

Attachments to Narrative Appendix styled
"Dean's Statement that She Was Not That
Close to Mitchell Until After She Left HUD"

1. Pages 1, 8-9 of January 18, 1994 Letter from Arlin M. Adams to Probation Officer Gregory Hunt.
2. Transcript of Hearing of February 22-23, 1994, pages 53-56, 64-67, 88-97.



OFFICE OF INDEPENDENT COUNSEL

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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.

ATTACHMENT 1

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.

ATTACHMENT 2

Transcript of Hearing of February 22-23, 1994, pages
53-56, 64-67, 88-97.

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. Kitchin

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 Kitchin 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

1 that Mr. Kitchin testified, I believe, he talked to everybody he
2 could talk to about it, to many different people to get these
3 units.

4 Paragraph 32, the offense conduct, the presentence
5 report reflects the defendant agreed to assist Mr. Kitchin in
6 obtaining 203 units for Dade County. Defendant says she did not
7 make these arrangements to have this list of 203 units
8 configured as requested by the developer but that came through
9 the PHA, and that it's inaccurate not to mention Mr. Demery and
10 Mr. Dorsy were also involved in this process, and that the
11 defendant asked Mr. Kitchin for money is inaccurate, as they
12 were involved in a business relationship.

13 The government concurs with the defense that it was
14 actually the PHA that requested this particular configuration,
15 but it was the same as eventually requested by the developer and
16 had no more meaning when the PHA made the request as the
17 developers behind it. I believe that that is an accurate
18 reflection of the realities of the situation and that the
19 statements contained in paragraph 32 are an accurate reflection
20 of the evidence, and I'll not make any changes.

21 Paragraphs 34 and 35 of the presentence report, again
22 talking about the testimony before the U.S. Senate, the
23 defendant disputes the fact that she perjured herself, and the
24 jury verdict was otherwise, unfortunately, and therefore I'll
25 not change that.

1 Paragraph 39, victim impact statement, the presentence
2 report indicates the United States government is a victim in
3 this case, and this defendant disputes that. The government
4 argues that its ability to provide honest delivery of services
5 was called into question, and I think that's a fair
6 characterization of the situation and will not change that.

7 Paragraphs 40 and 51, obstruction of justice, that's
8 about the \$4,000 loan from Kitchin, etc., that I've already
9 reviewed, and that Mr. Mitchell and the call to Al Cain that
10 I've reviewed, 3 and 4 are non-guideline counts, the obstruction
11 regarding Mr. Kitchin's testimony is not grounds for enhancement
12 according to the probation officer, and I'm going to accept
13 that. It would be only as to Mr. Mitchell.

14 The presentence report reflects the guidelines apply
15 in this case, paragraph 44. The defense disputes that. I've
16 already reviewed that, and we'll treat that finally tomorrow.
17 Again, as to specific defense characteristics, we'll treat that
18 tomorrow as well.

19 And the acceptance of responsibility issue, defendant
20 argued that she should have a two-level decrease since she
21 admitted during her presentence interview that she violated 18
22 U.S.C. 201 technically and that she should not have had a
23 financial relationship with Mr. Kitchin. I see no basis to
24 award acceptance of responsibility to the defendant for the
25 matters covered by the guidelines in counts 1 and 2 and cannot

1 award a two-level decrease.

2 The employment history, the defense states there's no
3 evidence that indicates the defendant made anyone clean her
4 apartment on government time, went shopping on government time,
5 or used a government chauffeur for a personal basis, and that
6 comments made by Ms. Morgan and Mr. DeBartolomeis are
7 irrelevant, petty, and not worthy of consideration. There was a
8 lot of information supplied. I'm not sure of the relevance
9 about anyone shopping or cleaning her apartment, frankly, and
10 the Court is not going to give any weight to it, and I'll leave
11 it at that.

12 Paragraph 75, financial condition - ability to pay,
13 defendant supposedly holds a second trust mortgage of her
14 mother's worth, approximately \$170,000. It's payable in the
15 event of her mother's death, and there are a number of judgments
16 against the defendant, and that she may not recover any monies,
17 I'll consider that as in addition to the presentence report.

18 I also received a report today which I made part of
19 the record as one of the letters received regarding Ms. Dean,
20 which is the reason I'm making it a public record, from a lawyer
21 in bankruptcy proceedings involving Ms. Dean's family property,
22 where that's proceeding, indicating it may actually be sold for
23 substantial sums of money, up to \$6 million.

24 All right, can we get everyone back here at 2:30
25 tomorrow?

1 MR. SWARTZ: That's fine with the government, Your
2 Honor.

3 THE COURT: All right.

4 MR. WEHNER: Your Honor, may I raise one issue before
5 we leave?

6 THE COURT: All right.

7 MR. WEHNER: Your Honor, I'd ask the Court
8 respectfully to reconsider in your finding on the two-point
9 increase on the John Mitchell testimony. I think a review of
10 the record indicates that Ms. Dean acknowledged her relationship
11 and her family's relationship with John Mitchell in very clear
12 and unambiguous terms, especially with regard, for example, to
13 the relationship between John Mitchell and her mother, when that
14 began and how it continued, and I think Ms. Dean's statement
15 that she didn't know John Mitchell that well until she left HUD
16 has to be considered in context of the entire state of the
17 testimony with regard to her and her family's relationship with
18 Mr. Mitchell. I'd ask the Court to reconsider that.

19 THE COURT: All right, thank you. I'll rule again
20 tomorrow on that if necessary.

21 MR. WEHNER: Thank you, Your Honor.

22 THE COURT: All right, we'll stand in recess on this
23 case then.

24 (Recess from 3:00 p.m., to 2:30 p.m., February 23, 1994.)

25

1 essentially that's what Ms. Dean is charged with in counts 1 and
2 2 is defrauding the government, would mean the Court would have
3 to apply 2F1.1 of the 1990 guidelines. That would have a base
4 offense level of 6, and then consideration would be given to
5 upward departures as appropriate.

6 I've already ruled on the minimal planning, and I'm
7 going to hear the reconsideration of the obstruction of justice,
8 and I can consider the appropriate departure upward because of
9 the harm for the institution and comparing the new guideline as
10 to the concerns that could be raised with this type of offense.
11 Under comment 9 of the fraud guideline, the reference is made to
12 an eight-level increase warranted for high government officials
13 under 2C1.2(b)(2)(B).

14 So for the purposes of the sentencing, the Court is
15 going to apply the fraud guideline in existence in 1990 and then
16 will discuss the additions to the base level of 6. The
17 probation officer has now recommended a two-point increase for
18 more than minimal planning, which I have already ruled is
19 appropriate. As to the adjustment for abuse of public trust,
20 that's warranted. That may be, however, encapsulated in the,
21 some type of increase as to the suggested eight-level increase
22 or some type of increase that could be possible under note 9
23 with reference to the new guideline.

24 The obstruction of justice, I'll hear now as to
25 whether that should be changed from the Court's ruling. I was

1 given by the defendant a copy of her testimony in part as to her
2 reference to Mr. Mitchell and whether or not the reference she
3 didn't know him well until after she left HUD was sufficient to
4 base an obstruction of justice finding, when she made other
5 reference to him, indicating she was close to him, etc. So I
6 want to consider that at this time.

7 I'd like to hear from, is it Ms. Flynn who's going to
8 take that?

9 MS. FLYNN: Yes.

10 THE COURT: Okay. Have you had a chance to review
11 Mr. Wehner's memo with the attached documentation?

12 MS. FLYNN: Yes, Your Honor.

13 THE COURT: Had I misread that when I gave my ruling
14 and the probation officer misread it as to the import of that
15 obstruction of justice? I'm referring to page 13 of the
16 presentence report, paragraph 41, where she testified, he said,
17 falsely in regard to the relationship with Mr. Mitchell, that
18 she didn't know he was being paid, that she -- well, Al Cain I'm
19 not worried about, I already ruled on that -- that she testified
20 that she did not know Mr. Mitchell very well prior to leaving
21 HUD, but then she had admitted to the writer, that is, to the
22 probation officer, that she had known him since she was a
23 teenager and that he was a friend of the family.

24 I think the guidelines on obstruction of justice as to
25 the testimony indicate I have to consider the defendant's

1 testimony in the light most favorable to her as I weigh this.

2 MS. FLYNN: Yes, that's right.

3 THE COURT: Does that change the equation I use then
4 by supplying this additional information about where she
5 admitted to certain things in her testimony about her
6 relationship with Mr. Mitchell?

7 MS. FLYNN: No, Your Honor, I don't think so. While
8 the defendant did acknowledge that she knew John Mitchell, that
9 he was a friend of the family, that she was close to him at
10 certain periods of time, what she was attempting to do by
11 denying that she was close to him until after she left HUD was
12 again to distance herself from him at the very point in time
13 when the relationship with him was most inappropriate in terms
14 of what her job was at, at HUD.

15 She -- you know, it was part of a larger pattern of,
16 of trying to hold for as long as she could at arm's length those
17 individuals with whom she was conspiring until circumstances
18 presented themselves that she couldn't deny. She couldn't deny
19 that she knew John Mitchell. It was well established that he
20 was a very close, he had a very close relationship with her
21 mother and that she had known him for a long time.

22 But the point that she was trying to convince the jury
23 of was that during the point in time when he was making money
24 off of, as a consultant on Mod Rehab projects, she really wasn't
25 that close, that she was more than an arm's length away from

1 him, and that in fact it didn't have an effect on, on how she
2 dealt with him or on her relationship with him.

3 Likewise, as other examples of this, she, she
4 testified in connection with questions about Colonel Brennan,
5 who as Your Honor will recall was Mr. Mitchell's partner at
6 Global Research, she testified when asked about Mr. Brennan that
7 she never had a very good understanding of if Mr. Brennan worked
8 for John, with John: "I never really understood exactly how it
9 worked." She said, you know, at another point that she didn't
10 know if they were partners. If there was a salary, she didn't
11 know. She never saw them working on anything together. She
12 didn't know.

13 Now as Your Honor knows, she worked there for a period
14 of time. She was very close to John Mitchell. She certainly
15 had at least one if not more meetings with Colonel Brennan. And
16 again, it's a way to try to convince the jury that there wasn't
17 this relationship and this connection during the very point in
18 time when she was making decisions on Mod Rehab.

19 So for that reason, Your Honor, the government
20 believes that your, your decision was appropriate, that you can
21 look at, even looking at the testimony in the light most
22 favorable to her, you can look at it as a whole as to what, in
23 fact, was happening here, and it's the position of the
24 government that that's, in fact, what she was trying to do by
25 denying that she was close to him until after she left HUD.

1 THE COURT: All right. I'm just looking at a summary
2 of the situation as put forth by the Independent Counsel letter
3 of January 18 to Mr. Hunt on obstruction of justice, just at
4 least to the part that goes to Mr. Mitchell. All right, thank
5 you.

6 Mr. Wehner, what about this matter on the cross
7 examination of Mr. Mitchell, where she answered she didn't know
8 him very well prior to leaving HUD, which was obviously not
9 true?

10 MR. WEHNER: Your Honor, I think that the
11 interpretation put on that statement by the Independent Counsel
12 is fair if you take it in the light most favorable to the
13 Independent Counsel as opposed to the light most favorable to
14 Ms. Dean. The Independent Counsel would have you believe that
15 Ms. Dean attempted to say during her testimony that she wasn't
16 that close to John Mitchell when she was at HUD and that that
17 was the fair import and the fair inference that should be drawn
18 from the testimony.

19 If you look specifically at the testimony, in 1983,
20 when she was at HUD, Ms. Dean acknowledges writing to John
21 Mitchell as "Dear Dad" or "Daddy." This is when she was at HUD.
22 And she acknowledges in her testimony, I've given Your Honor the
23 exact transcripts of that testimony, she acknowledges signing
24 such letters "Love, Deborah" or "Love, D."

25 When she was at HUD, she also testifies -- and I found

1 this after I'd submitted this memo, Your Honor -- she testified
2 that she had, in fact, been helped getting her job, her initial
3 government job at the Department of Energy by Mr. Mitchell even
4 prior to her tenure at HUD. She testified that when she was at
5 HUD, that John Mitchell acted as a mentor, I would say, to both
6 my brother and I.

7 And then, Your Honor, most explicitly and what clearly
8 demonstrates that, taken in the light most favorable to
9 Ms. Dean, she was not lying or obstructing justice about her
10 relationship with John Mitchell, was the direct question by
11 Mr. O'Neill, the transcript page 2960: "Is it fair to say that
12 you were close to John Mitchell?"

13 "Answer: Yes."

14 Now, Judge, that type of -- it doesn't get any better
15 than that in terms of acknowledging the precise relationship
16 that the Independent Counsel was trying to prove. When you
17 contrast that type of testimony with her response to a question
18 about these lunches that she had when she worked at HUD and the
19 number of times she had lunch with John Mitchell, which is truly
20 what the question was looking to, I think it falls clearly into
21 that category of questions, where taken in the light most
22 favorable to Ms. Dean, you cannot infer the negative, that she
23 was attempting to cover up the relationship.

24 It is much more likely, Your Honor, logically and
25 given Your Honor's experience in hearing many, many witnesses

1 testify, that Ms. Dean was referring more to the number of times
2 she saw John Mitchell for lunch, the time she spent alone with
3 him, and frankly, Judge, the maturation of their relationship.
4 She'd known John Mitchell admittedly on the witness stand from
5 the time before she went to HUD.

6 She could hardly intend to say, "I wasn't that close
7 to John Mitchell when I was at HUD," when she had previously
8 testified and intended to mislead the jury by saying she wasn't
9 close to John Mitchell when she called him a mentor and had
10 written him "Dear Daddy" letters and signed letters "Love,
11 Deborah" and testified that he'd gotten her, helped her get her
12 job at the Department of Energy.

13 That's not intentional obstruction of justice, Your
14 Honor. It may be confusion, it may be inaccurate, it may be a
15 mistake, but if you look at the different testimony in context,
16 I do not believe that Your Honor can reasonably rule that it
17 rises to the level of an obstruction.

18 Finally, Your Honor, for the last perhaps point that
19 she was not intending to obstruct justice is when she had a full
20 discussion about that issue with the probation officer, and Your
21 Honor has in front of you the statement she made regarding her
22 relationship with John Mitchell, and I believe the probation
23 officer stated accurately she freely acknowledged what that
24 relationship was and the length of that relationship, and that
25 is not inconsistent with the thrust of her testimony at trial.

1 It is inconsistent with one small sentence of
2 testimony given in response to a nondirect question which she
3 was otherwise asked and answered directly when she was asked
4 what the relationship was that was picked out in terms of
5 picking out a snippet of her testimony during approximately,
6 what, three-and-a-half days on cross examination, and taken in
7 the light most favorable to Ms. Dean, it was not obstruction.

8 THE COURT: All right. We're talking about
9 obstruction under 3C1.1. Application note 1 indicates, "In
10 applying this provision, the defendant's testimony and
11 statements should be evaluated in a light most favorable to the
12 defendant." I'm looking at the '90 guideline statements.
13 Application note 2 says, "Although the conduct to which this
14 enhancement applies is not subject to precise definition,
15 comparison of the examples set forth in application notes 3 and
16 4 shall assist the court in determining whether application of
17 this enhancement is warranted in a particular case." And I've
18 gone through those examples.

19 The probation officer did not put forth to the Court,
20 and perhaps because of the time frame when the guidelines
21 applied, that much of the evidence asserted by the Independent
22 Counsel in their letter of January 18 to the probation officer
23 as obstruction of justice regarding her testimony at trial, not
24 only the Kitchin loan, which is another count, but as to other
25 matters besides Agent Cain, but as to other matters, her

1 relationship to other individuals and her statements to the
2 probation officer of what her knowledge was of these areas and
3 how she's misled the probation officer, and he did not make his
4 findings on those areas but only on the Louis Kitchin loan and
5 on her relationship to Mr. Mitchell, and those are the two that
6 he relied upon.

7 Earlier he knocked out the one about the Kitchin loan,
8 and now we're considering, reconsidering the one about
9 Mr. Mitchell, and I had made that ruling based on my
10 recollection it was very clear it was correct as to she said
11 that she was not that close to Mr. Mitchell until after she left
12 HUD, and my recollection was that was totally contrary to the
13 evidence, and I felt that was warranted.

14 Counsel has pointed out to me she made other
15 statements in the same time frame she was testifying over, I
16 think, six to eight days on the stand acknowledging her
17 closeness to Mr. Mitchell, although I'm sure the import of her
18 statement that she gave to that one answer was to try to
19 distance herself from him while she was at HUD, because that was
20 what she was accused of doing wrong, being involved with him
21 while she was at HUD along with Mr. Nunn and the others.

22 The Court has got to be guided by the guidelines, and
23 it is concerned that I think the defendant's whole approach to
24 this situation has sometimes not been in accordance with reality
25 as to what occurred. But as to this one issue, I am convinced

1 by the refiling of the materials and the testimony given at
2 trial that that alone cannot be found to be obstruction of
3 justice. I think that's reversible error, where she had talked
4 about he raised her as a mentor to her as a young person, he
5 helped her to get her job at Energy, and then she said in one
6 question among many that she really wasn't that close to him
7 until after she left HUD, it was a question about having lunch
8 with him while she was at HUD or dinner.

9 Taking that out of context, it seems misleading, and
10 obstruction of justice, putting it in context with all the other
11 answers, I can't find that, so I'm going to strike the finding I
12 made yesterday and omit any increase for obstruction of justice.

13 The final ruling of the Court is going to be as
14 follows to the guidelines that apply therefore for the reasons
15 I've given -- and this bench opinion will be the opinion of the
16 Court; there will not be a written opinion. I'm going to
17 summarize where we came from from yesterday through today so
18 it's clear for the record where we are.

19 One, the sentencing guidelines apply to counts 1 and
20 2, not to counts 3 and 4. I did not accept the government's
21 theory of continuation of the conspiracy by the continued rehab
22 payments and for 15-year periods these contracts were in
23 existence, which would mean the government could still charge
24 offenses and could still have sentences based upon whatever
25 offenses occurred in the past for several more years. I don't