

ARAMA: THE JOHN MITCHELL TELEPHONE
MESSAGES AND MAURICE BARKSDALE

Summary: Count One of the Superseding Indictment alleged that Deborah Gore Dean had caused 293 units of moderate rehabilitation subsidy to be allocated to Dade County, Florida in order to benefit John Mitchell. The units would go to a project called Arama of developer Art Martinez, who had retained former Kentucky governor Louie B. Nunn to assist in securing moderate rehabilitation funding. Nunn paid Mitchell \$75,000 for his assistance on the matter. The funding occurred as a result of documents signed by Assistant Secretary for Housing Maurice C. Barksdale in mid-July 1984, several weeks after Dean assumed the position of Executive Assistant.

John Mitchell had died in November 1988. Mitchell's files secured by the Office of Independent Counsel in May of 1992 contained telephone messages indicating that in January 1984, at the same time Nunn was working out a consulting agreement to secure 300 moderate rehabilitation units for Martinez, Mitchell was talking to Dean's predecessor, Lance H. Wilson, about securing 300 moderate rehabilitation units, and that Wilson had told Mitchell he was talking to Barksdale about the units. Though the Superseding Indictment alleged that Dean had caused the Arama funding to benefit Mitchell, the OIC would not turn the Mitchell messages over under Brady. Further, the OIC would eventually acknowledge that it had brought Barksdale before the grand jury and had called him to testify in court for the purpose of tying Dean to the Arama funding without ever confronting Barksdale with the information contained in the Mitchell message indicating that Wilson had been talking to him (Barksdale) about the matter. In eliciting Barksdale's testimony in court, the prosecutor focused the inquiry solely on the period after Wilson had left HUD, and asked no questions about the messages or about Wilson.

In support of her motion for a new trial, Dean pointed out that the failure to disclose the messages violated Brady. Dean also argued that the OIC had apparently never confronted Barksdale with the messages when preparing the indictment, presumably because the only recollections they might have refreshed would have been exculpatory as to Dean.

In its Opposition, the OIC acknowledged awareness of the messages but argued that it did not turn them over under Brady because they were as consistent with guilt as with innocence. The OIC also acknowledged that it never confronted Barksdale with the information on the messages, arguing that the government does not have an obligation "to seek out all potentially material evidence conceivably related to the defense."

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Attachments:

1. John Mitchell phone message dated "1-12"
2. John Mitchell phone message dated "1-26"
3. Letter from Deborah Gore Dean to Louie Nunn dated July 5, 1984.

Principal References:

1. Memorandum of Law in Support of Deborah Gore Dean's Motion for Judgment of Acquittal Pursuant F. R. Crim. P. 29(c) and (d) and Motion for New Trial Pursuant to F. R. Crim. P. 33 at 107-12 (Nov. 30, 1993) ("Dean Mem.")
2. Government's Opposition to Defendant Dean's Motion for New Trial Pursuant to Fed. R. Crim. P. 33 at 10-12 (Dec. 21, 1993) ("Gov. Opp.")
3. Deborah Gore Dean's Reply to Government's Opposition to her Motion for Judgment of Acquittal, or in the Alternative, a New Trial at 7-8 (Jan. 7, 1994) ("Dean Reply")

4. 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. ("Lantos Hearings")
5. HUD Investigation, Hearings Before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance, and Urban Affairs of the House of Representatives, 101st Cong., 1st Sess. ("Banking Hearings")

A. Background

The first moderate rehabilitation funding involved in Count One of the Superseding Indictment concerns the sending of 293 moderate rehabilitation units to Dade County, Florida in 1984, which units went to the Arama project of developer Art Martinez. The units would be sent to Dade County by documents signed in the middle of July 1984 by Assistant Secretary for Housing-Federal Housing Commissioner Maurice C. Barksdale. This would take place about three weeks after Dean officially assumed the position of Executive Assistant to HUD Secretary Samuel R. Pierce, Jr. The Superseding Indictment alleged that Dean had "facilitated and caused to be facilitated" the Arama funding in order to benefit John Mitchell whom Dean considered to be her stepfather. Superseding Indictment at 10, ¶¶11 and 14, ¶34.

The first three overt acts listed in the Superseding Indictment relating specifically to that funding involve (1) a contact made by Martinez to Louie Nunn (listed as Co-conspirator Two) at Mitchell's office on January 5, 1984; (2) an agreement reached on January 25, 1984, between Nunn and Martinez whereby Martinez would pay Nunn a total of \$375,000 for his services in securing up to 300 moderate rehabilitation units for the Arama project, including \$225,000 in legal fees and \$150,000 in consulting fees; and (3) a statement written on the agreement by Nunn on January 25, 1984, indicating that one-half of the \$150,000 in consulting fees was to be paid to Mitchell. Superseding Indictment at 13-14, ¶¶ 28-30.

As of January 25, 1984, Lance H. Wilson was the Executive Assistant to HUD Secretary Samuel R. Pierce, Jr. Wilson had worked for the same law firm as Mitchell and knew Mitchell. Tr. 357-58. Mitchell had previously set up a meeting between Wilson and Louie Nunn with regard to another matter. Tr. 1395. At that time, Barksdale was in the position of acting Assistant Secretary for Housing, having received a recess appointment in November 1983 and awaiting confirmation, which occurred on February 10, 1984. Tr. 453. Dean was a Special Assistant/Director of the Executive Secretariat. At this point in time, there was no indication that Dean would become Executive Assistant later that year.

Among the materials that investigators working for the Office of Independent Counsel ("OIC") secured from Mitchell's files during an inspection of those files in May 1992 (see Tr. 370-71) were two telephone message forms. The first reflects a telephone call to "Mr. M." indicating that Lance Wilson had returned Mitchell's call on "1-12," which undoubtedly referred to January 12, 1984. This would be one week after Martinez's initial contact to Nunn referenced in the Superseding Indictment. On the message form, in Mitchell's handwriting, are the words (just legible): "300 units, Process + Keep Advised. Talking to Barksdale." Dean Mem., Exh. GG (Attachment 1).

The second document is a message form indicating that Lance Wilson called Mitchell on "1-26," which undoubtedly referred to January 26, 1984. This is the day following Nunn's reaching the agreement with Martinez and Nunn's annotating on the

agreement that one half of the \$150,000 designated as consulting fees was to go to Mitchell. The message form provided is not sufficiently legible to determine whether Wilson was returning a call from Mitchell. Dean Mem., Exh. HH (Attachment 2).

Sometime prior to March 15, 1984, Martinez submitted a proposal for a 293-unit project to the public housing authority for Dade County, and on March 15, 1984, the housing authority would advise Martinez that the proposal would be rated and inserted in the Section 8 pipeline. Gov. Exh. 23. On March 20, 1984, Martinez would write Nunn stating that the Arama 293-unit proposal was now first in the Dade County pipeline. Noting that the HUD's Jacksonville Area Office would not be requesting the units, Martinez urged Nunn to "obtain the authorization for these units as soon as possible" from HUD headquarters. Martinez emphasized that "[t]iming is of the essence" because of a problem with availability of units as time passed and because of a concern that an option contract may expire before the closing. Gov. Exh. 24.

On March 29, 1984, Melvin J. Adams, director of the public housing authority in Dade County, wrote to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office, stating that "we understand that the Area Office will soon be receiving additional funds for [the moderate rehabilitation] program." The letter attached materials related to proposals by Martinez and other developers in the Dade County pipeline. Gov. Exh. 36. On April 3, 1984, Martinez wrote to Nunn enclosing a copy of Adams' letter to the Jacksonville area office. After describing the somewhat complex status of pending proposals, Martinez urged Nunn to "INSIST that our 293 units do not come in two increments," and asking, "When will funding for the 293 units take place?" Gov. Exh. 25. On April 11, 1984, the legal fees contract between Nunn and Martinez would be increased by \$50,000. Gov. Exhs. 22, 25.¹

On July 5, 1984, Dean wrote to Nunn in care of Mitchell's business address stating that she was confirming a recent conversation with Mitchell and stating:

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 the week and that Arama Partnership will definitely receive these units from HUD.

¹ The addendum increasing the fee is dated April 11, 1984, but it appears to have been enclosed in the April 3, 1984 letter from Martinez to Nunn that was introduced as Government Exhibit 25. The discrepancy does not appear to be of consequence.

I hope that the additional units will make the partnership a viable venture.
Please keep in touch.

Dean wrote the letter on HUD stationery and retained a copy in her chron files, which she left at HUD when she departed the agency three years later. Gov. Exh. 27 (Attachment 3). Barksdale would sign the rapid reply commencing the funding process of July 16, 1984, and Dean would send a copy of that document, by HUD courier, to the Arama Partnership c/o Mitchell's business address. Gov. Exh. 30.

Dean would testify that Mitchell had called her shortly after she had become Executive Assistant and told her that Nunn had a project that had been funded and that there was a problem with an option and the developer had to know when the funds were being assigned. Mitchell asked if she would check on the matter. Dean stated that she contacted Barksdale who appeared to know all about the matter and told her that the funding documents would issue in a few days. This occurred about ten days after Dean was officially in the position of Executive Assistant. Tr. 2621-22. Dean stated that Barksdale brought her the rapid reply that she sent to Nunn. Tr. 2622, 2986-88. Dean stated that she did not know that Mitchell was receiving any money relating to the matter. Tr. 2622.²

During cross-examination, Dean also stated that subsequent to the Superseding Indictment, Lance Wilson had told her that he had been responsible for securing the Arama units for Mitchell. The statement would be stricken as hearsay. Tr. 2887-88.

Despite the suggestion in the Mitchell messages that Mitchell had secured the Arama funding through Wilson rather than Dean, the OIC never provided those messages as Brady material. Rather, they were made available among more than 200,000 pages of documents the OIC produced for Dean's review during discovery.

² Dean's testimony that she was unaware that Mitchell had received any HUD consulting fees until she read the matter in the HUD Inspector General's report on the moderate rehabilitation program is the subject of Narrative Appendixes styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr." and "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony."

B. Maurice C. Barksdale

Maurice C. Barksdale had been interviewed by agents of the OIC on one occasion following the OIC's securing John Mitchell's files in May 1992, that interview occurring on June 28, 1992. He also testified before the Grand Jury on June 29, 1989, one week before issuance of the Superseding Indictment containing the allegations relating to the funding of Arama.

Apart from the Mitchell telephone messages, the OIC had other reason to believe that Barksdale made certain funding decisions at the behest of Wilson after Wilson left HUD on June 1, 1984. Silvio DeBartolomeis had told the OIC that a 600-unit allocation to Puerto Rico, based on documents Barksdale signed in mid-June 1984, was a result of Wilson's doing a favor for Joseph Strauss.³ In March 1987, Dean also had told an F.B.I. agent that Wilson had caused those units to be sent to Puerto Rico. Tr. 3192-94.⁴

The OIC also knew that Barksdale had much reason not to volunteer that he had been making funding decisions at the behest of Wilson in July 1984 or otherwise to associate himself with Wilson. Joseph Strauss, who would shortly be indicted, was being investigated by the OIC, and there was ample reason to fear that 600-unit Puerto Rico funding would be the subject of an indictment involving Strauss and Wilson. At the time that Barksdale was being interviewed, Wilson was already under indictment for a variety of offenses, including a gratuity to a HUD official named DuBois Gilliam. Barksdale had previously testified that he (Barksdale) had loaned Gilliam \$2000 while Gilliam was involved in the review of a matter Barksdale had pending before HUD (after Barksdale had left HUD and was working on housing matters). Lantos Hearings, Pt. 3, at 783-94. Barksdale had also co-chaired with Wilson a legal defense fund for another indicted HUD official and had drawn harsh criticism during the Lantos Hearings for the fund's manner of soliciting contributions from public housing authorities. Id. at 789-94.

³ See DeBartolomeis Interview Report dated October 1 and 2, 1992, at 3rd and 4th unnumbered pages. The interview report may be found as Exhibit C to Deborah Gore Dean's Omnibus Motion and Memorandum of Law (Feb. 8, 1994).

⁴ There was never a suggestion that Dean had any role in that funding or that she had some reason for fabricating the story about Wilson.

Further, like Wilson, Barksdale had been an active supporter of a charity named F.O.O.D. for Africa promoted by Assistant Secretary for Housing Thomas T. Demery, and had co-sponsored with Wilson and several others a fundraiser held in Washington, D.C., in October 1987. And, as discussed more fully in Section F infra, like Wilson and others who supported F.O.O.D., Barksdale had derived substantial benefits as a result of Demery's decisions that would later draw strong criticism.

In any event, as the OIC would eventually acknowledge, subsequent to securing the Mitchell messages indicating that Wilson was talking to Barksdale about 300 moderate rehabilitation units in January 1984, the OIC would interview Barksdale, bring him before the grand jury, and ultimately call him to testify in order to implicate Dean in the Arama funding without ever advising him that it had reason to believe the Wilson had spoken to him about allocating the 300 units.

During Barksdale's direct examination, Associate Independent Counsel Robert E. O'Neill showed Barksdale the July 16, 1984 rapid reply letter (Gov. Exh. 30) reflecting the first step in the Arama funding, and asked Barksdale if he remembered signing the document. Tr. 455. After Barksdale indicated that he remembered signing the document, O'Neill then sought to determine why Barksdale had signed the document. In doing so, he would focus Barksdale on his contacts with the Secretary's office during the July 1984 period when the document was signed, which would have been after Wilson had left HUD. The exact questioning follows:

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?

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.

O'Neill did not then confront Barksdale with the information the OIC possessed suggesting that Wilson had contacted Barksdale on the matter. Nor did O'Neill ask Barksdale if Wilson had contacted him on the matter.

During Barksdale's cross-examination, he stated that he did not recall Wilson's discussing any moderate rehabilitation units in Florida with him. Tr. 509. When Dean's counsel showed him the earlier Mitchell message, Barksdale stated that it did not refresh his recollection. He gave no indication of having ever seen the message before or of having been advised of the information in it. Tr. 510-11. On cross-examination, Barksdale also testified that he had no recollection of Pierce, Wilson, or Dean asking him to fund the Arama project, and that he believed that he would remember if any of them had. Tr. 535.⁵

C. Dean's Rule 33 Motion

⁵ On cross-examination Barksdale also would acknowledge that he had been present in a meeting with Wilson and Secretary Pierce involving the sending of approximately 600 mod rehab units to Puerto Rico and that the units would be funded contrary to Barksdale's wishes. Tr. 490-91.

In support of her Rule 33 Motion, Dean first argued that the phone messages were strongly exculpatory as to her because they suggested that Barksdale had funded Arama at the direction of Wilson, and maintained that the OIC had failed to fulfill its obligations to provide the material under Brady. She noted that the OIC clearly was aware of the documents, since the documents bore microfiche numbers very close to documents supporting allegations in the Superseding Indictment, and the F.B.I. agent who secured the documents from Mitchell's files remembered both messages. Dean Mem. at 107-110.

Dean also argued that it was reflective of the OIC's tactics that, so far as was revealed by the Jenks material provided by the OIC, Barksdale had never been questioned about the information in the Mitchell message of January 12, 1984, which any prosecutor interested in securing the truth about the funding of Arama in 1984 certainly would have done. Dean noted that when interviewing Richard Shelby, the OIC had confronted him with the July 31, 1985 Fine memorandum because in that instance there was reason to hope that Shelby would identify "the contact at HUD" referenced in the memorandum as Dean.⁶ She argued that, by contrast, the OIC had chosen not to confront Barksdale with the information on the Mitchell message because all likely recollections that the information would have elicited would have been exculpatory. Id. at 118-121.

D. OIC's Opposition

In its Opposition, the OIC did not deny that it was aware of the messages but maintained that it had no obligation to provide the messages under Brady because they were "as consistent with guilt as with innocence." Noting that the units were not awarded until after Wilson left HUD, the OIC argued that "[r]ather than suggesting that Wilson was responsible for awarding the Arama units, these notes reinforce the importance of defendant's role, and cast light on her phone call with Mitchell that she referenced in her letter to Nunn." Gov. Opp. at 11.

With regard to confronting Barksdale with the information on the messages, the OIC acknowledged that it had not done so, arguing that the government does not have

⁶ See Narrative Appendix styled "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony."

an obligation "to seek out all potentially material evidence conceivably related to the defense." Gov. Opp. at 16-17 (original emphasis). The OIC also argued that the fact that Barksdale could recall nothing when the message was shown to him at trial showed that Dean's claim that he would have recalled something if shown the messages earlier was "not only wholly speculative, but was in fact false." Id. at 16.

E. Dean's Reply

In her Reply, Dean noted that the OIC had not denied knowledge of the Mitchell messages, and argued that the OIC's claim that it had failed to provide the Mitchell messages under Brady because they were "as consistent with guilt as with innocence" was groundless. Dean argued that to the extent that such claim constituted a representation as to the OIC's actual reason for failing to provide the messages under Brady it was a false representation. Dean's Reply at 6.

Dean pointed out that the OIC acknowledged that it had not confronted Barksdale with the information on the message, noting that anyone interested in -- or recognizing an obligation to learn -- the truth about the Arama funding, would have brought those facts to Barksdale's attention in circumstances where he could carefully reflect on them. She argued that Barksdale's failure to recall anything when shown a just legible scrap of paper on the stand does not belie the possibility that in other circumstances, confronted with all the facts related to the message, Barksdale might have recalled a great deal. Dean also argued that Barksdale's failure to recall anything has no bearing on the issue of the OIC's intentions in deciding not to confront Barksdale with the information when it questioned him more than a year earlier. Dean Reply at 7-8.

F. Ruling of February 14, 1994

At the hearing in which the court denied Dean's motion for a new trial, Barksdale was not specifically discussed. The court did criticize the OIC harshly for putting on certain witnesses, "where there was substantial questions and information that they may not have been telling the truth in the prosecution's files or the prosecution didn't ask if they were telling the truth to make sure they were before they went on stand." Tr. 27. But the court did not indicate whether it related the remarks to Barksdale.

G. Comments

Even if the OIC's representation that it regarded the notes to be as consistent with guilt as with innocence was more plausible than it is, that would not have been a legitimate basis for failing to make a Brady disclosure. Yet, as with other instances where the OIC failed to comply with Brady, the conclusion seems inescapable that the reasons offered for failing to turn over the messages under Brady were false.

There also seems little doubt that Barksdale was not interviewed about the Wilson messages because of the concern that he would remember (or, if he already remembered, feel required to say) that Wilson had asked him to fund the Arama project. The OIC's behavior here contributes to an overall picture suggesting that the OIC did not believe there was any realistic chance that Dean was actually causing moderate rehabilitation fundings in order to help Mitchell, or that she even knew that Mitchell was earning HUD consulting fees. In any event, this is another instance where the OIC refused to take actions that could lead to the revelation of evidence to that effect, just as the OIC evidently refused to confront Eli Feinberg with Shelby's statements indicating that Feinberg was not telling the truth when he stated that he (Feinberg) was unaware of Mitchell's involvement in Park Towers.⁷

The suggestion in the argument that the OIC had no obligation "to seek out all potentially material evidence conceivably related to the defense" that the possible role of Wilson in the matter was not obvious is fatuous. The OIC's making of the argument is worth considering, however, for it suggests that the prosecutors here recognized no obligation to make the most modest efforts to determine the truth of charges even before they are brought.

It may nevertheless be more useful to explore the motivations of the OIC attorneys without regard to of just what may be the precise rules for prosecutorial behavior in these circumstances. A better question may simply be what were the attorneys in the OIC seeking to do when they chose not to confront Barksdale with the information on the first Mitchell message at the time they were seeking to secure an indictment alleging a conspiracy involving Deborah Gore Dean and John Mitchell. The extensive evidence with regard to Park Towers that these same individuals were then crafting an indictment intended to create inferences that they knew to be false certainly bears on this question. But even without consideration of the Park Towers issues, there does not seem room for doubt that these prosecutors preferred to go forward with what could well be false charges than to take modest steps to determine the truth. Similarly, when O'Neill put Barksdale on the stand, it seems clear enough that O'Neill would have

⁷ See Narrative Appendix styled "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony"; see also Narrative Appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr."

preferred to elicit false testimony from Barksdale that would implicate Dean than to take any measures to cause Barksdale to tell the truth if that truth was exculpatory of Dean. As O'Neill would make clear in his discussion of the Sankin receipts, if the evidence is misleading or false, that is a matter for the defense to show.⁸ Most people would regard this to be heinous conduct regardless of what obligations the law or codes of professional conduct impose on prosecutors in these circumstances.

This appraisal of the prosecutors' conduct stands regardless of what Barksdale's recollection might have been if he had been confronted with the information on the messages and pressed by the OIC to recall everything he could about the contacts from Wilson during the relevant time frame. Nevertheless, it is worth considering Barksdale's testimony more generally. Notably, he was almost entirely unable to recall the circumstances surrounding particular moderate rehabilitation funding decisions during his tenure with the exception of a recollection of Dean's contacting him regarding a matter that would be germane to certain perjury counts. Tr. 468-70.

⁸ See Narrative Appendix styled "The Andrew Sankin Receipts."

It may be notable as well that during his direct examination, while Barksdale firmly stated that neither Pierce nor Abrams had contacted him about Arama, he would state merely that "I do not remember Deborah Dean asking me." Tr. 456. This formed the basis for the OIC, in its appellate brief, to argue that "Barksdale testified that he did not 'remember Deborah Dean asking me' to fund Arama, Tr. 457, he did not testify that she did not do so..."⁹ though to make that point the OIC would have to ignore Barksdale's testimony on cross-examination that he believed he would remember if Dean had asked him.¹⁰

Though it was not brought out in court, Barksdale had reason to be as cooperative an OIC witness as possible. Apart from the other matters mentioned earlier, like Wilson, Barksdale had been a strong supporter of Thomas Demery's charity, F.O.O.D. for Africa. Barksdale attended three F.O.O.D. fundraisers. His company, H.M.B. Management, contributed \$1,000 at a Dallas fundraiser organized by Demery in October 1986. Along with Wilson, Philip Winn, Martin Artiano, and several others, Barksdale co-sponsored a fundraiser held in Washington, D.C. on October 19, 1987, contributing \$1,000 for expenses. Banking Hearings at 1053-54, 1089, 1196. Two weeks later, Wilson, Winn, and Artiano would each have his name matched with

⁹ Brief of the United States of America as Appellee, United States v. Deborah Gore Dean, No. 94-3021 (D.C. Cir., Sep. 16, 1994) at 21 n.7.

¹⁰ The OIC's appellate brief was dishonest in a number of respects with regard to the allegations involving Mitchell and Arama. As discussed in Sections B.2 and J of the Park Towers appendix and Part IV, Section A of the Introduction and Summary, despite evidence making it clear that Martinez did know that Mitchell was involved in Arama, the OIC would selectively cite evidence that it maintained showed that Mitchell's involvement had been concealed from Martinez. The Park Towers appendix and the Introduction and Summary show numerous other examples of the OIC's efforts to mislead the court of appeals about matters relating to Dean and Mitchell.

one or more pending moderate rehabilitation requests on a list maintained by Demery in which he matched such requests with the names of persons promoting them. Lantos Hearings, Pt. 5, p. 339-40.

A Barksdale client, Eagle Housing Mortgage Group, organized fundraisers in Dallas on May 21, 1987, and October 26, 1987. Barksdale solicited contributions at least for the May event. Eagle contributed \$1,000 to F.O.O.D. in connection with the May 1987 event, while Barksdale clients Citizens National Mortgage Corp. and Southwest Savings contributed \$1,000 and \$2,000 in connection with various events. Banking Hearings, at 578-79, 1132, 1136-39, 1189, 1196, 1198; Lantos Hearings, Pt. 3, at 767-69.

In addition to maintaining his own company, H.M.B. Management, Barksdale was employed by J & B Management Co. J & B Management contributed \$5,000 to F.O.O.D. on May 19, 1987, apparently in connection with the May 1987 Dallas fundraiser and another of \$2,500 on October 16, 1987, apparently in connection with the Washington or Dallas fundraisers held in late October 1987. Lantos Hearings, Pt. 3, at 780, Banking Hearings, at 1186-87.

Barksdale was in frequent contact with Demery and was one of 20 persons on Demery's wallet-sized phone listing of frequently called numbers,¹¹ among such persons as Joseph Strauss, J. Michael Queenan, Louis Kitchin, Silvio DeBartolomeis, Judith Siegel, David M. Barrett, and Martin Artiano, all of whom were involved in some questionable activity with Demery.¹² Barksdale benefited greatly as a result of Demery's decisions.

¹¹ The same sample of Demery's telephone calls that would show him calling the Winn Group offices 400 times per year according to Congressman Tom Lantos' estimate (Lantos Hearings, Pt. 2, pp. 286, 336) would show almost two-thirds as many to Barksdale's office.

¹² See Narrative Appendix styled "Testimony of Thomas T. Demery."

Of the sixteen FY 1987 discretionary Loan Management Set-Aside awards covered in an audit of Demery's administration of that program, five would go to properties controlled by J & B Management. Four of the remaining awards, involving two different companies, were the subject of Demery's Superseding Indictment. Another two awards received adverse publicity because they went to a company owned by Demery's former business partner.¹³

Barksdale also received \$100,000 for securing a flexible subsidy award for Johnstone Management for a property in Canton, Ohio, and \$25,000 for securing for the Woodlands Corporation a waiver of the annual fee for participation in Title VII of the National Housing Act. He received \$110,000 in connection with a Title X award for a Dallas project called South Creek, \$15,000 in connection with a Title X award for an Austin project called Steeds Crossing, and \$43,000 in connection with a Title X award for a Fort Worth project called Autumn Meadows. Lantos Hearings, Pt. 3, pp. 767-69. Southcreek was investigated as a possible kickback/bribery scheme because consultant pressure caused HUD to approve the project despite considerable evidence that it was overpriced. Steeds Crossing was investigated because HUD headquarters had pushed the project despite poor market conditions forecast by the HUD field office; the project was appraised by HUD at twice the owner's acquisition costs and the appraisal also exceeded the seller's appraisal by \$600,000. Autumn Meadows was investigated because of allegations that excessive consultant pressure caused HUD headquarters to approve the project even though it was not feasible. See Case FH16-124 and Appendix C-9 to HUD Title X Audit.

Though the OIC would chose not to indict Demery or anyone else on anything related to F.O.O.D. for Africa, Barksdale presumably would have recognized that he was very vulnerable in that regard.

¹³ See Review of the Section 8 Loan Management Set Aside Program, Audit Case No. 89-AO-119-006 (Mar. 31, 1989); Superseding Indictment in United States of America v. Thomas T. Demery and Phillip McCafferty, Crim. No. 92-0227-SSH; "HUD Official Gave Funds To Ex-Partner's Projects," The Washington Post, July 22, 1986, p. A1.

ADDENDUM TO NARRATIVE APPENDIX STYLED "ARAMA:
THE JOHN MITCHELL TELEPHONE MESSAGES AND MAURICE BARKSDALE."
(January 1995)

The OIC's failure to confront Maurice Barksdale with information from the John Mitchell telephone messages indicating that Mitchell had talked to Lance Wilson about securing 300 units and that Wilson had indicated that he (Wilson) had been talking to Barksdale about the matter should be read in light of the fact that when OIC attorneys interviewed the Arama developer, Aristides Martinez, on May 15, 1992, they did ask Martinez if he knew whether Nunn knew Lance Wilson or Maurice Barksdale. See Supplement I, Narrative Appendix styled "Nunn's Annotation Regarding Mitchell's Right to Half the Arama Consultant Fee," at 7 n.3, and Attachment 1 thereto at 4. Thus, though the OIC would bring Barksdale before the grand jury and call him to testify for the purpose of tying Dean to the Arama funding without ever confronting him with the information contained in the Mitchell messages, as of May 15, 1992, the possibility that Mitchell had secured the Arama funding through Wilson was evidently of some concern to the OIC.

SECOND ADDENDUM TO NARRATIVE APPENDIX STYLED "ARAMA:
THE JOHN MITCHELL TELEPHONE MESSAGES AND MAURICE BARKSDALE."
(September 1995)

In the rebuttal portion of the government's closing argument, Associate Independent Counsel Robert O'Neill stated the following regarding the Mitchell message referencing Wilson and Barksdale:

I'd like to talk about the message to Lance Wilson from John Mitchell. The Government has never said that other people didn't write to John Mitchell. First of all, we don't know what project we're talking about here. Arama is not even mentioned and, of course, Maurice Barksdale is the Assistant Secretary at the time. We know that. Mr. Barksdale testified.

Tr. 3516

After then pointing out that Wilson had previously passed information on to Dean regarding an earlier project Mitchell was interested in, O'Neill stated:

Lance Wilson isn't even in the Department of Housing and Urban Development when these three projects [Arama, Park Towers, and South Florida I] are funded.

Tr. 3517

There may be some problem with the transcription of the first two sentences of the first quote above, or O'Neill may have intentionally or unintentionally misdescribed certain events. But he does appear to acknowledge that the OIC did understand that the messages showed that Wilson has spoken to Mitchell and had told him the he (Wilson) was talking to Barksdale about 300 units, though in suggesting to the jury that there is some doubt whether the message referred to Arama, O'Neill is attempting to lead the jury to believe something he could not possibly believe.

In any event, O'Neill's statement provides further support for the proposition that the OIC knew that Wilson had talked to Barksdale about the Arama units. The message itself, of course, would have led anyone who read it to believe beyond any doubt that Wilson had talked to Barksdale about the Arama units.

It is believed Wilson was granted immunity to testify before the grand jury while Dean's case was on appeal. It is doubtful that the OIC recognized any obligation to inquire of Wilson whether -- as Dean stated Wilson had told her -- Wilson had caused Barksdale to fund the Arama project. The government has a continuing obligation in that regard. This is a matter that takes on additional importance in light of the fact that the court of appeals would hold that of the four projects involved in Count 1, there was sufficient evidence to sustain a conviction only at to Arama.