspirator's 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.

Finally, at the same time that 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 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." Defendant would have this Court hold as a matter of law that she was free not only to act in matters in which she has a hidden financial interest, but 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 charge was properly submitted to the jury.

2. Count Two: With regard to Count Two, this Court held on October 4, 1992, 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 has failed to address the Court's holding in her second motion for judgment of acquittal. She simply cites again the transcript excerpts that she cited in her first motion, and argues that there is no evidence linking her to the charged conspiracy. More particularly, the defendant repeats her 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." Dean Second Motion at 41. Defendant is, of course, wrong about what the evidence shows; moreover, defendant fails to understand that, at most, the question whether she benefitted Sankin, or he her, was for the jury to decide.

In fact, Sankin's testimony demonstrates that he 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. 1137-28. 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.[20] 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. Sankin, who attended law school, testified that he accompanied her to a real estate closing. Tr. 1139.[21] 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;

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[20] 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 getting it out 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.

[21] Indeed, Dean acknowledged that she could request services of Sankin because he was already "on the family payroll".

bought her gifts, including an expensive antique cup and saucer,[22] G. Ex. 1281, 1245-46, and expensive bottles of port, Tr. 1288-89.

In light of all this, it is, to say the least, surprising to hear defendant argue that the government has not proved that defendant received benefits from Sankin. Defendant's argument boils down to this: as a matter of law, she cannot be prosecuted under §371 for agreeing to act to advance Sankin's interests before HUD at the same time that she was receiving gifts, meals, and other benefits from him, and at the same time that he was conferring benefits on her family. But, as the cases cited above indicate, this is not the law; to the contrary, under such circumstances, "[i]t cannot be supposed that [defendant's] duty could be fully, impartially and honestly discharged." Crawford v. United States, 212 U.S. 183, 191 (1909). As noted above, §371 prosecutions have been upheld even absent any proof that the defendant benefitted from the conspiracy. See, e.g, Conover and other cases cited above. It necessarily follows that the proof of benefit to defendant here is more than sufficient.[23]

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[22] Tellingly, Dean conveniently 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.

[23] 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.

The evidence is equally compelling as to the actions defendant agreed to take, and did take, to benefit Sankin. Those actions begin with the Necho Allen hotel, a Mod Rehab project. In late 1984, John Rosenthal, a Philadelphia developer, was seeking exception or increased rents for the Necho Allen Hotel. G. Ex. 101, Tr. 689 (Rosenthal). Career staff at both the HUD regional office and HUD HQ disapproved the request. G. Ex. 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.[24]

Five days later, the defendant scheduled a brunch with Sankin on a Saturday in Rehobeth 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

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[24] 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. 691.

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 HQ 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.[25] 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.[26]

This pattern continued with the Regent Street project.[27] Even before he paid Sankin for Necho Allen, Rosenthal sent him material for his next project, which was to obtain Mod Rehab units for

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

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

[27] Dean places great reliance on Rosenthal's testimony that the Senators from Pennsylvania wrote letters of support regarding Regent Street. See Dean Mem. at 22. Contrary to Dean's assertions that mod rehab awards were political, Rosenthal's testimony and the other evidence regarding Regent Street, including the contemporaneous documents, demonstrates that, even with the support of both Senators, Rosenthal was unable to obtain the mod rehab units for this project without the help of a consultant who had access to Dean. Moreover, Dean herself admitted that it was she who told consultants and developers to have their Senators write. Tr. 2724. The fact that she may herself have generated congressional support for the projects where she had personal dealings with favored consultants and developers hardly poses a defense.

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. Ex. 126.[28] Early in fiscal year 1986, the balance of 13 units was sent to Philadelphia.[29]

The evidence regarding the Alameda Towers project is equally

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[28] Rosenthal and Sankin had a fee dispute regarding Regent St. 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.

[29] 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. Hale at 804-5. With regard to G. Ex. 129, she stated that she did not know Sankin or Rosenthal or anything else about this allocation. Tr. Hale at 738.

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 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.[30] James Wilson, a

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[30] In arguing that the evidence with respect to Count 2 is insufficient, defendant quotes isolated testimony from Broussard's cross-examination: that defendant did not ask him to keep the fact of their conversations secret and that she did not indicate she was doing anything inappropriate or illegal. Dean Mem. at 19 note 7 citing Tr. 1035.

To the extent that Broussard's testimony about concealing his conversations with defendant is of any significance, it was contradicted James Wilson. Wilson, a builder and developer for over 30 years, Tr. 1066-67, 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 lack of expertise in the development field, Wilson asked Broussard how he had obtained the commitment of federal subsidies, and their negotiations came to an abrupt termination because Broussard would

developer, testified that Broussard approached him and said that he had 300 units to be used in Puerto Rico. Tr. 1076. 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,[31] Rubi agreed to pay Sankin and Broussard $100,000 each for 150 units.[32]

Thus, the uncontradicted evidence here is 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 that defendant

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not disclose more details about the allocation. Tr. 1078-80.

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, presented a jury issue.

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

[32] 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. Tr. 1047. This is further evidence that the conspirators sought to conceal their activity.

Defendant has argued, in her defense, that the entire mod rehab system was "political" and with regard to Alameda Towers has directed the Court to Rubi's testimony regarding political contributions. See Dean Mem. at 26-27. Rubi candidly admitted that he had made political contributions in an effort to win mod rehab awards. Tr. 1061-62. The importance of his testimony in this regard is that, even with the support of powerful Republican senators, a developer such as Rubi could not get all the mod rehab units he needed for his project without dealing with the consultants favored by Dean. In short, this testimony undercuts Dean's position.

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.

The same pattern of conduct is revealed by the evidence as to the Foxglenn and Eastern Avenue projects, with the exception of the fact 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.[33] 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.[34] In light of all the evidence -- including the testimony of Shelby, Sankin

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[33] In support of her motion for acquittal, defendant quotes certain passages from the cross-examination of Richard Shelby. See Dean Mem. at 28-30. Contrary to the impression defendant wishes to create, Shelby also 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. The Foxglenn and Eastern Avenue summary charts show the chronological relationship between Shelby's scheduled meetings with Dean and events associated with these projects. They also set in chronological perspective his correspondence with Dean including letters thanking her and assuring her of his future help and some documentary evidence of the support he provided her in her efforts to become Assistant Secretary for CPD.

[34] Defendant's first motion to the contrary, Dean's nomination for the Assistant Secretary slot was contemplated as early as 1986, and she began gathering support at that time -- not in 1987, as she now seeks to suggest.

and Patenaude, see supra -- the jury ws entitled to disbelieve Dean's testimony that she did not assist Shelby or Sankin to obtain Mod Rehab units for those or other projects. See, Tr. 2700, 2684. In any event, the direct contradiction presented by this testimony was for the jury to resolve.

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. 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's motion not only fails to address this finding; it fails to address Count Three at all. This is hardly surprising,

given the overwhelming proof that supports the Court's conclusions regarding this count. Kitchin testified that defendant had agreed to give him Mod Rehab units, and that he thereafter gave her $4,000 at her request. Tr. 1431-47. Defendant admitted having received the $4,000, but denied having dealt with Kitchin on Mod Rehab matters. On its face, this was an issue of credibility for the jury to decide.

The evidence is even more telling in detail. 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; also that she had bought a piano. 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 fully repaid. Tr. 1445. Jennings, Kitchin's associate, corroborated Kitchin's testimony that he had given defendant $4,000. Tr. 1523 (Jennings). Defendant also asked for, and received, Kitchin's support for her nomination to be Assistant Secretary. Tr. 1447, 1527.

Beginning shortly before this time, in the fall of 1986, Kitchin had approached defendant for Mod Rehab units for use in

Atlanta. Tr. 1431.[35] 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 -- allowing 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. Jennings, see also Tr. at 1551 (Nettles-Hawkins). Jennings further stated that the defendant provided Kitchin with HUD funding documents. Tr. 1524-25 (Jennings).

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 this testimony was contradicted not only by Kitchin and Jennings, but also by Sherrill Nettles-Hawkins, defendant's secretary. Even more significantly, 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

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

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, he had signed a contract." Tr. 2745. As the government established on cross-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.

B. There Was More Than Sufficient Evidence that Defendant Perjured Herself.

Neither of defendant's written motions for judgment of acquittal attempted to demonstrate that there was insufficient evidence to permit the jury to consider the perjury charges. Nor is this surprising, in light of the overwhelming evidence that was before the jury on these counts. As we show in this section, the Court's denial of the initial motion to dismiss these counts was correct; indeed, the evidence that was subsequently introduced by defendant and on rebuttal serves only to buttress the Court's conclusion that these counts were properly sent to the jury.

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" -- the 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. Several former Acting Assistant Secretaries for Housing and/or Deputy Assistant Secretaries in Housing described the extent of defendant's decision-making role in the mod rehab program and the lack of any selection criteria. Tr. 726, 751, 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. 1982-93 (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 puts the lie to defendant's description of the process in her Senate testimony. Prior to the "formal session,"

the defendant and Demery would meet in a more informal sessions where the two of them would meet and discuss PHA requests than 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 a couple of 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)).

Moreover, that defendant's Senate testimony was perjurious and/or designed to mislead also was established by evidence introduced by defendant in her own case. Michael Dorsey, former General Counsel at HUD and a defense witness, 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." Tr. 3180, also 3182. He 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 individual funding decisions on individual projects in the mod rehab program. Tr. 3184.

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 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 including 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[36] or their consultants

[36] 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.

as well as documentary evidence showing contacts by developers and subsequent thank you notes from them.

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.[37] 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 Once.

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 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

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[37] At the nomination hearing, the Chairman referred to a Washington Post article about a $17 million abuse of funds involving a project known as Baltimore Uplift One. In the course of colloquy with the Chairman about the type of funds involved in the project, the defendant twice stated "I've never heard of Baltimore Uplift One," and offered two explanations for not knowing it. See colloquy quoted in Count Nine, para. 65 and Count Ten, para. 5.

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." Tr. 1785.[38]

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. She 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.[39] Tr. 1786-87.

The testimony of DeBartolomeis and Golec was corroborated by

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[38] 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.

[39] 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.

During the defense case, defendant called one other witness, James 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.

the defendant's personal secretary, Sherrill Nettles-Hawkins, who stated that the Bob Tuttle who did not work at the White House called the defendant "occasionally, 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. interest, 6z, 7dd.

7. Count Eleven and Twelve: In these counts, defendant is 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."[40] The Court held that "[a]gain, we're talking about the '87 timeframe 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 has introduced substantial evidence to prove that here again defendant Dean lied. The evidence shows that defendant participated in mod rehab funding

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[40] Her testimony is quoted at Count Eleven, para. 5 and Count Twelve, para. 5.

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 Dean discussed with him units being sent to the Baltimore Housing Authority. Tr. 453, 468 (Barksdale). According to Barksdale, defendant Dean mentioned that one of Janice Golec's friends was involved in the project. Id. Barksdale also stated that, to his knowledge, defendant Dean 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 Dean 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).[41]

In addition, the evidence demonstrated that, contrary to her sworn statement to the Senate Banking Committee, defendant Dean also was involved in the Foxglenn project, 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[42] Tr. 563 (Shelby); Tr. 1122-23, (Sankin). Defendant Dean met with Shelby on three or four occasions to discuss the Foxglenn project. Tr. 559 (Shelby). Shelby had two or three meetings and

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

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

numerous telephone conversations concerning Eastern Avenue; his primary contact was defendant Dean. Tr. 563-64 (Shelby).

CONCLUSION

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

Respectfully submitted,

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Dated: October 29, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 1993, I caused a true and correct copy of the foregoing Government's Supplemental Opposition to Defendant Dean's Second Motion for Judgment of Acquittal to be delivered by ~~hand~~ fax to the following:

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