

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-20 (RTR)

GEORGIA THOMPSON,

Defendant.

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**DEFENDANT'S BRIEF IN SUPPORT OF  
HER MOTIONS FOR JUDGMENT OF ACQUITTAL  
OR FOR A NEW TRIAL**

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**I.**

**INTRODUCTION**

Georgia Thompson timely moved for judgment of acquittal under Rule 29, FED. R. CRIM. P. At trial, her motions were denied by the court. After the jury's verdict was returned, the court reserved Georgia Thompson's right to make any post-conviction motion. On June 19, 2006, she timely filed a motion for judgment of acquittal (pursuant to FED. R. CRIM. P. 29(c)(1)) and, in the alternative, for a new trial in the interest of justice (pursuant to FED. R. CRIM. P. 33(a)). This brief is filed in support of those motions.

Before and during trial Georgia Thompson raised numerous legal issues which the court ruled on after consideration of arguments and pleadings. *See, e.g.*, Docket Nos. 7, 15 -17, 19, 23 -26, 35, 41- 45 and 48. This brief is not intended to re-argue those legal issues which have already been considered by the court. At the same time, Georgia Thompson does not waive or abandon the objections raised and legal positions previously taken; she incorporates by reference all arguments previously made. The instant motions are based on specific facts which require either entry of judgment of acquittal or a new trial

## II.

### LEGAL STANDARD

#### A. Rule 29, FED. R. CRIM. P.

A court considering a motion for acquittal must view the evidence in the light most favorable to the government and only grant the motion if no rational jury could find guilt beyond a reasonable doubt. *United States v. Eberhart*, 388 F.3d 1043, 1052 (7th Cir. 2004); *United States v. Washington*, 184 F.3d 653 (7th Cir. 1999). The same test applies whether the evidence is circumstantial or direct. All reasonable inferences which tend to support the government's case must be accepted and any conflicts in the evidence must be resolved in the government's favor. *United States v. Reed*, 875 F.2d 107, 111 (7th Cir. 1989). The Seventh Circuit has re-stated the above

test as “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Moya*, 721 F.2d 606 (7th Cir. 1983)(emphasis in original), citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

**B. Rule 33, FED. R. CRIM. P.**

Rule 33 provides that the court may grant a new trial “if the interest of justice so requires.” *United States v. Walton*, 217 F.3d 443, 450 (7th Cir. 2000). “The rule by its terms give the trial court broad discretion . . . to set aside a jury verdict and order a new trial to avert a perceived miscarriage of justice.” *United States v. Ferguson*, 246 F.3d 129, 133 (2d Cir. 2001). The defendant’s motion for a new trial may be considered in five basic categories: (1) the verdict is contrary to the law and evidence; (2) the court’s legal rulings and instructions given during the trial and in the court’s final jury charge were erroneous; (3) the court erred in its evidentiary rulings made prior to and during the trial; (4) there was prosecutorial misconduct; and (5) the court should not have allowed the jury to continue its deliberations and erroneously instructed the jury after the jury had begun its deliberations. *United States v. Huls*, 1987 WL 15949 (M.D. La). The latter two categories are not implicated by these motions.

In contrast to the deference afforded to the jury verdict by Rule 29, under

Rule 33, the court need not view the evidence in the light most favorable to the government. *United States v. Washington*, 184 F.3d 653, 657 (7th Cir. 1999). Rather, the court is free to “discount” evidence and consider the record as a whole. *United States v. Huerta-Orozco*, 272 F.3d 561 (8th Cir. 2001).

To this end, the court may weigh the evidence and consider the credibility of witnesses to determine whether a miscarriage of justice may have resulted. The court may only order a new trial if “the verdict is against the manifest weight of the evidence” and a guilty verdict would result in a “miscarriage of justice.” *Washington*, 184 F.3d at 657. “The ‘great weight’ of the evidence—the measure used to decide a new trial motion - is quite distinct from the ‘abstract sufficiency of the evidence to sustain the verdict’ - the measure used to decide a motion for a judgment of acquittal.” *Huerta-Orozco*, 272 F.3d at 567.

Thus, the court has the power and discretion to grant a new trial if the court concludes that the trial has resulted in a miscarriage of justice: “[t]he ultimate test [under Rule 33] is whether letting a guilty verdict stand would be a manifest injustice. . . . There must be a real concern that an innocent person may have been convicted.” *United States v. Canova*, 412 F.3d 331, 349 (2d Cir. 2005)(internal quotations and citations omitted).

### III.

#### ARGUMENT

The government's case, as presented over the course of a six day jury trial, was notable for the nature of the evidence the government introduced and that evidence which the government did not; the government did not produce any direct or "smoking gun" evidence of Georgia Thompson's alleged wrong-doing. Instead, the government's case layered inference upon speculation upon inference and relied on the public's underlying bias against politicians (and public servants) – believing all politicians to be crooks – to obtain a guilty verdict.<sup>1</sup>

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<sup>1</sup> Statements made to the media by two members of the jury reveal the prism through which the jury interpreted the evidence. Juror Marvin Bizelle, Sr., for example, stated the jury believed higher ranking administration officials, including Governor James Doyle, were involved in the RFP Partner contract's award to Adelman Travel Group. Ryan Foley, *Travel Pact Jurors Give Their View*, WISCONSIN STATE JOURNAL, June 18, 2006, at D9. Victor Nohl, the jury foreman, agreed: "[t]hat's what the evidence tended to show . . . I really couldn't say anything about who it was" involved in favoring Adelman. Bizelle said he believed Thompson "just went along with what her superiors wanted. There was no doubt in anybody's mind that there was people above her pushing on her and telling her what to do." *Id.* These views of the case are unsupported by the evidence introduced at trial. By his statements to the media, after the jury verdict was returned, the United States Attorney agrees: "The allegation was against Georgia Thompson you know several layers below Mark Marotta. There's no reason for the public to speculate that based on the evidence we presented that this went past Georgia Thompson." Available at <http://www.wpr.org/news/newsstories.cfm> (last visited on June 13, 2006). It is (sadly) ironic that members of the jury apparently engaged in the same conduct which accused Georgia Thompson of, namely considering facts that were not be applied. Georgia Thompson notes that Rule 606, FED. R. EVID., bars the introduction of the jurors' statements when inquiring into the validity of the verdict.

Proof of Georgia Thompson's criminal intent was not based any document, email or phone record. Indeed, FBI agent Terry Sparacino testified that the government's investigation was focused only on possible interactions between one proposer (of five finalists) to the "Partner" contract - Adelman Travel Group - and appointed officials. The investigation did not examine whether other companies had similar contacts or whether direct evidence - such as phone records - existed to demonstrate that Georgia Thompson was directed by the appointed officials. So too, proof of criminal intent was not supported by testimony from those individuals who were Georgia Thompson's superiors (all appointees of Governor Doyle) or her subordinates - none of them were called as witnesses by the government. Proof of Georgia Thompson's criminal intent, as it were, came from testimony of individuals who participated in an evaluation committee with Georgia Thompson. Their recollections, when they had them, of the statements attributed to Georgia Thompson were not complete and, at times, not accurate. Certainly, these witnesses did not provide direct evidence. They could only interpret what Georgia Thompson is alleged to have said against the backdrop of their own interests and beliefs. And much of their interpretation did not occur until after they learned that a principal of one of the proposers involved in the RFP process had made contributions to

Governor Doyle's campaign fund.<sup>2</sup>

These facts demonstrate a paucity of evidence which, when coupled with legal errors, require this court to enter a judgment of acquittal or, in the alternative, to order a new trial for Georgia Thompson.

**A. FAILURE TO PROVE CRIMINAL CONDUCT BEYOND A REASONABLE DOUBT: THE EVIDENCE PRESENTED WAS INSUFFICIENT.**

The government's evidence that Georgia Thompson used political (or other) considerations ("non-merits" reasons in the parlance of the jury instruction) to evaluate and select proposers in the "Partner" travel contract Request for Proposal process was insufficient to support a conviction for violations of 18 U.S.C. §§ 666(a)(1)(A), 1341 and 1346. This court should grant the motion of acquittal under

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<sup>2</sup> That a principal of Adelman Travel Group made contributions to Governor Doyle's campaign fund was first disclosed in the media five or more months after the evaluation committee met and discussed whether to recommend the award of the "Partner" contract. There was no evidence introduced at trial that Georgia Thompson was aware of Adelman's contribution in connection with her evaluation of the "Partner" RFP proposals. Records introduced by the government indicate that Craig Adelman contributed \$2,500 on August 11, 2004 and, again, \$7,000 on June 21, 2005 to Governor Doyle. These contributions pale in comparison to the contributions made by the owner of Marathon Cruise and Travel, a direct competitor of Adelman Travel Group for the "Partner" contract. John Noel, CEO of Marathon, testified at trial that he and his family, over a three year period, contributed \$29,750 to Governor Doyle's campaign committee. Moreover, Governor Doyle appointed John Noel to his Economic Growth Council, where he served from 2003 to 2005. There is, similarly, no evidence that Georgia Thompson was aware of (or considered) John Noel's ties to Governor Doyle. Nor is there any evidence of pressure exerted on Georgia Thompson as a result of the connections between Noel and Governor Doyle.

Rule 29 as no rational jury could find Georgia Thompson guilty of the charged offenses beyond a reasonable doubt. *See United States v. Eberhart*, 388 F.3d 1043, 1052 (7th Cir. 2004).

The Indictment alleges that Georgia Thompson misused her position by using “political considerations” to (a) intentionally inflate her scores for Adelman Travel Group during the oral presentation portion of the Partner contract selection; (b) state to other evaluators that she had intentionally inflated her scores for another travel agency during the oral presentation portion of the Athletics contract and to do so in order to use that score as a negotiating tool in favor of Adelman in dealings with other members of the committee on the Partner contract; (c) prevent the otherwise unanimous determination of the other committee members that the Partner contract be awarded to a recipient other than Adelman; and (d) suggest committee members change the scores evaluating the Partner contract. Indictment, at ¶ 13.

As a result, the Indictment alleges that “an additional evaluation step was utilized that resulted in the Partner contract being awarded to Adelman” Travel Group. *Id.*, at ¶ 14.

The Indictment further alleges that Georgia Thompson’s scheme to defraud included “false material pretenses and representations” (Count Two, ¶ 2), which she

“intended to cause political advantage for her supervisors,” *id.*, ¶ 3, and “to help her job security.” *Id.*, ¶ 4.

These are extraordinary claims and the evidence adduced at trial by the government did not prove these points. A rational trier of fact examining the trial record could not have found the essential elements of the crime beyond a reasonable doubt. *See United States v. Moya*, 721 F.2d 606 (7th Cir. 1983)

**1. Summary of Evidence Refuting Indictment’s Allegations**

**a. Oral Presentation Scores**

The Indictment alleges that Georgia Thompson misused her position by intentionally inflating her scores for Adelman Travel Group during the oral presentation portion of the Partner contract selection. This she did not do. Georgia Thompson acknowledged amending her scores when she further considered the oral presentation and, when she realized that she had scored proposers lower because of style, rather than substance. She made changes that reflected the substance of the presentations. When all of the evaluator’s scores across all categories are examined, Georgia Thompson’s scores were no more out-of-line than other evaluator’s scores. With respect to the scores on the oral presentation for the “Partner” contract, if Georgia Thompson had wanted to skew scoring in favor Adelman Travel Group she would have scored them perfectly across the board, or close to it – in every category,

since she could have gone back to change her scores on the mandatory categories – this she did not do. And while she scored Adelman Travel Group high, she did not give them a perfect score as other evaluators gave Omega. *See, e.g.,* exhibit 1000 (Peg Lafky scoring Omega 200 out of 200 possible points).

**b. Trading Scores**

The Indictment alleges that Georgia Thompson informed other evaluators that she intentionally inflated her scores for another travel agency during the oral presentation portion of the “Athletic Travel” contract and to do so in order to use that score as a negotiating tool in favor of Adelman in dealings with other members of the committee on the Partner contract. This she did not do. Other than conflicting interpretations of what Georgia Thompson allegedly said at the March 3, 2005 evaluation team meeting there is no evidence of this occurring. The scoring for the “Athletic Travel” contract belies the allegation. *See* exhibit 1005. Georgia Thompson acknowledged that she reconsidered her scores for this category upon learning more about the special needs which athletic travel poses from Lisa Clemmons, the representation for the University of Wisconsin Athletic Department, something permissible under, and encouraged by, the rules of the process.

**c. Unanimity**

The Indictment alleges that Georgia Thompson prevented the otherwise

unanimous determination of the evaluation committee with regard to the “Partner” contract.<sup>3</sup> This allegation is entirely misleading as there exists no requirement that the evaluation committee’s decisions be unanimous. In fact, the entire purpose of the requirement that an evaluation committee be composed of no less than three individuals is so that there can be no ties – and thus, logically, there need not be unanimity. *See* WIS. ADMIN. CODE, Adm § 10.08(4).

**d. Asking Evaluators About Scores**

The Indictment alleges that Georgia Thompson suggested that members of the RFP evaluation committee members change the scores. Testimony from the other members of the evaluation committee regarding what Georgia Thompson is alleged to have stated was not consistent. Generally, all witnesses agreed that she inquired along the lines of “is that your final answer?” If the evaluator was satisfied with their scores, Georgia Thompson did nothing more to get them to re-consider their scores. What is troubling about the allegation is that the presumption that this inquiry is somehow nefarious. It is not. Those witnesses who were experienced in the RFP process, Helen McCain for example, noted that an evaluator was entitled

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<sup>3</sup> The scores of other evaluators indicate that they scored Adelman in first place for the “Partner” contract, *See, e.g.*, exhibit 1000. Terri Gill gave Adelman 1053 points, Fox 977.7 and Omega 958.8, out of a possible 1,200 points. Thus Gill’s scores belie her later support for Omega as the proposer who provided the best qualified product and the best possible price.

to change scores at any time and that evaluators were encouraged to discuss their scores throughout the process.

**e. The “additional evaluation step”**

The Indictment alleges that, at Georgia Thompson’s direction, “an additional evaluation step was utilized.” The government argued that the process after the March 3, 2005 meeting was guided by Georgia Thompson at the direction of her superiors. No such evidence was presented to the jury. In fact, though the government in its opening statement attributed the use of the “best and final” process to Georgia Thompson, it was evaluation committee member Lisa Clemmons who suggested that this process be used. (The use of the “best and final” was noted in the RFP, among other places, giving proposers advance notice that this process might be used.) Moreover, the testimony of Ian Thomas and Georgia Thompson was that she had no role in the “best and final” process (it was managed by David Webb and Ian Thomas).

**f. Causing Political Advantage for her Supervisors**

The Indictment alleges that Georgia Thompson was motivated by some political advantage that would accrue to her supervisors as a result of the award of the “Partner” contract to Adelman Travel Group. The lack of evidence as to this allegation overwhelming. At trial, there was (1) no testimony from any of Georgia

Thompson's superiors; (2) no evidence of any communication between Georgia Thompson and her superiors; and (3) no evidence that Georgia Thompson knew anything about a donation made by a principal of Adelman Travel Group to Governor Doyle. Nor was there any testimony to establish what the "political advantage" was, or to which supervisor(s) it would accrue.

**g. "Job security"**

The Indictment alleges that Georgia Thompson was motivated by a vague threat to her employment if Adelman Travel Group was not awarded the "Partner" contract. The lack of evidence as to this allegation overwhelming. The government presented no evidence in support of this allegation. Moreover, the allegation was soundly refuted by the testimony of Michael Soehner who testified that civil service employees, such as Georgia Thompson, have significant protection from political pressure; her employment could not have been threatened if Adelman Travel Group was not awarded a contract.

**2. Thompson Was A Career Civil Servant: No Evidence At Trial That She Was Politically Involved**

Georgia Thompson was a respected civil service employee with a tremendous fund of knowledge about the travel industry gained during a twenty-five year career working in all aspects of that field. She was not a political appointee, having entered state employment in 2001 under then Governor Scott McCallum. And there is no

evidence that she contributed to or supported a political candidate. Ever. Moreover, there is no allegation that Georgia Thompson was paid off or received any direct benefit from the offense conduct. And when she got a raise after the Travel RFP process was completed, it was at the recommendation of her superior who was not in the Department of Administration at the time the RFP was evaluated; the raise was based on her dedication and tireless devotion to her job.<sup>4</sup> Indeed, testimony at trial made clear that *if* Georgia Thompson had been pressured to influence the RFP process, state civil service protections would not have allowed her to be disciplined, had she refused.

Those who testified against Georgia Thompson were all associated with the University of Wisconsin. They suggested in their testimony that Georgia Thompson was worried about the contract being awarded to Adelman Travel Group. It was clear, however, that the University of Wisconsin's representatives (like Ian Thomas, the travel consultant)<sup>5</sup> had their own agenda: the University of Wisconsin does not appreciate any interference with their prerogatives, especially by the Wisconsin

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<sup>4</sup> To be clear, the government never presented any evidence (not even a suggestion) that the one-time award was related in any way to the RFP process.

<sup>5</sup> It is undisputed that Ian Thomas was being paid by the UW Madison (and not the Wisconsin Department of Administration) for his work advising the RFP evaluation committee (*see* exhibit 1007). Additionally, Ian Thomas had another on-going \$150,000 contract with the UW System (*see* exhibit 1008), for an automated travel system which had been previously passed-over by the Wisconsin Department of Administration.

Department of Administration. Helen McCain, who was at the University of Wisconsin at the time of the alleged offense, testified that there is a great deal of resentment by the University and its employees of (perceived) interference by the Legislature or the Department of Administration with what they see as appropriate. The animosity is historic and constant. Simply put, the University of Wisconsin believes it knows better and resents that its role in state government is subservient to other administrative agencies.<sup>6</sup>

**2. Lack of Any Direct Evidence of Wrongdoing By Georgia Thompson's Superiors of Subordinates**

At trial the government did not elicit any testimony from any of Georgia Thompson's superiors that they spoke to her, directed her or, in any manner, attempted to influence her - and thus, indirectly, the RFP evaluation process. Specifically, the government did not call to testify the Secretary of the Department of Administration, Marc Marotta, Division Administrator Patrick Farley or Deputy Administrator James Langdon. As a result there was no direct evidence that any of these three preferred Adelman Travel Group, or any other proposer, because of the political ties or contributions which that proposer (or any other) had made (*i.e.*,

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<sup>6</sup> Why else would evaluators from the UW Madison, such as Terri Gill and Frank Kooistra, note that cost did not matter when it came to evaluating the RFP proposals. So too, these employees were the source of leaks to the media about the RFP process as revealed in Tony Galli's interview of Georgia Thompson (*see* exhibit 126).

political reasons or advantage).

So too, the government did not elicit any testimony from those whom Georgia Thompson was supposed to have supervised – and thus, over whom she was to have exerted influence at the direction of her superiors. Dave Webb, the procurement manager was an *ex officio* member of the evaluation committee. There was no evidence about how (if at all) Georgia Thompson affected the RFP evaluation process, including the best and final and tie-breaker. Indeed, there is no dispute that a best and final was available in this RFP process or that the RFP evaluation process did not require unanimity as alleged in the indictment. The only evidence regarding the tie breaking procedure came from Ian Thomas, who did not implicate Georgia Thompson in the process; and from Georgia Thompson whose testimony established limited and discreet involvement in passing Dave Webb's question up the chain of command to the department's legal counsel. There is no suggestion that she knew of any rounding of the final scores.

### **3. No Evidence of Personal Gain By Georgia Thompson**

At best, the relevant evidence, viewed in the light most favorable to the government, demonstrates a violation of the applicable sections of the Wisconsin Administrative Code. *See* WIS. ADMIN CODE, Adm § 10.08. Such a violation (if proven) is, in itself, insufficient to constitute a federal criminal offense and certainly

not a scheme to defraud. That is, violation of the administrative code is legally insufficient to prove that a public employee breached her fiduciary duty; the evidence must demonstrate that the breach was intended to prevent or call into question the proper or impartial performance of the employee's official duties. In other words,

although a public official might engage in reprehensible misconduct related to an official position, the conviction of that [employee] cannot stand where the conduct does not actually deprive the public of its right to her honest services, and it is not shown to intend that result.

*United States v. Sawyer*, 85 F.3d 31 (1st Cir. 2001). This the government could not and did not do.

#### **4. Testimony Regarding Job Security**

Critical to the government's case was the inference that Georgia Thompson's "job security" would somehow be threatened if she did not act to have one of the contracts awarded to Adelman Travel Group. *See* Indictment, Count 2, ¶ 4. The government did not introduce any testimony (direct or circumstantial; in chief or in rebuttal) in this regard. Michael Soehner, of the Wisconsin Office on State Employment Relations, provided the only source of information for the jury. He testified that a state employee is protected from political pressure and that her employment would not be jeopardized if she declined to advance the award of a

contract based on “political” (“non-merits”) considerations. *See, e.g.*, WIS. STAT. § 230.34. As such, the Indictment’s stated motive for Count 2 fails. No other evidence of personal gain was presented and the lack of proof regarding personal gain is insufficient to support the conviction. *See United States v. Bloom*, 149 F.3d 649, 655 (7th Cir. 1998); *United States v. DeVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999); *United States v. Frost*, 125 F. 3d 346, 365 (6th Cir. 1997); and *United States v. Sawyer*, 85 F. 3d 713, 725 (1st Cir. 1996).

**B. ADMISSION OF SPECULATIVE TESTIMONY AS PROOF OF GEORGIA THOMPSON’S CRIMINAL INTENT WAS IMPROPER**

Speculation, even if credible, does not suffice as substantial evidence. Here, in place of direct evidence, the government presented (over repeated objection, before and during trial) the testimony of evaluation committee members Lisa Clemmons, Terri Gill, Frank Kooistra, Bridget Nettesheim and Ian Thomas. The testimony of these witnesses, in particular as to why Georgia Thompson acted as she did when the “final scores” for the “Partner” travel proposal were discussed, was premised on speculation, surmise and conjecture regarding Georgia Thompson’s intent. Such testimony is a legally insufficient basis to support a conviction. *Karchmer v. United States*, 61 F.2d 623 (7th Cir. 1932)(“We are not unmindful of the rule which makes the jury the sole judge of facts over which there is a conflict. . .

. But the verdict, as we view it, rests upon speculation and conjecture. Such being the fact, the case should not have been submitted to the jury. A verdict which finds its only support in conjecture and speculation cannot stand.”); *Rice v. United States*, 166 F.3d 1088, 1092 (10th Cir.1999) (“To support a . . . verdict, evidence, including testimony, must be based on more than mere speculation , conjecture, or surmise”); and *United States v. Bailey*, 859 F.2d 1265 (7th Cir. 1988)(“Speculation, ‘funny’ looks, and ‘raised eyebrows’ are not sufficient to convict people for knowingly participating in a scheme to defraud.”)

At trial the government elicited testimony by members of the evaluation committee concerning a meeting on March 3, 2005, during which the RFP proposer’s scores for the “Partner” category were discussed. The witnesses to the March 3, 2005 meeting testified about Georgia Thompson’s demeanor and statements allegedly made by Thompson and their beliefs or impressions which (they believe) explain Georgia Thompson’s demeanor and statements and thus, her intent. Testimony falling into the last category is not relevant and is based wholly on speculation. Such testimony is not the product of observation but, rather, uninformed (and inadmissible) surmise.

**1. Rules 602 and 701, FED. R. EVID.**

Rule 602, FED. R. EVID., requires that a witness give testimony based on

perception from the five senses – not from some sixth sense. The rule provides that

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Relatedly, Rule 701, FED. R. EVID., provides that:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

In this case, the witnesses' testimony was not rationally based on their observations. Terri Gill, for example, agreed on cross examination that her testimony attributing motive to Georgia Thompson's conduct at the March 3, 2005, meeting was based on surmise and suspicion. At best (on redirect) Gill said that her observations were based on a "general feeling" she had. She could not be more specific. Lay assertion cannot be "flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from [the witness's] experience;" witnesses are not competent to describe motive because testimony too much like psychoanalysis, for which the witnesses are not qualified. *Visser v. Packer Engineering Assoc., Inc.*, 924 F.2d 655, 659-60 (7th Cir. 1991).

**C. ADMISSION OF HEARSAY STATEMENTS WAS IMPROPER GIVEN GOVERNMENT'S FAILURE TO ESTABLISH NECESSARY PREDICATE RELATIONSHIP BETWEEN WEBB AND THOMPSON**

Ian Thomas ought not have been permitted to testify about a statement which he attributed to David Webb, the procurement manager involved in the RFP process: "Georgia's not going to be happy about this," or words to that effect. Admission of that hearsay statement was not harmless because it comprises the only evidence that Georgia Thompson discussed a potential outcome with David Webb.

At trial, the government argued that Webb's purported statement to Thomas was not hearsay under Rule 801(d), FED. R. EVID.<sup>7</sup> That rule, however, is inapposite. The government never established the prerequisite relationship between Thompson and Webb such that the statement could have been received as either an adoptive admission, or as the statement of an agent or of a coconspirator. *See* Rules 801(d)(2), 803, and 804 (b)(3), FED. R. EVID.

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<sup>7</sup> Rule 801(d)(2), Fed. R. Evid., provides: Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual capacity or (B) a statement the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered by are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

**1. Requirements For Admission of Hearsay Statement under Rule 801(d)(2)(E), FED. R. EVID.**

While the government did not present evidence that would allow the court to admit the statement under any part of Rule 801(d)(2), it is clear that its admission as the statement of coconspirator (perhaps the most commonly used exception) is particularly dubious. *United States v. Santiago*, 582 F.2d 1128, 1134 (7th Cir. 1978)(overruled on other grounds by *United States v. Bourjaily*, 483 U.S. 171 (1987)), established the standard in this circuit for admission of statements under Rule 801(d)(2)(E). The Seventh Circuit court held that “ ‘if it is more likely than not that the declarant and the defendant were members of a conspiracy when the hearsay statement was made, and that the statement was in furtherance of the conspiracy, the hearsay is admissible.’ ” *Id.* at 1134 (quoting *United States v. Petrozziello*, 548 F.2d 20, 23 (1st Cir. 1977)).

To offer the coconspirator’s declarations at trial, the government must prove by a preponderance of the evidence that (1) a conspiracy existed, that both the defendant and the declarant were members of the conspiracy, and (2) that the declarant made the statement in furtherance of the conspiracy. *Santiago*, 582 F.2d at 1134. The government’s evidence must not be hearsay and must be independent of the statements sought to be admitted. *United States v. Jefferson*, 714 F.2d 689, 696 (7th Cir. 1983). No such prerequisite proof was introduced by the government in this

matter and Thomas' testimony regarding the Webb statement.

The government has never alleged that others conspired with Georgia Thompson to affect the alleged scheme. This, the government made explicitly clear in its response to the Georgia Thompson's Motion for Bill of Particulars (Docket No. 15) - which requested information on whom Georgia Thompson aided or abetted and whether she conspired with anyone in regard to the alleged offenses. The government asserted that her request was "without merit," because "in a case such as this, [ ] the defendant has not been charged with conspiring with anyone." GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANT'S PRETRIAL MOTIONS (Docket No. 21), at 36-37.

**2. Admission of The Hearsay Statements Was Not Harmless**

Never having established the necessary prerequisite relationship between Thompson and Webb, such that, for example, his alleged statement to Thomas was either an adoptive admission, or the statement of an agent or that of a coconspirator, the hearsay statement was, nonetheless, heard and considered by the jury. The hearsay was the sole evidence of any discussion of the outcome between Georgia Thompson and David Webb. The import of the hearsay statement was that the government's theory (and verdict) relied on the inference that Georgia Thompson directed David Webb to jigger the outcome. In the absence of this hearsay,

testimony regarding the “rounding” of the final scores after the “best and final” is not relevant. A new trial must be ordered. *United States v. Hanson*, 994 F.2d 403, 407 (7th Cir. 1993)(an evidentiary error requires reversal where the error has “a substantial and injurious effect or influence on the jury’s verdict”) citing *United States v. Peak*, 856 F.2d 825, 834 (7th Cir.), *cert. denied*, 488 U.S. 969 (1988).

#### **D. INTERESTS OF JUSTICE REQUIRE A NEW TRIAL**

Letting a guilty verdict stand in this case would be a manifest injustice. Such gross injustice originates from the lack of evidence introduced by the government.

In considering a motion for a new trial under Rule 33, FED. R. CRIM. P., the court considers the weight of the evidence, including the credibility of the witnesses. Under Rule 33, the focus of the court’s consideration does not question whether the testimony is so incredible that it should have been excluded; instead, the court considers whether the verdict is against the manifest weight of the evidence, taking into account the credibility of the witnesses. The court may grant a new trial if the verdict is so contrary to the weight of the evidence that a new trial is required in the interest of justice or, said another way, if the evidence “preponderates heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand.” *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989).

In this regard, the court may also examine the other side of the balance from

the evidence the government did present at trial: the presumption of innocence and Georgia Thompson's own testimony regarding the lack of contact (and thus pressure) from her superiors as well as a lack of evidence that she would stand to benefit from her conduct. When viewed in terms of concrete evidence introduced at trial (and excluding speculation and conjecture), the convictions represent a manifest injustice requiring a new trial.

**1. Contributions to Governor Doyle By Adelman**

The government offered evidence of contributions to Governor Doyle by principals of Adelman Travel Group, but left out that the owner of Marathon Cruise and Travel made similar and more substantial contributions too.

Records introduced by the government indicate that Craig Adelman contributed \$2,500 on August 11, 2004 and, again, \$7,0000 on June 21, 2005 to Governor Doyle. These contributions pale in comparison to the contributions made by the owner of Marathon Cruise and Travel, a direct competitor of Adelman Travel Group for the "Partner" contract. John Noel, CEO of Marathon, testified at trial that he and his family, over a three year period, contributed \$29,750 to Governor Doyle's campaign committee. Moreover, Governor Doyle appointed John Noel to his Economic Growth Council, where he served from 2003 to 2005. There is, similarly, no evidence that Georgia Thompson was aware of (or considered) John Noel's ties

to Governor Doyle. Nor is there any evidence of pressure exerted on Georgia Thompson as a result of the connections between Noel and Governor Doyle.

**2. Pre-RFP Contact between Adelman and Secretary Marotta**

The government offered evidence of a presentation made by Craig Adelman to Department of Administration Secretary Marc Marotta's aides, but left out that they took place long before Georgia Thompson's supervisors were installed in her division. And the government left out that Georgia Thompson was not present at the meeting and that there were no e-mails or documents or phone records to show that she knew of the meeting or its content; or that she ever impermissibly communicated with anyone at Adelman Travel Group before the contract was awarded.

The government offered evidence of an e-mail from Georgia Thompson saying that she had incorporated into the RFP two suggestions of Secretary Marc Marotta about airlines and hotels, made after she gave him a formal presentation, without knowing what the suggestions were. No testimony from others present at the meeting to say that the suggestions were untoward.

The government offered evidence of phone calls between Secretary Marc Marotta and Adelman Travel Group and Craig Adelman. But no evidence of what they were about or that, whatever the content was, whether the information was

communicated to Georgia Thompson.

So too, the government left out that they didn't even check to see if there were similar phone calls with the other proposers.

### **3. Contact between Georgia Thompson and Governor Doyle**

The government offered evidence of an e-mail between Georgia Thompson and one of Governor Doyle's aides setting up a meeting with Adelman Travel Group. But, again, the government left out of the testimony that it occurred after the contract had been awarded, when Georgia Thompson was implementing the contract, and that it was to teach the governor's staff how to use the new system.

### **4. "Job Security"**

The government offered not a whit of evidence of a need for job security. In fact, the evidence shows quite the contrary. Georgia Thompson was a career executive in the civil service. Before she could be disciplined (or her "job security" threatened), the state would need to show "just cause." And doing what the government accuses Georgia Thompson *is* just cause; not caving into political pressure isn't. The government doesn't offer a single instance of a prior act of submitting to political pressure in her career; or of the inclination to do so.

By all accounts she's not a political person making the government's case nothing but speculation.

From these bits and pieces, the government asked the jury to assume communication from those above Georgia Thompson directing her to fix the contract.

#### **5. Best & Final Process**

The Indictment alleges that Georgia Thompson manipulated the process to include an additional step: the “best and final.” *See* Indictment, ¶ 14. And when this process resulted in a “tie” the government claims Georgia Thompson told Dave Web, the procurement manager, how to conduct the “best and final,” and how to score it. When a tie resulted, the government claims that Georgia Thompson told Dave Webb how to compute it, and, when it was computed, told him to drop a decimal point. There was no direct or circumstantial evidence of this.

In the end it is undisputed that Lisa Clemmons, not Georgia Thompson, suggested that a best and final process be utilized where, as here, the final scores of Omega and Adelman differed by less than 2%.

The entirety of the government’s proof is based on the fact tthat Georgia Thompson’s cubicle at the Department of Administration was near David Webb’s and inadmissible hearsay which was introduced through Ian Thomas. There is not a single e-mail, note, document, phone call or scrap of testimony that she directed Webb in any manner.

Dave Webb was assigned the task of directing the RFP development process because Georgia Thompson didn't have the time. Ian Thomas testified that he and Webb worked out the best and final process and the tie-breaker together. Georgia Thompson was not involved.

Georgia Thompson's only involvement was when Dave Webb came to her with the 0.7 difference (out of a possible 1,200 points) between Omega and Adelman after the best and final. Georgia Thompson didn't know what to do. She went to her boss; and he said he went to the Department of Administration's lawyer who then directed what the next steps should be.

The government offered a single phone call from someone at Adelman Travel Group to Dave Webb on March 10 for 5.45 minutes. *See* exhibit 136. It doesn't present testimony, or show notes of the call, which enlighten what the call was about. The summary can't do these things, because the government didn't check to see whether similar calls were received from or placed to Omega. The government relied on speculation and not proof to make its point.

The government also left out the Travel Contract's Charter which envisioned the best and final before the RFP was ever developed. So too, the government put the RFP into evidence, but left out testimony that it included language allowing a best and final in the discretion of the Department of Administration. Regardless of

who came up with the idea, the best and final process was appropriate. The Department of Administration uses the process in at least 60% of all RFP's: a car buyer isn't wrong to ask the dealer if he can lower the price. Nor is the State.

## 6. Unanimity

Notwithstanding the assertions contained in the Indictment, the RFP evaluation committee was not required to act in complete unanimity. *See* Indictment, ¶ 13(c)(Georgia Thompson "prevent[ed] the otherwise unanimous determination of the other committee members that the Partner contract be awarded to a recipient other than Adelman"). The government's theory is that something must be amiss if the committee's recommendation is not unanimous. But nowhere in the statutes, administrative rules or the procurement manual does it say that unanimity is required. It's a subjective process.

Moreover, at trial the government did not present evidence which showed the other contracts where other evaluators were the only ones to disagree with the majority, and sometimes *all* the other members.

## E. ERRORS AT TRIAL REQUIRE A NEW TRIAL IN THE INTEREST OF JUSTICE

Two errors emphasized the lack of evidence and distorted the outcome into a manifest injustice. *First*, allowing government witnesses to testify as to what they believed (in retrospect) may have motivated Georgia Thompson's support for one

proposer in the "Partner" contract was so unreliable and prejudicial that it tainted the reliability of the entire proceeding. *Second*, allowing Ian Thomas to testify as to a statement attributed by him to Dave Webb without any foundation that such testimony was admissible under the hearsay exception for adoptive admissions, or statements of agents or coconspirator. Both errors have been discussed, *supra*, and Georgia Thompson relies on the arguments previously made.

**IV.**

**CONCLUSION**

For these reasons, Georgia Thompson asks the Court to enter a judgment of acquittal as to both counts in the Indictment. In the alternative, the Court ought order a new trial in the interest of justice.

Dated this 19th day of July, 2006.

Respectfully submitted,

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