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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.