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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.  
DEBORAH GORE DEAN, . . August 31, 1993  
Defendant. . . 10:00 a.m.  
. . . . .

TRANSCRIPT OF STATUS CALL  
BEFORE THE HONORABLE THOMAS F. HOGAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MARK BATTS, ESQ.  
ROBERT O'NEILL, ESQ.  
PAULA SWEENEY, ESQ.  
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## P R O C E E D I N G S

(Defendant present.)

THE CLERK: Criminal Case No. 92-181, United States of America v. Deborah Gore Dean. For the government, Ms. Sweeney, Mr. O'Neill, and Mr. Batts; for the defendant, Mr. Wehner.

MR. O'NEILL: Good morning, Your Honor.

THE COURT: Good morning, counsel.

MR. WEHNER: Good morning, Your Honor.

THE COURT: All right. This is another status call, getting ready for trial next week. We received some additional motions and in limine notices that we'll discuss this morning. First I'll take up the motions. The defendant has filed a motion to exclude Exhibits 5, 6, 7, and 8, I believe, and a motion to dismiss on the Brady materials they allege that have been lately produced -- or produced too late.

The government filed a motion to dismiss Count 5 of the superseding indictment and to renumber the remaining counts and to name co-conspirators not previously named and to admit in limine certain summary charts and use them in opening statement.

The first one we'll take up is the motion regarding the Braswell-type materials. Let me ask Mr. Wehner about that. Aren't you going back through ground we already had plowed at the last hearing?

MR. WEHNER: With --

THE COURT: I had left open if you wanted to object in

1 relevancy or other grounds, 403 basis, but I thought we had ruled  
2 that they were authentic documents and the government  
3 modifications could employ the Braswell and Dean II  
4 rationale, and I thought I indicated they could introduce the  
5 documents by introducing the evidence through the person that  
6 received these documents and that's someone who could identify  
7 the documents, what they are.

8 I recognize your conceptual problems with the legal  
9 fiction that's entailed in this matter and that you're worried it  
10 infringes upon Ms. Dean's fifth amendment rights, but I think  
11 that's what Braswell says happens.

12 MR. WEHNER: Yes, sir. I understand Your Honor's  
13 ruling on the Braswell issue, but Your Honor just, in your  
14 summary of the statement, just made a statement that I think the  
15 Independent Counsel cannot satisfy, which is Your Honor said that  
16 they would have somebody who could testify as to what the records  
17 were.

18 Now I would assume, which was the purpose of filing the  
19 additional motion, that Your Honor, after I read the transcript,  
20 would require the records to otherwise be admissible at the  
21 trial, notwithstanding the fact that they are already authentic  
22 government documents, and I think the Braswell issue goes to  
23 the authenticity of the government documents and that that's what  
24 they are, but that doesn't per se mean that they do not otherwise  
25 fall within the usual parameters of the Federal Rules of

1 Evidence.

2 In other words, I think the Independent Counsel has to  
3 be required to satisfy the evidentiary foundation as provided for  
4 under the exception to the hearsay rules under 803, and their  
5 proffer doesn't do that.

6 THE COURT: You're saying 803(6) has to be complied  
7 with. Don't you think that Braswell basically states that  
8 having the process server or the document individual and the  
9 person who received the documents satisfy the concerns of 803?

10 MR. WEHNER: No, sir.

11 THE COURT: Don't you think that is just subsumed in  
12 Braswell?

13 MR. WEHNER: No, sir, not at all. And if I could tell  
14 the Court as to why I believe that?

15 THE COURT: All right, go ahead.

16 MR. WEHNER: When documents are produced pursuant to a  
17 subpoena, it is in the investigatory stage of the, of the matter.  
18 The documents may or may not be produced by a person, a custodian  
19 who is competent of satisfying 803 at the trial as to the  
20 admissibility of those records. I think Your Honor, in a lot of  
21 white collar cases, has seen the fact that the person who  
22 produced the records to the grand jury is not the same person who  
23 testifies on the witness stand as to the 803 requirements to  
24 permit them to be introduced.

25 I think what Braswell goes to is the use of the act

1 of production to authenticate the documents, and I will concede  
2 that Your Honor has already ruled that these are authentic  
3 government documents. I don't think that Your Honor can fairly  
4 be said to have ruled or could fairly rule that they are  
5 authentic government documents and that they are hereby admitted  
6 into evidence because the Independent Counsel has satisfied the  
7 exception to the hearsay rule as found in 803.

8           If that were the case, Your Honor, then any document  
9 that was produced to the Independent Counsel by virtue by them  
10 issuing a grand jury subpoena could theoretically be admitted at  
11 a trial because they put the agent on the stand who served the  
12 subpoena that said this calls for all documents relevant to  
13 Ms. Dean, and all those documents come into evidence, regardless  
14 of whether they're hearsay, nonhearsay.

15           I don't think Braswell goes that far at all, and I  
16 don't think any court has held that Braswell provides --  
17 Braswell means that the government does not have to otherwise  
18 satisfy the rules of evidence as to the admissibility of the  
19 documents. What Braswell means is that the authenticity issue  
20 is resolved by virtue of the custodian's testimony.

21           THE COURT: All right, thank you.

22           Tell me, Mr. O'Neill, or if Ms. Sweeney wants to  
23 address that last statement, that it still leaves open the issue  
24 of the exhibits that are appropriate under 803(6).

25           MS. SWEENEY: Yes, Your Honor. Your Honor, we believe

1 that Braswell contemplates that authenticity and admissibility  
2 are satisfied by the custodian's testimony. In this particular  
3 case, Judge Robinson specifically has already considered whether  
4 or not these calendars were personal calendars or whether or not  
5 they were, in fact, records of official business at HUD.

6 Your Honor, he conducted an evidentiary proceeding and  
7 accepted affidavits ex parte in camera from Ms. Dean and an  
8 affidavit from the government, submitted by the government as to  
9 how the calendars were maintained and prepared, and, Your Honor,  
10 in considering whether or not these were HUD records and in  
11 deciding that they were HUD records and business records, Judge  
12 Robinson in effect went through the elements that would be  
13 necessary to satisfy 803(6), and it seems to the government, Your  
14 Honor, that that's why this is really a very, very close analogy  
15 with what the court has had to say in Braswell.

16 And I do have a transcript of the hearing before Judge  
17 Robinson. If that would be helpful, I'd be prepared to hand up a  
18 copy to Your Honor today.

19 THE COURT: All right. What as to the argument of  
20 counsel, Mr. Wehner, that this would allow, this theory, that any  
21 document produced to the grand jury could be admissible then,  
22 without any further identification by a witness on the stand  
23 during trial?

24 MS. SWEENEY: Your Honor, that's why I raised the fact  
25 that Judge Robinson has specifically addressed the issue as to

1 whether or not these were personal records or HUD business  
2 records. I think that that is what distinguishes this from  
3 documents that have just been provided in response to a subpoena.

4           Now Your Honor indicated that it would be appropriate  
5 to at some point during the course of the government's case  
6 produce witnesses who will talk about these calendars, and we  
7 firmly intend to do that, but that does not require the  
8 government to produce a witness who could actually authenticate  
9 the calendars. Many people had access to the calendars. Many  
10 people can identify the calendars as to what, what they are,  
11 without being in a position to lay the business records  
12 foundation.

13           And, Your Honor, that was what really was fully  
14 explored before Judge Robinson.

15           THE COURT: All right. I will look at this tran-  
16 script -- I haven't had a chance to do that -- in a minute and  
17 then consider that.

18           All right, thank you, Ms. Sweeney.

19           MS. SWEENEY: You're welcome, Your Honor.

20           THE COURT: All right, the motion to dismiss as to the  
21 recent release of what the defendant says is Brady material,  
22 the government says in all caution they're releasing these and  
23 they think they're more Giglio material, I must tell you when I  
24 read them through, I think they're Brady material in large  
25 part, individuals who denied that Ms. Dean had certain knowledge

1 and took certain actions regarding matters with which she's been  
2 charged, and I think that's fairly clear.

3 I think the only question is what to do about the  
4 situation at this late date. The case is really distinguishable  
5 from most of the other cases, where the Brady material comes up  
6 after the fact and then you have to determine whether or not  
7 there was prejudice that would cause a new trial to be granted.

8 Mr. Wehner, do you have anything as to any cases or  
9 other instances where this has happened prior to trial and the  
10 court took any kind of remedial action against the prosecutors  
11 for this late development?

12 MR. WEHNER: The cases which are applicable to the  
13 remedial action that the Court may take depend largely upon the  
14 twofold analysis of, I guess threefold analysis of Brady and  
15 due process, sixth amendment, and prosecutorial misconduct. I  
16 know of no case that strictly under due process grounds in a  
17 Brady situation pretrial in which an indictment has been  
18 dismissed.

19 I do know that there are cases analogous to this case  
20 where a government prosecutor stands in front of a district court  
21 judge, two district court judges and says to the court that there  
22 is no Brady material and the court presses the government and  
23 the government says there is no Brady material and the defense  
24 moves for it and the government says there is no Brady  
25 material, that that pattern of prosecutorial misconduct can be



1 sufficient grounds for dismissal of an indictment.

2           Now somewhere within those two, I think, Your Honor,  
3 lays the analogous situation to rule 16, which is that evidence  
4 can be excluded. Which one of those Your Honor chooses, if any,  
5 I think depends upon the level of the prejudice that has occurred  
6 to Ms. Dean.

7           Now, Judge, the prejudice in this case is that for over  
8 two years, the Independent Counsel has had in their files the  
9 precise Brady information that Ms. Dean and her lawyer --  
10 lawyers have spent all of her money proving through the search of  
11 the Independent Counsel's 500,000 documents. The documents that  
12 we look at corroborate what these witnesses now say.

13           They corroborate that Ms. Dean did not do anything for  
14 Lou Kitchin. They corroborate that Andy Sankin says Ms. Dean  
15 didn't make decisions. They corroborate that Rick Shelby says  
16 that as far as he knows, Ms. Dean didn't know John Mitchell was  
17 involved in a project.

18           So to that extent, I suppose you could say they were  
19 helpful to Ms. Dean, that now our case is better, and in fact,  
20 it's the exact opposite, Judge, because we could have just -- we  
21 would not have done that if we would have known what these wit-  
22 nesses' statements were. It was an absolute waste of our time.

23           I was going to cross-examine Lou Kitchin. I didn't  
24 anticipate that he was going to be a friendly witness. I hoped.  
25 I haven't talked to Rick Shelby. One of the reasons was because

1 I didn't know where he was coming from, and I had to wait until I  
2 got the Jencks material, because I believed I knew that he was  
3 going to testify consistently with what was in the indictment,  
4 because that's what the Independent Counsel had said. I knew  
5 that.

6           They didn't say it to me, and you'll notice, Judge,  
7 that I didn't put in there any correspondence that flies back and  
8 forth between defense counsel and the Independent Counsel. I  
9 mean, correspondence, to my mind, is not as important, frankly,  
10 in a case like this as representations that are made to the Court  
11 when one is pressing on a Brady issue and pressing and pressing  
12 and pressing and filing ex parte affidavits and trying to  
13 convince the judge to please let us have this if it exists.

14           And I frankly couldn't have asked any more for the  
15 Court. As Judge Gesell said, "Well, do you know of any? Do you  
16 have any?"

17           And the Independent Counsel says, "No."

18           And the judge looks at me and says, "What else am I  
19 supposed to do? Nothing?"

20           That ends the inquiry.

21           So the prejudice to Ms. Dean is not the type of  
22 prejudice that can be cured by a continuance. It can't be cured  
23 by more time to prepare for trial, more time to use this  
24 information. It can only be cured by the two remedies that I  
25 think remain to the Court: dismissal of one or more counts or

1 exclusion of evidence.

2           Now dismissal is a drastic remedy. It's rare in the  
3 cases. It is, however, not unheard of in the cases, particularly  
4 where the representations are made on the record to the court  
5 repeatedly showing a pattern of concealment.

6           There used to be a time, Judge, and there still is a  
7 time in certain places where the criminal law is malpractice this  
8 way. You know, this information as a general rule would have  
9 been produced the day after the indictment in 99 percent of the  
10 cases that I've been involved in. There are no secrets. The  
11 government, when they charge somebody, believes they can win the  
12 case, and the defense believes we might be able to win it, and  
13 why keep it a secret? It's not going to disappear.

14           It's professionally aggravating. Turn it over. And  
15 the reason it's so professionally aggravating is because when as  
16 a defense attorney and you're spending hundreds of hours with  
17 Ms. Dean and tens of thousands of her dollars trying to prove  
18 exactly what's in the government's file that you don't have, then  
19 you say, "Well, you know, we've been misled, and what's the  
20 remedy? We've been prejudiced. What's the remedy?"

21           And I suggest to the Court that as to each piece of  
22 Brady information that is in their list and each piece of it  
23 that is over two years old, which our supplemental pleading  
24 reflects evidence that it is two years old, that at a minimum,  
25 that evidence should be excluded from those witnesses, because

1 our cross examination and our defense, our defense has been  
2 severely prejudiced, and we can't correct it. Time maybe and a  
3 couple hundred thousand dollars would correct it, but time can't,  
4 and a continuance can't.

5 THE COURT: All right. Thank you, sir.

6 Ms. Sweeney or Mr. O'Neill, as to these matters?

7 MS. SWEENEY: Your Honor, we believe that the material  
8 that has been provided is in the nature of Giglio, and we  
9 believe that that will be entirely clear when the Jencks  
10 productions on these particular witnesses are made available  
11 either this week or early next week.

12 THE COURT: You're basically saying they said different  
13 things at different times.

14 MS. SWEENEY: Yes, Your Honor.

15 THE COURT: But it still is exculpatory if one of the  
16 things they said is that the person didn't commit the crime  
17 charged, and that's in your file. That's not exculpatory  
18 information?

19 I don't understand the purpose of having it for two  
20 years and not turning it over in response to a request from Judge  
21 Gesell and this Court.

22 MS. SWEENEY: Your Honor, as time progressed, these  
23 witnesses admitted that they had not been candid and had not been  
24 forthright, and these stories developed over time, and that  
25 really -- the witnesses will testify consistently with the

1 indictment, and to that extent, Mr. Wehner and Ms. Dean's efforts  
2 have not been for no avail. In Tarantino --

3 THE COURT: But when you originally had these  
4 statements before they changed their stories, I mean, it was  
5 obviously exculpatory at that time. Now that they've changed  
6 their stories, maybe it's more Giglio, you're saying, but I  
7 mean, if these statements were the first things taken from them  
8 and they said they had no knowledge she did X and that's what you  
9 had at that point, that was then, if the indictment was handed  
10 down then, that was exculpatory. It may have changed to be more  
11 Giglio type where they then changed their statement, said, "No,  
12 that's not true. She did know about X."

13 But in any event, I think the issue is if there should  
14 be any type of penalty imposed for not producing these earlier,  
15 and I think that's the real issue and the prejudice that may have  
16 resulted to the defendant by not producing these and the  
17 defendant, either through a search of the record they'd have to  
18 go through or she had to go through of the many records I ordered  
19 produced or the inability to use this information appropriately  
20 in a short time remaining to develop at trial.

21 The Court is going to do as follows in this matter:  
22 It's going to deny the motion to dismiss. It's not going to  
23 prohibit the introduction of the evidence pursuant to rule 16 for  
24 the failure to produce these earlier, but it will indicate for  
25 the record it believes that this type of information was

1 producible long ago in accordance with Judge Gesell and this  
2 Court's ruling and should have been produced and that if there  
3 are further instances of this, the Court will consider what would  
4 be appropriate actions to be taken against the Independent  
5 Prosecutor's Office for this type of delay, the delayed  
6 production of, it seems to me, evidence that was in the records  
7 of Independent Counsel that should have been produced pursuant to  
8 the court order some years ago.

9 I'm not sanguine now that there is any type of  
10 prejudice to Ms. Dean in the sense of her rights have been  
11 violated. There's prejudice in the sense to her that she has  
12 spent money and time and efforts for years attempting to receive  
13 these documents and to see what the testimony would be as to  
14 these individuals who may have been thought to support her  
15 position in this matter and that was not provided to her pursuant  
16 to the Court's rulings, but I don't see any prejudice to her in  
17 the sense that it has affected her ability to conduct a defense  
18 of herself fairly and adequately at trial.

19 The materials have been produced, and they're available  
20 now. They can, Jencks material will be supplemented, this  
21 material will be supplemented by the Jencks material shortly,  
22 which will have further use then for the defendants to put it  
23 together, and it may be these individuals have changed their  
24 stories somewhat, but there's no question they originally had  
25 statements of noninvolvement of Ms. Dean at various times which

1 should have been produced.

2           But I don't find under the argument and the filings by  
3 defense counsel that she has been so prejudiced, there either has  
4 to be a barring of the evidence or that a delay of the trial  
5 would not accomplish anything or that she has either lost  
6 witnesses or otherwise has been deprived of producing her  
7 defense. Appropriately, they are attacking the government's case  
8 appropriately.

9           I do, as I said, castigate the Independent Prosecutor's  
10 Office for not producing these at an earlier time, and enough has  
11 been said. There's been a warning made, and if anything else  
12 comes up like this, I'll take another look at what should be done  
13 about it.

14           All right, we also have the issue as to the  
15 admissibility or use, I guess, of the charts that have been  
16 produced recently by the government, six colorful charts. Let me  
17 see if I can find them.

18           MS. SWEENEY: Yes, Your Honor. Mr. O'Neill will be  
19 addressing that.

20           THE COURT: All right. Mr. Wehner, what's your  
21 position as to these charts? They're in one of my many files.  
22 I've got them.

23           This is the government's motion in limine to admit  
24 summary charts at trial and to permit their use during opening  
25 statements. There are six charts setting forth, trying to show

1 the organization of the charges: the HUD organizational chart;  
2 B, C, D, and E go to counts involving the alleged conspiracies;  
3 and the final chart, F, sort of a flow chart as to applications  
4 for these rehab projects, et cetera.

5 Have you looked at those?

6 MR. WEHNER: Yes, Your Honor.

7 THE COURT: All right.

8 MR. WEHNER: Regarding the first chart, which is  
9 "Counts of the Indictment - Deborah Gore Dean" --

10 THE COURT: Right.

11 MR. WEHNER: -- we would request that the chart be  
12 changed to reflect the full name of the defendant, that being  
13 Deborah Gore Dean, as opposed to "Defendant Dean," particularly  
14 since that is going to be used in opening statement.

15 THE COURT: Oh, I see what you mean. Well, it does say  
16 it at the top of the chart. You're just talking about in the red  
17 boxes.

18 MR. WEHNER: I don't have red boxes on my copy, Judge.  
19 I just have a --

20 THE COURT: You should look at the colors as well.

21 MR. WEHNER: Oh, I like the colors.

22 THE COURT: These little blue circles or lines  
23 underneath the counts.

24 MR. WEHNER: Judge, I have no colors.

25 Judge, now that I have the colors, let me state a



1 general objection to the colors, a general objection to the  
2 charts. One, charts are fine and summaries are fine if they are  
3 generic as to the case and they are fairly stated. Charts that  
4 are not fairly stated and are not generic to the case are not  
5 okay.

6 Now you can analyze it under rule 403, or you can  
7 analyze it under the rules pertaining to summaries, but basically  
8 in a trial setting, the purpose of a chart is to help the jury  
9 understand, not to influence the jury as to the verdict. These  
10 charts are designed to influence the jury as to the verdict.

11 The Count 1 chart, which I guess is Exhibit C, is  
12 inaccurate, Judge. It's inaccurate, because that's not what the  
13 evidence is going to reflect, and if the evidence does reflect  
14 that, I think the Independent Counsel may well be entitled to use  
15 that in their closing, but I submit to the Court that the  
16 evidence that is going to be admitted at this trial is not going  
17 to prove that.

18 With respect to Exhibit E, I submit to the Court that I  
19 predict that the evidence won't prove that, either, and the use  
20 in its opening statement at least should be forbidden.

21 Exhibit F, I make the same objection to the Court. You  
22 have to wait until the evidence is in before you determine  
23 whether that chart is appropriate.

24 These charts conclude guilt, and to show them to the  
25 jury at the beginning of trial is inappropriate.

1           With respect to Exhibit F, you know, that's  
2 interesting, Judge. I may not object to that chart at the end of  
3 the case, but at the beginning, I think the same objection  
4 applies. I'm not sure that's what the evidence is going to show,  
5 and I think they're missing the Secretary of HUD at the top, and  
6 maybe the arrow going to the top goes to the wrong place, but at  
7 the close of the trial, that may well be permissible.

8           THE COURT: All right, let me see it a second again. I  
9 need the color copies back.

10           MR. WEHNER: If I could, Your Honor, with respect to  
11 Exhibit B, Your Honor, that's simply not accurate and is not an  
12 accurate rendition of the organizational chart at HUD.

13           THE COURT: All right.

14           MS. SWEENEY: This is another copy.

15           MR. WEHNER: If I could inquire, what's this?

16           MR. O'NEILL: Names of various people.

17           MR. WEHNER: Thank you, Bob.

18           THE COURT: What are you looking at?

19           MR. WEHNER: I was looking at the attachment to, that  
20 has "Defendant Dean" at the top. There's a list of names.

21           THE COURT: I don't have that in mine. Where does that  
22 appear?

23           MR. WEHNER: Your Honor, in my --

24           THE COURT: All right, I see it. It's behind --

25           MR. WEHNER: Behind Exhibit A -- behind Exhibit B, I'm

1 sorry.

2 THE COURT: Behind Exhibit B.

3 I take that back; I do have that. All right. I take  
4 it that's the listing of those individuals holding the jobs  
5 listed on the page preceding that?

6 MR. WEHNER: If it were accurate, Judge, we wouldn't  
7 object, but I think what I would recommend that the Court do is  
8 the Court allow a person to create the chart that's capable of  
9 testifying as to its accuracy prior to allowing the chart to be  
10 entered into evidence, because this chart is inaccurate.

11 THE COURT: All right, let me hear from Mr. O'Neill.  
12 Thank you, sir.

13 Mr. O'Neill, let me just go through these with you.  
14 I'm not opposed in a case that would take some explanation to a  
15 jury so they understand the nature of the charges, understand the  
16 operations of a government agency such as HUD, to having some  
17 type of material to show to the jury during opening statements.  
18 I'm concerned a little bit on the, how they're drafted as to  
19 being accurate and fair to the defendant.

20 MR. O'NEILL: Understood, Judge. If you'd like to take  
21 them in seriatim?

22 THE COURT: Yes, I think it would be best to do that.

23 MR. O'NEILL: Your Honor, it's the government's  
24 contention that the first chart, Exhibit A, the "Counts of  
25 Indictment - Deborah Gore Dean," is drawn in an entirely fair

1 manner. All it does is break down the counts of the indictment,  
2 the people involved.

3           The "Defendant Dean" is in color, because she is the  
4 only defendant in this case. The various counts are listed. The  
5 wording for the various perjuries and concealments are underlined  
6 as they are in the indictment and made bold because those are the  
7 perjurious statements that the government must prove in order to  
8 convict the defendant of those charges.

9           I do not see how these are, this chart concludes guilt  
10 in any way, shape, or form. It's just a, merely a breakdown,  
11 Judge. This is, as you know, a 72-page indictment as it  
12 presently is constituted, and this breaks down in one page the 72  
13 pages.

14           As you know, we've filed a separate summary of the, of  
15 the charges with you that would make it a little easier, I would  
16 believe, in your introductory statements to a jury to read  
17 something along those lines rather than the 72 pages, and this  
18 makes it a lot easier for a jury to comprehend what the charges  
19 against the defendant are.

20           THE COURT: Well, does the listing of these various  
21 perjury and concealment charges and the highlighting that comes  
22 directly from the indictment -- and the highlighting is the same  
23 in the indictment?

24           MR. O'NEILL: No, the highlighting on the wording,  
25 Judge, does not. What it is in the indictment, it's underlined,

1 not highlighted, and then it is specifically stated that the  
2 underlined version, portions are those that we deem to be  
3 perjurious.

4           And the only other things that are not in the  
5 indictment would be the coloring of the defendant's name and  
6 below that, that line below the various counts, and to be  
7 technical, there's Roman numerals on this version, as opposed to  
8 in the indictment, it's written out Count One, Count Two, Count  
9 Three.

10           MR. WEHNER: Your Honor, if I could make one brief  
11 comment as to that?

12           THE COURT: All right.

13           MR. WEHNER: With regard to Count 4 on the chart, it  
14 states "Illegal Payment." Well, that hasn't been proven. That's  
15 a charge. It's written here as if it's a conclusion that it was  
16 an illegal payment of \$4,000, and that's what I object to  
17 vis-a-vis the opening statement, the use of those type of words  
18 in their chart.

19           THE COURT: All right, let me go to the next one.

20           MR. O'NEILL: Judge, the next one is a chart of HUD  
21 broken down. It doesn't have every job title within the HUD  
22 infrastructure, because most of them the government deems are  
23 irrelevant to this case, so what we've tried to do is scale it  
24 down so only the jobs or evidence that will be brought forth at  
25 this trial will affect these particular positions.

1           It doesn't seem to make much sense to draw to scale a  
2 chart of all the various positions within HUD both here and  
3 around the country that have no bearing on this case, so we've  
4 tried to put it down to just those jobs that we feel the evidence  
5 at least on the government's case will, will center on.

6           Then following that, we have a list of several people  
7 who will, many of whom will be witnesses at this trial, that fill  
8 these various positions. As Your Honor knows, the indictment  
9 basically spans '84 through '87. A lot of these people come and  
10 go during that time, so we cannot make a chart at this time with,  
11 for instance, Assistant Secretary for Housing/FHA Commissioner,  
12 we can't put a name in there, because that name continually  
13 changes, so we figured it would be better to put the names, as  
14 we've stated, on a magnetic strip and then change those as the  
15 people testify or references are made to them. It's the  
16 government's feeling that that would benefit the jury. They  
17 would understand who these people are and when they're there.

18           THE COURT: The listing of these names is in some type,  
19 though, of order of authority is what you're arguing by this  
20 list, putting Dean at the top and everyone else in different --  
21 it's not alphabetical.

22           MR. O'NEILL: No, Your Honor.

23           THE COURT: It's in some kind of order.

24           MR. O'NEILL: There is no significance to the listing,  
25 and there won't be a list. This is for Court and counsel's

1 edification. There would be separate strips, magnetic strips. I  
2 don't know how else we would show that to the Court in a motion.

3 THE COURT: All right.

4 MR. O'NEILL: And those would be --

5 THE COURT: But wouldn't this be part of a chart that  
6 you would put up on a board when you open to the jury, this list  
7 here of these names, or not?

8 MR. O'NEILL: No, no.

9 THE COURT: You would not intend to put that up?

10 MR. O'NEILL: No. That is not our -- the intention is  
11 those would be magnetic strips that later on --

12 THE COURT: I see.

13 MR. O'NEILL: But we wanted to show you that those are,  
14 in fact, people --

15 THE COURT: I see, all right.

16 MR. O'NEILL: -- whose names would go onto this chart.

17 So the chart, the organizational chart is somewhat  
18 incomplete, because there are no names. We could not put the  
19 names in ahead of time.

20 THE COURT: I see, all right.

21 Then the D and E and F are the conspiracy arrangement  
22 that you alleged happened basically?

23 MR. O'NEILL: That's correct, Your Honor, and it's  
24 basically a flow chart that the evidence will show, in the  
25 government's view, that these particular projects were the ones

1 that are named in the indictment which the government intends to  
2 prove were, were funded through the intervention of the  
3 defendant, Deborah Gore Dean. These were the consultants who  
4 were involved in each of those projects, and these are the  
5 amounts of money that they made through the defendant's  
6 intervention.

7 That in sum and substance is the government's case, and  
8 those represent, the three charts represent Counts 1, 2, and 3,  
9 the three separate conspiracy counts.

10 THE COURT: All right. And the last one, F, is a --

11 MR. O'NEILL: Once again, a flow chart, Your Honor, and  
12 the government is showing this to show how the process and the  
13 regulations contend projects were supposed to be awarded by the  
14 Department of Housing and Urban Development and instead how it  
15 actually was awarded for the specific projects named in this  
16 indictment and how the defendant bypassed the normal procedures  
17 and these, these projects were, were funded in a manner that the  
18 program was not designed.

19 Your Honor, we've tried not to put in any titles,  
20 statements that were prejudicial to the defendant. You'll see we  
21 spoke with Mr. Wehner at one point prior to this where yes, he  
22 had seen and his client had seen a chart made in a previous case  
23 from this Independent Counsel that was entitled something like  
24 Alleged Fraudulent Activity. We have tried not to put anything  
25 like that in, and I would take umbrage with, with any statement



1 that these charts conclude guilt. They are what the government  
2 expects the evidence to show, and that's what the purpose of an  
3 opening statement is.

4 THE COURT: All right, thank you.

5 The government has moved to admit these summary charts  
6 at trial and to permit their use in the opening statement. The  
7 Court is not going to admit them, rule upon admitting them at  
8 this time. I think that they can be somewhat modified and used  
9 in opening statements, certain of these, but I'm not going to  
10 admit them as evidence in the case or to be used by the witnesses  
11 at this time.

12 I do think the government should be entitled to have  
13 some type of materials to refer to during opening statement in  
14 this type of a case, as the defendant may want to have. I'm  
15 concerned of any effect over to the defendant that would be  
16 unfair if these were introduced to the jury as, in essence, some  
17 type of authoritative statement as to what the Court has approved  
18 as to the allegations in this case. I think that's unfair to the  
19 defendant.

20 I do think that the government should have a right, as  
21 set forth in Exhibit A, the list of the counts of the indictment,  
22 with Ms. Dean's name at the top and each charge and what the  
23 basis of that charge is, to review with the jury. I have not  
24 reviewed the indictment word for word as to see whether the  
25 various perjury and concealment counts state what's alleged.

1 I'll have to rely upon that being appropriate, and Mr. Wehner can  
2 point out difficulties if it's not appropriately cited, but I  
3 think the charges are as they are. They're conspiracy charges,  
4 illegal payment, perjury charges, and the government has a right  
5 to list those and to indicate to the jury in opening statement  
6 what the case is about, and I think in general that chart is  
7 appropriate. Any specific problems that the defendant has we can  
8 make corrections on it.

9           As to the second one, Exhibit B, as some type of a  
10 general organizational chart, again, I'd consult with the  
11 defense counsel on that and see if there's other things to be  
12 added that would be essential or not. I think some type of,  
13 again, version of the, an organizational chart is appropriate for  
14 the jury to be introduced to in opening statement by the  
15 government indicating they expect to prove this is the  
16 organizational chart, et cetera.

17           I do agree with the general remarks of Mr. Wehner that  
18 they're going to need a witness and need witnesses, obviously, to  
19 come in and explain and develop the charts, some of them perhaps  
20 to draw on the charts or to add names, et cetera, to the charts,  
21 but I think a chart setting forth the overall organizational  
22 structure as it pertains to this case is appropriate.

23           If there are certain offices left out that the  
24 defendant thinks are absolutely essential to the understanding of  
25 the case by the jury to make it accurate, then they can be added

1 in this framework, but an overall organizational chart is, I  
2 believe, appropriate, and I think the government should be  
3 allowed to refer to it in opening statement.

4           The next three cause me more concern, D, E, and F, the  
5 conspiracy counts. Maybe it's the colors. Maybe I think this is  
6 a little bit of a colored approach, but I think the government  
7 should again be allowed to have some aids in opening statement to  
8 indicate to the jury what they expect to prove, but at the same  
9 time, I don't think they should be allowed to go into matters and  
10 develop with these charts for the jury in opening statement,  
11 where there's been no testimony or other evidence as to what  
12 exactly is going to happen in, what actually happens in the trial  
13 and what really is proven or not.

14           Once these charts are put before the jury and they read  
15 them and they're blown up in their bright colors, with "Deborah  
16 Gore Dean" featured at the top of all this, I have concerns if  
17 these charts don't prove out exactly as alleged, and the Court  
18 would have to instruct the jury to disregard some of these  
19 matters, the impact that would have upon the jury and the D, E,  
20 and -- I guess it's C, D, and E exhibits proposed by the  
21 government, I think, should be redone basically to, if they wish  
22 to use any kind of a chart, to indicate their argument of how  
23 this evidence is going to show this relationship to be less, I  
24 keep thinking of the word "colorful," but at least less, less  
25 explicit perhaps is the word I'm looking for.

1 I'm concerned that if we allow the jury to see "John  
2 Mitchell (Global Research) \$242,000; Louie Nunn \$500,000; Richard  
3 Shelby 700,000," and "Deborah Gore Dean" at the top, "Family  
4 Enrichment" at the top in bright colors, and some of that or all  
5 of that is not proved or part of it's not proved or the dispute  
6 as to what is proved or not is up for the jury to decide, and if  
7 they have this chart in front of them from the very first minute  
8 of the trial, that they are so influenced that they could not  
9 fairly review the evidence, and those concern me. I don't know  
10 how else to have it redone, but I'm concerned about those three  
11 exhibits, in fairness to the defendant.

12 The last one, again, I think is probably argument more  
13 than -- perhaps the evidence will come that way at the end of the  
14 case, but again showing this bypass by "Consultants," in quotes,  
15 which puts consultants in a bad light just putting it in quotes,  
16 I believe, and a bypass of, would it be argued, the normal  
17 approach to obtain financing, I'm not sure again that that is  
18 fair for an opening statement chart to be used before a jury, and  
19 if there's testimony of that by individuals who are going to come  
20 in and testify to that, perhaps the chart can be used at the end  
21 of the case or developed through individuals, but again, this  
22 putting this "Consultants" over on the side in quotes, with a  
23 line running up from "Developer" to "Defendant Dean," not up to  
24 the secretary who signs off or to other assistant secretaries who  
25 signed off or other persons, I question the fairness of that in

1 the opening statement to the jury in putting that before them.

2           So in summary, what the Court will do is as follows in  
3 the government's motion in limine: I'll allow the use of charts  
4 indicated in Chart A, with any particular more input the  
5 defendant wants to add to that, and consider those things that  
6 need to be revised or filled out to make it fair, Chart B, and  
7 then C, D, E, and F I'm going to hold back from the jury at this  
8 time at least unless they can be redone to be fair.

9           MR. O'NEILL: Your Honor, while we're at it, it seems  
10 you've repeated the word "color" -- I'm not trying to read into  
11 your mind --

12           THE COURT: I understand that.

13           MR. O'NEILL: -- on C, D, and E several times.

14           The government, obviously, can make this black and  
15 white.

16           THE COURT: Well, I have a black-and-white copy that  
17 was provided by counsel as well.

18           MR. O'NEILL: Does that cause you less concern?

19           THE COURT: But again, I don't think that that's  
20 sufficient.

21           MR. O'NEILL: Okay.

22           THE COURT: It seems to the Court the way it all is  
23 laid out, that without any evidence yet presented, you've set  
24 forth the case for the jury just on these charts as some type of,  
25 I'm afraid they'd look upon this no matter what instruction I'd

1 give them as evidence in the case.

2 MR. O'NEILL: Your Honor, but isn't that exactly what  
3 we're going to be doing in opening statement?

4 THE COURT: I understand you're going to lay out the  
5 evidence in the case, but I think that it would be better to have  
6 people come in and identify the system that's alleged in the  
7 conspiracy and to eventually make up a chart as they testify or  
8 as the various individuals testify or at the end of the case come  
9 in with these charts and saying, "Now, Your Honor, we've proven  
10 these things sufficiently as to the jury's consideration, and we  
11 want to put this chart before them in closing argument." That  
12 may be appropriate. Opening statement seems a little strong to  
13 the Court.

14 MR. O'NEILL: Your Honor, if I may then, obviously  
15 we've gone through some thought about presenting some visual aids  
16 for the assistance of the jury, and I understand your thinking of  
17 why you would not allow us to refer to these at this time.  
18 However, without giving us some sort of guidance on, for  
19 instance, is it the money that troubles you? Is it --

20 THE COURT: No, I think it's the whole layout of it,  
21 and I'm not sure that that's necessary to have a layout like that  
22 in opening statement.

23 MR. O'NEILL: Okay.

24 THE COURT: I think you can simply say, "We've got a  
25 conspiracy, and our first conspiracy involves allegedly

1 Mr. Sankin and Mr. Broussard and Mr. Shelby in these particular  
2 projects with Ms. Dean, who did it for family and personal  
3 benefit," or whatever it was, a family benefit. That's the  
4 second count.

5 But I am opposed to putting this chart before the jury  
6 at this time --

7 MR. O'NEILL: Thank you, Your Honor.

8 THE COURT: -- and I don't want that done.

9 And to admitting it, I'm not going to admit them under  
10 the rule 106 at this time.

11 But I'll allow you to use, as I said, the introductory  
12 chart as -- you'll have to make sure it's accurate -- and as to  
13 the organizational chart to the jury to lay out for them the  
14 nature of the charges as well as the organizational aspects of  
15 HUD and how these applications are made, et cetera.

16 MR. O'NEILL: Thank you, Judge.

17 THE COURT: We've got, also, some voir dire in from the  
18 defendant I believe I just received.

19 MR. WEHNER: Yes, sir.

20 THE COURT: I haven't read it. I've just received it.

21 And the defendant's motion to dismiss Count 5, that's  
22 regarding an issue I didn't discuss on the Brady matters, but  
23 it involves a couple of pages of missing documents, original  
24 documents supplied to the Senate Committee, I believe.

25 Is there any objection to dismissing Count 5 of the

1 superseding indictment?

2 MR. WEHNER: No objection to dismissing it with  
3 prejudice, Your Honor. We object to it being dismissed without  
4 prejudice. She's been indicted for it. She's been investigated  
5 for it. It's too late to dismiss it without prejudice. She  
6 should not have that hanging over her head.

7 THE COURT: I think it would be kind of late to  
8 reindict it anyway at any time in the future.

9 MR. WEHNER: Maybe they, maybe the grand jury wouldn't  
10 do it, Judge.

11 THE COURT: All right, I'm going to just dismiss Count  
12 5 at this time in accordance with the government's motion. I  
13 don't think it's really going to be hanging over defendant's  
14 head, but it will be dismissed as a count in the indictment.  
15 That's Count 5.

16 I'll allow the other counts in the indictment to be  
17 renumbered to reflect this dismissal. Count 5 has charged the  
18 defendant with making false statements to the Senate Banking  
19 Committee, and as to that count, that will be dismissed.

20 The government's request to release the names of  
21 co-conspirators, we're going to have to have that anyway when we  
22 address the jury as to potential witnesses and individuals whom  
23 they may know or have heard of, so I will allow that to be done.  
24 The government has been very responsible about holding back those  
25 names for some years, and that will be permitted.



1 I would like a list of the potential witnesses, if we  
2 haven't already had them, supplied sufficiently by both sides for  
3 the jury when we do the voir dire.

4 The government has also provided to the Court a  
5 statement of charges. The defendant, I don't believe, has any  
6 comment on that yet, had a chance to review that.

7 MR. WEHNER: No, sir, we haven't had a chance to review  
8 that, and we will have a --

9 THE COURT: If you have a counterstatement or a  
10 proposed statement, you can supply that as soon as you can, and I  
11 will look at both of those and put something together. I thought  
12 the government's statement was perhaps a little too fulsome, but  
13 otherwise, we should have some type of review for the jury of  
14 what is to be expected they're going to hear as to the charges in  
15 the case so they understand something about the case charges when  
16 we are doing the voir dire.

17 I think that, I don't know if counsel have taken the  
18 opportunity to review the requested excuses, but we've had multi-  
19 ple requested excuses -- I have another pile on my desk that just  
20 came in a few minutes ago -- and the excuses run the standard  
21 gamut of reasons, from illness to child care to work concerns  
22 over a six- or eight-week trial, and I've considered some and  
23 released many, and others I have not at this time, depending upon  
24 further review with them when they come in on the 7th.

25 But the Jury Lounge just told me that there are

1 sufficient jurors that have responded they're available that  
2 there will be a large pool to review on the 7th of jurors, so  
3 there should not be a problem selecting a sufficient number of  
4 jurors, having a sufficient number of jurors to make a selection  
5 from.

6 All right, anything else we need to look at today?

7 MR. O'NEILL: Yes, from the government, Your Honor.  
8 Mr. Wehner has filed, I guess, the jury questionnaires with the  
9 Court, and we will file one as well today with the Court, and  
10 hopefully he and I can go over this and determine if there's any  
11 compromise.

12 THE COURT: Yes. It would be better if you'd look them  
13 over, each one of you, and see if you have any specific ones that  
14 you object to. In fact, you may want to advise chambers of  
15 specific objections just by number. I mean, you can call  
16 chambers and talk to my clerk, and then I can consider those.  
17 Otherwise, I'll have to take them up on Tuesday morning.

18 I'm here for the next couple of days. Because of the  
19 potential hurricane, I may have to leave for a day at the end of  
20 the week to a beach house to see if it's still there, but  
21 otherwise, I'm here this week if there are any emergency matters.  
22 All right.

23 MR. O'NEILL: The one final thing, Your Honor, is we  
24 have finished discovery at this point, and the only thing  
25 outstanding is a report from our handwriting expert, which we got

1 this morning, so we will furnish that to Mr. Wehner when we leave  
2 court today. So we would now be requesting reciprocal discovery,  
3 as well as we've been able to work out a number of stipulations,  
4 and we've sent other ones to Mr. Wehner just this morning, so  
5 hopefully a lot of that -- but if we need your intervention --

6 THE COURT: I'd like the stipulations also signed off  
7 on by Ms. Dean as well as Mr. Wehner.

8 MR. O'NEILL: You said that, Your Honor, so we've  
9 drafted it accordingly.

10 THE COURT: All right. There will be a reciprocal  
11 discovery rule entered under rule 16, and again, I expect the  
12 defense to be as responsive as they know they should be to that  
13 under any documentary evidence that they may have or other expert  
14 reports, et cetera, they've not yet produced.

15 MR. WEHNER: We have the same obligation as the  
16 government does in that regard, Your Honor, and we will respond  
17 in the same fashion.

18 THE COURT: I'm not going to comment on that, but I  
19 will expect you to produce them in accordance with the rule.

20 MR. WEHNER: Yes, sir.

21 THE COURT: All right, counsel, we'll be back  
22 otherwise, I'll see you in court ready to go at 10:00 on Tuesday.

23 MR. O'NEILL: Thank you, Your Honor.

24 MR. WEHNER: Your Honor, could I see you at the bench  
25 for a second?

1 (Bench conference on the record.)

2 MR. WEHNER: I've requested that the marshal be  
3 unobtrusive and sit in the back of the courtroom. I don't think  
4 there's a serious problem in this case with security, Judge. I  
5 think it's a little obvious when he sits directly behind the  
6 defendant.

7 THE COURT: All right, that's fine. I don't have any  
8 problem with that. I'll talk to the marshal about it.

9 MR. WEHNER: Thank you, sir.

10 THE COURT: We've been having hearings in a death  
11 penalty case with lots of murders, and they've been very cautious  
12 about this Court lately, but that's not a problem here.

13 MR. WEHNER: Thank you.

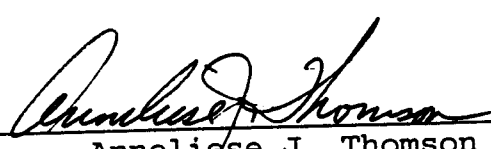
14 MR. O'NEILL: Judge, could we just give you a courtesy  
15 copy while we're up here of the questionnaire?

16 THE COURT: Yes, that will be fine. Thank you.

17 (Which were all the proceedings had  
18 at this time.)

19  
20 CERTIFICATE OF THE REPORTER

21 I certify that the foregoing is a correct transcript of the  
22 record of proceedings in the above-entitled matter.

23  
24  
25   
Anneliese J. Thomson