Oral Argument Not Yet Scheduled

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-3021

UNITED STATES OF AMERICA,
Appellee

v.

DEBORAH GORE DEAN,
Appellant

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE UNITED STATES OF AMERICA,
Appellee

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Dated: September 16, 1994

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES PURSUANT TO CIRCUIT RULE 28

Parties

The parties to this appeal are appellant Deborah Gore Dean and appellee United States of America.

Rulings Under Review

Deborah Gore Dean appeals from judgments of conviction and sentence entered on March 15, 1994. References to the rulings at issue appear in the brief for appellant Dean.

Related Cases

An unrelated aspect of this case was previously before this Court in United States v. Deborah Gore Dean, No. 92-3180, an appeal by the United States pursuant to 18 U.S.C. §3731 from a pretrial order by the district court suppressing evidence. The decision in that appeal is reported at 989 F.2d 1205 (D.C. Cir. 1993).

The Dean suppression appeal was in turn related to an earlier appeal from grand jury proceedings prior to the indictment of defendant Dean, In re Sealed Case (Government Records), Nos. 91-3088, 91-3089. The decision in that appeal is reported at 950 F.2d 736 (D.C. Cir. 1991).

There are no related cases currently pending in this court or in any other court of which counsel is aware.

Bruce C. Swartz
Deputy Independent Counsel

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GLOSSARY

The following abbreviations are used in this brief:

"HUD" -- The United States Department of Housing and Urban Development;

"Section 8" -- Section 8 of the Housing Act of 1937, now found at 42 U.S.C. §1437f, which provides legal authority for various HUD rental assistance programs for low-income families;

"Mod Rehab Program" -- HUD's Moderate Rehabilitation Program, one of the low-income rental assistance programs authorized by Section 8, pursuant to which HUD would allocate federal funds to state or local Public Housing Authorities, which in turn would use the funds to provide rent subsidies for fifteen-year periods to owners or developers who agreed to rehabilitate properties to make them decent, safe and sanitary for low-income families;

"Mod Rehab unit" -- the amount of Mod Rehab funding designated for the rental subsidy of an apartment unit;

"PHAs" -- state or local Public Housing Authorities;

"Hearing" -- Hearing on the Nomination of Deborah Gore Dean to Be An Assistant Secretary of Housing and Urban Development, Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate, 100th Congress, 1st Sess. (Aug. 6, 1987);

"Tr." -- trial transcript;

"Tr. [date]" -- transcript of district court hearing;

"GX" -- government exhibit;

"DX" -- Dean exhibit.

COUNTERSTATEMENT OF THE ISSUES

1. Whether a reasonable jury could have found Dean guilty beyond a reasonable doubt on each count, in view of the extensive evidence that Dean conspired to benefit herself and her family and then testified falsely about her actions before Congress.

2. Whether the district court abused its discretion in quashing subpoenas for the testimony of former Senator Proxmire and a former Senate employee on the grounds of irrelevance.

3. Whether the district court erred in concluding that Dean received a fair trial.

4. Whether the district court's determinations that the Sentencing Guidelines applied to counts one and two, and that an upward departure was warranted, were clearly erroneous.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

Pertinent constitutional provisions, statutes, and regulations are set forth in an addendum bound with this brief, except for those contained in the brief for appellant Dean.

COUNTERSTATEMENT OF THE CASE

1. Introduction: Following a jury trial, Dean was convicted of three counts of having conspired to defraud the United States, one count of having accepted an illegal gratuity, four counts of perjury, and four counts of concealment and false statements.

In reaching these verdicts, the jury had before it testimonial and documentary evidence that Dean, while the Executive Assistant to the Secretary of HUD, played a central role in the allocation of federal funds under HUD's Moderate Rehabilitation Program. There

also was extensive evidence that Dean agreed to take, and did take, official actions involving the Moderate Rehabilitation Program in which she and her family had hidden financial and personal interests. Finally, there was evidence that Dean sought to conceal her actions and to mislead Congress, as well as the public and non-favored developers, regarding the manner in which HUD funding awards were made.

2. The Evidence: In summary, the evidence, viewed in the light most favorable to the government, showed the following:

a. Background: Dean was hired in 1982 to serve as a Special Assistant to HUD Secretary Samuel R. Pierce, Jr., and as Director of the Executive Secretariat. Tr. 2170-71; GX 256. Dean's testimony established that, within weeks of becoming a Special Assistant, she began to interject herself into program matters and called other HUD officials for explanations of their actions. Tr. 2177-78.

In 1984, Dean became Executive Assistant to HUD Secretary Pierce, a position she held until 1987. Tr. 217-18. During that three-year period, Dean played a central role in the allocation of federal housing funds under HUD's Moderate Rehabilitation Program.

The Moderate Rehabilitation Program ("Mod Rehab Program") guaranteed a 15-year stream of federal rental subsidies to qualifying property owners who rehabilitated properties for low-income housing. Tr. 166; 42 U.S.C. §1437f. To obtain such Mod Rehab funds, a property owner had to apply to his or her state or local public housing authority ("PHA"). PHAs received allocations

of Mod Rehab funds from HUD. The PHAs -- not HUD officials -- were supposed to determine which properties would receive these funds. Tr. 113. PHAs were required to advertise the potential availability of Mod Rehab funds and hold a competitive selection process pursuant to their administrative plan. Tr. 113.

Prior to 1983, HUD awarded Mod Rehab funds to PHAs according to the "fair share" system, which used a geographic formula mandated by Congress. Tr. 111. Mod Rehab funds were sometimes referred to as "Mod Rehab units," which designated how many apartment units the allocated funds could subsidize; thus, for example, an allocation of 200 Mod Rehab units to a PHA generally would provide subsidies for 200 low-income apartments. Tr. 146.

In 1983, Congress made cuts in the funds budgeted for the Mod Rehab Program and waived the requirement that PHAs be allocated funds according to the "fair share" formula. Tr. 120; DX 96. Thereafter, HUD awarded Mod Rehab funds to PHAs without regard to any geographic formula, even though there were always far more PHA requests for Mod Rehab funding than there were funds available. Tr. 112. HUD continued to be prohibited from making Mod Rehab awards to specific projects, as Dean herself pointed out in official correspondence. See, e.g., GX 31A; see also Tr. 148-49, 155 (Greer); Tr. 163-67 (Hastings).

In fact, however, following the end of "fair share," Dean sought to use the Mod Rehab allocation process to steer awards to projects and individuals she favored. Notwithstanding that she had no formal "line authority," Dean took an active role in the Mod

Rehab Program after becoming Executive Assistant in 1984. Maurice Barksdale, the Assistant Secretary for Housing/Federal Housing Commissioner in 1984, testified that Dean was "running the Department," that she would contact him about "almost everything that would be involved in the day-to-day operations of the Department up to and including funding decisions," and that she would "often" ask about particular funding decisions. Tr. 464-65, 527.

Following Barksdale's departure from HUD in late 1984, Dean instructed Acting Assistant Secretary for Housing Wiseman that the Office of the Secretary "will concur on all funding decisions regarding Mod Rehab funds not previously approved by both Maurice [Barksdale] and myself, until a new Federal Housing Commissioner is named." GX 147 (emphasis added).

But no new Assistant Secretary for Housing/Federal Housing Commissioner was appointed until late 1986. Numerous witnesses testified that during that two-year period from 1984 to 1986, Dean would convene ad hoc meetings in her office and announce to the acting Assistant Secretary for Housing and other HUD political appointees which PHAs would receive Mod Rehab funding; if a PHA on Dean's list had not in fact requested Mod Rehab funding, Dean would order that the PHA be contacted and told to apply for such funds. Tr. 726, 754, 762, 789 (Hale); Tr. 825-26, 951, 957, 995 (DeBartolomeis); Tr. 1724, 1729-30 (Zagame). During this time period, HUD career employees had been cut out of the Mod Rehab funding process. Tr. 183, 209 (Hastings).

In October 1986, Thomas Demery was sworn in as Assistant Secretary for Housing/Federal Housing Commissioner. Tr. 1890. A struggle ensued between Dean and Demery for control over the Mod Rehab funding process. Tr. 1556. In January 1987, in response to this controversy, Secretary Pierce established a three-person Mod Rehab committee consisting of Dean, Demery, and either the HUD General Counsel or Under Secretary. Tr. 2570. Thus, even after the appointment of an Assistant Secretary for Housing, Dean played an important role in deciding which PHAs should be funded.

The evidence further showed that Dean agreed to use, and did use, her official position, and the power she had obtained at HUD, to advance the interests of three different sets of co-conspirators, each of which provided financial and other personal benefits to Dean and to her family.

b. The Mitchell Conspiracy: The first of the conspiracies involved John N. Mitchell. Mitchell lived with Dean's mother and Dean referred to him as her "Dad" or "Daddy." See, e.g., GX 17; Tr. 2970. Mitchell and his company were secretly hired by two "consultants" -- unindicted coconspirators Louie Nunn, a former state governor, and Rick Shelby, a political consultant who subsequently supported Dean's political ambitions -- to secure Mod Rehab funding for their developer clients, neither of whom were informed of Mitchell's role. See, e.g., Tr. 250-51, 657-58. Dean was involved in the funding of each of the projects -- known as Arama, South Florida, and Park Towers -- and Mitchell and his

company were subsequently paid over $200,000. See, e.g., Tr. 327, 339, 2989.

Dean's official actions thus directly benefitted Mitchell, whom she considered to be a family member and who provided her with financial and political support. She took these actions even though she had been expressly warned it would be improper to do HUD business with friends, and by her own admission knew that it was wrong to use HUD funds to benefit family members. GX 258; Tr. 2726.

c. The Sankin Conspiracy: The second conspiracy involved Andrew Sankin, a young lawyer and businessman who Dean acknowledged was essentially on the Dean family "payroll." Tr. 3163. On behalf of a developer, Sankin approached Dean first about obtaining increased subsidized rents for a project known as the Necho Allen Hotel, and later about obtaining Mod Rehab units for a project known as Regent Street; in both cases, Dean took action to grant the request. See, e.g., Tr. 1104, 1106-07. Dean then arranged for Sankin to team up with another consultant, Thomas Broussard, and assigned them Mod Rehab funding for 150 apartment units in Puerto Rico. See, e.g., Tr. 1010. This allowed Sankin and Broussard to peddle these federal subsidies to the highest bidding developer; Sankin and Broussard sold these federal funding "units" for $100,000 for use in the Alameda Towers project. Tr. 1076-77, 1047. Finally, Dean urged Sankin to work with Rick Shelby, who, as noted above, had previously hired Mitchell. See, e.g., Tr. 1118-19. Dean was Shelby and Sankin's contact on the Foxglenn and Eastern

Avenue projects, and Mod Rehab funds were sent to the PHAs they designated. See, e.g., Tr. 561, 599, 606, 1122, 3249.

Throughout this time, Sankin performed a variety of services for Dean and her family, including managing a troubled apartment building owned by Dean's family. See, e.g., Tr. 1125. Indeed, because Dean was providing him access to HUD funds, Sankin accepted Dean's refusal to pay him for his extensive services for the Dean family in obtaining a critical hardship rents petition for that building. Tr. 1285-86. Sankin also bought Dean expensive gifts and made a political contribution at Dean's request. Tr. 1282, 1245-46, 1288-89, 1140-41.

d. The Kitchin Conspiracy and Gratuity: The third conspiracy, and the illegal gratuity charge, involved Lou Kitchin. Kitchin was an influential political consultant. Tr. 1319, 1429. Although Dean denied having any HUD dealings with Kitchin, numerous witnesses testified to the contrary. See, e.g., Tr. 1431, 1436-37, 1524-25, 1551, 2761. Kitchin asked Dean for blocks of Mod Rehab funding units not tied to particular projects, and she assured him that the requests were "reasonable." Tr. 1433. Kitchin then found developers who were willing to pay him to receive the Mod Rehab units he had secured from Dean. Tr. 1332-35.

Kitchin, in turn, contacted the White House to support Dean's bid to become the HUD Assistant Secretary for Community Planning and Development in 1987. Tr. 1446-47, 1527. While under consideration for that position, Dean approached Kitchin and asked him for money. Tr. 1444. He gave her a check for $4,000, which he

marked "loan." GX 203. By her own admission on cross-examination, Dean was in arrears with regard to her credit card bills at this time and had insufficient funds in the bank. Tr. 2909.

Dean testified that Kitchin wanted to buy her brother's apartment, that Kitchin gave her the $4,000 as an advance for decorating the apartment, and that she attempted to repay the $4,000 on the day in June 1987 that Kitchin told her he did not intend to buy the apartment after all. Tr. 2738-46. Dean's explanation for the $4,000 payment not only was contradicted by the testimony of Kitchin and others; in addition, undisputed evidence introduced in rebuttal showed that Dean's story could not be true, since Dean's brother's apartment had in fact been sold to someone else several months before the date of Dean's alleged June 1987 attempt to repay the $4,000. See, e.g., Tr. 2835-38, 3264-65.

e. Dean's Senate Testimony: The jury also heard evidence that, when Congress inquired into Dean's role in the Mod Rehab Program, Dean gave false testimony and concealed material facts. On August 6, 1987, Dean appeared before the Senate Committee on Banking, Housing, and Urban Affairs for confirmation hearings on her nomination to be HUD Assistant Secretary.

At that hearing, Dean testified that PHA applications for Mod Rehab units were reviewed and rated by HUD regional offices and HUD's Office of Housing; thereafter, the Mod Rehab panel on which she sat would "go[] solely on information provided by the Assistant Secretary for Housing." Hearing, GX 212 at 53. She also testified 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. Id. at 53. In addition, she denied any knowledge of a project known as Baltimore Uplift One, and testified 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." Id. at 56-57. Each of Dean's statements was directly contradicted by numerous witnesses. See, e.g., Tr. 588-89, 829, 1120-23, 1298, 1703, 1785, 1898, 3180-82.

3. The District Court's Denial of Dean's Motions for Judgment of Acquittal: At the close of the government's direct case, Dean moved for acquittal pursuant to Fed. R. Crim. P. 29(a). On October 4, 1993, the district court denied that motion in a 23-page oral opinion that reviewed the evidence in detail as to each count of the indictment. Tr. 2040-63. As to each conspiracy count, the court held that there was sufficient evidence from which a jury could conclude that Dean had illegally agreed to take actions to favor her coconspirators and to receive benefits from them, thereby depriving the United States of her loyalty and interfering with lawful government functions, in violation of 18 U.S.C. §371. Tr. 2040-55. Similarly, with regard to the perjury counts and concealment counts, the court found that there was sufficient evidence to permit a jury to find that Dean intended to testify falsely and to conceal from Congress her actions and involvement in the Mod Rehab program. Tr. 2055-63.

After the jury verdict, Dean again moved for judgment of acquittal pursuant to Fed. R. Crim. P. 29(c). The district court denied this motion on February 14, 1994, after reviewing the "over several hundred pages of materials and references to the record" submitted in connection with Dean's renewed motion. Tr. 2/14/94 at 5. The court concluded (id.) that

> [w]eighing the evidence and drawing a justifiable inference of fact, the standard is met here that there was sufficient evidence to permit a reasonable jury to conclude the defendant was guilty as charged in the conspiracies and committed the perjury and concealment when questioned by the Senate about her actions. It is evident to me that looking at the evidence independently, not just from one viewpoint, that the jury could have drawn the conclusions it did, and I could not say that no juror could not have possibly concluded that defendant was responsible for these actions she took.

4. The District Court's Denial of the Motion for New Trial: Following the verdict, Dean also moved for a new trial, claiming that the government, inter alia, had made tardy disclosure of Brady materials, had failed to correct the allegedly false or misleading testimony of certain witnesses, and had made improper arguments in its closing. The government strongly disputed these claims of prosecutorial misconduct both in its brief in opposition and at oral argument on February 14, 1994. Tr. 2/14/94 at 21.

The district court rejected Dean's claim of abuse as to the government's closing argument. The court held that it had taken "care of that appropriate with its own sua sponte instructions it gave after consulting with counsel." Tr. 2/14/94 at 31. The court also noted that "this was, it had to be recognized, a perjury case, and it's very hard to argue a case of perjury unless you are

allowed to refer to the defendant's testimony and have the jury consider what it's worth and taking all that into account." Id.

Furthermore, although the court stated that the government had acted with unworthy zeal with regard to the Brady and witness issues, id. at 27, the court nevertheless held that "... I do not believe there was any overwhelming failure by the government in its zealous efforts in this case that resulted in such prejudice to the defendant as would require a new trial ....." Tr. 2/14/94 at 31.

In reaching this conclusion, the court relied first upon the corrective actions it had taken during the trial. It stated that its concern about the government's conduct did not "tell[] the whole story," since "... I believe that any prejudice was met adequately by the Court's instructions and accommodations to counsel for the defendant to appropriately rebut evidence that may have been produced by the government without a full exploration as to its accuracy." Tr. 2/14/94 at 30.

The court also based its conclusion on the relative unimportance of the challenged evidence when compared to the rest of the evidence in the case. The court stated that "there were multiple other witnesses that testified as to defendant's involvement, and the defendant herself testified at length as to her noninvolvement in these matters in a criminal sense, and the jury concluded against her." Tr. 2/14/94 at 29.[1]

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[1] The other challenged rulings -- the quashing of the Senate subpoenas on the motion of the Senate Office of Legal Counsel, Tr. 2116-29, and the Guideline calculations, Tr. 2/25/94 -- are discussed in detail in Parts II and IV below.

SUMMARY OF ARGUMENT

1. The evidence was more than sufficient to permit a reasonable jury to find Dean guilty on each count. The evidence shows that Dean entered into three self-dealing conspiracies, wherein she used her official position at HUD to advance the interests of coconspirators who provided financial and other benefits to her and her family. The evidence also shows that, when the Senate questioned Dean about her actions at HUD, Dean testified falsely and concealed material facts.

2. The court did not abuse its discretion in quashing subpoenas for the testimony of former Senator Proxmire or former Senate Investigator Naylor. It correctly held that this testimony would not be relevant to the question whether Dean intended to lie to the Senate. Because Dean expressly stated to the court that these witnesses were being called solely on the question of intent, and not on the question of the materiality of her testimony, she cannot now argue on appeal that their testimony should have been allowed on materiality; in any event, their testimony would not have been relevant on that issue either.

3. The court correctly held that Dean was not entitled to a new trial on the ground of alleged prosecutorial misconduct. The court's holding that Dean did not suffer prejudice warranting a new trial is entitled to deference and is in accord with the law of this Circuit. As to each of the four pieces of evidence that Dean claims were Brady and tardily produced, she in fact received the evidence in sufficient time to make effective use of it before the

jury. Similarly, Dean suffered no prejudice with regard to the Sankin receipts; to the contrary, she elected not to have them stricken from evidence, but instead to cross-examine Sankin on the receipts to show him to be untruthful. Finally, the prosecutor's statements in closing that Dean "lied" were legally permissible and had been invited by Dean's repeated assertions in her opening and in her testimony that she was not "lying." In any event, even if those statements had been improper, that impropriety would have been cured by the court's instructions.

4. The court's determinations that the Sentencing Guidelines applied to counts one and two, and that an upward departure was warranted, were carefully reasoned and on their face not clearly erroneous.

ARGUMENT

I. THE EVIDENCE WAS MORE THAN SUFFICIENT TO SUPPORT THE JURY'S VERDICT ON EACH COUNT.

A. Dean's Arguments Ignore The Rigorous Standard Of Review Applicable Here.

Dean's insufficiency arguments fail on both factual and legal grounds. Factually, her arguments ignore most of the evidence at trial, and rely instead almost exclusively on her own testimony. When all the evidence is considered, it overwhelmingly supports each of the jury's verdicts.

Legally, Dean fails to recognize that, even if the case had been closer than it was, it was for the jury to weigh the evidence and to resolve disputed issues of fact and credibility. Dean would have this Court reweigh the evidence and substitute its judgment

for that of the jury -- something this Court repeatedly has stated it will not do.

To the contrary, this Court has held that, when a criminal conviction is challenged for sufficiency of the evidence, the jury's verdict is reviewed "very deferentially." United States v. Harrison, 931 F.2d 65, 71 (D.C. Cir.), cert. denied, __ U.S. __, 112 S. Ct. 408 (1991). The reviewing court "do[es] not determine whether [it] would find guilt beyond a reasonable doubt, but only whether any reasonable jury could find guilt beyond a reasonable doubt." Id. (emphasis in original). See Jackson v. Virginia, 443 U.S. 307, 318-19 (1979).

This standard requires the Court to determine whether, "'viewing the evidence in the light most favorable to the Government, ... and recognizing that it is the jury's province to determine credibility and to weigh the evidence, a reasonable jury must necessarily entertain a reasonable doubt on the evidence presented.'" United States v. Johnson, 952 F.2d 1407, 1409 (D.C. Cir. 1992)(citation omitted)(emphasis in original). It follows that "[w]hen a reasonable mind might fairly have a reasonable doubt of guilt or might fairly have none, the decision is for the jurors to make." United States v. Herron, 567 F.2d 510, 514 (D.C. Cir. 1977).

Dean also fails to recognize that "[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.'" United States v. Treadwell, 760 F.2d 327, 333 (D.C. Cir. 1985), cert. denied, 474 U.S. 1064 (1986). In particular, "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances.'" Glasser v. United States, 315 U.S. 60, 80 (1942)(citation omitted). See Treadwell, 760 F.2d at 333.

In any event, the evidence was not simply circumstantial. As to each count, there was more than sufficient evidence -- both direct and circumstantial -- from which a reasonable jury could find guilt beyond a reasonable doubt.

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

The evidence establishes that defendant entered into classic self-dealing conspiracies. The federal courts -- including this Court in Treadwell -- have uniformly sustained prosecutions under 18 U.S.C. §371 against public officials or others entrusted with federal funds who act in matters in which they have hidden personal interests.[2] This personal interest need not be financial in

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[2] See, e.g., United States v. Gallup, 812 F.2d 1271, 1276 (10th Cir. 1987) (PHA official secured HUD financing for property, thereby ensuring that brother-in-law would receive finder's fee); United States v. Conover, 772 F.2d 765, 770-71 (11th Cir. 1985) (employee of rural electric cooperative steered contract to friend with whom he had business dealings), aff'd in part and remanded on other grounds sub nom. Tanner v. United States, 483 U.S. 107 (1987); Treadwell, 760 F.2d at 334 (managers of HUD property engaged in "general pattern of self-dealing, conflicts of interest and shoddy management practices," such that in "every transaction there was a potential for improper favoritism").

nature.[3] Nor, Dean to the contrary (Dean Br. 20), is it necessary that the United States have suffered a financial loss.[4]

Dean has never disputed that this type of self-dealing conspiracy is punishable under §371. Instead, her claim is that the evidence was insufficient to permit the jury to find her guilty of having entered into such conspiracies to defraud the United States. According to Dean, the evidence showed "nothing more than the fact that Ms. Dean knew or had friendships with the consultants," and that "[w]hile she may have played a peripheral role in some allocation decisions that benefitted these consultants, there is no evidence that this involvement was improper or motivated by fraudulent intent." Dean Br. 20.

In fact, however, the evidence was overwhelmingly to the contrary on all these points. As to each of the conspiracies charged, there was ample evidence that Dean, while holding a powerful position at HUD, agreed to and did take official actions to advance the interests of her coconspirators; that she and her family had hidden personal interests in these official decisions; and, finally, that Dean and her coconspirators acted with

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[3] See, e.g., Gallup, 812 F.2d at 1278; United States v. Tham, 960 F.2d 1391, 1394 (9th Cir. 1991); United States v. Shoup, 608 F.2d 950, 957 (3d Cir. 1979). Indeed, even absent proof of a hidden personal interest, §371 forbids conspiracies to subvert governmental functions by "deceit, craft or trickery, or at least by means that are dishonest." See Hammerschmidt v. United States, 265 U.S. 182, 188 (1924).

[4] See, e.g., Tanner v. United States, 483 U.S. 107, 128 (1987); Hammerschmidt v. United States, 265 U.S. 182, 188 (1924); In re Sealed Case, 676 F.2d 793, 815 n.92 (D.C. Cir. 1982).

fraudulent intent and deceitfully sought to conceal their actions.[5]

1. The Evidence Was More Than Sufficient As to Count One (The Mitchell Conspiracy).

a. Dean Had a Hidden Personal Interest in Enriching Mitchell: The conspiracy charged in count one centered on John N. Mitchell. As Dean's brief concedes, Dean had a "familial" relationship with Mitchell. Dean Br. 22. Mitchell was the companion of Dean's mother and lived at her mother's home. See, e.g., Tr. 316 (Brennan); Tr. 388 (Gauvry); Tr. 2960 (Dean). Mitchell referred to Dean as his daughter, see Tr. 1367-68 (Nunn), and Dean -- in forwarding HUD documents to Mitchell -- referred to Mitchell as "Daddy" and "Dad." See GX 17, 18.

There was testimony that Mitchell's financial situation at this time was poor, and that Dean attributed her mother's decision not to marry Mitchell to her fears that his financial condition might encumber the family. See Tr. 819 (DeBartolomeis). Dean 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). Dean also testified that her mother paid Mitchell's living expenses. Tr. 3164.

Dean fails to recognize that her own testimony in this regard, if credited by the jury, permitted the inference that Dean was able to limit the financial burden on her mother by generating income

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[5] Similarly, this evidence of deceit also established -- and the indictment also charged -- that Dean conspired to conceal and cover-up material facts, in violation of 18 U.S.C. §§371 and 1001.

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

Thus, actions Dean took to benefit Mitchell would enrich the Mitchell-Dean family, and redound to the ultimate benefit of Dean's mother and herself. Indeed, there is proof that Dean received gifts of money from Mitchell after he began his consulting activities. For instance, as Dean admitted at trial, Mitchell gave her $500 on December 25, 1986, GX 236, Tr. 3013-14, and the following year he paid over $3,300 for a birthday party that was held for Dean at the Georgetown Club. See GX 238.

Dean's suggestion that these "benefits that Mitchell provided Ms. Dean were clearly consistent with that [familial] relationship," Dean Br. 22, both makes and misses the point. Dean essentially admits that, as Mitchell's "daughter," she could expect benefits received by Mitchell to flow through to her. She fails to acknowledge, however, that this gave her an improper personal interest in assisting him at HUD.

The evidence also established that Mitchell's assistance to Dean was not only financial in nature. Mitchell sought to advance defendant's career and her political aspirations. See SF 186 in GX 236; Tr. 3014-15, 2599-2600; Tr. 581 (Shelby). In addition, Dean admitted that Mitchell interceded on her behalf with the Director of the FBI when Dean complained of the manner in which the FBI was

conducting her background investigation for her nomination to be Assistant Secretary. Tr. 3017-19.

b. Dean Agreed To, And Did, Advance Mitchell's Interests at HUD: Dean argues that she lacked any power over Mod Rehab allocations, and thus could not have assisted Mitchell or any of her other coconspirators. Dean Br. 7-8, 28-29. In actuality, however, there was overwhelming evidence that Dean wielded significant power and influence in Mod Rehab funding decisions. See pp. 3-5 supra.

It is, for instance, undisputed that Dean had one of three votes on the Mod Rehab funding panel eventually established by Secretary Pierce. Furthermore, before the establishment of that panel, Dean would convene ad hoc meetings in her office and personally direct the Acting Assistant Secretary and other high-ranking HUD political appointees which PHAs would receive Mod Rehab funding. See p. 4 supra. This testimony was not "generalized opinions by second and third-level employees," as Dean would have this Court believe. Dean Br. 28. Rather, it was direct evidence of Dean's actions from witnesses -- including two acting Assistant Secretaries and one Deputy Assistant Secretary -- who were present at the Mod Rehab funding meetings run by Dean. See also Tr. 1555-56 (testimony of Dean's secretary that Dean asserted that Assistant Secretaries should obey her on Mod Rehab matters).

In light of this, Dean cannot credibly argue that a rational jury could not have found that she was in a position to assist those seeking Mod Rehab allocations. Even viewing the evidence in

the light most favorable to Dean, the sensitive nature of her position was such that she could at least influence, if not decide herself, who would receive Mod Rehab funding. Moreover, Dean fails to recognize that, as a legal matter, it is irrelevant whether she had the ultimate authority to allocate Mod Rehab funds; it is enough that she took actions designed to advance the interests of her coconspirators.[6]

Alternatively, Dean argues that she did not take such actions, and that instead she did no more than extend "routine courtesies" to Mitchell and the other charged coconspirators. Dean Br. 22, 27. Here, too, Dean misstates the evidence. There was more than sufficient evidence from which a rational jury could have concluded that Dean took official actions to aid each of the projects in which Mitchell had an interest.

For instance, with regard to Marbilt, the first Mitchell project, Dean wrote to Mitchell and advised him that she had discussed the project with relevant HUD officials; the very wording of the letter -- which suggests that "[i]t's time we say 'adios'" to the developer, GX 17 (emphasis added) -- would justify the jury in concluding that Dean and Mitchell were working together. See also GX 18.

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[6] 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. Analytis, 687 F. Supp. 87, 90 (S.D.N.Y. 1988) (same); United States v. Raff, 161 F. Supp. 276, 280 (D. Pa. 1958) (same).

Similarly, Dean's correspondence stated that she spoke to Mitchell concerning the Arama Partnership's request for "additional Mod-Rehab units." GX 27, 28. Her letter assured Nunn, who had hired Mitchell, "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." Id. In contrast, Dean wrote to Mod Rehab applicants outside the conspiracy that "[f]ederal regulations prohibit HUD from making project specific allocations."[7] GX 31b; see GX 31a.

On the South Florida I project, Dean admitted meeting with Jack Brennan, Mitchell's partner. Tr. 2622-23. Significantly, she also admitted that she did not tell Secretary Pierce about Brennan's request for Mod Rehab units, since Pierce allegedly would not have been interested. Tr. 2625, 2868 ("[a] friend of mine asking me for something at HUD hardly required Secretary Pierce's attention"). By admitting that she did not tell Secretary Pierce about Brennan's request -- and in light of the evidence that it was Dean who would tell the Acting Assistant Secretary which requests to fund -- Dean herself provided the jury with a basis for

[7] While Assistant Secretary 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, or that she did not seek to advance Mitchell's interests by making inquiries that would let Barksdale know that she was interested in the project. The jury also had before it Barksdale's testimony that Dean would "often" ask about particular funding decisions (Tr. 465), as well as GX 147, cited above, in which Dean herself made clear that Mod Rehab decisions were approved by Barksdale and herself.

concluding that she personally made the decision to award these units.[8] Tr. 326-27; GX 51.

On the Park Towers project, Dean met with unindicted coconspirator Shelby, who had retained Mitchell. Tr. 553. Furthermore, Mitchell's and Dean's calendars reflect that Dean, Mitchell, and Shelby scheduled a lunch together after Shelby and Mitchell became involved in the project; and the day following that scheduled lunch, Shelby forwarded Dean information on "the Miami Mod Rehab," which allowed the jury to conclude that the project had in fact been discussed. GX 5k, 9g & 76 (emphasis added). The evidence also showed that Shelby's self-described "friend" at HUD on this project was Dean, that she assisted him on this project, and that he was careful not to identify her by name to the developer who had hired him. GX 85; 3021.

c. There Was Ample Evidence of the Conspirators' Fraudulent Intent: Dean contends that there was no evidence demonstrating that she had a fraudulent intent and "little, if anything, to suggest that Ms. Dean had reasonable notice that her acts could be construed as criminal." Dean Br. 29, 26. Again, the evidence was entirely to the contrary.

At trial, Dean admitted that while she was at HUD she knew that it would be wrong to use HUD funds to benefit family members.

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[8] While Brennan, an unindicted coconspirator, testified that Mitchell said he would not participate in this project because Dean worked at HUD, Tr. 321-22, the jury could weigh that testimony against the evidence that Brennan worked with Mitchell and that it was Mitchell's company -- not Brennan personally -- that was paid $109,000 for obtaining these units. Tr. 326-27; GX 51.