

Attachments to Narrative Appendix styled
"Testimony of Supervisory Special Agent Alvin R. Cain, Jr."

1. Relevant Trial Transcript: Pages 2615-19, 3195-203, 3269-71.
- 1a. Listing of Prosecutor's Statements in Closing Argument that Dean had lied in her Testimony.
2. Affidavit of Deborah Gore Dean.
3. Affidavit of James P. Scanlan.
4. Pages 1, 8-9 of January 18, 1994 Letter from Arlin M. Adams to Probation Officer Gregory Hunt.
5. Pages 1, 13, 51 of Revised Presentence Investigation Report
6. Transcript of Hearing of February 22-23, 1984: Pages 1-22, 53-56.
7. Interview of Louie B. Nunn from HUD Inspector General's Report
8. USA Today Article Reporting Interview in Which Arlin M. Adams Stated That He Might Have Been on the Supreme Court if He Had Not Angered John Mitchell.

ATTACHMENT 1

Trial Transcript: Pages 2615-19, 3195-203, 3269-71

1 Q. We were dealing generally with the Arama project, and
2 keeping the Arama project in mind --

3 A. I think we were talking about Marbilt.

4 THE COURT: Yes, you were talking about Marbilt.

5 MR. WEHNER: I'm sorry, Your Honor. That's correct.

6 Q. Keeping the Marbilt project in mind, excuse me, did you ever
7 attempt to influence any HUD decision with regard to Marbilt?

8 A. No. I -- the only conversation I had was with Mr. Hipps,
9 and he gave me the information, that was no, and that's what I
10 passed on, and the decision was reversed later, but without
11 any -- I didn't know it was going to be reversed, and I didn't
12 have anything to do with it.

13 Q. You have testified concerning your relationship with John
14 Mitchell.

15 A. Yes.

16 Q. When was the very first time that you learned that
17 Mr. Mitchell was being paid for consulting work he was doing in
18 relationship to HUD?

19 A. The -- I learned about it the day that the HUD Inspector
20 General report came out on the Mod Rehab Program after -- well,
21 it was in 1989, I believe. And it was a, a big report, a long
22 report. Everybody had been waiting for it to come out.

23 And it was basically an investigation of developers'
24 ties to a charity that Mr. Demery had been sponsoring and whether
25 or not that had any influence on decisions that were made, and it

1 was of great interest. And I remember calling the Inspector
2 General's office, to the man who was running the report -- who
3 wrote the report, the head of the investigations unit, his name
4 was Al Cain, and I called him, and I said, "How do I get a copy
5 of the report?"

6 And I remember it was, sixty-some dollars was the fee
7 to get it, and I remember sending Marti Mitchell at that time
8 down with it, a check to pick up the report, and the report came
9 back, and I opened it up, and about the second or third page, it
10 said --

11 MR. O'NEILL: Objection, Your Honor.

12 THE COURT: I'll sustain it.

13 I think the question was what did she learn of any
14 payments to Mr. Mitchell.

15 THE WITNESS: I learned about it when I opened up the
16 report.

17 THE COURT: All right.

18 BY MR. WEHNER:

19 Q. Did you read the report?

20 A. I, around the second or third page of the report, as I
21 remember, there was a listing of consultants who had earned fees
22 in the Mod Rehab Program and had said John Mitchell --

23 MR. O'NEILL: Objection, Your Honor.

24 THE COURT: I'll sustain the objection to the report
25 unless you have some other grounds to offer it. She can testify

1 that's how she learned of it.

2 THE WITNESS: That's how I learned about it, and it had
3 an amount of money.

4 BY MR. WEHNER:

5 Q. Okay. After you learned -- was that the first time you knew
6 that John Mitchell was receiving dollars based on consulting with
7 HUD?

8 A. Yes.

9 Q. This was in May -- or, I'm sorry, April of 1989?

10 A. Yes, the day the report came out.

11 Q. Was John Mitchell alive, or had he passed away by then?

12 A. He had died the previous November.

13 Q. Did you place any telephone calls after you heard that in
14 the report -- after you discovered that information?

15 A. Yes.

16 Q. Who did you call?

17 A. I called Al Cain.

18 Q. What did you say to Mr. Cain?

19 A. I told him that I considered him to have been a friend and I
20 couldn't believe that he wouldn't have told me about this before
21 now and that I knew it wasn't true, that John would never have
22 done that, and that he better be prepared, because I was really
23 mad, and I wanted to see that check, and if there had been a
24 check written to John Mitchell, Al better have a copy of it, and
25 I was coming down there, and if I found out that he was, in any

1 way had misinterpreted or had misrepresented John's actions, I
2 was going to have a press conference and I was going to scream
3 and yell and carry on.

4 And Al said, Al told me that he --

5 THE COURT: I'll sustain the objection. Don't get into
6 what he said.

7 BY MR. WEHNER:

8 Q. Did you have any further conversation with anyone else other
9 than Mr. Cain shortly after you discovered that information?

10 A. Yes. I called Jack Brennan and told Jack Brennan that I
11 wanted him to come to my office with all of John's papers so that
12 I could prove that John hadn't done any business with HUD and
13 hadn't gotten any money.

14 Q. Did you learn during that conversation that Mitchell had
15 received money?

16 A. Yes. He told me that --

17 MR. O'NEILL: Objection once again, Your Honor.

18 THE COURT: All right.

19 BY MR. WEHNER:

20 Q. Based on your conversation with Mr. Brennan, did you reach
21 an understanding then as to what Mr. Mitchell's role was in the
22 mod rehabilitation process?

23 MR. O'NEILL: It's hearsay, Your Honor.

24 THE COURT: Yes, it is still hearsay. I think she can
25 say what actions she took and what she learned of things.

1 BY MR. WEHNER:

2 Q. Did you speak to Mr. Shelby at that point?

3 A. No. I understood from Mr. Brennan that Mr. Shelby might be
4 involved, and I have never spoken to Mr. Shelby since that day,
5 and I didn't call him. I didn't understand how it could have
6 happened.

7 Q. When did you find out that Mr. Mitchell, the amount of money
8 that Mr. Mitchell made?

9 MR. O'NEILL: Objection. Asked and answered, Your
10 Honor.

11 MR. WEHNER: It hasn't been asked and answered, Judge.

12 THE COURT: The amount of money, you're talking about
13 apart from whatever she said she learned earlier?

14 MR. WEHNER: No, the initial question was when she
15 initially learned that John Mitchell had made money.

16 THE COURT: This is how much money?

17 MR. WEHNER: This is how much.

18 THE COURT: All right, go ahead.

19 Go ahead. The question was when did you find out how
20 much money Mr. Mitchell had made?

21 THE WITNESS: The -- the day or two before the, before
22 the Independent Counsel issued an indictment, they had me come
23 down to the office, and they read to me what was going to be in
24 the indictment, and that was the first time I understood the
25 extent to which Mr. Mitchell had been involved.

1 A That is correct.

2 Q At that time, just so it is clear, Miss Dean was
3 not under investigation by the FBI, is that correct?

4 A Not at that time.

5 MR. O'NEILL: Nothing further, thank you.

6 THE COURT: All right, thank you.

7 MR. WEHNER: I have no questions, Your Honor.

8 THE COURT: All right. Thank you, Agent
9 Bowie. You may step down, sir.

10 MR. O'NEILL: Your Honor, the Government would
11 call Special Agent Alvin Cain.

12 THE COURT: All right.

13 (SPECIAL AGENT ALVIN CAIN, WITNESS FOR GOVERNMENT,
14 SWORN)

15 DIRECT EXAMINATION

16 BY MR. O'NEILL:

17 Q Agent Cain, I would ask you to speak in a loud and
18 clear voice so that everyone can hear you, and so that
19 there's no misunderstanding. Sir, would you please
20 state your name for the record, spelling your last name?

21 A My name is Alvin R. Cain, Jr. The last name is
22 spelled C-a-i-n.

23 Q Agent Cain, by whom are you employed?

24 A I'm currently employed with the Office of the
25 Inspector General at the U.S. Department of Housing and

1 Urban Development here in Washington.

2 Q And in what capacity are you so employed?

3 A I serve as a Supervisory Special Agent.

4 Q What exactly does a Supervisory Special Agent do?

5 A I supervise a variety of investigative efforts that
6 are focused toward protecting the integrity of the HUD
7 programs. Our primary mission is -- we're concerned
8 with fraud, waste, abuse and mismanagement within those
9 programs of HUD.

10 Q Where are you currently assigned, sir?

11 A At -- I'm currently working at the Office of the
12 Independent Counsel.

13 Q And how long have you been assigned there?

14 A Since June of 1990.

15 Q Agent Cain, did you have any other previous law
16 enforcement experience prior to joining HUD as a Special
17 Agent?

18 A Yes, prior to HUD I was on active duty with the
19 United States Air Force for 22 years, 20 of which was
20 spent with the Air Force Office of Special
21 Investigations.

22 Q Agent Cain, did there come a point in time when you
23 were involved in a HUD I.G. Report?

24 A Yes.

25 Q And did there come a point in time, as you recall,

1 that it was published?

2 A Yes.

3 Q And do you recall when approximately that was?

4 A The Section Eight Mod Rehab investigative report
5 was published April 17, 1989.

6 Q At or about the time that was published, do you
7 recall having a conversation with the defendant Deborah
8 Gore Dean?

9 A A telephone conversation.

10 Q And can you recount for the ladies and gentlemen of
11 the jury what if anything was said during that telephone
12 conversation?

13 A As I recall, Miss Dean telephoned me with an
14 inquiry relative to how she could obtain a copy of the
15 investigative report. I related to her that the report
16 was available under the provisions of the Freedom of
17 Information Act. I also explained to her the cost that
18 was associated with obtaining a copy of the report.

19 Basically we had two versions that were being
20 sold under FOIA. The report itself totalled 50 some
21 dollars and the report plus the audit report was 60 some
22 dollars.

23 Q Did she express an interest in either report?

24 A Yes, she did. Miss Dean indicated that she would
25 like to have a copy. I explained to her that she could

1 send in a written request which we would honor and
2 process or she could come to my office, pay for the
3 report and sign a receipt for the same, and that would
4 be the quickest way to obtain it.

5 Q And, Agent Cain, what if anything did she say to
6 you?

7 A What if anything did --

8 Q Did she say to you.

9 A She told me that she would send Marty over with a
10 check.

11 Q Did you know who Marty was at that time?

12 A I was not entirely clear. I assume Marty was a
13 reference to Marty Mitchell.

14 Q Did there come a point in time when Marty Mitchell
15 came to pay you for the copy of the report?

16 A As I recall, it was the same day.

17 Q What if anything happened?

18 A Marty came into the office. I had placed a copy of
19 the report with a receipt to be signed with my secretary
20 just in case if I was away from the office.

21 Ms. Mitchell came in, gave the check, signed the
22 receipt, took the report and left.

23 Q At or about that date, do you recall any
24 conversation with the defendant Deborah Gore Dean in
25 which she was quite upset with you about the contents of

1 the report?

2 A No, I do not.

3 Q Do you recall her mentioning John Mitchell to you
4 and the fact that he made money as a consultant being
5 information within the report?

6 A No, I do not.

7 Q Do you recall her telling you that she was going to
8 hold a press conference to denounce what was in the
9 report?

10 A Absolutely not.

11 MR. O'NEILL: No further questions.

12 Thank you, sir.

13 THE COURT: All right. Go ahead and cross.

14 MR. WEHNER: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. WEHNER:

17 Q Agent Cain, do you recall the name of a project
18 known as Castle Square?

19 A Castle Square?

20 Q Yes.

21 MR. O'NEILL: Just for the record, Your Honor,
22 I would object to the scope of this question.

23 THE COURT: All right, we'll see where it
24 goes.

25 BY MR. WEHNER:

1 Q Do you recall that Miss Dean came to see you with a
2 complaint on that particular project?

3 A Not at this point. Maybe if you give me some more
4 detail.

5 Q After she had left HUD do you recall that she came
6 to see you and said that certain subsidies were being
7 misused in a certain project?

8 A Castle Square. Is that a project in Boston?

9 Q It's in Pennsylvania.

10 A In Pennsylvania?

11 MR. O'NEILL: Judge, again, for the record, I
12 would object to this.

13 THE COURT: All right. Where are we going in
14 this, in relation to the direct?

15 MR. WEHNER: Very briefly, Your Honor, I'm
16 going to cover some items that may bear on his
17 credibility regarding his last statement.

18 THE COURT: All right.

19 BY MR. WEHNER:

20 Q It's in Boston.

21 A It's in Boston. I'll say project sponsored, and
22 when I say project sponsored, my reference is that this
23 is the individual who brings the project before the
24 Department. Oftentimes it's synonymous with ownership
25 and development. We refer to them as project

1 sponsored. Now --

2 Q Do you recall Miss Dean coming to see you with
3 regard to something by that name?

4 A I'll still trying to identify the project. Is the
5 project sponsored a gentleman by the name of Winn?

6 Q Yes.

7 A Arthur Winn. I remember -- what I remember about
8 that project is we had an investigation into some
9 matters surrounding the funding of that project and if I
10 recall correctly I may have interviewed Miss Dean in
11 connection with that.

12 Q Did she come to see you? Did she come to your
13 office to see you?

14 A As far as a particular interview?

15 Q No, as far as the investigation, sir.

16 A Well, when I interviewed her I don't recall if it
17 was in my office or at her office.

18 Q Have you ever been in the Beverly Wilshire Hotel?

19 MR. O'NEILL: Again beyond the scope of the
20 inquiry, Your Honor.

21 MR. WEHNER: Credibility, Your Honor.

22 BY MR. WEHNER:

23 Q Have you ever been in the Beverly Wilshire?

24 A Where is the Beverly Wilshire?

25 Q In Los Angeles, California.

1 A I believe so.

2 Q And have you been there in the company of
3 Miss Dean?

4 A That's very possible. I think I can recall going
5 to -- is that Los Angeles?

6 Q Yes.

7 A I can recall at least one, possibly two trips with
8 Secretary Pierce to Los Angeles and I think that's the
9 hotel we utilized.

10 Q And do you recall a party you attended in a place
11 called Fernando's Hideaway?

12 A No.

13 Q Do you recall receiving a Secretary's award from
14 the Secretary at the Beverly Wilshire Hotel for you and
15 your partner -- for you and your partner?

16 A No. I can recall that Secretary Pierce awarded
17 myself and Special Agent Day the Secretary's award for
18 excellence I think is the title, but as I recall,
19 Mr. Day may have received those awards for both of us.

20 Q Do you recall attending a party at that hotel paid
21 for by Miss Dean in celebration of those awards?

22 A No.

23 MR. WEHNER: Nothing further, Your Honor.

24 MR. O'NEILL: Just briefly, Your Honor.

25 THE COURT: Sure.

REDIRECT EXAMINATION

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BY MR. O'NEILL:

Q Mr. Cain, as a part of your duties and responsibilities would you be on the traveling protection detail for Secretary Pierce?

A That was one of the responsibilities that I supervised at HUD.

MR. O'NEILL: No further questions.

THE COURT: Thank you, Agent. You may step down.

That's all you have now.

MR. O'NEILL: Yes, Your Honor.

THE COURT: Okay.

Ladies and gentlemen, I'm going to release you for this evening. We've got some things to do here on legal matters. I expect tomorrow's program will probably not take the entire day in testimony. I don't know that. I suspect tomorrow we'll get finished by lunch? I don't know how long cross will be. If that happens then what we'll do, ladies and gentlemen, I've talked to counsel, I expect we'll give you the afternoon off while we take up various legal matters and maybe Wednesday -- I'm not sure, I've got to talk to counsel on how much work we have to do to get ready for the closing arguments and instructions to you in the final

1 MR. WEHNER: Yes, sir.

2 (Recess, 11:40 a.m. to 11:55 a.m.)

3 MR. O'NEILL: Judge, there's three documents
4 that Mr. Wehner has not objected to and we'll admit
5 those into evidence.

6 THE COURT: All right. And then should we let
7 the jury go and look at our other documents and resolve
8 those? You all need sometime to read over these
9 instructions and come back and comment and seek
10 additions and changes as well.

11 I did read through Judge Gesell's comments and
12 I appreciate the Independent Counsel supplying the
13 information to the Court rather quickly. I'll read it
14 again. It's clear to me he didn't want the entire
15 indictment sent in. His concern was more as a reading
16 of an overall indictment versus a hub and spoke theory,
17 but I think I'll have to look at the indictment to see
18 what I'll do about that. I've not reviewed the
19 indictment as to that aspect at all.

20 Let me have the jury in then to do those
21 documents. Do you want to put in the ones you agreed to
22 now in front of the jury?

23 MR. WEHNER: No, sir. I don't want to show
24 them to the jury at this point. I want them to be
25 available to go back and use certain of them for closing

1 but I think that would be a waste of my time.

2 THE COURT: All right. That's fine. Then I
3 can tell the jury we're finished with the evidentiary
4 phase of this case after these documents come in, as far
5 as we're concerned.

6 MR. WEHNER: I did want to put Miss Dean back
7 on.

8 THE COURT: And that was to go into Patenaude
9 or what?

10 MR. WEHNER: The testimony would be that
11 Reynolds was not her regular driver, that she never met
12 Mr. Mitchell at the Fairfax Hotel, Mrs. Patenaude did
13 not resign but was dismissed, forced to go, to take the
14 demotion she took. That she provided substantial
15 information to Senator Proxmire. That Miss Dean paid an
16 extensive bill along with Secretary Pierce for Mr. Cain
17 at the Beverly Wilshire when he was provided with an
18 award for some kind of superior performance. And a
19 brief explanation as to what Castle Square was.

20 THE COURT: As to what was?

21 MR. WEHNER: Castle Square? It was a
22 Pennsylvania development that came up during the
23 cross-examination. I'm sorry, Boston development,
24 excuse me. It's a rebuttal to their rebuttal. Those
25 are the areas.

1 MS. SWEENEY: Your Honor, the Government would
2 strenuously object to Miss Dean resuming the stand.
3 Miss Dean was on direct examination if I recall
4 correctly, perhaps understated, for what, six days?
5 Your Honor, I just don't know in what circumstances a
6 surrebuttal case would be appropriate. This is not a
7 briefing situation and they had their opportunity to
8 cross-examine Miss Patenaude. The Government was very
9 limited in the rebuttal case that we offered to meet
10 Miss Dean's case.

11 THE COURT: All right. I'm going to sustain
12 the objection of the Government. I don't think that
13 Miss Dean has a right to retake the stand in this
14 typical rebuttal type testimony in the areas that were
15 gone into on cross-examination.

16 The other area about the Boston development
17 where there was some cross-examination about it by the
18 special witness Cain, I believe it was, and the Beverly
19 Wilshire matter, he was asked about it at that time. I
20 don't see it appropriate as coming in on some kind of
21 surrebuttal about some new areas, it's unfair, that have
22 been raised by the Government for the first time.
23 Typical rebuttal is challenging one or two statements of
24 certain witnesses to certain areas that are limited.

25 So I'll deny Miss Dean retaking the stand.

ATTACHMENT 1a

PROSECUTOR'S STATEMENTS THAT DEAN LIED

OIC Closing - First Day

Tr. 3375: "The defendant's story just doesn't make sense. It is not credible. It is not believable. It is what you often see about admitting what you can't deny, denying what you can't admit."

Tr. 3377-8: "... Everything she's told you rests on her word, on what she says.

"The problem with that is her story is like a house of cards with a very rotten foundation, because as we will show, she lied to you, and if she lied to you, how can you believe the rest of what she said. That is the problem, ladies and gentlemen. How do you believe it?

Tr. 3415: "She lied to you ladies and gentlemen. She lied in this court before you. Having done that, does anything else make sense? Can you see her as being a credible witness?...."

Tr. 3416: "Why not ladies and gentlemen? Because it would have blown that whole theory out of the water. It was a lie. It didn't make sense."

Tr. 3417: "It was a lie ladies and gentlemen, out and out, right in front of you. She needed that \$4000 because she was in financial trouble."

Tr. 3418: "Based on her lies, you should throw out her entire testimony. Her six day's worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you... ..Because it was filtered with lies..."

Tr. 3419: "So therefore, Miss Hawkins is telling the truth on that. Then Miss Dean lied."

Tr. 3420: "So we had to call in Special Agent Alvin Cain for two minutes of testimony And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. They asked him a bunch of questions about the Wilshire Hotel, and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that."

Tr. 3421: "Now it might seem a small point ladies and

gentlemen, but she denies it on the stand. She lies when it benefits her. When its a benefit. When she can say I didn't know John Mitchell was a paid consultant, she lies about that. We have to show if she's going to lie on that will she lie on anything else.

"I mentioned earlier, not close to John Mitchell until after she left HUD. All the letters were written Dear Daddy. Five years earlier. Come on ladies and gentlemen. Does that square with common sense? Does that make any sense at all? She's trying to talk her way out of it."

Tr. 3422: "Why would she lie about a HUD driver not taking her there? Well, the reason is very clear, ladies and gentlemen. The reason it's so clear why she would lie that Mr. Reynolds did not drive her to lunch with John Mitchell...."

Tr. 3424: "But she told us when I cross-examined her about it that there are many drivers. I don't know who Ron is. Well, Pam Patenaude had no problem remembering that she took trips with her when Ron was driving. But she didn't want to admit to it ladies and gentlemen, because she was in a trick bag. Either it's personal and she lied to Senator Proxmire, or its business and she lied to you.."

Tr. 3425: "And her answer was, well yes, I shouldn't have done it but, you know John Mitchell said I could. Well, that's false. That's a lie. She wasn't the director of public relations at Global Research any more than I was. She lied about that."

Tr. 3425: "... She admitted on the stand that she shouldn't have said that [she knew Shelby five years]. It was just another lie."

Tr. 3426: "What we have ladies and gentlemen, is a person who lied to you on the 4000 and continued to lie to you."

"You might wonder why we took so long to cross-examine. As I said earlier, after the initial lie you should be able to say that's it. But we wanted to show you that that wasn't the only time. Her entire testimony is fraught with lies and deception. It cannot be believed."

Tr. 3427: "And probably the biggest lie of all is what she says about Secretary Pierce..."

Tr. 3429: "Just as she's deceived you or attempted to do so, ladies and gentlemen, through a series of lies and deceptions, she misled Samuel Pierce and didn't tell him of her hidden interest because if this man who she said is such a fine man and prominent attorney, would he have allowed her

to do this....

Tr. 3430: "... but there's no question that the best defense is a good offense. You take the offensive. And that's what she did.

"She came in and told you a story. It doesn't matter that it wasn't true, but she told you a story...

Tr. 3431: "She has taken the initiative from the get-go. She has lied to this court, to this jury. Do not believe what she says. It's always someone else's fault."

Tr. 3431: "But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it."

Tr. 3432: "I'd ask you when Mr. Wehner gives his closing argument to be as attentive to him as you were to me and I will have an opportunity to talk to you again, but throughout that listen and wonder why she lied to you throughout her testimony.

OIC Rebuttal:

Tr. 3501: "But the problem is desperate times call for desperate measures. When your back's against the wall, when it's obvious the Government has put forth all this evidence, the only thing you can do is lie. And when that doesn't work, when the lies are shown to the jury, it becomes a personal attack. And that's what it is, nothing more, nothing less."

Tr. 3501: "I told you during closing argument that Miss Dean lied to you very clearly and that she lied to you a series of times thereafter and, I repeat, you can take her testimony and throw it in the garbage where it belongs because someone --"

[Defense objection to continued characterization is overruled.]

Tr. 3502: "Since Mr. Wehner kept saying that it was not garbage, that I should not have said that, I'm saying that's where it belongs, in the garbage. Because it was a lie, ladies and gentlemen."

"And then you must -- as I said earlier, there are two, two conflicting stories here, totally different. Irreconcilable. One or the other is correct. You must base it on what all the witnesses said on one hand or Miss Dean's

credibility on the other, and that's what her whole case hinges upon, her veracity, her honesty, her credibility. But she lied to you."

Tr. 3503: "And here's the seller's settlement statement that the seller gets at the time, likewise dated June 10th, 1987. Unequivocal proof that Miss Dean lied to you."

Tr. 3505: "...and she told you, ladies and gentlemen, that was on June 15th, 1987, that was a lie. That was an attempt to get you to believe her story, but it couldn't be true."

Tr. 3506: "And then I went over series of things the other day, yesterday, you might recall. A series of additional mistruths that she told on the witness stand about no Mod Rehab dealings with Kitchin. Never had it. Sherrill Nettles-Hawkins said they did have."

"No idea that Mitchell was a consultant. But that was his occupation.

"Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

"She denies that Lance Wilson sent the 600 to Joe Strauss in Puerto Rico. Special Agent Bowie had to come in here and say that's exactly what she told me.

"Not close to Mitchell until after she left HUD. In fact, the record shows she was calling him Daddy five years earlier.

"Denied the HUD driver ever drove her to lunch. The records show that he did.

"Again, the reason she would lie about that, she was in a trick bag. Either she lied to the Senate about using it for personal reasons or she lied to you about Mitchell doing business with her.

"She said she didn't know Nunn until she left HUD. Yet she told other people she knew him as a young girl.

"Only work [sic] at Global to run a party when in fact she wrote Director of Public Relations.

Tr. 3507: "Only knew Shelby for five years -- excuse me, stated she didn't know Shelby until her time at HUD when in fact she had said she had known him for five years.

"It goes on ladies and gentlemen. One after the other --

[Defense objection to mischaracterization of defendant's testimony is overruled.]

Tr. 3507: "And I'll keep going, ladies and gentlemen, because I won't miss a step with objections. This is something I've done for quite sometime and I'll be able to continue.

They were lies ladies and gentlemen. Lies, blatant attempts to cover up what had occurred, to sway you."

Tr. 3508: "... we all misstate. I misstate quite often when I go to speak and maybe speak too fast and the words come out wrong, that's one thing, but when someone purposely misstates what they're saying, such as my brother is antsy on June 15th when there is no more apartment, and all the other misstatements that I've just gone through, if those are purposeful, you will hear, you can just disregard her entire testimony based on what His Honor reads you on the law. That is the state of the law. If you find a witness incredible you do not have to believe a single thing that witness says.

Tr. 3509: "So you as the jury can throw her testimony in the garbage. That is up to you. It's what you decide. You again are the judge of the facts."

"You've heard the evidence. The evidence that the Government produced through all the witnesses, through all the documents, and on the other side you have a series of misstatements, of falsehoods, of lies. They don't balance up. They're not even close, ladies and gentlemen. They can't be."

Tr. 3511: "Mr. Wehner also began with yesterday saying there's not one piece of evidence, not one document to show Miss Dean did not tell the truth, that she lied, as the Government said. You'll have the opportunity, like with all the other documents, look at those closing papers. Look at the dates on them. They unequivocally show that she lied to you, ladies and gentlemen, on the stand, under oath."

Tr. 3511: "...it's his client by telling you falsehoods you're in a position where you can't believe a word she said. And that prevents you from listening to them, and as His honor will instruct you the law is clear on that, if you don't believe them you can discount that testimony.."

Tr. 3515: "There are four separate counts of perjury, four separate counts of concealment. There is no sense going into all of them because the Government contends that each of those was a lie and a misstatement in much the manner as you've seen during the course of this trial."

Tr. 3518: "She misused the public trust in her time at HUD and then when it was discovered, when it was detected, she lied about it. That is what's at issue here."

Mr. Reynolds did not hold either of those positions while I was at HUD.

4. I am married to Richard A. Pawlik. Mr. Pawlik is a therapist at a clinic called "The Green Door," where he has been employed since 1990. Prior to taking his position at the Green Door, Mr. Pawlik had been working at The Guards restaurant in Georgetown since 1987. He continued to work at The Guards on a part time basis until early 1993. The Guards is located on the North side of M Street just as one enters Georgetown from downtown. I am familiar with M Street in Georgetown. To my knowledge there is no fine dining establishment named "The Green Door" or having a green door on either side of M Street in Georgetown.

5. I went to work at HUD in November of 1982. Lynda Murphy was no longer employed at HUD at that time.

6. I have known Lynda Murphy since 1980. I knew her well enough that I would have known if she had a horse farm in Virginia. To my knowledge she has never had a horse farm in Virginia.

7. During the time that I was at HUD, I never had lunch with John Mitchell at the Hay Adams or the Ritz Carlton (formerly the Fairfax Hotel). The only lunches I had with Mr. Mitchell would have been at the Grand Hotel or The Guards. To my knowledge, Mr. Mitchell rarely went out to lunch at other places.

8. As I testified in my trial, shortly after I read the HUD Inspector General's Report when it was released in April of 1989,

I called Special Agent Alvin R. Cain, Jr. to raise a number of matters with him about the information in the Report indicating that John N. Mitchell had earned a consulting fee from Governor Louis Nunn for the Arama project. Among the matters I raised with Mr. Cain was whether there existed a check to demonstrate that Mr. Mitchell had received a consulting fee from Governor Nunn. Mr. Cain told me that he could not show it to me, but that he knew a check existed. He told me that it was being maintained in the Regional Inspector General's Office. I asked him specifically if he had seen it himself, and he said that he had not but assured me that a check did exist.

9. At the time of my conversation with Mr. Cain, I was dating James P. Scanlan. Shortly after my discussion, I told Mr. Scanlan what Mr. Cain had said to me, including the statement that the check was maintained in the field.

10. As I testified in my trial, after I had spoken to Mr. Cain, I called Colonel Jack Brennan concerning the information I had learned indicating that Mr. Mitchell had received HUD consulting fees. Colonel Brennan informed me that Mr. Mitchell had received money from Mr. Nunn for services related to HUD. He also told me that he believed that Mr. Mitchell had received money from Richard Shelby for services related to HUD.

11. Shortly after that conversation, I informed Mr. Scanlan of what Colonel Brennan had told me, including what Colonel Brennan had told me about Richard Shelby.

12. During a trip to Los Angeles, California in May of

1986, Secretary Pierce stayed at the Beverly Wilshire Hotel. During that stay, Agent Alvin Cain's partner Agent Clarence Day was presented an awards upon his completion of 20 years of government service. This event also marked Mr. Day's retirement. In celebration, Secretary Pierce opened a very expensive bottle of champagne which was shared in his suite among the Secretary, Mr. Cain, Mr. Day, and myself. Afterwards, Mr. Cain, Mr. Day, and I, and several other HUD employees (including Eric Amig and Bob Davidson from HUD Headquarters and several local HUD employees) went to a night club in that hotel for a planned party in Mr. Day's honor. The night club was a famous place called Hernando's Hideaway. I left before others did, but before leaving paid the outstanding bill, which came to \$428.78. A copy of the receipt is attached as Attachment 2 hereto. Shortly after that evening, I received a thank-you note signed "Joe," which I understood to be a reference to the line in the song "Hernando's Hideaway: "Knock three times and whisper low--that you and I were sent by Joe." It had been a recurring joke during the party.

13. After I left HUD, it came to my attention from Mr. Arthur Winn, the developer-owner of the Castle Square project in Boston, Massachusetts, that an irregular funding had been granted him, and that the funding had been approved by Assistant Secretary for Housing Thomas T. Demery. I was also aware that Mr. Demery was to have recused himself from dealings with the project. I reported this information to Agent Alvin Cain and

spoke about it with the Deputy Assistant Secretary for Multi-Family Housing and the Undersecretary in an effort to cancel the funding. I spoke to Mr. Cain in his office. He did not take notes at the time. He said that he had heard of the project and based on what I had told him he would start an investigation.

14. At approximately 9:00 a.m. on October 19, 1993, I was dropped off by a taxi in front of the United States Courthouse. I noticed Ronald Reynolds and Pamela Patenaude greet each other. They then hugged and walked into the Courthouse together.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/30/93

Deborah Gore Dean
Deborah Gore Dean

LMM
 EXPENSE REPORT FOR MONTH OF
 FEB 7-16
 PLACE OF BUSINESS
 VAIL - Newmarket, New Jersey
 PLACE OF TRAVEL

DATE	LOCATION & DETAILS OF EXPENSE	AMOUNTS			DAILY TOTALS
		TRANSPORTATION	MEALS	OTHER	
2-7	PARKING TIXES				
	LOANER CAR				
	AIR FARE	492.71		36.00	
2-7					
2-7					
2-10	Meal - Newark				
2-12	Salmon		676.00		
2-12			20.10	7.79	
2-15			87.33		
2-16					
2-17					
	CONFERENCE				
	Light - Schol/terminal				
			121.72		
	SKUNK 3/11				
	3/13				
	3/18				
	SKI INSTRUCTION				
				57.00	
				27.00	
	RISK - 11 days @ 50			540.00	
	WATER - party/terminal for lunch			350.00	
				175.00	

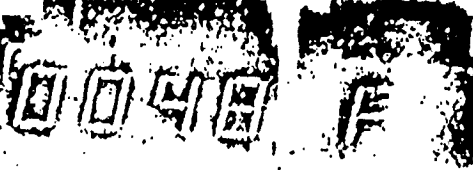
TOTAL CASH EXPENSE _____
 TOTAL CASH ADVANCES _____
 TOTAL AMOUNT PAID _____

APPROVED

MONTHLY TOTAL **2,569.77**
 I CERTIFY THAT THE ABOVE EXPENSES WERE INCURRED BY ME IN THE INTEREST OF THE COMPANY.

ATTACHMENT 1

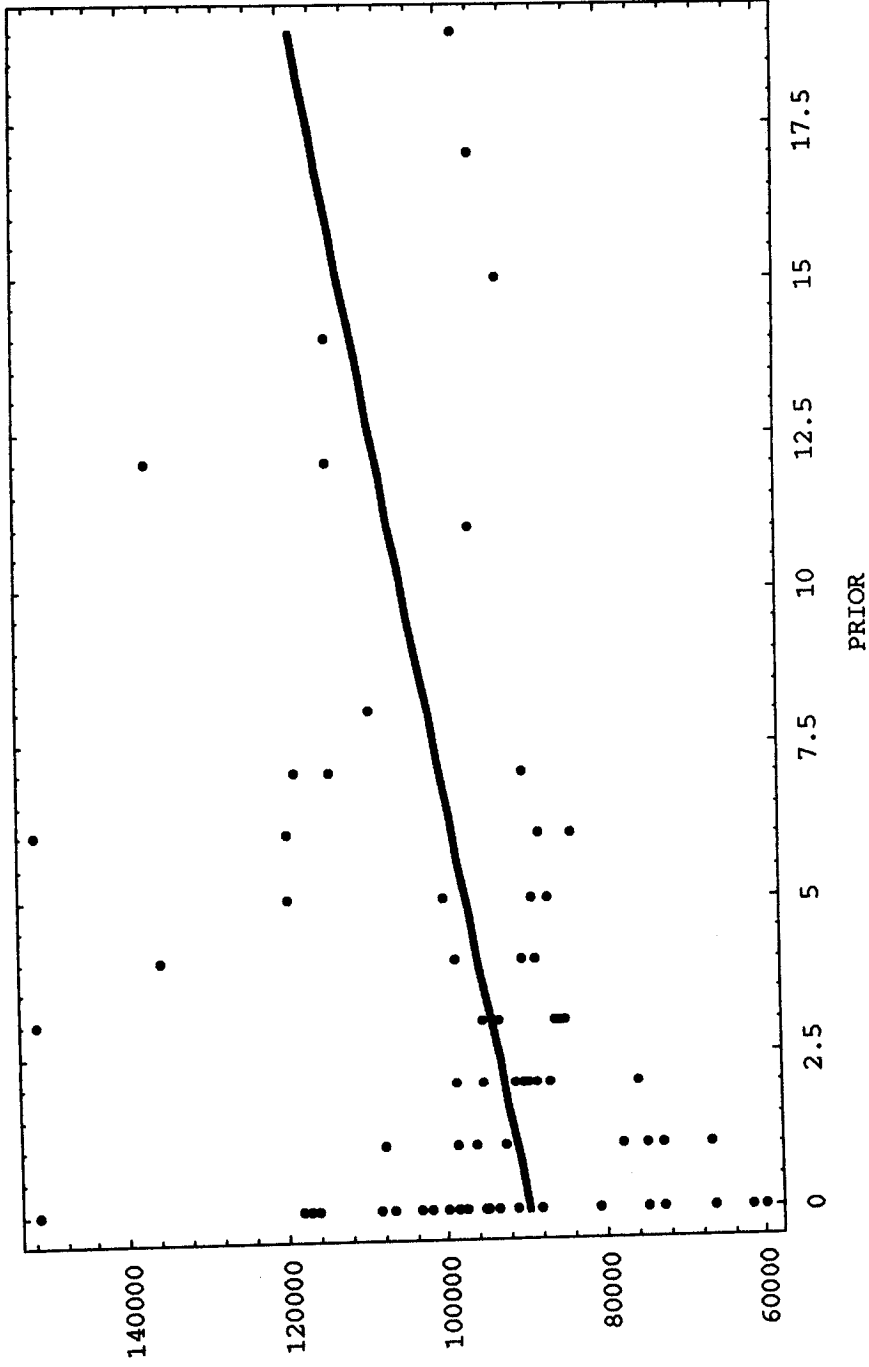
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ATTACHMENT 2

Plot of 1989 Annual Salary and PRIOR



A linear model is clearly not an acceptable representation of the data.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
 v.) Criminal No. 92-181 (TJH)
))
DEBORAH GORE DEAN)
_____)

AFFIDAVIT OF JAMES P. SCANLAN
IN SUPPORT OF DEBORAH GORE DEAN'S MOTION FOR JUDGMENT
OF ACQUITTAL PURSUANT TO F.R.CRIM.P. 29(a) and (d)
AND MOTION FOR NEW TRIAL PURSUANT TO F.R.CRIM.P. 33

James P. Scanlan states the following:

1. I am an Assistant General Counsel with the United States Equal Employment Opportunity Commission (EEOC). I have been employed as an attorney by the EEOC since February 1973. Prior to that, following graduation from law school in 1969, I served 22 months with the United States Army, most of which time was spent as a trial counsel or legal officer at bases in the United States and the Republic of Korea. Most of my experience with the EEOC has been as an appellate attorney or a supervisory trial attorney. In my present position, I monitor the agency's larger cases prosecuted in its field offices and fulfill certain other duties including acting as the sanctions officer under Executive Order 12778.

2. In April of 1989, I was dating Deborah Gore Dean. At that time I had a number of discussions with Ms. Dean regarding the information in the HUD Inspector General's Report that John N. Mitchell had earned a \$75,000 consulting fee from Louie Nunn related to a project called Arama. I recall well that Ms. Dean

informed me that she had spoken to an Agent of the HUD Inspector General's Office named Al Cain about whether there was a check proving that Mr. Mitchell had received a fee on the Arama project, and that Mr. Cain had told her that a check existed and was maintained in a field office. I recall clearly thinking at the time that if the Report indicated that Mr. Mitchell had received a fee, there was little doubt that he had, whether or not a check could be produced. I am fairly sure that I communicated that view to Ms. Dean at the time, though I think that, because she was quite distressed over the matter, I expressed the view with somewhat less certainty than I in fact felt.

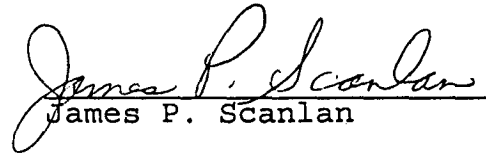
3. Within a short period after advising me of her conversation with Mr. Cain, Ms. Dean advised me of a conversation with Colonel Jack Brennan, in which Colonel Brennan told her that Richard Shelby, as well as Mr. Nunn, had paid Mr. Mitchell. I recall that conversation with particular vividness because of the evident impact on Ms. Dean.

4. In the years since these conversations took place, they have remained quite fresh in mind. That would very likely have been the case in any event. In addition, partly to assist Ms. Dean and partly in an effort to write a book about events following release of the HUD Inspector General's Report, I became very familiar with that document. Though I did not know Mr. Cain, Ms. Dean often spoke about him in discussions of the Inspector General's investigation and in reviewing the Report I

would often note that Mr. Cain had conducted a particular interview.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Nov 30, 1993


James P. Scanlan



OFFICE OF INDEPENDENT COUNSEL

444 NORTH CAPITOL STREET SUITE 519
WASHINGTON, D.C. 20001

January 18, 1994

By Hand

Mr. Gregory Hunt
United States Probation Office
United States District Court for
the District of Columbia
Room 2800
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: United States v. Dean, CR 92-181-TFH

Dear Mr. Hunt:

The United States of America, by and through the Office of Independent Counsel, hereby submits its comments on the preliminary Presentence Investigation Report ("Report") regarding defendant Deborah Gore Dean. The Report accurately describes the facts regarding the offense conduct. It does not, however, take into account the gravity of that conduct in making the offense level calculation.

At trial, the government proved, and the jury found, that defendant -- a high-level official who wielded enormous power at HUD -- corrupted a federal program designed to aid low-income families, and used it to benefit her family, her friends, and herself. Defendant then perjured herself when Congress tried to determine how that housing program was in fact being administered. She further perjured herself at trial and thereafter.

This case thus does not involve simply a series of gratuities, or a mere conflict of interest. Instead, it involves defendant's systematic corruption of a critical government program, and her repeated attempts to cover up that corruption. Her actions are precisely the type that cause loss of public confidence in government. A sentence that treats defendant's conduct as trivial or commonplace would cause an even greater loss of public confidence in government and the judicial system.

defendant's testimony regarding the \$4,000.⁸

Similarly, defendant perjured herself on several major issues in an attempt to avoid conviction on the conspiracy charged in count one. One of defendant's chief defenses was that she was unaware that Mitchell was being paid to act as a consultant on mod rehab projects. See Tr. 2989-90, 3003. To buttress this defense, defendant testified that, when she received the HUD Inspector General's Mod Rehab Report, she was shocked to learn that Mitchell had received payments, and she had called HUD IG Special Agent Al Cain to express her anger at these accusations. Tr. 2617. But Agent Cain testified on rebuttal that to his recollection this conversation never occurred. Tr. 3199.⁹ Defendant also sought to distance herself from Mitchell by testifying on cross-examination that she did not know him well until after leaving HUD, Tr. 3019; but the government introduced extensive testimony to the contrary, as well as letters to Mitchell from defendant, while she was at HUD, addressed to "Dad" or "Daddy." See G. Exs. 17, 18.

⁸ Defendant also perjured herself by testifying that she "never discussed his [Kitchin's] having anything to do with mod rehab with him ever." Tr. 2761. This testimony was contradicted not only by Kitchin and Jennings, but by defendant's own secretary, Sherrill Nettles-Hawkins. Tr. 1436-37 (Kitchin); Tr. 1524-25 (Jennings); Tr. 1551 (Nettles-Hawkins).

⁹ In her motion for new trial, defendant argued that Special Agent Cain had perjured himself, with the complicity of the prosecutors, not only by denying any recollection of this telephone call, but also by denying any recollection that in May 1986 he had attended a party in Los Angeles allegedly paid for by defendant in honor of another IG Special Agent. Under penalty of perjury, defendant submitted an affidavit stating that Agent Cain had been present at this party, and describing it in great detail. But here again, the government was able to establish that defendant had perjured herself. Indeed, having seen the affidavits and travel records submitted by the government in rebuttal -- which establish that Agent Cain was not present at this alleged party -- defendant now states that she was "mistaken," and falls back on her familiar excuse that she would not have deliberately lied about this matter, since it allegedly would be so easy for the government to disprove. Dean Reply at 26-27, n. 22. But, in truth, defendant obviously hoped that the government would not be able to prove definitively that Agent Cain was not at this party. Defendant's post-trial filings simply follow the pattern she established at trial: she will perjure herself in the hope that the government will not be able to prove her testimony to be perjurious -- and then claim, whenever she is found out, that she obviously would not perjure herself about something that could be refuted. This post-trial obstruction also warrants an upward adjustment.

Defendant likewise perjured herself with regard to her relationship to Shelby, her co-conspirator in counts one and two. On several occasions, defendant testified that Shelby had never requested Mod Rehab units from her until 1987. Tr. 2567-77. But this testimony was contrary not only to that of Shelby, but of Pam Patenaude, defendant's colleague at HUD. Patenaude testified that, after she started working for defendant in 1985, defendant instructed her to "take good care" of Shelby; and when his name came up in a funding round in 1986, "it was made clear that he was to be taken care of." Tr. 3247, 3249.

While further examples could be multiplied, the point is clear: defendant perjured herself on material issues in an attempt to obstruct her prosecution. Under the circumstances, an adjustment for obstruction of justice is required. It is, of course, true that the Court will make the ultimate ruling on whether such an adjustment is appropriate. But that does not distinguish this issue from any other sentencing issue. Nor, we submit, does it relieve the Probation Office of its responsibility to make an independent assessment of the evidence and to make appropriate sentencing recommendations.

b. Obstruction of the Probation Office: Even apart from defendant's perjury at trial, it is clear that an adjustment for obstruction is required because defendant has provided materially false information to the Probation Office.

The statement that defendant submitted to the Probation Office repeats much of her perjury at trial. Defendant's overall theme -- which is that others, and not herself, made the Mod Rehab funding decisions at issue -- was also the theme of her testimony at trial; and that testimony, as noted above, was not only rejected by the jury, but was directly contradicted by virtually every witness and by numerous documents.

Defendant's statement also is false in material particulars. In order to set the stage for her argument that she was not an important "player" at HUD, the first several pages of defendant's statement are devoted to an attempt to suggest that she found out shortly after she arrived at HUD that her "role was not to think, but to do what I was told." Report at 15. This should be contrasted with her trial testimony, in which she described in detail how, almost immediately upon arriving at HUD as Director of the Executive Secretariat, she began to read correspondence and to interject herself into program matters by calling other HUD officials for explanations of their actions. Tr. 2177-78. Moreover, far from being chastised for this conduct, defendant testified that Secretary Pierce told her that she was doing the right thing and should not only continue, but should bring correspondence to him so that they could work on it together. Tr. 2178-79.

Victim Impact

39. *The victim in this case is the United States government. However, there are no actual losses in this case, as the Mod Rehab funds were distributed to legitimate enterprises for legal purposes. Consequently, restitution is not applicable.*

Adjustment for Obstruction of Justice

40. *The defendant testified during trial that the \$4,000 that Louis Kitchin gave to her was for assisting him in obtaining and decorating an apartment. Mr. Kitchin, on the other hand, testified that she asked him for the money and that he gave it to her. In fact, he wrote on the check that it was a loan. Mr. Kitchin's partner, Jack Jennings, also testified that it was a loan. As the jury found the defendant guilty of Illegal Gratuity in Count 4, the defendant's testimony would be false.*
41. *The defendant also testified falsely in regard to her relationship with John Mitchell. She testified to the fact that she was unaware that Mr. Mitchell was being paid to act as a consultant on Mod Rehab projects. She also testified that when she learned of his involvement, she contacted HUD IG special agent Al Cain to express her anger at these accusations. The agent testified that he does not recollect any such conversation. The defendant also testified on cross-examination that she did not know Mr. Mitchell very well prior to leaving HUD. However, she readily admitted to this writer to that she has known Mr. Mitchell since she was a teenager and that he was a friend of the family.*

Adjustment for Acceptance of Responsibility

42. *The defendant spoke at length in regard to her offense. During those discussions, she denied any wrongdoing. She believes that there is insufficient evidence to convict her of these charges, and she questioned the veracity of several of the witnesses who testified against her. She believes that the prosecutors did not conduct themselves during the trial in an appropriate manner. She generally feels that she has been convicted of something that she did not do. She recalled that during the initial stages of her case, her counsel suggested that she plead guilty. However, she, in good conscience, could not plead guilty to something she did not do, and she decided to contest it.*

43. *She submitted the following statement in regard to the offense.*

"When I first arrived at HUD in November of 1982, I was first impressed by the amount of confusion regarding who did what and who reported to whom. Work assignments to me were varied in my first assignment as Director of the Executive Secretariat. I also held the title of Special Assistant to the Secretary, but that didn't seem to have any real meaning to it. One week I would receive work assignments from the Executive Assistant to the Secretary, Lance Wilson, and other times directly from the Secretary. Lance

Therefore, it has no meaning that it was the PHA that made the request, as it was the Florida developer who was behind it. The evidence at trial supports the accuracy of the balance of information contained in that paragraph.

The probation office takes no position on this objection as it involves testimony and evidence at trial.

Paragraphs 34 and 35 (The Offense Conduct): The presentence report describes details of the defendant's testimony before the U.S. Senate. The defense disputes the fact that the defendant perjured herself during these hearings. The government states that there is jury verdict that indicates otherwise.

The probation office believes no change is necessitated as the jury found the defendant guilty of perjury in regard to her testimony before the Senate.

Paragraph 39 (Victim Impact Statement): The presentence report indicates that the United States government is a victim in this case. The defense disputes this, stating that it would be more accurate to state that there was no victim in this case, as there was no actual loss. The government indicates that because of the defendant's activities, the government was severely disrupted in its ability to provide the honest delivery of services.

The probation office believes that the government was the victim in this case and no change in the presentence report is warranted.

Paragraphs 40 and 51 (Adjustment for Obstruction of Justice): The presentence report reflects that the defendant obstructed justice by testifying at trial that the \$4,000 received from Mr. Kitchin was for services that she was rendering in regard to an apartment that he was attempting to purchase. She further testified that she did not know Mr. Mitchell that well until after she left HUD and that he had called HUD IG agent Al Cain to express her shock at the accusations that Mr. Mitchell was involved in HUD-related matters. The defense objects, stating that it is not clear that the defendant's testimony at trial was false. They argued that a jury could accept her testimony as true and still find her guilty of illegal gratuity.

The government continues to assert that the defendant obstructed justice not only in her testimony in Court, but by providing false statements to probation office in regard to her offense.

The probation office believes that the defendant perjured herself during her trial regarding her remarks about Mr. Mitchell, Mr. Cain, and Mr. Kitchin. U.S. Sentencing Guidelines indicate that when perjury is committed, which could materially affect the outcome of the defendant's case, an enhancement for obstruction is warranted. However, it should be noted that as the probation office believes that Counts 3 and 4 are nonguideline counts, the obstruction in regard to Mr. Kitchin's testimony is not grounds for an enhancement under the guidelines for Counts 1 and 2. This is based on case law in this circuit.

Transcript of Hearing of February 22-23, 1994:
Pages 1-22, 53-56.

ATTACHMENT 6

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Criminal No. 92-181-01

vs.
Washington, D.C.
February 22, 1994
11:00 a.m.

Defendant.

TRANSCRIPT OF PRESENTING HEARING
BEFORE THE HONORABLE THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

VOLUME I

APPEARANCES:

FOR THE GOVERNMENT:

BRUCE C. SWARTZ, ESQ.
CLAUDIA FLYNN, ESQ.
Office of Independent Counsel
444 North Capitol Street, N.W.
Suite 519
Washington, D.C. 20001

FOR THE DEFENDANT:

STEPHEN VINCENT WEHNER, ESQ.
513 Capitol Court, N.E., Suite 200
Washington, D.C. 20002

PROBATION OFFICER:

GREGORY A. HUNT

OFFICIAL COURT REPORTER:

ANNELISE J. THOMSON, RPR-CM-CRR
6814 U.S. District Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001
(202)842-5069

(Pages 1 - 68)

P R O C E E D I N G S

(Defendant present.)

THE CLERK: Criminal No. 92-181, United States of

America v. Deborah Gore Dean. We have Bruce Swartz and Claudia

Flynn for the government, Stephen Wehner for Ms. Dean.

MR. WEHNER: Good morning, Your Honor.

THE COURT: All right, good morning, counsel. The

probation officer, Mr. Hunt, is also here.

This is a presentencing hearing on challenges to the

application of the guidelines in the convictions against

Ms. Dean assessed by the jury in this case, substantial briefing

having been reviewed by the Court from both sides as well as

discussions with Mr. Hunt and his report.

A couple of matters: One, my notes reflect we have a

motion of Deborah Gore Dean for reconsideration of ruling

denying her motion for a new trial, and that was filed the 18th.

My copy is not date-stamped, but I think you probably got it in

Friday as well. And then received on the 17th in my chambers

was a memo of law in support of modifications to the presence

report, a supplement to her original filing, I believe.

And then I understood that government had my clerk

make an inquiry as to time frames to respond to this new trial

reconsideration motion and was going to respond orally today.

Is that correct, Mr. Swartz?

MR. SWARTZ: Yes, Your Honor.

1 THE COURT: All right. Let me take up the new trial

2 issue first before we get to consideration of the guidelines

3 that may apply in this case or not. All right, the basic issue

4 is the Court's ruling as to certain matters that have been

5 challenged by Ms. Dean again, and that went into, I think,

6 allegations about a check about Mr. Mitchell, Agent Cain's

7 issue, and Russell Cartwright's statements, and asking the Court

8 to review at least in camera certain materials to see how they

9 would affect or not the jury's decision in this case.

10 All right, Mr. Swartz.

11 MR. SWARTZ: Thank you, Your Honor. With the Court's

12 permission, I will address the motion for reconsideration on

13 behalf of the government, and Claudia Flynn will address the

14 sentencing guidelines issues.

15 THE COURT: All right, that's fine.

16 MR. SWARTZ: With regard to the motion for

17 reconsideration, Your Honor, the government has three points

18 that it would like to make this morning. The first is that the

19 motion for reconsideration does not raise any issues not already

20 presented to the Court and ruled upon by the Court in denying

21 Ms. Dean's original motion for a new trial.

22 Our second point is that in any event, on the merits,

23 Ms. Dean's arguments in her motion for reconsideration are wrong

24 and are demonstrably wrong.

25 Our third point is, Your Honor, that the motion for

1 reconsideration itself provides a further basis for finding that
 2 defendant Dean has obstructed the administration of justice in
 3 this matter and has repeatedly made false statements, including
 4 in the motion for reconsideration, in an attempt to avoid the
 5 application of the appropriate guidelines and, indeed, to
 6 challenge the conviction that has been obtained against her.
 7 Turning to the first point, the two issues that
 8 defendant Dean has raised in her motion for reconsideration,
 9 that is, Agent Cain's testimony and the Cartwright receipt, are
 10 both matters that were, in fact, adverted to by the Court in the
 11 February 14 hearing last week in which her motion for a new
 12 trial was denied. They were also both raised in her original
 13 motion for a new trial, and indeed, there is no reason, she has
 14 suggested none and we know of none, to believe that the Court
 15 misunderstood or did not pay any attention to those arguments
 16 when they were initially raised. So as a baseline matter, there
 17 is no reason to go into a motion for reconsideration at this
 18 point.
 19 But beyond that, Your Honor, our second point is that
 20 the motion is wrong. It's wrong in the charges it makes, and it
 21 continues to raise issues that can be shown to be wrong.
 22 Turning first to Agent Cain's testimony, as Your Honor
 23 will recall, in her original motion for a new trial, defendant
 24 Dean argued that Agent Cain had perjured himself in three
 25 regards: first with respect to Hernandez's Hildeaway issues; the

1 second was with respect to Castle Square, a HUD project in
 2 Boston; and third was with respect to the alleged conversation
 3 that defendant had with Agent Cain after the HUD inspector
 4 general issued its audit report in April 1989.
 5 It was the first two of those issues, the Hernando's
 6 Hideaway issue and the Castle Square issue, that defendant
 7 particularly stressed in her motion. Indeed, those were also
 8 the two issues on which Agent Cain had been cross-examined at
 9 trial, as the Court will recall. There was no cross examination
 10 on his conversation with the, supposed conversation with the
 11 defendant.
 12 In our opposition to the motion for a new trial, we
 13 showed the defendant had, in fact, made false statements in her
 14 affidavit regarding both of the initial two matters, that is,
 15 the Hernando's Hideaway matter and the Castle Square matter.
 16 First, with regard to Hernando's Hideaway, as the Court noted in
 17 the February 14 hearing, defendant at least made a mistake and
 18 has acknowledged that she made a mistake, but we believe that it
 19 is more than simply a mistake, Your Honor.
 20 In her affidavit, she set forth in extremely
 21 compelling detail an incident that she said occurred and that
 22 Agent Cain should have known had occurred and that the
 23 government should be able to determine if it had
 24 done even minimal investigation. In fact, we submit that
 25 defendant never expected that the government would be able to

1 obtain HUD IG travel records from approximately nine years ago
 2 to rebut this claim, and instead she put forward what seemed on
 3 its face to be a plausible event and hoped to pit her
 4 credibility against that of Agent Cain's. At a minimum, Your
 5 Honor, this was reckless, particularly given the accusations
 6 against Agent Cain, a career government agent, and it also at a
 7 minimum completely undercuts her credibility on all other
 8 matters.
 9 Turning to the second point, the Castle Square point,
 10 there, Your Honor, the false statements of defendant cannot even
 11 be excused as negligence or recklessness, because what she
 12 stated in her affidavit, Your Honor, is a complete inversion of
 13 the truth, and it was deliberately so. Her affidavit, as Your
 14 Honor will recall -- and I have copies if it would be of
 15 assistance to the Court further -- in her affidavit, defendant
 16 stated that she had gone to Agent Cain on the Castle Square
 17 project, had told him that there was an irregular funding of
 18 that project caused by Thomas Demery, and told him that the
 19 funding should be stopped. She also stated that she had told
 20 Agent Cain that she had also gone to the deputy assistant
 21 secretary for Multi-Family Housing, who at that time was Hunter
 22 Cushing, and the undersecretary in an attempt to have the Castle
 23 Square funding stopped.
 24 But as we showed in our opposition and particularly in
 25 the materials we attached as appendix F to that opposition,

1 those statements were false. They could not have been more
2 false, because Agent Cain's interview notes revealed and
3 defendant's own correspondence confirms that she was acting as a
4 consultant for the Castle Square project, not trying to have the
5 funding stopped, but to try to have the funding delivered there,
6 and in fact, that correspondence in that interview report also
7 indicates that she went to the deputy assistant secretary,
8 Hunter Cushing, and she went to the undersecretary to get the
9 funding put in place. Those materials are attached, as I said,
10 as appendix F. We also have copies this morning if it would be
11 of assistance to the Court.
12 But again, there can be no mistake about that kind of
13 thing, nor can there be a question, I believe, of recklessness.
14 The intent was to have this Court believe that she had nothing
15 to do with the project and again to suggest that Agent Cain was
16 a liar.
17 That brings us, Your Honor, to the third suggestion,
18 that Agent Cain perjured himself, and that is the supposed
19 conversation with regard to John Mitchell. Defendant's argument
20 both in her original motion and in her motion for reconsidera-
21 tion is that she was told by Agent Cain that the check from
22 Louise Nunn to John Mitchell in connection with the Arama project
23 was being kept in the field, being maintained by the HUD
24 regional inspector general's office. She says it true, that's a
25 fact that she could have only learned from Agent Cain, and

1 therefore she is entitled to discovery on the issue of where the
2 check was. But, Your Honor, it's false.
3 I'd like to provide to the Court, if I may, an excerpt
4 from -- if I can find it -- the inspector general's report. If
5 the Court will indulge me for a second?
6 THE COURT: All right.
7 MR. SWARTZ: Your Honor, this is a copy, an excerpt
8 from the HUD Inspector General's Office report on the Mod Rehab
9 program of April 1989, the report that defendant says was the
10 predicate for her phone call to Agent Cain after she received
11 it. The first page is a cover page of that report. The second
12 and third pages are excerpts from the report, the interview of
13 Louise Nunn.
14 It was this interview, Your Honor, that revealed that
15 Louise Nunn had paid \$75,000 to John Mitchell. That's referenced
16 on the second page, approximately midway down, "Nunn paid John
17 Mitchell, former United States attorney general, \$75,000 for his
18 help in the Arama project."
19 If Your Honor will turn to the third page of this
20 interview report, which again was in defendant's possession by
21 her own testimony, you'll note that the final statement in the
22 report is, "Agent's note: All the contracts agreements shown to
23 Nunn were obtained from HUD OIG audit file in Atlanta, Georgia."
24 So, Your Honor, the report itself suggests that the
25 materials shown to Nunn that involved General -- excuse me,

1 former Attorney General Mitchell were maintained in the field.
 2 There's simply no basis for her suggestion that she could have
 3 only learned such a fact from Agent Cain. Even if it were true,
 4 the report itself on its face would have provided her with the
 5 information that suggested to her that materials were being
 6 maintained in the field.
 7 We submit that on all three of these points then, Your
 8 Honor, defendant has attempted to pit her credibility against
 9 Agent Cain and has made attacks on Agent Cain's integrity that
 10 are completely unfounded.
 11 The same is true, Your Honor, with regard to the
 12 Cartwright receipt, which has also been the subject of last
 13 week's hearing as well. Your Honor will recall that defendant's
 14 testimony about the Cartwright matter was elicited in connection
 15 with various other Black Manfort matters that were being
 16 discussed and other entertainment she may have received from
 17 Black Manfort employees, one of whom was Russell Cartwright,
 18 and I have for the Court that testimony, a copy for defense
 19 counsel. This is transcript 2864.
 20 The question at the bottom of that page is, "And how
 21 about Russell Cartwright? Did you ever have meals with Russell
 22 Cartwright?"
 23 At the top of 2865, defendant responds, "No, I've
 24 never eaten with Russell Cartwright."
 25 The next question is, "Do you recall going out to

1 dinner with Mr. Cartwright, Abbie Wiest, and yourself on October
 2 "22, 1987?"
 3 Defendant responds, "I've never eaten with Russell
 4 Cartwright."
 5 Your Honor, the government submits that that
 6 statement, "I've never eaten with Russell Cartwright," is
 7 perjurious. Indeed, the very Wiest grand jury testimony on
 8 which defendant so heavily relies suggests that it's perjurious.
 9 Defendant notes that the, Abbie Wiest in her grand
 10 jury testimony suggested that defendant was not along on the
 11 October -- it should be October 27, 1987 meal. Defendant
 12 neglects to inform the Court, however, that Abbie Wiest went on
 13 to testify that she and Russell Cartwright had had at least two
 14 meals with the defendant.
 15 In that regard, Your Honor, I have copies of the Wiest
 16 testimony which were provided. She refers both to a dinner and
 17 a lunch with defendant Dean and Russell Cartwright on page 57 of
 18 her grand jury testimony.
 19 Your Honor, with regard to the October 27, 1987
 20 incident, of course, the question is as a legal matter whether
 21 the government had a reasonable basis for suspecting that indeed
 22 defendant was along on that, that occasion, and Wiest said not,
 23 but of course, Wiest, like many others, when confronted with
 24 receipts that suggested that while they were HUD employees, they
 25 had taken meals from particular individuals who had business

1 pending before HUD, would frequently say, as we've suggested,
2 that really she was personal friends with these people and it
3 didn't have anything to do with HUD, or that occasion didn't
4 happen, but the receipt itself, Your Honor, standing alone would
5 have given more than sufficient basis for the government to have
6 a reasonable suspicion that it did.
7 Here's a copy of the receipt. As Your Honor will see,
8 it's not simply a receipt, but it's also a reimbursement form
9 submitted to Black Manafort by Russell Cartwright. It's the
10 bottom item on the first page before the whited-out section of
11 10-27, "Wadsworth, West, and Dean," it says, and it carries
12 over to the Wadsworth column "134." I should say that the Wite-
13 out is not the work of the government, but rather of the party
14 that produced the document.
15 Similarly on the expense report, on the second page,
16 it says "HUD, West, Dean." It says "HODAG" for the nature of
17 the discussion. Client name, it says "Wadsworth," and it says
18 "\$154."
19 The third page, Your Honor, is a set of receipts
20 themselves, the credit card receipts, and the bottom receipt
21 says "CFM," which stands for Cruse, Fox & Manafort, "Wadsworth,
22 Dean, and West."
23 And, Your Honor, in fact, as the government is aware,
24 there was a project being pursued by Mr. Wadsworth at that time
25 through Russell Cartwright and other members of Black Manafort.

1 We've submitted here for the Court and defense counsel copies of
2 some of the correspondence during that time period confirming
3 that fact. This alone, Your Honor, we suggest, would give the
4 government a reasonable cause for suspicion, a reasonable basis
5 for going forward on cross examination.
6 Your Honor, with the Court's permission and with the
7 appropriate direction under rule 6(e), we're also prepared to
8 discuss this morning and to submit in camera for the Court's
9 review Russell Cartwright's grand jury testimony should the
10 Court so desire, which is what defendant Dean has requested
11 here.
12 THE COURT: Was this Abbie Weist's grand jury
13 testimony produced and brought out to the defendant --
14 MR. SWARTZ: Yes, it was.
15 THE COURT: -- at the time this issue arose?
16 MR. SWARTZ: Yes.
17 THE COURT: She said that he wasn't at this dinner,
18 because it was her birthday?
19 MR. SWARTZ: Said that Dean was not at the dinner,
20 Yes, Your Honor. That is the exact copy, I believe, of the
21 grand jury -- or excerpt from the grand jury transcript that
22 defendant had.
23 THE COURT: All right.
24 MR. SWARTZ: I should say, Your Honor, that without
25 going into the specifics of Russell Cartwright's testimony, that

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1 it suggests, it also confirms that defendant perjured herself
 2 with regard to saying that she had never eaten with Russell
 3 Cartwright, and furthermore, that the receipt is an accurate
 4 one.
 5 That is not to say, Your Honor, that Russell
 6 Cartwright did not suggest with regard to other HUD employees,
 7 although he could name none, that he might not have been
 8 submitting false receipts supposedly pursuant to a Black
 9 Mantfort policy, but what he explicitly said was that he had
 10 gone out to dinner and lunch with Dean, again confirming that
 11 she'd perjured herself, and that he entertained her on two
 12 occasions, including at the Mayflower Hotel, which, of course,
 13 is the subject of the receipt.
 14 If Your Honor so desires, we'll submit that.
 15 THE COURT: All right. Do you have that here?
 16 MR. SWARTZ: Yes, I do, Your Honor.
 17 THE COURT: All right, I'll take that in camera.
 18 MR. SWARTZ: Okay.
 19 MR. WEHNER: Your Honor, could we have the opportunity
 20 to review that, please?
 21 THE COURT: No, I'm taking it in camera.
 22 MR. WEHNER: Thank you. I just wanted to make the
 23 record.
 24 THE COURT: All right.
 25 MR. SWARTZ: As you see, Your Honor, Russell

1 Cartwright's testimony before the grand jury is extremely
 2 extensive. We are glad to provide the whole record to Your
 3 Honor, and we're glad to provide any excerpts to defense counsel
 4 relating to defendant Dean that Your Honor considers to be
 5 appropriate.

6 In particular, Your Honor, the page numbers here would
 7 be page 27 with regard to other meals, page 30 with regard to
 8 the Mayflower matter, and then the later pages -- 34, 36, with
 9 regard to the supposed Black Manfort practice, although again,
 10 I would like to stress, Your Honor, two points in that regard:
 11 One, Russell Cartwright could not identify any
 12 individuals that he supposedly followed this practice with
 13 regard to, and again, as I've suggested to Your Honor, it's not
 14 uncommon in our experience that the attempt has been to suggest
 15 that these events never occurred, but the second point and the
 16 more important point here is that he had already admitted having
 17 gone out with defendant Dean on four occasions.

18 And, Your Honor, that brings me to my concluding
 19 point, which is that defendant should not be permitted to
 20 continue to obstruct justice in this way and to make statements
 21 that require the government to go back, go through the record at
 22 a massive expenditure of time and effort and require the Court
 23 to do so. It is defendant that has made misstatements to this
 24 Court, it is defendant who perjured herself, and we submit, Your
 25 Honor, that the motion for reconsideration is a further basis

1 For holding that defendant should receive a two-level
 2 enhancement for obstruction of justice for making material false
 3 statements to the Court pursuant to Sentencing Guideline 3C1.1.
 4 Thank you, Your Honor.
 5 THE COURT: All right, thank you.
 6 All right, Mr. Wehner, do you want to respond briefly
 7 on this new trial motion?
 8 MR. WEHNER: Yeah, briefly, Your Honor. Generally,
 9 I'd point out to the Court it's another, Mr. Swartz's statement
 10 is another example that draws me back to before the trial in
 11 this case, when the Independent Counsel stood up and said there
 12 wasn't any Brady material. That statement is about as
 13 accurate, turned out to be about as accurate as the information
 14 Mr. Swartz wants you to consider today.
 15 If you look at the grand jury testimony of Abbie
 16 Wiest, you will see that there is no more a fair inference from
 17 that testimony that Deborah Dean perjured herself when
 18 testifying about her relationship with Russell Cartwright than
 19 that Andy Sankin gave Ms. Dean Christmas presents.
 20 And I invite the Court to look at that grand jury
 21 testimony with care, because Mr. Swartz has just told you that
 22 Ms. Wiest testified in contradictory fashion to Ms. Dean. If
 23 you look at page 56 and the exact information that Mr. Swartz
 24 wants you to rely on, line 11, "Let me see if I can refresh your
 25 recollection.

1 "Question: I've seen records that reflect a dinner
 2 with Russell Cartwright and Abbie Wiest at the Mayflower on the
 3 27th of October 1987. Would that have been one of the occasions
 4 that you were thinking of?
 5 "Answer: No. But Debbie Dean wasn't there, was she?
 6 "Question: The information we have indicates that she
 7 was.
 8 "Answer: No, she wasn't."
 9 Now, Judge, if you take expense account receipts in
 10 this town of Russell Cartwright or of an Andy Sankin and you
 11 subject them to scrutiny, it does not give a reasonable
 12 prosecutor a basis upon which to not delve further into whether
 13 or not the event took place. Now I grant you you can construct
 14 a case, take it in the light most favorable to the independent
 15 Counsel that all these events did take place, but when you
 16 subject them to the scrutiny of cross examination, they don't
 17 hold up.
 18 And I would ask the Court that if you're going to
 19 consider, for example, Mr. Cartwright's testimony in terms of the
 20 looking at the grand jury testimony, that you do two things:
 21 One, I would like the Court to focus on what I believe based
 22 upon what Mr. Swartz said was a statement that Mr. Cartwright
 23 routinely phoned up his expense vouchers. Now I don't know,
 24 I'd like Mr. Swartz to tell the Court what pages, where that
 25 appears. He referenced it, but he didn't give the Court a

1 reference as to what pages it appeared upon.
2 And it seems to me that when someone with a track
3 record of credibility as the Independent Counsel asks the Court
4 to determine that a witness who spent six days on the stand
5 testifying has perjured herself, that the least they should do
6 is bring Mr. Cartwright in to testify, as opposed to ask the
7 Court to take the word of the Independent Counsel, and subject
8 Mr. Cartwright to some cross examination, or let's subject
9 Ms. Wiest to some cross examination.
10 You have to argue from the record, Judge. You can't
11 stand up and make your record. And because it exists on a piece
12 of paper certainly doesn't make it true.
13 Now with regard to the John Mitchell check, if you
14 scrutinize the testimony at trial, Judge, and you take a fair
15 look at it, you will recall Ms. Dean received the Inspector
16 General's report in April of 1989 and that that is when she
17 testified she made the call to Agent Cain. If you look at this
18 report, Judge, this report is authored, this interview is
19 authored December 12 of 1988, almost five months before. And
20 this is the report upon which the Independent Counsel wishes you
21 to rely upon what was in Agent Cain's possession in May of 1989.
22 Now the cover sheet accurately reflects the date
23 during which Ms. Dean approximately recalls when she had the
24 conversation. If you look in the upper right-hand corner, it
25 says, "Date of report: April 17, 1989." That's fairly

1 consistent, fairly consistent with Ms. Dean's testimony as when
 2 she received the report. The interview, however, took place at
 3 his office, Mr. Nunn's office in December of 1988.

4 At the end of that report, the Independent Counsel
 5 would have you say -- would have you assume that based on this
 6 note, all the contracts agreements shown to Nunn were obtained
 7 from the HUD OIG audit file in Atlanta, Georgia. Now it strikes
 8 me that that is more consistent with what Ms. Dean testified to
 9 than inconsistent to what Ms. Dean testified to, which was that
 10 Agent Cain said the check, the check, not the contract or the
 11 agreement, but he couldn't show her the check, because it was in
 12 the field.

13 Now, Judge, you know, it cuts both ways, and that's
 14 why, that's why the requirement is that you have to make
 15 specific findings of fact under the sentencing guidelines before
 16 there is an enhancement applied, and No. 2, that's why you call
 17 witnesses to testify, to determine what the true facts are.

18 Now I'll be glad to cross-examine Russell Cartwright
 19 or Abbie West or this Agent Cain regarding the whereabouts of
 20 this information, but until the Independent Counsel comes
 21 forward with more than additional false receipts that may or may
 22 not be accurate or comes forward with more than an investigative
 23 report from which an equally compelling argument can be made
 24 that it supports Ms. Dean's credibility, I submit to the Court
 25 that there is no basis upon which for the Court to find under

1 consistent, fairly consistent with Ms. Dean's testimony as when
2 she received the report. The interview, however, took place at
3 his office, Mr. Nunn's office in December of 1988.
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17 witnesses to testify, to determine what the true facts are.
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19 or Abbie Wiest or this Agent Cain regarding the whereabouts of
20 this information, but until the Independent Counsel comes
21 forward with more than additional false receipts that may or may
22 not be accurate or comes forward with more than an investigative
23 report from which an equally compelling argument can be made
24 that it supports Ms. Dean's credibility, I submit to the Court
25 that there is no basis upon which for the Court to find under

1 the relevant Supreme Court case, Dunnigan, that there's been

2 an attempt at obstruction.

3 THE COURT: All right. You had the Abbe Weist grand

4 jury testimony at trial, right?

5 MR. WEHNER: I recall, Your Honor, reading that. As I

6 stand here today, I do not recall whether it was in an interview

7 report or whether it was in the grand jury transcript, but I

8 recall the substance of it.

9 THE COURT: Where she said Ms. Dean was not at that

10 birthday dinner with Mr. Cartwright?

11 MR. WEHNER: I recall the substance of that, Your

12 Honor, at trial, yes, sir.

13 THE COURT: She also said that she had had dinners

14 with others, including Ms. Dean and Mr. Cartwright, at various

15 times, talked about a dinner in Old Town and a lunch downtown on

16 page 37 or 57, the number, of her grand jury testimony.

17 MR. WEHNER: I'm sorry, I'm on page 57, Your Honor.

18 THE COURT: On the middle of the page, it starts with

19 line 4.

20 MR. WEHNER: "Then we had dinner, I don't know if we

21 had dinner before that or after that, but we had dinner in Old

22 Town with Paul Manfort, Rick Davis, Russell Cartwright, Lorry

23 Gay, and myself and Deborah one night"?

24 THE COURT: And then prior to that, "We had lunch

25 together."

1 MR. WEHNER: I'm not sure I read.

2 THE COURT: Line 4.

3 MR. WEHNER: I'm sorry. "Well, one day in November,

4 we had lunch, me, Debbie Dean, Paul -- not Paul Manfort -- Rick

5 Davis, Lorry Gay, me, and Debbie Dean had lunch downtown?" I

6 don't recall seeing that at trial, Judge. That's not to say I

7 didn't.

8 THE COURT: All right.

9 MR. WEHNER: But again, if you read the grand jury

10 transcript in terms of what Abbie Wiest was testifying

11 concerning, it's clear to me that it is consistent -- or not

12 inconsistent with Ms. Dean's testimony.

13 And I would be -- and as I say to the Court, I

14 suggest -- well, let me put it this way to the Court: If the

15 Court is going to consider the information regarding the Russell

16 Cartwright grand jury testimony, I request that the Court allow

17 me to issue a subpoena to Mr. Cartwright so that the Court can

18 gauge his credibility with regard to whatever it is Mr. Swartz

19 wants you to rely upon in his grand jury testimony. Not having

20 it leads to some difficulty in making that argument, but if the

21 Court intends to rely on it, we can avoid the grand jury problem

22 simply by putting Mr. Cartwright on the stand and having him

23 testify as to whatever Mr. Swartz would like him to testify to,

24 and I'll be glad to cross-examine him.

25 THE COURT: All right. On the motion for

1 reconsideration of the new trial, the Court is going to deny
 2 that at this time. The government has produced materials
 3 reflecting both at the original Cain argument -- and I'll put it
 4 in quotes -- Cain argument by defendant as to where she met him
 5 and discussed matters with him. It seems to the Court that is
 6 not accurate as to the John Mitchell check and Cain, when he
 7 knew about it -- when she knew about it and where the documents
 8 were, I think that's argument and could be argued either way
 9 about it, but it doesn't mean of necessity the government is
 10 putting on information they knew was false before the jury.
 11 As to the issue on Mr. Cartwright, I think the same is
 12 true. There is information in the government's possession both
 13 ways that they had a receipt charging he had Dean and Wiest for
 14 dinner that evening in question. The impression they had is
 15 information from Ms. Wiest that she had eaten alone with
 16 Mr. Cartwright.
 17 I've reviewed the grand jury testimony of
 18 Mr. Cartwright in this consideration as well as to his
 19 recollection and his accuracy or not of his receipts, and that
 20 does not change the Court's opinion that the government, while,
 21 as I said before, zealous and aggressive, misrepresented to the
 22 jury the issue as to the Cartwright receipt or not, the
 23 defendant had information to challenge that inference or
 24 recollection of Mr. Cartwright's about it.
 25 Ms. Dean had testified at trial -- we'll go further if

1 necessary into this in the sentencing phase of it -- "Did you
 2 ever have meals with Russell Cartwright?" That was asked right
 3 after a question about Rick Davis of Black, Manfort, Stone &
 4 Kelly, she mentioned about that, she answered, "I've never eaten
 5 with Russell Cartwright."
 6 And she was asked specifically about going out on
 7 October 22, 1987. I'm not sure that was the right date; it was
 8 October 27. But in any event, she answered again, "I've never
 9 eaten with Russell Cartwright."
 10 There is evidence otherwise that she had eaten with
 11 him. I don't know the context in which she was answering that
 12 question in her mind. I can't say it's lying when she said she
 13 never ate with him on October 22, whether when she said, "I've
 14 never eaten with Russell Cartwright," she means by herself, with
 15 others, I don't know, but for the purposes of the new trial
 16 motion, I will not find that it raises any substantial issue
 17 that more likely or not would result in a different jury verdict
 18 or prosecutorial misconduct would result in ordering a new
 19 trial, and because of that, I see no need to have Mr. Cartwright
 20 or Ms. West testify further in this matter or Agent Cain.
 21 So I'm going to deny the renewed motion for a new
 22 trial, I guess, or reconsideration. I'm denying the motion for
 23 a new trial at this time.
 24 I'd like to set up the sentencing matter now. I've
 25 got a meeting at 12:15, a TRO to hear, and another matter at

1 upon that at all. I recognize in the body of it you're talking
2 about the bond, but that really wasn't how it was captioned. I
3 thought somebody would look at this caption and find there were
4 things not ruled upon. I'm reserving, obviously, on the bond
5 pending appeal.
6 All right, let me go through a couple other issues.
7 I've talked through my office with Mr. Hunt, who has indicated
8 that he could be reviewing this this afternoon and tomorrow
9 morning, and hopefully we can reschedule this tomorrow afternoon
10 as to the guidelines that should apply to this case, on how to
11 apply the guidelines, which as I've said, I think is a difficult
12 calculation to make as to the newer guidelines or if they go to
13 the older guidelines, what is the most analogous offense, and if
14 we do pick one, how does that work with the various increases
15 that can be made and the various categories that have been
16 argued.
17 The other matters are the obstruction of justice
18 matters, including the defendant's testimony and points material
19 to her relationship with Mr. Mitchell, about whether she's close
20 to him or not, etc., at various time frames, and his knowledge
21 of the role in the conspiracy -- or her knowledge of his role in
22 the conspiracy, and the issues about the telephone conversation
23 with Mr. Cain.
24 The probation officer, after reviewing this --
25 additionally was the loan -- or monies received from Mr. Kitchen

1 I think was the other obstruction of justice issue, and that's
2 whether she testified falsely regarding her relationship with
3 Mr. Mitchell and whether that was material to the case and the
4 call to Agent Cain or not. He testified he doesn't recall any
5 such conversation.
6 We have had the various statements after the trial
7 alleging that he didn't tell the truth, and that turned out that
8 he was not the individual she recalled in California, and that
9 was incorrect, and there's been no supplemental affidavit from
10 her explaining that, and that she had testified she really
11 didn't know Mr. Mitchell very well, although I think the
12 evidence is she did know him well.
13 And the other issue is the defendant was found guilty
14 of an illegal gratuity in Count 4 for the kitchen payment, and
15 she had testified that, that he gave her for assisting in
16 decorating an apartment and buying furniture and that didn't
17 work, and then she had the money and tried to pay it back and
18 that that didn't work out.
19 The government has also asserted that other
20 obstruction of justice should be used against her for filing
21 these post-trial motions and challenging other statements by
22 other individuals that the government alleges she did not prove
23 is correct, her version being correct.
24 Obstruction of justice always gives the Court concern,
25 because I don't know if there's a close line between the

1 defendant testifying in his defense in a case and then being
2 found guilty by a jury and then adding obstruction of justice
3 because he did that or not. Obstruction of justice, I have to
4 construe the terminology used by the party testifying in the
5 light most favorable to the defendant, and again, I'd have to
6 consider what she meant by that.
7 I am not convinced that the defendant was lying about
8 a telephone conversation with Mr. Cain. I think it could have
9 occurred. I'm not convinced that the jury found that she was
10 lying about that, and I'm going to construe that in the light
11 most favorable to the defendant, and I'm not going to raise the
12 level by two points for any testimony she gave about
13 consideration of speaking to Mr. Cain or not.
14 I am concerned about her testimony about Mr. Mitchell,
15 and I think the testimony about Mr. Mitchell was essential to
16 the case. His efforts involving Mr. Nunn and with her were one
17 of the foundations of one of the counts in the case in which she
18 was found guilty and her involvement with Mr. Nunn and this
19 money being paid by Mr. Nunn for her as to decorating the
20 apartment or not. Whether or not the jury found it an illegal
21 gratuity, I'm not sure it means she's automatically lying about
22 it, because still they could have considered it illegal even if
23 they thought she had gotten it to do something for him but never
24 did the things for him and never paid it back. But
25 the testimony regarding Mr. Mitchell concerns the Court, because

1 there's no question in my mind that she knew
 2 Mr. Mitchell quite well and had for a long time, and I don't
 3 understand the evidence going -- except to the point that she
 4 was not involved with Mr. Mitchell as to HUD matters, and even
 5 her recounting the telephone call with Mr. Cain about how upset
 6 she was about Mr. Mitchell being named, she didn't believe it,
 7 etc., reflects her, I think, relationship with Mr. Mitchell,
 8 payment for the birthday party, the letters signed to Daddy,
 9 etc. So I do believe that it's appropriate to raise for
 10 obstruction of justice by two points for that testimony she gave
 11 as to Mr. Mitchell, and that's in accordance with what the
 12 probation officer found.
 13 I'm not going to make a ruling as to the other issues
 14 on which guidelines apply, whether the '90 or '93 ones apply,
 15 or, as I said, what other additional increases should be made to
 16 whatever the base is as discovered to apply after I speak with
 17 Mr. Hunt, but we'll have you back tomorrow afternoon, and I'll
 18 issue final rulings on that after I speak with him again, he's
 19 researched the matter of the fraud application and the
 20 application of the amount of losses, if any.
 21 I'm not sanguine at this point with the government's
 22 theory of the amount of losses. I took a look at their case
 23 over the break, and it's a pre-guideline case. I tried to read
 24 about what "loss" means in the guidelines, and I'm going to have
 25 to have Mr. Hunt look at that as well as myself to get some

HM 1-1054

He had two partners in the above transaction, MARIO JIMENEZ and RAY BORN. He believes his proposal was selected for funding by DADE HUD because it was the most suited for the allocation. He heard this from friends, who he declined to identify, but asserted they were never employed by HUD nor the federal government. He indicated that his contacts were individuals who had political influence. He did not pay directly for any political influence but has made donations to Republican candidates.

The HIALEAH-MIAMI LTD. APARTMENTS were sold in 1986 to J & B INC., a New York syndication.

ARAMA LIMITED (293 unit project) and WEST DADE LIMITED, (122 unit project) both had Washington D.C. based consultants. ARAMA had LOUIE B. NUNN and WEST DADE had JOE STRAUSS of PHOENIX ASSOCIATE.

He explained he met NUNN in 1978-79, when NUNN successfully represented him in a suit against HUD. In both ARAMA and WEST DADE matters, consultants were paid for services rendered. Copies of both contracts were provided the Inspector General through PAUL ATKINSON, HUD-IG-Audit.

Regarding WEST DADE, he engaged PHOENIX ASSOCIATES through a local associate, MANNY VERGERA. In both instances involving ARAMA and WEST DADE, he was notified within thirty to forty-five days by his consultants that his units would be included in an allocation forth coming to DADE HUD. He does not recall receipt of a "Form 185" regarding an award.

7 He always reflected payment to the consultants on the Cost Certification, although he understood it was not an eligible cost. He listed it because he wanted the whole world to know he used consultants.

In the case of WEST DADE, he had to adjust the number of units to fit the allocation. He explained that allocations are based on two bedroom units and in order to provide various sized units he changed the mix from all two bedroom units to a combination of no bedroom, two bedroom and three bedroom units in addition to two bedroom units, which is allowable as long as the total does not exceed the allocation.

He is aware of others in the industry, JORGE PEREZ, JORGE BOLANOS and LOUIS-RUBY SWEZY to mention a few, but has never discussed how they went about getting allocations.

He has never donated to F.O.O.D. FOR AFRICA.

LOUIE B. NUNN, (Former Governor of Kentucky), Counselor at Law, Route #3, Park, Kentucky 42749, telephone number (502) 453-2805 was interviewed at his office on December 12, 1988, by Special Agent LESTER A. DAVIS. NUNN provided the following information:

He has been involved with only two HUD Moderate Rehabilitation projects, ARAMA, LTD., and SOUTH FLORIDA, LTD., both of which the contractor was ARISTIDES MARTINEZ.

He came to know MARTINEZ because he represented MARTINEZ in a debarment procedure, involving the HUD Jacksonville, Florida Office, prior to working on the two Moderate Rehabilitation projects.

As further explanation as how he came to know MARTINEZ, DWIGHT BROEMAN (Business Partner of NUNN's brother, LEE NUNN), told him there was a contractor in Miami having problems with a HUD project controlled by HUD's Jacksonville Office. BROEMAN gave him a man's name (name unknown) and telephone number for him to contact so he could determine if he could help the contractor. When he called that man, he was told the contractor having the problems in Miami was ARISTIDES MARTINEZ. He decided at that point not to get involved. However, he later was in Atlanta speaking to CLIFF BROWN, (then Regional Director, HUD), who told him the HUD Jacksonville Office was having problems with MARTINEZ and he was going to go there to try and solve them. He (NUNN) decided then that MARTINEZ may have a legitimate complaint against HUD so he called MARTINEZ.

MARTINEZ' problems involved three projects, ROBERT FORCUM TOWERS, ST. DOMINIC GARDENS and ST. JOSEPH TOWERS, all of which were under HUD programs by MARTINEZ, HARBILL INCORPORATED. NUNN entered into a contract with MARTINEZ which in essence required him to convince HUD Jacksonville to pay the money they owed MARTINEZ for his work. HUD claimed that MARTINEZ was not doing a good job and would not pay him. NUNN called CLIFF BROWN in Atlanta to see if a solution could be worked out. BROWN arranged a meeting in Atlanta for NUNN with Atlanta HUD personnel who listened to him and said they would see what could be done. The only person NUNN remembers being at the Atlanta meeting was JIM HILLS (deceased). The HUD Jacksonville office (names unrecalled) then said MARTINEZ had falsified records and they were going to try and debar him. NUNN made several trips to Washington to speak to HUD employees about the debarment procedure (NUNN does not remember the name of anyone he spoke to). He was able to stop the debarment procedure and recovered some of the monies HUD was withholding from MARTINEZ. NUNN believes he received approximately \$18,000 for his services, however, he does not have any documentation concerning that work.

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After stopping the debarment procedure and recovering some of MARTINEZ' money, NUNN and MARTINEZ went to HUD in Atlanta to find out if there were any projects or programs MARTINEZ could get involved in since he was treated so unfairly by HUD. At a meeting (NUNN does not remember any of the HUD employees' names that were there), MARTINEZ said he knew about HUD's 515 program (Rehab).

On January 25, 1984, NUNN entered into two contractual agreements with ARISTIDES MARTINEZ and MARCO JIMENEZ for the project ARAMA LTD., (Miami). The agreements were shown to NUNN by Special Agent LESTER A. DAVIS and acknowledged his signature and payments. The first agreement was for NUNN to act as a consultant involving 300 Moderate Rehabilitation units and he was to be paid \$150,000. The second agreement was for NUNN to act as an attorney concerning the 300 Moderate Rehabilitation units and he was to be paid \$225,000 for his services. When NUNN entered into the agreements, he asked what was the normal fee for Rehab units and MARTINEZ told him \$1,000 per unit. An addendum was added to both agreements which reflected NUNN was to receive \$1,250 per unit (300 X \$1,250 = \$375,000). To the best of his knowledge he was paid in full for the two agreements (NUNN stated his income tax records would reflect the income). NUNN paid JOHN MITCHELL, former United States Attorney General, \$75,000 for his help in the ARAMA project. MITCHELL had told NUNN he had contacts at HUD in Washington from the top on down because Secretary PIERCE was a friend of his. Because of this, MITCHELL said he would help NUNN. When MARTINEZ had the project signed off locally (Miami), he would call NUNN to find out when approval would be made in Washington. NUNN would then call MITCHELL and ask him to find out when the funds were going to be released for the Rehab projects in Miami. MITCHELL would find out and tell NUNN (NUNN does not know who MITCHELL spoke to in Washington). NUNN spoke to MITCHELL two or three times concerning the ARAMA project. Once NUNN knew when the funds would be allocated, he was able to advise MARTINEZ if he needed to refile his options or if his current paperwork would be satisfactory, etc. The next step for NUNN would be to stay in touch with the HUD Jacksonville Office to follow the flow of MARTINEZ' application. NUNN felt the HUD Jacksonville Office was discriminating against MARTINEZ so he would make sure all of MARTINEZ' paperwork was being processed fairly. MITCHELL only helped on this project (ARAMA LTD.).

The next and last Moderate Rehabilitation project NUNN helped MARTINEZ with was SOUTH FLORIDA, LTD. NUNN was shown an agreement dated April 1986, that listed NUNN as a consultant for SOUTH FLORIDA, LTD., and he was to be paid \$200,000 at the time of all initial closings of the 200 Moderate Rehabilitation units. NUNN acknowledged the agreement and the two checks (also shown to him)

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both dated December 18, 1986, one for \$110,000 and the other for \$109,000. NUNN could not explain why there was a difference of \$19,000.00 between the two checks and the agreement. The invoices for both checks described the checks as being for consultant fees. NUNN's responsibilities for this project was to help MARTINEZ get all the forms in order, help contracts go through the HUD process, look for any defects, advise MARTINEZ what to do next and to keep HUD from discriminating against MARTINEZ. NUNN does not remember ever talking to any HUD personnel in Washington about this project.

NUNN stated that, although he is listed as a consultant on some contractual agreements, he considered himself to be an attorney on a retainer at the time. MARTINEZ approached NUNN and asked him if he minded being listed as a consultant because the local attorneys MARTINEZ was using would not have liked the amount of money NUNN was receiving for legal advice. NUNN told MARTINEZ he understood and agreed.

NUNN also stated he does not know where any of the contracts/agreements between himself and MARTINEZ are.

AGENT'S NOTE: All the contracts/agreements shown to NUNN were obtained from HUD-016 Audit file in Atlanta, Georgia.

