

ATTACHMENT 1

Trial Transcript: Pages 1195-1206

1 yesterday that many of those credit card receipts didn't relate
2 to Ms. Dean?

3 A. Yes, sir.

4 Q. Many of the ones they introduced into evidence?

5 A. Several of them, yes, sir.

6 MR. WEHNER: Your Honor, I request the jury be excused.

7 THE COURT: All right. Ladies and Gentlemen, we'll
8 take our morning recess. Take about 15 minutes and come back.
9 Remember the admonition of the Court, please. Do not talk about
10 the case during any recess.

11 MR. WEHNER: Your Honor, I further request that
12 Mr. Sankin be admonished to talk to no one.

13 THE COURT: That's all right. He can wait here.

14 (Jury out.)

15 THE COURT: All right, Mr. Sankin, wait outside for a
16 second, will you, please?

17 (Witness out.)

18 THE COURT: Mr. O'Neill, do I understand his
19 characterization of his testimony correctly that he at some time
20 yesterday told you that the exhibits, some of which were admitted
21 into evidence here, some of them did not relate to Ms. Dean that
22 he said related to Ms. Dean or left the impression they were
23 Ms. Dean's, related to her?

24 MR. O'NEILL: No, Your Honor. What had occurred, after
25 Mr. Sankin testified yesterday, he came down from the stand, and

1 when we were walking back towards the office, he said, "I can't
2 say whether all of these went to Ms. Dean or someone else. I
3 have no specific recollection as to --" like the one that Mr.,
4 the one that Mr. Wehner stated is Government's Exhibit 11C,
5 "Lunch with HUD officials re mod rehab units," he said, "I have
6 no independent recollection at this time who they were."

7 THE COURT: How about as to the others? Did he
8 specifically mention any of the others? Some had "Dean" written
9 on them, some had "chief of staff" written on them, some had
10 "staff assistant," a cup and saucer, I think, yesterday my notes
11 reflect.

12 MR. O'NEILL: That one, Your Honor, I believe is
13 Government's Exhibit No. 11P, and it says, "Business gift, Deb
14 Dean."

15 THE COURT: Right, it had "Dean" on it. And then the
16 Georgetown Leather I have a note related to Dean. I don't know
17 if it had anything on it that says that.

18 MR. O'NEILL: I don't believe there was any
19 conversation relating to the other gift at all, Judge. I don't
20 remember him saying anything specifically about any specific
21 document.

22 THE COURT: I had kept out -- not kept out, I had held
23 on one, 11D, because he couldn't say it was related. I had a
24 note to myself, 11C, I had no question asked relating it to
25 Deborah Dean, but it was admitted without objection.

1 MR. O'NEILL: Well, if Your Honor recalls, as I was
2 going through them yesterday, there were a number of other ones
3 when we took a break that did not specifically say the defendant,
4 Deborah Dean, so I took most of them out, or ones that said --
5 and this was before his conversation. Let me get to these in
6 order.

7 I believe we broke at about 11G. I don't remember
8 exactly where that was.

9 THE COURT: We did. We did break at 11G.

10 MR. O'NEILL: 11G? Okay.

11 11F was Deborah Dean. 11G was, it's hard to read. It
12 looks like "Dinner with HUD executive assistant to secretary.
13 Discussed stuff." That one went on the record.

14 11H, I think that was pulled.

15 THE COURT: That was pulled.

16 MR. O'NEILL: Okay. 11I.

17 THE COURT: That was pulled.

18 MR. O'NEILL: That was pulled. That one says,
19 "Entertaining HUD personnel. Discussed new appointment." So
20 that was pulled.

21 11J, it says, "With Debbie Dean and Hunter Cushing." I
22 believe that went into evidence.

23 THE COURT: Right.

24 MR. O'NEILL: 11K said, "Dinner with executive
25 assistant and chief of staff."

1 THE COURT: Right.

2 MR. O'NEILL: 11L said, "Lunch with Debbie Dean from
3 HUD." "DD," I'm sorry, not "Debbie Dean."

4 11M says, "Dinner with chief of staff at HUD."

5 11N says, "Dinner with chief assistant -- or staff
6 assistant perhaps -- to secretary at HUD. Discussed mod rehab."

7 11O again looks like, "With staff assistant to
8 secretary at HUD. Discussed new tax effects." I believe that
9 was, that was put on the record.

10 11P is, "Business gift, Deborah Dean."

11 11Q is, "Business gift HUD assistant to secretary."

12 11R, was that in, Judge?

13 THE COURT: 11R is not in.

14 MR. O'NEILL: No.

15 THE COURT: Q is in.

16 MR. O'NEILL: That was pulled. That says, "Lunch with
17 staff assistant."

18 11S says --

19 THE COURT: That wasn't put in. I have 11Q, and the
20 next one I have after Q would be V and W.

21 MR. O'NEILL: V and W, okay, Judge.

22 THE COURT: They both have "DD" on them in my notes.

23 MR. O'NEILL: 11V says, "Dinner with assistant
24 secretary of HUD. Mod rehab."

25 11W says, "Entertained Deborah Dean."

1 THE COURT: All right. Well, he has answered the
2 question on cross that he informed the Independent Counsel
3 yesterday that he said exhibits that were put in did not, he
4 could not relate to Debbie -- Deborah Dean. Independent Counsel
5 indicates he said as to 11C that he couldn't relate that to
6 Deborah Dean.

7 That was not brought to our attention before trial
8 started today. I think that counsel should have brought that to
9 the Court and to opposing counsel's attention as Brady-type
10 material at this point, where he comes off the stand and denies a
11 document is related definitely to Ms. Dean. I had a question
12 mark on that document.

13 MR. O'NEILL: Your Honor, just so the record is
14 clear -- I'm sorry to interject.

15 THE COURT: All right.

16 MR. O'NEILL: He never denied to me that it was related
17 to Ms. Dean.

18 THE COURT: All right. Well, he said he couldn't
19 relate the document to Ms. Dean, as I understood it.

20 MR. O'NEILL: He said he had no specific recollection,
21 Your Honor, as to even the ones that bore her name.

22 THE COURT: As to all of them, he doesn't recall.

23 MR. O'NEILL: Correct. That's what he told me, Judge.

24 THE COURT: All right.

25 MR. O'NEILL: He just said he doesn't have any

1 recollection.

2 I didn't -- so the record is clear, I did not show
3 Mr. Sankin any of these documents in the government's case at all
4 prior to his testimony. They were shown to him, I believe, in
5 the Office of Independent Counsel several months ago, but I have
6 refused to show him any documents --

7 THE COURT: All right. You didn't review it with him
8 again before he testified?

9 MR. O'NEILL: No, Your Honor. I specifically refused
10 to allow him to see documents.

11 THE COURT: I see, okay.

12 Well, do you have anything further?

13 MR. WEHNER: Judge, it's going to get considerably
14 worse. I simply want to alert the Court to that.

15 THE COURT: I don't know what you mean by worse.

16 MR. WEHNER: I'm sorry. Many of these documents
17 demonstrably do not relate to Deborah Gore Dean. I don't know
18 whether the witness will ultimately admit that or not, but there
19 are several that are just so far afield from reality that the
20 jury and the Court will be satisfied that it didn't happen
21 without any doubt.

22 THE COURT: Well, do you have any relief you want? Do
23 you want me to strike documents, do you want me to give a
24 cautionary instruction to the jury, or do you just want to cross
25 him and make him look like he didn't tell the truth? I mean, I

1 think it's your option as to what you want to use.

2 MR. WEHNER: Well, you didn't list the option I wanted,
3 Judge.

4 THE COURT: We're still here.

5 MR. WEHNER: You seem to have limited me to those
6 three. Can I have a second to consider?

7 THE COURT: Yes.

8 MR. WEHNER: May I step out for a minute, Judge? I'd
9 like to take a look at a book.

10 THE COURT: All right, I'll take a break. Then we'll
11 take our morning recess, 15 minutes.

12 MR. WEHNER: Thank you, Your Honor.
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1 (Recess, 10:55 a.m. to 11:20 a.m.)

2 THE COURT: All right, resuming on the record
3 again, and Mr. Wehner, do you have anything.

4 MR. WEHNER: Yes, Your Honor, I think I'd
5 simply like to continue with the cross-examining of
6 Mr. Sankin and I'd like to remind the Court of a
7 statement that the Court made to Independent Counsel
8 before this trial even started, based on Brady, failure
9 to produce Brady material, and I believe the Court's
10 statement was that you found that the information they
11 had not provided at that point was Brady and you
12 cautioned them, frankly, very sternly that sanctions
13 would be in order if they failed to comply with Brady in
14 the future and I think I would like the Court to keep
15 that in mind as we continue the cross-examination.

16 MR. O'NEILL: Judge, I'd like to put one thing
17 on the record.

18 THE COURT: Sure.

19 MR. O'NEILL: The series of questions elicited
20 to Mr. Sankin were cross-examination and I have no
21 problem with that, but when my credibility is put at
22 issue and in a way that reveals to the jury that I may
23 have done something improper when I do not feel that I
24 did, it becomes time to fight back, Judge, and if he's
25 going to do that on the record, if gloves are going to

1 be off, they're going to be off on both sides, Judge.

2 I've put up with some of the histrionics so
3 far, the head shaking, and the like. I have no problem
4 with putting up with it. I have not attacked
5 Mr. Wehner's credibility, nor do I intend to, but if my
6 credibility is at issue, that is not what this case is
7 about.

8 Mr. Sankin on direct examination identified
9 receipts. He identified his handwriting on them. Many
10 of them either said Miss Dean's name or some reference
11 to a high level HUD official. If Mr. Wehner wants to
12 cross-examine about that, to show it was not Miss Dean,
13 if he can prove it was not Miss Dean, that's fine.

14 The Government did not say when it was
15 unnamed, it was Miss Dean. Mr. Sankin then later on
16 said something about not having an independent
17 recollection. How the Government is then in a position
18 of hiding Brady is beyond me. But I just want to state
19 that for the record, Judge.

20 THE COURT: I do think in fairness though,
21 Mr. O'Neill, when these documents are introduced they
22 came in as related to Miss Dean in people's minds, if
23 not through direct testimony. I think that's why they
24 were offered. I kept out 11D because it was not
25 indicated in relation to Miss Dean, although it's a HUD

1 official lunch is what it said on it, but at that point
2 someone asked, and that's what my notes recollect
3 anyway. You've got a daily transcript. My notes
4 reflect that someone raised the issue whether or not
5 that was lunch with Miss Dean and I kept that one out.

6 The American Express receipt said HUD
7 officials for lunch. That was not challenged and was
8 admitted, but in relation to all the other ones that
9 were admitted that had Deborah Dean's initials on them,
10 and the Georgetown Leather gift which had DD on it,
11 there's some relationship to her, but that as to the
12 other ones, like staff assistant, et cetera, left the
13 impression, at least to the Court if not to the jury,
14 that they're all related to Miss Dean directly, not some
15 inference that she would have been at the lunch.
16 Otherwise they're not related Miss Dean --

17 MR. O'NEILL: I agree with you, Judge, but
18 wasn't that the time to object to it?

19 THE COURT: I said the American Express
20 receipt was allowed in. It was not objected to. On my
21 own notes I have a question on it. It was not objected
22 to and it was not in my mind identified as being
23 Miss Dean's responsibility at that time, but the
24 documents that were put in the same contiguous timeframe
25 certainly impresses to the Court that they were all

1 related to meetings and lunches and gifts to Miss Dean
2 and went to her culpability as to substantial matters,
3 and if there's evidence that the witness really didn't
4 know it was Miss Dean and didn't -- couldn't say that it
5 was related to Miss Dean, I think that should have been
6 brought out at the appropriate time once the prosecution
7 learned it.

8 I don't want to see the trial degenerate.
9 This trial has been remarkable for the excellence of
10 counsel on both sides. I have noted to myself and my
11 staff that fact and I contrasted it to the prior trial I
12 recently finished. I don't want to see it degenerate,
13 but at the same time I think Mr. Wehner is entitled to
14 raise issues with Mr. Sankin as to what he said and what
15 he recollects about these documents and, again, what
16 ones he can testify were Miss Dean's or not. It's up to
17 him how he wants to do that.

18 Mr. Sankin may remember they're Miss Dean's.
19 On the other hand, he may deny knowing that they're
20 Miss Dean's or not. I will allow him to examine him to
21 the American Express receipt and what he said about it
22 yesterday. I told him that he couldn't possibly finish
23 this examination yesterday. He said that he didn't have
24 any recollection, as I understand it, of having lunch or
25 dinner with Miss Dean precisely, but I think the

1 Government had a basis to put the ones identified with
2 her name on it into evidence certainly.

3 Others which were identified, he can then
4 testify that that would refer to her as opposed to
5 somebody else he would have lunch with in a high office
6 of HUD, are legitimate. But ones where they're not
7 related to her and he can't say, I do not think they
8 should be used, regardless of no objection.

9 All right. We'll have Mr. Sankin back and
10 proceed with cross-examination.

11 I do not want to put the Independent Counsel
12 on trial, although I'm not sure it's not fair game in
13 closing argument to mention these incidents.

14 All right. Bring Mr. Sankin in.

15 (Jury present)

16 THE COURT: Will someone get Mr. Sankin back?

17 All right, ladies and gentlemen, we're ready
18 to resume the cross-examination at this time.

19 BY MR. WEHNER:

20 Q Mr. Sankin, I believe that you testified yesterday
21 regarding Government Exhibit 11D.

22 We'll skip 11D, Mr. Sankin.

23 THE COURT: Yes, I kept that one.

24 MR. WEHNER: I'm sorry. I didn't recall. I
25 was trying to keep my notes straight.