

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : Appellee,
No. 92-0181-a1 : :
V. : :
DEBORAH GORE DEAN Appellant. : :
 : :

**MEMORANDUM IN SUPPORT OF
DEAN'S MOTION TO SET ASIDE THE
COUNT ONE OR IN THE ALTERNATIVE**

**DEFENDANT DEBORAH GORE
VERDICT ON
FOR A NEW TRIAL**

Defendant, Deborah Gore Dean, by and through counsel, hereby moves this Honorable Court to set aside her conviction on Count One. As reason therefore, the Defendant states that since trial she has discovered new material evidence that would **likely have** resulted in her acquittal on Count One, as defined by the Court of Appeals, if it had been presented at trial. United States v. Kelly, 790 F.2d 130, 133 (D.C. Cir. 1986). Indeed, as set forth below, the new evidence establishes that 1) Lance Wilson, not Ms. Dean, was involved with the Arama project and that Ms. Dean is completely innocent of any wrongdoing with respect to Count One; 2) the July 5th letter, relied on as the "chief" piece of evidence by the Court of Appeals is irrelevant; and 3) **the uncorroborated testimony of the government's material witness, Maurice Barksdale (also relied on by the Court of Appeals)** that he did not make project **specific funding** was misleading, if not false. In further support of this motion, Defendant states as follows:

I . THE COURT OF APPEALS DRASTICALLY REDUCED THE SCOPE OF COUNT ONE TO ONE PROJECT, WITH ONE "CHIEF" PIECE OF EVIDENCE LINKING MS . DEAN TO THAT PROJECT.

A. Background

Deborah Gore Dean was an employee of the Department of Housing and Urban Development (hereinafter "HUD") from 1982 to 1987. She initially supervised HUD's correspondence unit, but in June, 1984, was promoted to Executive Assistant to the Secretary. There, subject to the Secretary's supervision, she assisted him and represented him both within the Department and with Congress and constituency groups. Tr. 2186-88.

The case against Ms. Dean centered on her involvement with HUD's Section 8 Moderate Rehabilitation Program ("Mod Rehab"). Specifically, the indictment alleged that Ms. Dean was involved in three broad conspiracies to defraud HUD in the operation of the Program by assisting acquaintances to obtain Mod Rehab funding for certain projects.

B. Scope of Count One*

Count One alleged that Ms. Dean caused or facilitated actions by HUD concerning four projects in order to benefit former Attorney General John N. Mitchell. These actions included the favorable resolution of a problem related to a project called Marbilt **in** 1983, and moderate rehabilitation funding for three projects in Dade County Florida, known as Arama, Park Towers, and South Florida I, which were funded as a result of HUD actions between 1984 and 1986. Ms. Dean was convicted on Count One.

Ms. Dean appealed her *conviction* on Count One for, inter alia, insufficiency of evidence. The Court of Appeals agreed in most respects with Ms. Dean and drastically reduced the scope of Count One, holding that there was insufficient evidence with respect to three out of the four projects alleged. United States v. Dean, 55 F.3d 640, 667, n.18 (noting that "much of the government's evidence was *insufficient* to show that Ms. Dean committed overt acts in furtherance of the conspiracy alleged in the indictment.").

only the Arama project survived the Court of Appeals' *insufficiency* of evidence analysis, permitting the Court to uphold Ms. Dean's *conviction* on that Count.

C. The Court of Appeals Found That Only Limited Evidence Supported Count One.

The Court of Appeals found that the "chief" piece of evidence *linking* Ms. Dean to the Arama project was a July 5, 1984 letter she wrote to Louie B. *Nunn* (Mr. Mitchell's co-consultant on the Arama project) about the Arama Partnership's request for additional funding. The letter reads:

The Department is now in the process of completing the papers for the 293 units to the Public Housing Authority in Florida. Let me assure you 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.

55 F.3d at 651.

The Court also relied on the uncorroborated testimony of material government witness, Maurice Barksdale (the HUD official who authorized the allocation of 293 mod rehab units to Dade

County in July 1984). The Court of Appeals noted that Mr. Barksdale testified that he did not know that the 293 units would go to the Arama project; that the July 5th letter ran contrary to HUD's prohibition against project-specific awards; and that he did not remember Ms. Dean asking him to sign off on the funding document. . No other evidence was cited by the Court of Appeals in support of Count One.

II. NEW EVIDENCE CONCLUSIVELY DEMONSTRATES THAT MB. DEAN HAD NOTHING TO DO WITH THE ARAMA PROJECT, THE ONLY REMAINING PROJECT UNDER COUNT ONE.

A. Lance Wilson Recently Testified That It Was He, Not Ms. Dean, Who Was Responsible For The HUD Actions concerning The Arama Project.

Lance Wilson, who served as Executive Assistant to Samuel R. Pierce Jr., Secretary of Housing and Urban Development ("HUD"), from January 1981 to June of 1984, recently testified¹ (affidavit dated December 7, 1996 attached hereto as Exhibit 1) that he, rather than Ms. Dean, was responsible for the HUD actions *concerning* the Arama funding:

The Mod Rehab program was under the control of the Assistant Secretary for Housing, Maurice Barksdale, with whom I had daily contact. Barksdale, who ran the program in 1984, would authorize approval and funding of projects.

I had a number of *conversations* with Mitchell and Nunn about HUD's allocating approximately 300 units in order to support a project they were working on in **Florida** which later became known as Arama. My recollection of having had several conversations with Mitchell and Nunn about the approval and funding for this project is reinforced by having reviewed several

¹ At the time of Ms. Dean's trial, Mr. Wilson was on bond pending appeal of his own conviction, in a case in which he declined to testify.

telephone messages to Mitchell from me. The messages are attached to this affidavit. The first message dated January 12, at 4:07 with notations reflects that I told Mitchell that the 300 units for the projects in Dade County, Florida we had previously discussed would be approved and that I had discussed it with Barksdale. Another telephone message dated January 26 at 2:32 from me to Mitchell also appears likely to have been related to the approval and funding for Arama since there was no other reason for me to have called Mitchell.

I met with Maurice Barksdale and recommended that he allocate the units assuming that the PHA applications for the units met HUD requirements. I was led to believe by Barksdale that he would approve the units for funding. In fact, by the time I left HUD I believed that Barksdale had approved the units for funding. Beside talking to Barksdale about this project, I recall talking to others in that office including Stuart Davis, Barksdale's Executive Assistant.

At that time there would have been a lag between the decision to fund Arama and the actual funding of the project because of the number of projects in the funding pipeline for the Dade County PHA.

I decided to leave HUD in April or May 1984. Before my announcement I did not discuss my departure with anyone at HUD other than Secretary Pierce. Once my announcement was made it was thought that Alfred Moran, then HUD Regional Administrator in Chicago, would succeed me as Executive Assistant and not Dean.

My conversations with Mitchell and Nunn, my recommendation to Barksdale that the Arama project be approved, and Barksdale advising me that the units had been allocated and approved occurred prior to the time I left HUD and Ms. Dean assumed the position of "Acting" Executive Assistant to Secretary Pierce.

The activity on Arama occurred while Ms. Dean was in charge of the correspondence unit. That position would not have involved her in Mod Rehab. I recall no conversations with Ms. Dean or any dealings with Ms. Dean on the Arama project. I would have remembered such a conversation had one occurred.

I have reviewed the July 5, 1984 letter from Ms. Dean to Nunn. It was not unusual for HUD officials to either call or send a similar letter informing a particular consultant who was interested in a specific

project that the units he or she was seeking were approved or denied for funding.

At the time of Ms. Dean's trial I had been convicted of one Count *concerning* my conduct while an executive of PaineWebber, Inc. and I was not willing to testify on the Arama matter or any other matter. Before my conviction was reversed by the Court of Appeals on June 17, 1994, I was granted immunity by Independent Counsel and testified before the Grand Jury. After my conviction was reversed, I testified again before the Grand Jury. I do not recall having been shown any documents or asked any questions *concerning* Arama by the Independent Counsel's office before, during, or after my Grand Jury testimony.

Exhibit 1.

The foregoing testimony establishes that Ms. Dean is *innocent* of any conspiracy concerning the funding of the Arama project and the evidence was not discovered until after trial. The Wilson Affidavit also demonstrates that Ms. Dean's position at HUD, at the time of the Arama funding decision was made, did not involve funding decisions. Wilson Affidavit at Z 13 ("the activity on Arama occurred while Ms. Dean was in charge of the

correspondence unit.² That position would not have involved her in Mod Rehab")³

Lance Wilson's testimony concerning his (as well as Barksdale's) involvement with the Arama project is supported by several telephone message slips found in Mr. Mitchell's files, immediately following the Arama Rapid reply signed by Mr. Barksdale on July 16, 1984 and a Dade County request for funds that had been a backup document to that allocation. See Exhibit 3, Material from **Mr. Mitchell's files. According to a January 12, 1984 telephone message slip, Mr. Mitchell talked to Mr.**

² The actual funding of the Arama project (as opposed to the decision to fund) occurred after Ms. Dean officially became the Executive Assistant to the Secretary. However, as Mr. Wilson explained, "there was a lag between the decision to fund Arama and the actual funding of the project because of the number of projects in the funding pipeline for the Dade County PHA." Wilson Affidavit at 10. On March 29, 1984, Melvin Adams of the Dade County housing authority sent to Harry I. Sharrott an amended request for additional mod rehab units, supplementing a request that had been submitted on February 16, 1984. See Exhibit 2. Adams' letter indicated that a recent request for proposals had resulted in nine additional projects' being found to be acceptable under the regulations. Adams submitted a Pipeline Status Report Fact Sheet listing nine mod rehab projects, with names of the project and developer, location, and number of units. **Id.** Government Exhibit 36 (establishing that a 293-unit project, known as Arama, was the fifth project on the list).

³ Although the testimony of John Mitchell was unavailable because of his death, Jack Brennan, Mr. Mitchell's partner, testified that Mr. Mitchell refused to do *anything* with regard to South Florida I, a mod rehab project, because Ms. Dean at that time had been elevated to the position held by Lance Wilson during the Arama project and in that position would have been involved with mod rehab projects.

Wilson. ⁴ The message slip also *contains* the following notation in Mr. Mitchell's handwriting: "300 units, Process + Keep Advised. Talking to Barksdale." *Id.*; Exhibit 4, Defense Exhibit 23. Thus, the message slip makes clear that Mr. Wilson discussed the 300 units with Mr. Barksdale. The message slips were uncovered by Ms. Dean among the 400,000 plus bulk documents turned over during discovery. It is clear that: (1) the message slips were not provided pursuant to Brad^y and would not have seen the light of day but for Ms. Dean's search; (2) the message slips were not shown to either Lance Wilson or Maurice Barksdale before their grand jury testimony; (3) the impact of the message slips can be seen in the testimony of the Wilson **affidavit.5**

⁴ Mr. Wilson and Mr. Mitchell had previously worked at the same law firm, although not at the same time, and had previous dealings with one another. Tr. 357-58. The record indicates that Mr. Mitchell set up a meeting between Mr. Wilson and Louie B. Nunn with regard to a matter concerning a Moore Land Company project, which Mr. Wilson had approved. Tr. 1396-98.

⁵ Independent Counsel secured the Mitchell telephone message slips in May 1992. The message slips gave the Independent Counsel reason to believe that Wilson had talked with Barksdale about the funding and that Wilson, rather than Ms. Dean, was responsible for the Arama funding. The Independent Counsel failed to make a Brady disclosure of these message slips, a failure that the Court of Appeals found to be deplorable. 55 F.3d at 664. More important -- a point given considerable attention in the District Court and probably contributing to the Court's **basis** for criticizing the Independent Counsel for not determining whether witnesses were telling the truth -- the Independent Counsel failed to confront Barksdale with the information on the message slips before calling him to testify before the grand jury or in court for the purpose of tying Ms. Dean to the Arama funding. Memorandum of Law in Support of Dean's Motion for Judgment of Acquittal Pursuant to F.R.Crim.P. 29(c) and (d) and Motion for a New Trial Pursuant to F.R.Crim.P. 33 at 107-10, 118-20 (Nov. 30, 1993) ("Dean Rule 33 Mem."); Government's Op. to Defendant Dean's Motion for a New Trial, at 10-12, 16-17 (Dec. 21, 1993) ("Gov. Rule 33 Op."); Dean Reply to

When the Independent Counsel called Mr. Barksdale to testify at trial as a material witness for the Government, it focused Mr. Barksdale on the period after Mr. Wilson left HUD, and asked him no questions about any contacts with Mr. Wilson concerning funding. Independent Counsel began by showing Mr. Barksdale the July 16, 1984 rapid reply letter (Gov. Exh. 30) a step in the Arama funding, and asking him if he remembered signing the document. Tr. 455. After Mr. Barksdale indicated that he did, the prosecutor conducted the following questioning regarding why Barksdale signed the document:

Q. Did anyone ask you to sign off on this document?

A. I don't specifically remember anyone asking me to sign off, but generally when I sign off on those kinds of documents someone had asked me to review them and I believe someone must have asked me to review them, which I did, and you ultimately passed it on to staff for review and approval.

Q. When you say someone, who are you referring to?

Government's Opposition at 5-8 (Jan. 7, 1994); Transcript of Hearing at 27 (Feb. 14, 1994). That the Independent Counsel was uninterested in learning the truth on this matter is further demonstrated by the fact that Independent Counsel did not question Wilson about the matter when he was interviewed and questioned before the grand jury. Exhibit 1, Wilson Affidavit at 115.

Independent Counsel represented to this Court and the Court of Appeals that its attorneys did not regard the message slips as exculpatory. Gov. Rule 33 Op. at 10-ii; Brief of the United States of America as Appellee, United States v. Deborah Gore Dean, No. 94-3021 at 47-48 (D.C. Cir., Sept. 16, 1994). This representation defies credulity. Apart from its facial implausibility, the representation is belied by the fact that Independent Counsel attorneys did not themselves confront Barksdale with the message slips before calling him to testify.

A. Generally that would be someone that would have been on the tenth floor of the department, generally in the Secretary's office.

Q. And during this period of time -- and do you recall when you signed off on this rapid reply?

A. I think it was sometime in July of 1984.

Q. During the period of time, who were you in contact with from the Secretary's office?

A. Well, Secretary Pierce, of course, who was the Secretary, Deborah Dean who was the Executive Assistant to the Secretary, Phil Abrams, at that time who was the Undersecretary, and persons on his staff.

Q. Now, did Samuel Pierce ask you to sign off on this funding document?

A. No, he did not.

Q. Did Deborah Dean?

A. I do not remember Deborah Dean asking me.

Q. Did Phil Abrams?

A. No, Phil Abrams did not.

Tr. 455-57.

During cross-examination, Mr. Barksdale stated that he did not recall Mr. Wilson's discussing any moderate rehabilitation units in Florida with him. Tr. 509. When defense counsel showed him the earlier Mitchell message slip, Mr. Barksdale stated that it did not refresh his recollection. Tr. 510-11.6

⁶ Having seen the barely legible messages for the first time during cross-examination, it is extremely unlikely that Mr. Barksdale would have changed his testimony based on the messages in light of his prior statements to the FBI and the grand jury that he did not discuss project specific funding with Wilson. Had Independent Counsel brought the information on the message slips to Barksdale's attention before he testified before the grand jury, that information may very well have caused him to

Moreover, Mr. Barksdale's testimony concerning Ms. Dean's involvement does not contradict the Wilson Affidavit. Mr. Barksdale stated on direct examination that he had no recollection that Ms. Dean asked him to fund the 293 units. Tr. 456-57. In fact, there was no testimony from Mr. Barksdale or from anyone else, or any other evidence that Ms. Dean caused Mr. Barksdale to fund the Arama project.

Indeed, as early as January 23, 1990, Mr. Barksdale told an F.B.I. agent that as late as October 1984, "Deborah Gore Dean was not in the MRP (moderate rehabilitation program) loop and was otherwise not involved in the MRP funding process." Exhibit 5, at 4. 7 In an Independent Counsel interview on October 24, 1991, Mr. Barksdale was shown copies of Ms. Dean's July 5, 1984 letter to Mr. Nunn, Mr. Nunn's July 6, 1984 letter to Mr. Martinez, and the July 16, 1984 Rapid Reply letter initiating the Arama funding, which Mr. Barksdale had signed. See Exhibit 6. Mr. Barksdale stated that he did not recall that Ms. Dean had spoken to him about that allocation and that he was uncertain how the decision had been made to make that particular allocation. **Id.**

Of course, there is no dispute that it was Mr. Barksdale (not Ms. Dean) who authorized the funding for the Arama project and signed **all** of the supporting documentation. On July 16, 1984, Mr. **Barksdale** signed the Rapid Reply for 293 units.

The

remember, or acknowledge remembering, that Wilson had talked to him about the matter.

Despite the exculpatory nature of this statement, it was never provided in a Brad disclosure.

backup documentation in HUD's files was the Adams-Sharrott letter (March 29, 1984), with attached Pipeline Status Report identifying the 293-unit Arama project (and noting the other various projects to Dade County). Exhibit 2. On July 27, 1984, Mr. Barksdale signed the HUD Form 185 allocating the 293 units to Dade County. Form 185 had the same backup documentation in the file. [GA83 0909-33].8

B. The Wilson Affidavit Also Establishes That The July 5th 1984 Letter, Found By The Court Of Appeals To Be The "Chief s' Piece Of Evidence Linking Ms. Dean To Arama Project, Is Not Relevant.

Shortly **after Mr. Wilson left MUD,**⁹ Ms. Dean received a telephone call from Mr. Mitchell. Mr. Mitchell stated that Mr. Nunn had a project that had been funded; that there was some problem with an option; and that Mr. Nunn needed to know when the funds were going to be sent out. Ms. Dean testified that she called Mr. Barksdale and that she wrote down essentially what he

§ Mr. Barksdale authorized the allocation of 293 units to Dade County by documents signed on July 16 and July 27, 1984. This was the fourth allocation to Dade County between March 1984 and July 1984. A total of 880 units was allocated to Dade County during that period. The backup documentation for each of these allocations make manifest that each one was intended for a specific project, which was generally identified by name in the request from the PHA that went on to support the allocation. See Documents in Exhibit 7.

⁹ Lance Wilson left the position of Executive Assistant to the Secretary of HUD on June 2, **1984. Wilson** Affidavit at 11 Ms. Dean was officially appointed on June **24, 1984,** after being in the position in an acting role for **several weeks.** Ms. Dean had been in her official position for less than two weeks when she received the telephone call from Mr. Mitchell.

told her in a letter dated July 5, 1984 to Mr. Nunn.¹⁰ Thus, the letter was nothing more than the passing along of information from Mr. Barksdale to Mr. Nunn.¹¹

Ms. Dean testified she did not know that John Mitchell was earning any money on the Arama project and that she had believed that Mr. Mitchell was just placing a call on behalf of Mr. Nunn. Tr. 2620-22. Further, Richard Shelby, an alleged co-conspirator with Mr. Mitchell and Ms. Dean testified that he intentionally concealed Mr. Mitchell's involvement with HUD from Ms. Dean. Tr. 602. Mr. Mitchell's partner, Colonel Jack Brennan, also immunized, testified that Ms. Dean was "shocked" when he told her about Mr. Mitchell's HUD consulting **T** Tr. 369. No witness testified that Ms. Dean was aware that Mr. Mitchell earned any HUD consulting fees.

The Court of Appeals, in fact, found that Ms. Dean's letter to Mr. Nunn was the "chief" piece of evidence linking Ms. Dean to the Arama project, primarily because there was no evidence presented that anyone else was involved. 55 F.3d at 651. In all probability, neither the jury nor the Court would have made such a connection if it had known that it was Mr. Wilson, not Ms. Dean who was **involved** with Arama's funding.

¹⁰ **Mr.** Barksdale later provided Ms. Dean with a copy of the Rapid Reply. Tr. 2620-22.

¹¹ The fact that the July 5th letter notes that units will be going to a specific project rather than to the PHA, reflects only the fact that Ms. Dean did not understand the allocation system or that there were regulations requiring the PHA's to select the program.

The new evidence conclusively establishes that the July 5, 1984 letter was an innocent act by a person not a party to the decisionmaking process on the Arama project. First, as explained supra, Ms. Dean had no involvement with the Arama project.

Second, it makes clear that it was not unusual for HUD officials to inform a consultant who asked whether certain projects were approved or denied for funding.

Also supporting Ms. Dean's testimony regarding the July 5, 1984 letter is common sense. Ms. Dean relayed information to Mr. Nunn in a manner not indicative of someone aware that one's conduct was in any way wrongful -- she created a conspicuous paper trail identifying the specific project. Indeed, she wrote the July 5th on HUD letterhead and placed it in her HUD chron file. Gov . Exhs. 27, 28. Then, on July 18th, when she forwarded a copy of the Arama Rapid Reply to the Arama Partnership via a HUD courier, she identified herself as the requestor of the courier in a HUD Request for Special Services form. Gov . Exh. 30.

C. The Wilson Affidavit Also Establishes That Mr. Barkadale's Testimony That He Did Not Make Project Specific Allocations, Relied On By The Court of Appeals, Was Misleading, If Not False.

The **Wilson** Affidavit demonstrates that material Government witness Mr. Barksdale's testimony (specifically relied upon by the Court of Appeals) that he did not know that the 293-unit allocation was intended for the Arama project and that he never made any project-specific allocations was misleading, if not false.

Mr. Wilson's testimony is corroborated by the testimony of Stuart R. Davis, the testimony of Ms. **Dean**¹² and the Watt Indictment. In addition, there is evidence impeaching Mr. Barksdale that was not turned over to the defense as Brady.

Stuart R. Davis was, at all times relevant hereto, Mr. **Barksdale's Executive** Assistant. He was also a signatory to Arama Rapid Reply. In an interview conducted by representatives of the Office of Independent Counsel on February 12, 1993, Mr. Davis stated that 90 to 95 percent of mod rehab allocations were based on political contacts. See Exhibit 8, Interview of Stuart Davis (Feb. 12, 1993). Mr. Davis also stated that, when Mr. Barksdale received requests for mod rehab units, he would advise Mr. Davis, who would record the name of the political contact supporting the project, as well as the projects name, location, and number of units in a book. 1&. at 3. ¹³ Mr. Davis testified before the grand jury on March 12, 1993 that the bidding process at the PHA level was frequently a sham because senior people at HUD would ensure that specific funding would go to specific projects. Exhibit 9, Grand Jury Testimony of Stuart Davis (March 12, 1993). He indicated, for example, that units would be sent out to a housing authority in a certain number, when there would

¹² Tr. 2620-23, 2986-88.

¹³ The defense's records do not indicate when these Daviss' interview reports and testimony were provided to the **defense**. Presumably, the materials were provided on Mr. Barksdale the night before he testified.

probably be only one project that fit that the description in the area that the authority could fund. **Id.** at 12-16.14

In the Indictment of James Watt, Independent Counsel alleged that Mr. Barksdale and Mr. Watt were involved in a scheme to subvert HUD's regulations against project-specific awards and to cover up the way in which mod rehab units were allocated.

Exhibit 10. United States of America v. James G. Watt, Crim No. 95-0040 (D.D.C. Feb. 22, 1995). Indictment, **zz** 18, 21, at 5-6;

1 24-38, at 7-12. Supporting the allegations in the Indictment, is a September 5, 1984 letter to Mr. Barksdale from Mr. Watt, referencing a conversation of the previous evening and attaching "copies of three different Sec. 8 Mod Rehab projects" -- a 68-unit project in New Jersey, a 50-unit project in Massachusetts, and a 128-unit project in the Virgin Islands. In his letter, Mr. Watt stated that he had been assured that the projects "are clear [sic] as a whistle," but that the PHA applications themselves were not "project specific," "[j]ust as you like it." The letter

⁴ By letter of August 20, 1993, the Independent Counsel disclosed a number of exculpatory statements by Mr. Barksdale. Dean Rule 33 Mem., Exh. AA at 2-3. By letter of August 29, 1993, the Independent Counsel gave dates for those statements, including March 22, 1993. Dean Rule 33 Motion at Ex. BB. **Id.** The Independent Counsel, however, never produced the March 22, 1993 interview as Jencks on Barksdale. This interview occurred shortly after Davis told the Independent Counsel that he kept a book for Barksdale and that **all** allocations were product specific. The March 22nd interview may **reveal** that the Davis information was raised with Barksdale and what his response was or even that notwithstanding what Davis had testified to in the Grand Jury Independent Counsel failed to question Barksdale about it.

also indicated that he (Watt] wanted to have the Form HUD -185s on the allocations as soon as possible. Exhibit 11.15

In addition to evidence already discussed, Mr. Barksdale impeachment material existed which Independent Counsel did not provide to the defense as Brad^y or Giglio material. Mr. Barksdale and Assistant Secretary for Housing Demery were involved with five highly questionable Loan-Management Set-Aside (LMSA) Awards and three highly questionable Title X loans, after Mr. Barksdale left HUD. Both matters were extensively investigated by the HUD Inspector General and the Federal Bureau of Investigation. The investigation's *findings* indicated that Mr. Barksdale's influence (after he left HUD) had caused Mr. Demery to take questionable actions.¹⁶ The Independent Counsel was told by former Assistant **Secretary for Multi-Family Housing** R. Hunter Cushing that, in overriding Cushing's decision on five LMSA awards, Mr. Demery specifically stated that the awards were for Mr. Barksdale. Exhibit 12, Interview Report at 6-7 (July 23, 1991). The HUD Inspector General investigations of the LMSA

¹⁵ Presumably, Mr. Barksdale testified before the grand jury concerning the Watt Indictment and gave testimony inconsistent with his testimony in the Dean trial concerning his statement that he did not make project specific awards.

¹⁶ Through Mr. Demery, Mr. Barksdale secured five Loan Management Set-Aside (LMSA) awards for his employer J & B Management, an entity that contributed \$7,500 to F.O.O.D., a Demery-sponsored charity. The awards were the subject of a critical audit by the HUD IG. Audit No. 89-AO-119-0006. The audit report was not provided during discovery or as Giglio material on Mr. Barksdale.

program and the Title X¹⁷ program were never provided to the defense and in materials provided during discovery or as Giglio on Mr. Barksdale. Mr. Barksdale's name was redacted from discussions of certain joint HUD Inspector General and F.B.I. of the Title X loans. ¹⁸ Documents showing that Mr. Barksdale's bank records had been subpoenaed were not produced until two weeks

¹⁷ Mr. Barksdale was involved as a consultant in securing Title X loans on projects called Southcreek, for which he earned \$110,000, Autumn Meadows, for which he earned \$43,000, and Steeds Crossing, for which he earned \$15,000. Abuses, Favoritism, and Mismanagement in HUD Programs. Hearings Before the Employment and Housing Subcommittee of the Committee on Government Operations of the House of Representatives. 101st Cong., 1st Sess., Pt. 3, 767-69. HUD Audit Case No. 90-TS-129-0013 (Apr. 27, 1990) concluded that the loans clearly should not have been approved and that there were indications of consultant influence on HUD's decisions. Audit 90-TS-129-0013 at i, iii, 4, 7, Appendixes C8-C10. The Southcreek loan was also questioned in HUD Audit Case No. 90-TS-129-0014 at 49-50 (Apr. 30, 1990).

During discovery, a two page-document was provided with one-paragraph summaries of the investigation of the Southcreek, Steeds Crossing, and Autumn Meadows awards. With regard to each award, however, Barksdale's name was redacted. Exhibit 12.

When Mr. Demery testified two weeks after Mr. Barksdale, the Independent Counsel provided a one-page document (dated November 9, 1989) discussing an ongoing OIG/FBI investigation of the Southcreek Title X. The Independent Counsel also provided the single page of another document (dated September 25, 1990), discussing a grand jury investigation of the matter and indicating that Barksdale's bank and phone records were to be subpoenaed as part of the investigation. _____, Exhibit 12. The two page-document provided in discovery suggests that there must be similar materials on Steeds Crossing and Autumn Meadows that were never provided at all.

¹⁸ It appears that one document from which Barksdale's name was redacted during discovery, was faxed to defense counsel the night before Barksdale testified. This time, Barksdale's name was not redacted.

after Mr. Barksdale testified, when they were produced as Giglio material on Mr. Demery.¹⁹ See also Exhibit 12.

With knowledge of all of the foregoing, Independent Counsel asked Mr. Barksdale on redirect whether his integrity had ever been questioned by the Government. Mr. Barksdale responded "No." Tr. 536. The Independent Counsel permitted Mr. Barksdale's answer to stand without challenge.

CONCLUSION

What has always been missing from Count I, Arama Project, is what really happened among the decisionmakers. The evidence on the Arama project has always been a poor reconstruction of what actually occurred by witnesses and evidence on the periphery of the decisionmaking process. Secretary Samuel Pierce, John

¹⁹ It is worth noting that Mr. Wilson and Mr. Barksdale had other relationships, which may have contributed to the failure by Barksdale to volunteer that he, Barksdale, had caused Arama's funding at Wilson's request. Several years after leaving HUD, Mr. Barksdale (in conjunction with a number of his clients) had been a strong supporter of a charity called F.O.O.D. for Africa which was promoted by Mr. Demery, the Assistant Secretary for Housing from October 1986 until January 1989. Mr. Barksdale's and his client's efforts in this regard included the co-sponsoring of four fund raisers *including* one with Mr. Wilson. See HUD Investigation Hearings Before the Subcommittee on

Housing Finance and Urban Affairs or the House of Representatives, Cong., 587-88, 1054, 1089, 1139, 1189, 1187-99. Other involvements of Wilson and Barksdale that were criticized by the Lantos subcommittee are discussed in Abuses, Favoritism, and

Mismanagement in HUD Programs, Hearings Before the Employment and Housing Subcommittee of the Committee on Government Operations of the House of Representatives, 101st Cong., 1st Sess., Pt. 3, at 789-94. The loan Barksdale made to a HUD official, discussed (j at 788-89), involved the same official (Dubois Gilliam), to whom (at the time of the trial in this case) Wilson had been convicted of giving a gratuity. The conviction was later overturned. United States v. Lance Henry Wilson, F.3d (D.C. Cir. 1994).

not testify in the trial and Ms. Mitchell and Lance Wilson did not testify in the trial and Ms. Dean was forced to defend herself regarding activities for which she had no knowledge. Mr. Wilson, the integral figure, the author of the messages to John Mitchell, the HUD official who approached Mr. Barksdale regarding Arama funding, has finally come forward and told us what actually happened.

WHEREFORE, for the reasons set forth above, Deborah Gore Dean respectfully moves this Court to set aside the verdict, or in the alternative, grant a new trial.

December 24th, 1995

Respectfully submitted,



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EXHIBITS

- Exhibit 1 Affidavit of Lance Wilson
December 6, 1996
- Exhibit 2 Letter from Melvin Adams to Harry I. Sharrott
(March 29, 1984) and Pipeline Status Report
- Exhibit 3 Materials as found in the files of John N.
Mitchell.
- Exhibit 4 Defense Exhibit 23
- Exhibit 5 Interview Report of Maurice Barksdale
(January 23, 1990)
- Exhibit 6 Interview Report of Maurice Barksdale
(October 24, 1991)
- Exhibit 7 Arama Rapid Reply with backup documentation
including the March 29, 1984 letter from
Melvin J. Adams to Harry I. Sharrott (March
29, 1984) with attached Dade County Pipeline
Status Report *identifying* the Arama project
(CA135 2643-2656);
- Materials from HUD Headquarters files
concerning the April 17, 1984 allocation to
Dade County and Broward County with backup
documentation showing that both Dade County
allocations as well as Broward County
allocation were intended for specific
projects (GA83 0541-60);
- Rapid Reply and Form HUD-185 for 213-unit
allocation to Dade County on July 16, 1984,
with attached May 10, 1984 letter referencing
two projects, one for 90 units and the other
for 123 units (GA83 0791-93).
- Exhibit 8 Interview of Stuart Davis
(February 12, 1993)
- Exhibit 9 Grand Jury Testimony of Stuart Davis
(March 12, 1993)
- Exhibit 10 Indictment of James G. Watt
- Exhibit 11 Letter from James G. Watt to Maurice
Barksdale (September 5, 1984)

EXHIBITS (continued)

Exhibit 12

Interview Report of R. Hunter Cushing
(July 23, 1991);

Two-page document provided during **discovery referencing HUD IG/F.B.I. investigations of Southcreek (Case FH16-124), Steeds Crossing (Case FH16-124), and Autumn Meadows (Case FH16-124), but with Barksdale's name redacted (FA08 0005-06);**

FA08 0006 as faxed to defense counsel at 7:16 p.m. on September 15, 1993;

Two-page document provided as Giclio on **Demery referencing HUD IG/F.B.I. of Steeds Crossing (Case FH16-124) and Autumn Meadows (Case FH16-124) with Barksdale's** name not redacted (FA08 0005-06);

Page provided as Giclio on Demery concerning the status of **Southcreek investigation as of November 2, 1989;**

Page provided as Giglio on Demery concerning the status of Southcreek investigation as of September 25, 1990.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the party listed below via first-class mail postage ⁴ a 4+ - pre-paid on this 29^r& day of December 1996:

Larry D. Thompson, Esq.
Independent Counsel
Dianne J. Smith, Esq.
Deputy Independent Counsel
444 North Capitol Street, N.W.
Suite 519
Washington, D.C. 20001



Joseph J. Aronica

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA
Crim. No. 92-0181-01
V.
DEBORAH GORE DEAN

ORDER

This cause came onto be heard on Defendant, Deborah Gore Dean's motion to set aside the verdict and for a new trial, and the court having heard the argument of counsel and being fully advised, it is

ORDERED, that said motion be granted.

DATED: _____, 19

United States District Judge

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

Crim. No. 92-0181-01

V.

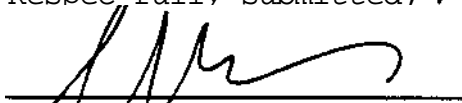
DEBORAH GORE DEAN

MOTION FOR NEW TRIAL

Defendant Deborah Gore Dean moves this court to set aside the verdict returned in the above-entitled action on December 23, 1996, and to grant a new trial on the ground of newly discovered evidence of which defendant was ignorant at the time of the trial herein and which she could not have sooner discovered in the exercise of due diligence. The said evidence is not merely cumulative or impeaching in character, but is material and of such character that if **received** at the trial it would probably have resulted in a different verdict.

Jos p . Aronica
Dec rt Price & Rhoads
1500 K Street, N.W., Suite 500
Washington, D.C. 20005

Respec fully submitted. ,



202/626-3354

Attorney for Defendant

Dated: December ²⁴/₂₃, 1996