

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

1		
2	UNITED STATES OF AMERICA,	Criminal No. 92-181-01
3		
4	vs.	Washington, D.C.
5		February 22, 1994
6	DEBORAH GORE DEAN,	11:00 a.m.
7		
8	Defendant.	
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.....

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

VOLUME I

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11		
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## P R O C E E D I N G S

(Defendant present.)

THE CLERK: Criminal No. 92-181, United States of America v. Deborah Gore Dean. We have Bruce Swartz and Claudia Flynn for the government, Stephen Wehner for Ms. Dean.

MR. WEHNER: Good morning, Your Honor.

THE COURT: All right, good morning, counsel. The probation officer, Mr. Hunt, is also here.

This is a presentencing hearing on challenges to the application of the guidelines in the convictions against Ms. Dean assessed by the jury in this case, substantial briefing having been reviewed by the Court from both sides as well as discussions with Mr. Hunt and his report.

A couple of matters: One, my notes reflect we have a motion of Deborah Gore Dean for reconsideration of ruling denying her motion for a new trial, and that was filed the 18th. My copy is not date-stamped, but I think you probably got it in Friday as well. And then received on the 17th in my chambers was a memo of law in support of modifications to the presentence report, a supplement to her original filing, I believe.

And then I understood that government had my clerk make an inquiry as to time frames to respond to this new trial reconsideration motion and was going to respond orally today. Is that correct, Mr. Swartz?

MR. SWARTZ: Yes, Your Honor.

1 THE COURT: All right. Let me take up the new trial  
2 issue first before we get to consideration of the guidelines  
3 that may apply in this case or not. All right, the basic issue  
4 is the Court's ruling as to certain matters that have been  
5 challenged by Ms. Dean again, and that went into, I think,  
6 allegations about a check about Mr. Mitchell, Agent Cain's  
7 issue, and Russell Cartwright's statements, and asking the Court  
8 to review at least in camera certain materials to see how they  
9 would affect or not the jury's decision in this case.

10 All right, Mr. Swartz.

11 MR. SWARTZ: Thank you, Your Honor. With the Court's  
12 permission, I will address the motion for reconsideration on  
13 behalf of the government, and Claudia Flynn will address the  
14 sentencing guidelines issues.

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

16 MR. SWARTZ: With regard to the motion for  
17 reconsideration, Your Honor, the government has three points  
18 that it would like to make this morning. The first is that the  
19 motion for reconsideration does not raise any issues not already  
20 presented to the Court and ruled upon by the Court in denying  
21 Ms. Dean's original motion for a new trial.

22 Our second point is that in any event, on the merits,  
23 Ms. Dean's arguments in her motion for reconsideration are wrong  
24 and are demonstrably wrong.

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

1 reconsideration itself provides a further basis for finding that  
2 defendant Dean has obstructed the administration of justice in  
3 this matter and has repeatedly made false statements, including  
4 in the motion for reconsideration, in an attempt to avoid the  
5 application of the appropriate guidelines and, indeed, to  
6 challenge the conviction that has been obtained against her.

7           Turning to the first point, the two issues that  
8 defendant Dean has raised in her motion for reconsideration,  
9 that is, Agent Cain's testimony and the Cartwright receipt, are  
10 both matters that were, in fact, adverted to by the Court in the  
11 February 14 hearing last week in which her motion for a new  
12 trial was denied. They were also both raised in her original  
13 motion for a new trial, and indeed, there is no reason, she has  
14 suggested none and we know of none, to believe that the Court  
15 misunderstood or did not pay any attention to those arguments  
16 when they were initially raised. So as a baseline matter, there  
17 is no reason to go into a motion for reconsideration at this  
18 point.

19           But beyond that, Your Honor, our second point is that  
20 the motion is wrong. It's wrong in the charges it makes, and it  
21 continues to raise issues that can be shown to be wrong.

22           Turning first to Agent Cain's testimony, as Your Honor  
23 will recall, in her original motion for a new trial, defendant  
24 Dean argued that Agent Cain had perjured himself in three  
25 regards: first with respect to Hernando's Hideaway issues; the

1 second was with respect to Castle Square, a HUD project in  
2 Boston; and third was with respect to the alleged conversation  
3 that defendant had with Agent Cain after the HUD inspector  
4 general issued its audit report in April 1989.

5           It was the first two of those issues, the Hernando's  
6 Hideaway issue and the Castle Square issue, that defendant  
7 particularly stressed in her motion. Indeed, those were also  
8 the two issues on which Agent Cain had been cross-examined at  
9 trial, as the Court will recall. There was no cross examination  
10 on his conversation with the, supposed conversation with the  
11 defendant.

12           In our opposition to the motion for a new trial, we  
13 showed the defendant had, in fact, made false statements in her  
14 affidavit regarding both of the initial two matters, that is,  
15 the Hernando's Hideaway matter and the Castle Square matter.  
16 First, with regard to Hernando's Hideaway, as the Court noted in  
17 the February 14 hearing, defendant at least made a mistake and  
18 has acknowledged that she made a mistake, but we believe that it  
19 is more than simply a mistake, Your Honor.

20           In her affidavit, she set forth in extremely  
21 compelling detail an incident that she said occurred and that  
22 Agent Cain should have known had occurred and that the  
23 government should be able to determine had occurred if it had  
24 done even minimal investigation. In fact, we submit that  
25 defendant never expected that the government would be able to

1 obtain HUD IG travel records from approximately nine years ago  
2 to rebut this claim, and instead she put forward what seemed on  
3 its face to be a plausible event and hoped to pit her  
4 credibility against that of Agent Cain's. At a minimum, Your  
5 Honor, this was reckless, particularly given the accusations  
6 against Agent Cain, a career government agent, and it also at a  
7 minimum completely undercuts her credibility on all other  
8 matters.

9           Turning to the second point, the Castle Square point,  
10 there, Your Honor, the false statements of defendant cannot even  
11 be excused as negligence or recklessness, because what she  
12 stated in her affidavit, Your Honor, is a complete inversion of  
13 the truth, and it was deliberately so. Her affidavit, as Your  
14 Honor will recall -- and I have copies if it would be of  
15 assistance to the Court further -- in her affidavit, defendant  
16 stated that she had gone to Agent Cain on the Castle Square  
17 project, had told him that there was an irregular funding of  
18 that project caused by Thomas Demery, and told him that the  
19 funding should be stopped. She also stated that she had told  
20 Agent Cain that she had also gone to the deputy assistant  
21 secretary for Multi-Family Housing, who at that time was Hunter  
22 Cushing, and the undersecretary in an attempt to have the Castle  
23 Square funding stopped.

24           But as we showed in our opposition and particularly in  
25 the materials we attached as appendix F to that opposition,

1 those statements were false. They could not have been more  
2 false, because Agent Cain's interview notes revealed and  
3 defendant's own correspondence confirms that she was acting as a  
4 consultant for the Castle Square project, not trying to have the  
5 funding stopped, but to try to have the funding delivered there,  
6 and in fact, that correspondence in that interview report also  
7 indicates that she went to the deputy assistant secretary,  
8 Hunter Cushing, and she went to the undersecretary to get the  
9 funding put in place. Those materials are attached, as I said,  
10 as appendix F. We also have copies this morning if it would be  
11 of assistance to the Court.

12 But again, there can be no mistake about that kind of  
13 thing, nor can there be a question, I believe, of recklessness.  
14 The intent was to have this Court believe that she had nothing  
15 to do with the project and again to suggest that Agent Cain was  
16 a liar.

17 That brings us, Your Honor, to the third suggestion,  
18 that Agent Cain perjured himself, and that is the supposed  
19 conversation with regard to John Mitchell. Defendant's argument  
20 both in her original motion and in her motion for reconsidera-  
21 tion is that she was told by Agent Cain that the check from  
22 Louie Nunn to John Mitchell in connection with the Arama project  
23 was being kept in the field, being maintained by the HUD  
24 regional inspector general's office. She says if true, that's a  
25 fact that she could have only learned from Agent Cain, and

1 therefore she is entitled to discovery on the issue of where the  
2 check was. But, Your Honor, it's false.

3 I'd like to provide to the Court, if I may, an excerpt  
4 from -- if I can find it -- the inspector general's report. If  
5 the Court will indulge me for a second?

6 THE COURT: All right.

7 MR. SWARTZ: Your Honor, this is a copy, an excerpt  
8 from the HUD Inspector General's Office report on the Mod Rehab  
9 program of April 1989, the report that defendant says was the  
10 predicate for her phone call to Agent Cain after she received  
11 it. The first page is a cover page of that report. The second  
12 and third pages are excerpts from the report, the interview of  
13 Louie Nunn.

14 It was this interview, Your Honor, that revealed that  
15 Louie Nunn had paid \$75,000 to John Mitchell. That's referenced  
16 on the second page, approximately midway down, "Nunn paid John  
17 Mitchell, former United States attorney general, \$75,000 for his  
18 help in the Arama project."

19 If Your Honor will turn to the third page of this  
20 interview report, which again was in defendant's possession by  
21 her own testimony, you'll note that the final statement in the  
22 report is, "Agent's note: All the contracts agreements shown to  
23 Nunn were obtained from HUD OIG audit file in Atlanta, Georgia."

24 So, Your Honor, the report itself suggests that the  
25 materials shown to Nunn that involved General -- excuse me,



1 former Attorney General Mitchell were maintained in the field.  
2 There's simply no basis for her suggestion that she could have  
3 only learned such a fact from Agent Cain. Even if it were true,  
4 the report itself on its face would have provided her with the  
5 information that suggested to her that materials were being  
6 maintained in the field.

7 We submit that on all three of these points then, Your  
8 Honor, defendant has attempted to pit her credibility against  
9 Agent Cain and has made attacks on Agent Cain's integrity that  
10 are completely unfounded.

11 The same is true, Your Honor, with regard to the  
12 Cartwright receipt, which has also been the subject of last  
13 week's hearing as well. Your Honor will recall that defendant's  
14 testimony about the Cartwright matter was elicited in connection  
15 with various other Black Manifold matters that were being  
16 discussed and other entertainment she may have received from  
17 Black Manifold employees, one of whom was Russell Cartwright,  
18 and I have for the Court that testimony, a copy for defense  
19 counsel. This is transcript 2864.

20 The question at the bottom of that page is, "And how  
21 about Russell Cartwright? Did you ever have meals with Russell  
22 Cartwright?"

23 At the top of 2865, defendant responds, "No, I've  
24 never eaten with Russell Cartwright."

25 The next question is, "Do you recall going out to

1 for holding that defendant should receive a two-level  
2 enhancement for obstruction of justice for making material false  
3 statements to the Court pursuant to Sentencing Guideline 3C1.1.

4 Thank you, Your Honor.

5 THE COURT: All right, thank you.

6 All right, Mr. Wehner, do you want to respond briefly  
7 on this new trial motion?

8 MR. WEHNER: Yeah, briefly, Your Honor. Generally,  
9 I'd point out to the Court it's another, Mr. Swartz's statement  
10 is another example that draws me back to before the trial in  
11 this case, when the Independent Counsel stood up and said there  
12 wasn't any Brady material. That statement is about as  
13 accurate, turned out to be about as accurate as the information  
14 Mr. Swartz wants you to consider today.

15 If you look at the grand jury testimony of Abbie  
16 Wiest, you will see that there is no more a fair inference from  
17 that testimony that Deborah Dean perjured herself when  
18 testifying about her relationship with Russell Cartwright than  
19 that Andy Sankin gave Ms. Dean Christmas presents.

20 And I invite the Court to look at that grand jury  
21 testimony with care, because Mr. Swartz has just told you that  
22 Ms. Wiest testified in contradictory fashion to Ms. Dean. If  
23 you look at page 56 and the exact information that Mr. Swartz  
24 wants you to rely on, line 11, "Let me see if I can refresh your  
25 recollection.

1 dinner with Mr. Cartright, Abbie Wiest, and yourself on October  
2 22, 1987?"

3 Defendant responds, "I've never eaten with Russell  
4 Cartwright."

5 Your Honor, the government submits that that  
6 statement, "I've never eaten with Russell Cartwright," is  
7 perjurious. Indeed, the very Wiest grand jury testimony on  
8 which defendant so heavily relies suggests that it's perjurious.

9 Defendant notes that the, Abbie Wiest in her grand  
10 jury testimony suggested that defendant was not along on the  
11 October -- it should be October 27, 1987 meal. Defendant  
12 neglects to inform the Court, however, that Abbie Wiest went on  
13 to testify that she and Russell Cartwright had had at least two  
14 meals with the defendant.

15 In that regard, Your Honor, I have copies of the Wiest  
16 testimony which were provided. She refers both to a dinner and  
17 a lunch with defendant Dean and Russell Cartwright on page 57 of  
18 her grand jury testimony.

19 Your Honor, with regard to the October 27, 1987  
20 incident, of course, the question is as a legal matter whether  
21 the government had a reasonable basis for suspecting that indeed  
22 defendant was along on that, that occasion, and Wiest said not,  
23 but of course, Wiest, like many others, when confronted with  
24 receipts that suggested that while they were HUD employees, they  
25 had taken meals from particular individuals who had business

1 pending before HUD, would frequently say, as we've suggested,  
2 that really she was personal friends with these people and it  
3 didn't have anything to do with HUD, or that occasion didn't  
4 happen, but the receipt itself, Your Honor, standing alone would  
5 have given more than sufficient basis for the government to have  
6 a reasonable suspicion that it did.

7           Here's a copy of the receipt. As Your Honor will see,  
8 it's not simply a receipt, but it's also a reimbursement form  
9 submitted to Black Manafort by Russell Cartwright. It's the  
10 bottom item on the first page before the whited-out section of  
11 10-27, "Wadsworth, Wiest, and Dean," it says, and it carries  
12 over to the Wadsworth column "134." I should say that the Wite-  
13 out is not the work of the government, but rather of the party  
14 that produced the document.

15           Similarly on the expense report, on the second page,  
16 it says "HUD, Wiest, Dean." It says "HODAG" for the nature of  
17 the discussion. Client name, it says "Wadsworth," and it says  
18 "\$154."

19           The third page, Your Honor, is a set of receipts  
20 themselves, the credit card receipts, and the bottom receipt  
21 says "CFM," which stands for Cruse, Fox & Manafort, "Wadsworth,  
22 Dean, and Wiest."

23           And, Your Honor, in fact, as the government is aware,  
24 there was a project being pursued by Mr. Wadsworth at that time  
25 through Russell Cartwright and other members of Black Manafort.

1 We've submitted here for the Court and defense counsel copies of  
2 some of the correspondence during that time period confirming  
3 that fact. This alone, Your Honor, we suggest, would give the  
4 government a reasonable cause for suspicion, a reasonable basis  
5 for going forward on cross examination.

6 Your Honor, with the Court's permission and with the  
7 appropriate direction under rule 6(e), we're also prepared to  
8 discuss this morning and to submit in camera for the Court's  
9 review Russell Cartwright's grand jury testimony should the  
10 Court so desire, which is what defendant Dean has requested  
11 here.

12 THE COURT: Was this Abbie Weist's grand jury  
13 testimony produced and brought out to the defendant --

14 MR. SWARTZ: Yes, it was.

15 THE COURT: -- at the time this issue arose?

16 MR. SWARTZ: Yes.

17 THE COURT: She said that he wasn't at this dinner,  
18 because it was her birthday?

19 MR. SWARTZ: Said that Dean was not at the dinner,  
20 yes, Your Honor. That is the exact copy, I believe, of the  
21 grand jury -- or excerpt from the grand jury transcript that  
22 defendant had.

23 THE COURT: All right.

24 MR. SWARTZ: I should say, Your Honor, that without  
25 going into the specifics of Russell Cartwright's testimony, that

1 it suggests, it also confirms that defendant perjured herself  
2 with regard to saying that she had never eaten with Russell  
3 Cartwright, and furthermore, that the receipt is an accurate  
4 one.

5           That is not to say, Your Honor, that Russell  
6 Cartwright did not suggest with regard to other HUD employees,  
7 although he could name none, that he might not have been  
8 submitting false receipts supposedly pursuant to a Black  
9 Manifold policy, but what he explicitly said was that he had  
10 gone out to dinner and lunch with Dean, again confirming that  
11 she'd perjured herself, and that he entertained her on two  
12 occasions, including at the Mayflower Hotel, which, of course,  
13 is the subject of the receipt.

14           If Your Honor so desires, we'll submit that.

15           THE COURT: All right. Do you have that here?

16           MR. SWARTZ: Yes, I do, Your Honor.

17           THE COURT: All right, I'll take that in camera.

18           MR. SWARTZ: Okay.

19           MR. WEHNER: Your Honor, could we have the opportunity  
20 to review that, please?

21           THE COURT: No, I'm taking it in camera.

22           MR. WEHNER: Thank you. I just wanted to make the  
23 record.

24           THE COURT: All right.

25           MR. SWARTZ: As you see, Your Honor, Russell

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

6 In particular, Your Honor, the page numbers here would  
7 be page 27 with regard to other meals, page 30 with regard to  
8 the Mayflower matter, and then the later pages -- 34, 36, with  
9 regard to the supposed Black Manifold practice, although again,  
10 I would like to stress, Your Honor, two points in that regard:

11 One, Russell Cartwright could not identify any  
12 individuals that he supposedly followed this practice with  
13 regard to, and again, as I've suggested to Your Honor, it's not  
14 uncommon in our experience that the attempt has been to suggest  
15 that these events never occurred, but the second point and the  
16 more important point here is that he had already admitted having  
17 gone out with defendant Dean on four occasions.

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

1           "Question: I've seen records that reflect a dinner  
2 with Russell Cartwright and Abbie Wiest at the Mayflower on the  
3 27th of October 1987. Would that have been one of the occasions  
4 that you were thinking of?

5           "Answer: No. But Debbie Dean wasn't there, was she?

6           "Question: The information we have indicates that she  
7 was.

8           "Answer: No, she wasn't."

9           Now, Judge, if you take expense account receipts in  
10 this town of Russell Cartwright or of an Andy Sankin and you  
11 subject them to scrutiny, it does not give a reasonable  
12 prosecutor a basis upon which to not delve further into whether  
13 or not the event took place. Now I grant you you can construct  
14 a case, take it in the light most favorable to the Independent  
15 Counsel that all these events did take place, but when you  
16 subject them to the scrutiny of cross examination, they don't  
17 hold up.

18           And I would ask the Court that if you're going to  
19 consider, for example, Mr. Cartright's testimony in terms of the  
20 looking at the grand jury testimony, that you do two things:  
21 One, I would like the Court to focus on what I believe based  
22 upon what Mr. Swartz said was a statement that Mr. Cartwright  
23 routinely phoned up his expense vouchers. Now I don't know,  
24 I'd like Mr. Swartz to tell the Court what pages, where that  
25 appears. He referenced it, but he didn't give the Court a



1 reference as to what pages it appeared upon.

2           And it seems to me that when someone with a track  
3 record of credibility as the Independent Counsel asks the Court  
4 to determine that a witness who spent six days on the stand  
5 testifying has perjured herself, that the least they should do  
6 is bring Mr. Cartwright in to testify, as opposed to ask the  
7 Court to take the word of the Independent Counsel, and subject  
8 Mr. Cartwright to some cross examination, or let's subject  
9 Ms. Wiest to some cross examination.

10           You have to argue from the record, Judge. You can't  
11 stand up and make your record. And because it exists on a piece  
12 of paper certainly doesn't make it true.

13           Now with regard to the John Mitchell check, if you  
14 scrutinize the testimony at trial, Judge, and you take a fair  
15 look at it, you will recall Ms. Dean received the inspector  
16 general's report in April of 1989 and that that is when she  
17 testified she made the call to Agent Cain. If you look at this  
18 report, Judge, this report is authored, this interview is  
19 authored December 12 of 1988, almost five months before. And  
20 this is the report upon which the Independent Counsel wishes you  
21 to rely upon what was in Agent Cain's possession in May of 1989.

22           Now the cover sheet accurately reflects the date  
23 during which Ms. Dean approximately recalls when she had the  
24 conversation. If you look in the upper right-hand corner, it  
25 says, "Date of report: April 17, 1989." That's fairly

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

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

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

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

1 the relevant Supreme Court case, Dunnigan, that there's been  
2 an attempt at obstruction.

3 THE COURT: All right. You had the Abbie Weist grand  
4 jury testimony at trial, right?

5 MR. WEHNER: I recall, Your Honor, reading that. As I  
6 stand here today, I do not recall whether it was in an interview  
7 report or whether it was in the grand jury transcript, but I  
8 recall the substance of it.

9 THE COURT: Where she said Ms. Dean was not at that  
10 birthday dinner with Mr. Cartwright?

11 MR. WEHNER: I recall the substance of that, Your  
12 Honor, at trial, yes, sir.

13 THE COURT: She also said that she had had dinners  
14 with others, including Ms. Dean and Mr. Cartwright, at various  
15 times, talked about a dinner in Old Town and a lunch downtown on  
16 page 37 or 57, the number, of her grand jury testimony.

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

18 THE COURT: On the middle of the page, it starts with  
19 line 4.

20 MR. WEHNER: "Then we had dinner, I don't know if we  
21 had dinner before that or after that, but we had dinner in Old  
22 Town with Paul Manifort, Rick Davis, Russell Cartwright, Loury  
23 Gay, and myself and Deborah one night"?

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

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

2 THE COURT: Line 4.

3 MR. WEHNER: I'm sorry. "Well, one day in November,  
4 we had lunch, me, Debbie Dean, Paul -- not Paul Manifort -- Rick  
5 Davis, Loury Gay, me, and Debbie Dean had lunch downtown"? I  
6 don't recall seeing that at trial, Judge. That's not to say I  
7 didn't.

8 THE COURT: All right.

9 MR. WEHNER: But again, if you read the grand jury  
10 transcript in terms of what Abbie Wiest was testifying  
11 concerning, it's clear to me that it is consistent -- or not  
12 inconsistent with Ms. Dean's testimony.

13 And I would be -- and as I say to the Court, I  
14 suggest -- well, let me put it this way to the Court: If the  
15 Court is going to consider the information regarding the Russell  
16 Cartwright grand jury testimony, I request that the Court allow  
17 me to issue a subpoena to Mr. Cartwright so that the Court can  
18 gauge his credibility with regard to whatever it is Mr. Swartz  
19 wants you to rely upon in his grand jury testimony. Not having  
20 it leads to some difficulty in making that argument, but if the  
21 Court intends to rely on it, we can avoid the grand jury problem  
22 simply by putting Mr. Cartwright on the stand and having him  
23 testify as to whatever Mr. Swartz would like him to testify to,  
24 and I'll be glad to cross-examine him.

25 THE COURT: All right. On the motion for

1 reconsideration of the new trial, the Court is going to deny  
2 that at this time. The government has produced materials  
3 reflecting both at the original Cain argument -- and I'll put it  
4 in quotes -- Cain argument by defendant as to where she met him  
5 and discussed matters with him. It seems to the Court that is  
6 not accurate as to the John Mitchell check and Cain, when he  
7 knew about it -- when she knew about it and where the documents  
8 were, I think that's argument and could be argued either way  
9 about it, but it doesn't mean of necessity the government is  
10 putting on information they knew was false before the jury.

11 As to the issue on Mr. Cartwright, I think the same is  
12 true. There is information in the government's possession both  
13 ways that they had a receipt charging he had Dean and Wiest for  
14 dinner that evening in question. The impression they had is  
15 information from Ms. Wiest that she had eaten alone with  
16 Mr. Cartwright.

17 I've reviewed the grand jury testimony of  
18 Mr. Cartwright in this consideration as well as to his  
19 recollection and his accuracy or not of his receipts, and that  
20 does not change the Court's opinion that the government, while,  
21 as I said before, zealous and aggressive, misrepresented to the  
22 jury the issue as to the Cartwright receipt or not, the  
23 defendant had information to challenge that inference or  
24 recollection of Mr. Cartwright's about it.

25 Ms. Dean had testified at trial -- we'll go further if

1 necessary into this in the sentencing phase of it -- "Did you  
2 ever have meals with Russell Cartwright?" That was asked right  
3 after a question about Rick Davis of Black, Manafort, Stone &  
4 Kelly, she mentioned about that, she answered, "I've never eaten  
5 with Russell Cartwright."

6 And she was asked specifically about going out on  
7 October 22, 1987. I'm not sure that was the right date; it was  
8 October 27. But in any event, she answered again, "I've never  
9 eaten with Russell Cartwright."

10 There is evidence otherwise that she had eaten with  
11 him. I don't know the context in which she was answering that  
12 question in her mind. I can't say it's lying when she said she  
13 never ate with him on October 22, whether when she said, "I've  
14 never eaten with Russell Cartwright," she means by herself, with  
15 others, I don't know, but for the purposes of the new trial  
16 motion, I will not find that it raises any substantial issue  
17 that more likely or not would result in a different jury verdict  
18 or prosecutorial misconduct would result in ordering a new  
19 trial, and because of that, I see no need to have Mr. Cartwright  
20 or Ms. Wiest testify further in this matter or Agent Cain.

21 So I'm going to deny the renewed motion for a new  
22 trial, I guess, or reconsideration. I'm denying the motion for  
23 a new trial at this time.

24 I'd like to set up the sentencing matter now. I've  
25 got a meeting at 12:15, a TRO to hear, and another matter at

1 1:30, but we'll just have to come back and finish it this  
2 afternoon. First I want to talk about I think underlying a lot  
3 of this is a couple of matters. Did the government get,  
4 Ms. Flynn, did you review the recent filing of Friday or so?

5 MS. FLYNN: Yes, Your Honor, I have.

6 THE COURT: All right. I had raised with Probation --  
7 I think this all should be on the record, because it's rather an  
8 interesting procedure we have now in our sentencing guidelines,  
9 with the Probation Office sort of interfacing with the  
10 prosecution, who has one view, and the defendant has one view,  
11 and the Court has a view, and the probation officer is in the  
12 middle of this, getting slammed from each side and maybe from  
13 the Judge's side as well.

14 I reviewed with Mr. Hunt only after the matters were  
15 fully finished. Today, as a matter of fact, I met personally  
16 with him. I had one brief phone conversation with him months  
17 ago, but I met personally with him, I believe, today as to his  
18 findings particularly in a couple of areas I was interested in,  
19 and I've asked him to do some checking after we have a  
20 conference, we have our conference today, and that is, whether  
21 or not there is some analysis that has not been gone into that I  
22 think was raised by the defendant when we had independently in  
23 chambers begun to look at it this way as to instead of  
24 gratuities or conflict of interest, he'd looked at fraud  
25 sections as applicable, and we have done some research on that

1 in chambers last week.

2 That also is affected perhaps by which guidelines  
3 apply, 1990 or 1993 guidelines, as had been amended in '91, and  
4 that also that ruling may apply to affect any determination  
5 eventually as well, but I'd like to discuss if this is a  
6 conspiracy to defraud, if the first two counts are covered by  
7 the guidelines, and that's the first issue I'm going to take up  
8 with counsel is whether or not they're covered, but beyond that,  
9 whether or not it's more appropriate to go to an analogous  
10 violation of fraud since this was an intent to defraud the  
11 government, to deprive the government of her best services, as  
12 opposed to really accepting gratuities or having conflicts.

13 All right, let me ask Mr. Wehner first then, I think  
14 the fundamental first issue is what is covered by the guidelines  
15 in these offenses where Ms. Dean has been convicted. Having  
16 ruled that I don't accept the theory of the prosecution that  
17 every payment on the continuing HUD contracts issued as a result  
18 of Ms. Dean's influence, at least as accepted by the jury as  
19 happened, then that cuts out all but the first two  
20 automatically, and whether or not there's sufficient other acts  
21 of co-conspirators beyond the effective date of the guidelines  
22 that tie in the first two counts I think is the issue, and are  
23 there not payments to these co-conspirators and other acts that  
24 would tie in the first two counts of the guidelines.

25 MR. WEHNER: There are payments to co-conspirators



1 after November 1 of 1987. The issue for the Court, however, is  
2 whether under the admitted standards of Milton and Dale,  
3 whether Ms. Dean or, frankly, not Ms. Dean, but an individual in  
4 Ms. Dean's position would have foreseen that those payments  
5 would have continued and would have formed a part of the  
6 conspiracy.

7           And I submit to the Court that based upon the record  
8 at trial that was developed in terms of, in terms of the  
9 conversations that took place between the developers and the  
10 consultants with regard to continuing payments, that if you look  
11 at the payments that the Independent Counsel alleges were in  
12 furtherance of the conspiracy that occurred after October or  
13 November of 1987, that given the facts as proved by the  
14 Independent Counsel at trial, that a reasonable individual in  
15 Ms. Dean's position could not have foreseen that those payments  
16 would be in furtherance of the conspiracy of which she has been  
17 convicted.

18           And I point out to the Court and one thing that the  
19 Court had mentioned previously when we were arguing on the  
20 initial set of rule 29 motions, that conspiracies simply cannot  
21 continue forever under the criminal justice system. They just,  
22 they simply cannot.

23           And when you have co-conspirators that testify that  
24 they weren't conspiring, that what they did, that they did not  
25 have the intent to conspire, it's not a situation where, as the

1 Independent Counsel would have you believe, that there's this  
2 great veil of secrecy surrounding the conspiracy. And I point  
3 out to the Court that, for example, Ms. Dean left HUD in October  
4 of 1987.

5 Now I'll grant you, Judge, that that does not meet the  
6 legal definition of what is required for withdrawal from a  
7 conspiracy, but that certainly is compelling evidence that  
8 because the Independent Counsel has been able to show no  
9 connection between Ms. Dean and the conspiracy they proved after  
10 October of 1987, when she left HUD, that she certainly could not  
11 have foreseen that it was continuing. Taken in the light most  
12 favorable to the government, the conspiracy certainly ended as  
13 far as an individual in her position was concerned once the  
14 moderate rehabilitation units were awarded.

15 Again, that may not have been enough and is not enough  
16 under the law to show an affirmative act of withdrawal from the  
17 conspiracy, but in terms of the sentencing guidelines issues,  
18 this Circuit has put the test in the conjunctive. It's not a  
19 disjunctive test. It's not simply an act by a co-conspirator  
20 beyond the deadline within the sentencing guidelines parameters.  
21 It is an act which was, quote, reasonably foreseeable and was a  
22 part of the conspiracy.

23 There is no testimony on the record from the  
24 co-conspirators that either made or received the payments that  
25 these payments were in furtherance of a conspiracy. So I submit

1 to you it takes it out of the realm of an innocent act being in  
2 furtherance of the conspiracy or something that was reasonably  
3 foreseeable by an individual in Ms. Dean's position because of  
4 those two factors.

5           The second issue I'd like to leave Your Honor with is  
6 I didn't perceive in the reading of Milton and Dale that the  
7 concept of overt acts falling within the sentencing guidelines  
8 period was as stretched as it is in this case, and frankly, it  
9 was difficult to articulate the argument as to why they are  
10 different, but in reading the sentencing guidelines, Judge, I  
11 think I came up with the basis for the finding that they're  
12 different, and the guidelines, in fact, discusses what occurs  
13 when the government stretches the case to fit it within the  
14 guidelines, and it was the extremely interesting one-sentence  
15 line that if the Court finds manipulation of the indictment,  
16 then the Court can depart.

17           And I think that is a telling statement from the  
18 sentencing guidelines -- from the Commission in terms of this  
19 case, because this is a case, Judge, where from the first day  
20 you read the indictment, you saw that there was an attempt to  
21 bring the conspiracy into the guidelines, and that's fair. The  
22 government is certainly entitled to craft an indictment based  
23 upon the facts as they perceive it, but when you analyze the  
24 individual acts that they charge, it's clear that they are  
25 stretching them, because in fact, Ms. Dean did leave HUD before

1 the guidelines came into effect.

2           Secondly, the co-conspirators testified that these  
3 payments took place, but they certainly weren't in furtherance  
4 of a conspiracy as far as they were concerned. Now if the  
5 payments are not in furtherance of a conspiracy as far as the  
6 co-conspirator testifying witnesses are concerned, the  
7 government would have you believe somehow that the jury was  
8 entitled to not only disbelieve their testimony, one; two, draw  
9 the adverse inference from their perjured testimony that, that  
10 somehow the payments were in furtherance of the conspiracy; and  
11 three, notwithstanding the fact that any of these individuals  
12 didn't have any conversations with Ms. Dean about these  
13 payments, that she could have reasonably foreseen that they were  
14 in furtherance of the conspiracy.

15           And I don't think, Your Honor, that you can make those  
16 findings from the record that fit into Milton and Dale  
17 unless you simply assume that any charged act by a  
18 co-conspirator in a government indictment within the guidelines,  
19 within the guidelines period is sufficient to bring that  
20 defendant within the guidelines.

21           Now -- and that's not what the law is, Judge, as I  
22 read Milton and Dale. The law is more sophisticated than  
23 that, because it recognizes that there would be circumstances in  
24 which an act by a co-conspirator could be unfairly charged to  
25 bring a particular defendant's act within the guidelines, and

1 there has to be some way, some line of demarcation.

2           And I submit to the Court that A, I don't think that  
3 the conspiracies as they involve Ms. Dean fall within the  
4 guidelines; B, if the Court finds that they do compel a  
5 conclusion, that is, that the acts of the co-conspirators compel  
6 a conclusion that falls within the guidelines, that the Court  
7 then has the power to depart downward on the guidelines issues  
8 based upon the sentencing guidelines themselves because of the  
9 manipulation -- which is the Sentencing Commission's word -- of  
10 the indictment.

11           And I base that argument, Your Honor, upon the proof  
12 at trial, not upon something that Ms. Dean has said or some  
13 argument that I am trying to make based upon records -- matters  
14 outside the record or new evidence here today, but based upon  
15 the testimony of the alleged co-conspirators themselves. There  
16 is no evidence from which the Court can find Milton and Dale  
17 are satisfied as it pertains to Ms. Dean. The evidence is to  
18 the contrary, and I think that is manipulation.

19           THE COURT: All right, thank you.

20           The Court is going to rule as follows on the  
21 sentencing guidelines applying to counts 1 and 2. Ms. Flynn,  
22 I'm sorry to cut you out on that, but the Court is going to hold  
23 that the guidelines will apply to these offenses set forth in  
24 counts 1 and 2, because they began, obviously, before Novem-  
25 ber 1, 1987, and continued after that date.

1 I'm relying upon the cases argued by counsel, United  
2 States v. Dale, 991 F.2d 818, 853, a D.C. Circuit '93 case, I  
3 believe cert was denied in '93, and I have the standard to apply  
4 a preponderance of the evidence that the conspiracies continued  
5 in United States v. Milton, 8 F.3d 39, page 48, D.C. Circuit  
6 '93 case, even though Ms. Dean committed no overt acts after  
7 that date, she was no longer employed at HUD, so long as other  
8 acts by co-conspirators were done in furtherance of the  
9 conspiracy within the scope of the unlawful project and could be  
10 reasonably foreseen as a necessary or natural consequence of the  
11 unlawful agreement. That's quoting United States v. Sampol,  
12 636 F.2d, at 676, a 1980 Circuit case.

13 In this case, the acts that the government has alleged  
14 would be sufficient to tie in these two counts to the guidelines  
15 by co-conspirators would be in count 1, a May 11, '90 letter  
16 from Louie Nunn to Martinez requesting payments of his fees;  
17 two, an authorization of payment executed by Martinez on May 16,  
18 '90; three, Nunn's eventual receipt of the payments; for count  
19 2, the acts are a \$25,000 payment to Andrew Sankin on December  
20 4, '87; a second payment on March 21, '90; a third payment on  
21 December 3, '90; and a final additional payment of 10,000 on  
22 January 21 in '89 actually.

23 Defendant has challenged these in that these acts were  
24 not foreseeable by her, that they didn't contemplate the  
25 co-conspirators still receiving these payments several years

1 after the defendant left HUD, and that she was no longer  
2 actively engaged in the conspiracy.

3 My concern is I think defendant candidly states that  
4 there's no evidence that suggests she affirmatively withdrew  
5 from the conspiracy at that point even though she was no longer  
6 in a position to actively influence the award of those as a HUD  
7 employee, although was operating as a consultant after that. I  
8 don't think leaving her job at HUD, trying to become an  
9 assistant secretary at HUD, could be argued to be an act  
10 designed to defeat the conspiracy or affirmatively withdraw from  
11 it.

12 And the fact it's not foreseeable I don't think is  
13 really the test. It's one really of it's necessary and natural  
14 consequences of what happened, and they were done in furtherance  
15 of the conspiracy, and I think that acceptance of these monies  
16 was obvious what was going on and would continue to go on for  
17 these consultants to get their monies.

18 So under the preponderance standard, the Court is  
19 going to find that these acts are adequate to bring count 1 and  
20 count 2 within the guidelines in general, not what specific  
21 guideline yet or what year guidelines.

22 Nunn and Sankin were co-conspirators, obviously found  
23 by the jury to be such, who were to receive payments from their  
24 clients in exchange for their assistance using Dean and others  
25 in obtaining Mod Rehab units. Since they're related to these

1 projects as charged in the conspiracies in counts 1 and 2, the  
2 receipt of these payments seem to me to be acts in furtherance  
3 of the conspiracy, within the scope of the conspiracy, and were  
4 necessary and natural consequences of the conspiracy.

5 I don't believe the other individual acts are  
6 necessary and natural consequences of the conspiracy, having a  
7 birthday party paid for Mr. Mitchell would be enough, and I  
8 don't see any other acts that would bring counts 3, actually,  
9 through 12 into the purview of the guidelines, particularly 3  
10 and 4.

11 The Court is cognizant of the argument of the  
12 Independent Counsel that continuing Mod Rehab payments over the  
13 next 15 years or so indicate the conspiracy is not complete and  
14 is ongoing and therefore could be considered under the same  
15 rationale I've just used as to payments to Sankin and Nunn. The  
16 only case we have is United States v. Barsanti, 943 F.2d,  
17 Fourth Circuit '91 case, at 428, which quotes another First  
18 Circuit case, United States v. Doherty, 867 F.2d 47, an '89  
19 case, as follows:

20 "Where receiving the payoff merely consists of a  
21 lengthy, indefinite series of ordinary, typically non-criminal  
22 unilateral actions, such as receiving salary payments, and there  
23 is no evidence that any concerted activity posing the special  
24 societal dangers of conspiracy is still taking place, we do not  
25 see how one can reasonably say that the conspiracy continues.



1 Rather, in these latter circumstances, one would ordinarily view  
2 the receipt of payments as the 'result' of the conspiracy."

3           It seems to the Court that these Mod Rehab payments  
4 that continue on are non-criminal, unilateral actions that  
5 present no suggestion that a conspiracy is still taking place.  
6 They are simply the result of the conspiracy. They benefit the  
7 developers, but they do not benefit the named co-conspirators at  
8 this time. So I do not see a rationale to tie those continuing  
9 Mod Rehab payments into the guidelines as bringing in counts 3  
10 and 4.

11           So the ruling of the Court is that the guidelines will  
12 apply to counts 1 and 2 for those reasons but not to 3 and 4 or  
13 the other counts of the indictment.

14           Then the issue really is which guidelines apply, and I  
15 have that in my notes in two areas. One is the appropriate  
16 guideline itself, and the other is the ex post facto concerns of  
17 the guidelines of 1990 or the guidelines of 1993 as amended  
18 after 1991 and how they should apply and whether it would  
19 violate the ex post facto clause or not.

20           I have knocked out the continuing Mod Rehab theory, so  
21 I don't think that solves any ex post facto problem. Let me see  
22 if Ms. Lynch can -- Ms. Flynn, I'm sorry, Ms. Flynn can answer  
23 the ex post facto situation, where they, I think the  
24 calculation, using the newer offenses, which do seem to describe  
25 the activity in a more rational way, I must say, but whether

1 would that result in a higher sentence than other earlier  
2 guidelines, that could be done, or is that an ex post facto  
3 situation under our case law and we cannot do that?

4 MS. FLYNN: Your Honor, it's the government's position  
5 that the case law, to the contrary, this is not a circumstance  
6 in which application of 2C1.7 would violate the ex post facto  
7 clause of the Constitution. The case law talks about, in  
8 addressing an ex post facto concern, a situation in which the  
9 guidelines are amended to increase the penalty so that a  
10 defendant approaching a crime -- and of course, there's a little  
11 bit of an intellectual fiction here, because there is some,  
12 there's some appreciation that defendants would have an  
13 understanding of exactly what kind of penalties their crimes  
14 would subject them to, but I think the argument would be that a  
15 defendant committing a particular crime at a particular point in  
16 time has the right to know within a range what kind of penalty  
17 he'd be subjected to and that a subsequent amendment to the  
18 guidelines substantially increasing or changing or subjecting  
19 him to a higher penalty would violate some sense of fairness.

20 Here in this circumstance, we don't have a guideline  
21 that specifically addresses the kinds of crimes that the  
22 defendant was convicted of, and so we don't have the  
23 circumstance where the amendment subjects her to a greater  
24 penalty, because the argument would almost be if there's no  
25 guideline, then does she have, does she have an expectation that

1 she should be entitled to pure probation simply because there  
2 was nothing to specifically cover it? And I don't think that  
3 that would be a proper argument.

4 THE COURT: As to that latter point, if there's no  
5 guideline at all that I can say is analogous, then I can do what  
6 I want, right?

7 MS. FLYNN: Well, Your Honor, I think that you  
8 obviously can't do entirely what you want, because there are the  
9 sentencing guidelines, and that imposes upon the Court a  
10 structure to deal with in sentencing a defendant, but I think  
11 certainly at the very least, you can look to what the sentencing  
12 guidelines determined was an appropriate punishment for the  
13 kinds of crimes that the defendant committed in enacting 2C1.7  
14 in evaluating whether or not the other guidelines that were in  
15 effect in 1990 provide an appropriate punishment.

16 THE COURT: If we look at all the guidelines in effect  
17 in 1990 that may be analogous to this situation, the conflict of  
18 interest, gratuity, or fraud guidelines, and they all have a  
19 lower base level than the new guidelines, does that cause a  
20 problem?

21 MS. FLYNN: Well, Your Honor, I think there's also --  
22 I don't think so, because as I will demonstrate in a second, I  
23 think that the fraud guideline as the defendant would ask you to  
24 apply it does not apply a lower guideline at all. I think that  
25 the Court has to also turn to part C of chapter 2, in which in

1 its introductory comments the sentencing guidelines certainly  
2 suggest that the, the penalties for public corruption offenses  
3 were not in the Sentencing Commission's view, didn't  
4 appropriately reflect the seriousness of the crimes.

5           Certainly the bribery guideline, which provides for  
6 the same calculation of a high government official as the, as  
7 ultimately 2C1.7 does and also provides in its application note  
8 for the possibility of an upward departure where the defendant's  
9 conduct causes a sufficient erosion of public trust by  
10 corrupting a federal process or program, certainly that, I  
11 think, suggests that while conflict of interest and gratuity are  
12 not appropriate guidelines here and bribery may not be the  
13 underlying offense either, you can certainly look at the bribery  
14 guideline as, as indicating the kind of sentence that a  
15 defendant convicted of the kind of crime that the defendant has  
16 been convicted of in this case and, in fact, has been convicted  
17 of engaging in in three of those conspiracies, the Court should  
18 look at that to fashion an analogous and appropriate sentence,  
19 taking into consideration the kinds of things that the  
20 sentencing guidelines thinks are appropriate in a public  
21 corruption context.

22           Now to get back to an earlier question that the Court  
23 raised about the fraud guideline, contrary to defendant's  
24 suggestion that the fraud guideline would result in the  
25 imposition of a level 6 and thereafter a 0 to 6 sentencing

1 range, it's the government's position that that's entirely  
2 inaccurate.

3           There is a base offense level of 6, that's true, but  
4 then section 2F1.1 provides for an enhancement based upon loss,  
5 and as the Court in United States v. Gallup recognized -- and  
6 the Court is familiar with that case, because that's one that  
7 the government has referred the Court to on numerous  
8 occasions -- the court in Gallup considered a challenge to a  
9 restitution order in that case in which the defendant was, was  
10 ordered to make restitution of the amount of money that he and  
11 his codefendant had gained as a result of the conflict of  
12 interest and collusive business practices that were underlying  
13 the conspiracy to defraud that they were convicted of, and the  
14 court there made a series of very, very pointed comments about  
15 how the, the corruption of a program and the hiding of, of  
16 secret interests and the failure to disclose self-dealing  
17 injures the administrative agency, in that case it was HUD as  
18 well, and the public in a significant way and that the court has  
19 substantial flexibility and latitude in determining what kind of  
20 restitution is appropriate to consider this significant harm,  
21 and although in that case the court acknowledged that there was  
22 no evidence that the particular programs were, the particular  
23 projects that has been financed by HUD caused HUD any loss,  
24 although there was some suggestion that they wouldn't have been  
25 financed but for this, this secret, this secret deal, but there

1 certainly wasn't any loss to HUD from these particular projects.

2           It was the larger context of the loss to, to HUD and  
3 to the public of the right to have their public institutions  
4 administered in a fair and impartial and efficient way, free of  
5 fraud and waste, that caused the court to impose restitution for  
6 the amount of money gained by the two defendants in that case.

7           In this case, the -- if you cumulate all of the gains  
8 by the defendant and her co-conspirators, it would result in an  
9 increase of eleven levels, because it's more than \$800,000.  
10 That's so whether you look at the 1990 guidelines or the 1993  
11 guidelines. So then that puts you up to 17.

12           There's a two-point enhancement for more than minimal  
13 planning. It is absolutely clear under the guidelines that a  
14 conspiracy of any kind of nature like this would certainly  
15 satisfy the more-than-minimal-planning guideline, and in fact,  
16 in addition, it's our position that the defendant also should be  
17 assessed a two-point enhancement for an abuse of a position of  
18 trust.

19           Now the guidelines make clear that when you're looking  
20 at the offenses in part C, the bribery, gratuity, conflict of  
21 interest guidelines, that you don't assess this additional  
22 two-point level, because the abuse of the position of trust is  
23 inherent in the guideline and in the offense itself, but in a  
24 typical fraud 2F1.1 situation, that's not necessarily the case.  
25 People can commit frauds without having any special position of

1 trust with the victim of the fraud. Here the defendant, as  
2 executive assistant to the secretary of HUD, had an enormous  
3 position of trust which she abused by engaging in these three  
4 conspiracies.

5 That would put you to a level 21, which is wholly  
6 consistent with the government's position that 2C1.7 would apply  
7 and would also result in a similar guideline level of 21, the  
8 base level of 10, and the adjustment of eleven for the amount  
9 of -- the value gained by the defendant and her co-conspirators.

10 THE COURT: Doesn't it provide an eight-level increase  
11 for high level officials?

12 MS. FLYNN: Well, Your Honor, that's an alternative.

13 THE COURT: So you could go up to 28 or 29?

14 MS. FLYNN: No, Your Honor. It's either the amount  
15 increased by the money or the increase for high-level position,  
16 whichever is the greater. Here because the money is greater  
17 than the eight levels, the eleven-level increase would be the  
18 one that's appropriate.

19 THE COURT: I see, all right. And the money applies  
20 as the monies that were received by the consultants for  
21 obtaining these contracts with HUD?

22 MS. FLYNN: That's right, Your Honor, by the  
23 co-conspirators in the counts who received substantial amounts  
24 of money as consultant payments based upon their conspiracy with  
25 the defendant to cause and facilitate the award of Mod Rehab

1 funds to their clients.

2 THE COURT: So the theory is that if you operate under  
3 a fraud analogy, that then it would not be ex post facto to  
4 apply the 2C1.7 1993 guideline to this?

5 MS. FLYNN: That's correct, Your Honor.

6 THE COURT: Okay. Okay, let me talk with defense  
7 counsel for a few minutes on this, and then we're going to have  
8 to resume later.

9 You had suggested a fraud may be inapplicable as to  
10 which guideline to apply, and that may affect whether we apply  
11 the new or old guidelines, according to the government's  
12 argument. Where do you go from that?

13 MR. WEHNER: Judge, I think that it's clearly  
14 inapplicable. I mean, frankly, No. 1, the evidence at trial is  
15 undisputed that these funds that were paid to consultants,  
16 the --

17 THE COURT: Which is inapplicable, the money  
18 calculation --

19 MR. WEHNER: The money, the money calculation.

20 THE COURT: -- or the underlying offense of fraud and  
21 looking to fraud as an analogous offense that I should calculate  
22 the guidelines from?

23 MR. WEHNER: You have to look at -- it either has to  
24 be gratuities, or it has to be conflict of interest, Judge. I  
25 don't know -- I do not believe that the fraud guideline can be





1 that's going to sit down and read the guidelines before they  
2 enter into a conspiracy and you read the guidelines, it's  
3 clearly the most analogous is conflict of interest or  
4 gratuities.

5           And it is -- and even the, if you look at bribery, at  
6 the worst case scenario, then that is more analogous than any  
7 other, and as Your Honor correctly points out, the conspiracy to  
8 defraud guidelines severely increase the appropriate punishment.  
9 It's clearly ex post facto.

10           THE COURT: Under 1001, that's in the Title 18 Code,  
11 it's under the fraud and false statements section of Title 18,  
12 it seems to me 1001, false statement, is involved with the fraud  
13 much more than you're talking about illegal gratuities.

14           How we calculate what the fraud comes out to is  
15 another matter, but it concerns me as to the appropriate  
16 guideline to attach to this and whether then the new or the old  
17 guideline applies, depending on where we go. I think it's a  
18 difficult issue that's not clear in the guidelines at all.

19           MR. WEHNER: Well, Judge, I think that's right. I  
20 mean, I think the Court has to recall that you're dealing in a  
21 situation in which the guideline -- the Court has to pick the  
22 guideline that is most analogous to the criminal activity  
23 proven, and the Probation Office, in probably the first  
24 independent analysis short of the Court and the jury, was  
25 looking at the possibility of a conflict of interest

1 quantification, for lack of a better word, of the entire case or  
2 a gratuities quantification, for lack of a better case -- for  
3 lack of a better word.

4           And I think that it is clear sentencing guideline law  
5 that the one thing you don't do is graft the most serious  
6 possible guideline that is with the highest possible penalty to  
7 the set of facts that are before the Court. In other words, the  
8 goal of the sentencing guidelines is not to dramatically  
9 increase out of the facts that are proven in front of the Court  
10 the possible penalty.

11           The goal is kind of to realistically apply a penalty  
12 to the conduct that was proven, and if you take that as a goal,  
13 I suppose that the Court could legitimately come up with factors  
14 that would allow it in this case to apply under the whole  
15 offense sentencing theory gratuities or conflict of interest.

16           I frankly put the fraud analogous really a poor third,  
17 and I'm thinking more about the record that's in front of the  
18 Court, frankly, in terms of fitting it into that in terms of the  
19 specific guideline. I mean, the Independent Counsel's theory of  
20 the case I do not believe fairly focused upon Ms. Dean  
21 committing fraud in the classic sense. What it more focused  
22 upon was what her relationship was with outside consultants that  
23 were doing business with HUD, and if you look at the evidence at  
24 trial talking about that relationship, that relationship was one  
25 of friendship and relationship was one of receipt of

1 inconsequential gifts.

2           So for purposes of applying the sentencing guidelines,  
3 I would urge the Court to go in that direction, as opposed to  
4 grafting on a guideline that less clearly fits the facts as to  
5 what was proven at trial.

6           THE COURT: All right. I think I'm going to, as I've  
7 said, have the probation officer look at on the basis of fraud  
8 as applying to this under the 1990 system, and we'll also look  
9 at it as to the 1993 corruption of government, the C section, as  
10 well to see where that would come out.

11           I am concerned about ex post facto application of the  
12 guidelines, and I'm not sanguine at all that this does not  
13 result in that, that the offenses having been completed before  
14 the amended guidelines in 1991, that applying subsequent  
15 guidelines would not be appropriate where there's a potential  
16 for a longer sentence involved.

17           Let me ask you, Mr. Wehner, what do we do with this  
18 multiple-page submission by the defendant of a statement as to,  
19 her statement as challenging, I guess, the various facts relied  
20 upon by the government and the factual challenges to the  
21 presentence report? You've got the --

22           MR. WEHNER: You're referring to the pleading, Your  
23 Honor?

24           THE COURT: Yes, I'm referring -- well, within the  
25 report itself --

1 MR. WEHNER: Yes, sir.

2 THE COURT: -- the defendant's statement, and then the  
3 pleading, where you've got, I think it's your memorandum of law  
4 in support of modifications to the presentence investigation  
5 report, February 16, 1994, where you go through all sorts of  
6 paragraphs and challenges and arguments as to, I think, really  
7 factual arguments a lot as to what should be done.

8 MR. WEHNER: Yes, sir. With regard to that, first of  
9 all, with regard to the memorandum of law in support of those  
10 changes, we continue to differ strongly with the Independent  
11 Counsel in terms of the view of what they actually proved at the  
12 trial and what the jury, frankly, must have found in order to  
13 have returned the verdict they did. I think the Independent  
14 Counsel continues to ascribe a much higher level of influence  
15 and a much more responsible role than the evidence would allow a  
16 fair inference in support of.

17 And most of our disputes with the factual inaccuracies  
18 in the report, frankly, are based upon our disagreement with the  
19 conclusions that the statement by the Independent Counsel draws,  
20 the conclusory statements, and we attempted to go back and show  
21 the Court and the Probation Office as of the record as to how we  
22 dispute those conclusions not based upon our feeling that  
23 they're wrong, but based upon the evidence at trial that was  
24 produced.

25 Now it may be that in regard to those, Your Honor may

1 not find it necessary to rule on each and every one or any of  
2 the disputes, but if Your Honor, for example, to give you one  
3 example off the top of my head where it's critical, is on the  
4 high government official determination and if you were to  
5 determine that it fell within the gratuities guideline and you  
6 were then talking about an eight-level increase for purposes of  
7 a high government official, I submit to the Court that some of  
8 those disputes become highly relevant to the issue as to whether  
9 or not Ms. Dean fell within the category that is envisioned by  
10 that eight-level enhancement, and frankly, Your Honor, that's a  
11 huge enhancement from a level 6. That's eight points. It more  
12 than doubles the enhancement.

13           So her role at HUD, I think, becomes significant, and  
14 our factual disputes may become significant to the Court in  
15 terms of determining whether that enhancement applies.

16           With regards to Ms. Dean's statement to the Probation  
17 Office as found in the presentence investigative report,  
18 Ms. Dean was asked for a full and explicit version of what she  
19 perceived had occurred during her tenure at HUD. Frankly, Your  
20 Honor, she gave a very full and complete version of what  
21 occurred when she was at HUD.

22           I find it significant, however, given the substance of  
23 that statement, that nowhere in the presentence investigative  
24 report, and given the hours that Mr. Hunt put in in talking to  
25 Ms. Dean and dealing with Ms. Dean and spending time with her

1 going over her various versions, that Mr. Hunt clearly does not  
2 conclude that she was attempting to mislead him in any way  
3 regarding her role in the offense at HUD, and he does not follow  
4 on or agree with the Independent Counsel's conclusion that  
5 Ms. Dean is somehow continuing to try to obstruct justice or  
6 perjure herself or make false statements to a government agency  
7 by virtue of the submission of that statement.

8 Judge, it's fair game under our system to continue to  
9 disagree with conclusions that are drawn.

10 THE COURT: All right.

11 MR. WEHNER: And I think that that is the light in  
12 which Your Honor must, must consider the statement.

13 THE COURT: All right.

14 All right, Ms. Flynn, do you want to add anything to  
15 that -- then I'm going to make a couple of brief preliminary  
16 rulings, and we're going to have to come back after lunch --  
17 just as to these factual challenges? I think they were set  
18 forth in a couple of pleadings by the defendant and in her  
19 statement.

20 MS. FLYNN: Your Honor, it's, it's the government's  
21 position that what defendant Dean is attempting to do is to  
22 again re-litigate the issues that were decided at trial, were  
23 ruled on by Your Honor in the rule 29 motion and rule 33  
24 motions, were ruled on again by Your Honor in the motion to  
25 reconsider the denial of the rule 29 and rule 33 motions.

1 Defendant refuses to acknowledge that what she did was criminal,  
2 that the crimes were serious, and that, in fact, events that  
3 were testified to and were proven occurred.

4           It's the government's position that it has  
5 demonstrated to probation and to the Court and to the jury these  
6 events, in fact, occurred, that defendant Dean's recitation of  
7 the events is, to put it charitably, inaccurate, and we've  
8 submitted letters to Mr. Hunt at probation, two letters  
9 reviewing in some detail the various challenges, and we're  
10 prepared to do that again if the Court so needed.

11           But our position is that the Court need not rule on  
12 those, because they're already part of the convictions in this  
13 case and can deny any further consideration of those challenges  
14 based on that ground.

15           THE COURT: All right, thank you very much.

16           A couple of things I'm going to do at this time: One,  
17 as I've said, I'm going to ask for the probation officer to take  
18 a look at this under the fraud guidelines, so I'm not going to  
19 make a final ruling today, although it's a presentencing hearing  
20 and we're supposed to be able to get down to what guidelines  
21 apply so you can all argue what would be an appropriate sentence  
22 within or do I depart from those guidelines upward or downward,  
23 but until I get that in the next day or so, I'm not going to  
24 rule.

25           Secondly -- and that may affect also the ex post facto



1 ruling. Second, there's an argument that's been advanced as to  
2 whether or not, depending on which guideline we use, an  
3 eight-level increase would apply as the type of position the  
4 defendant held. There's a new case that just came down we just  
5 discovered, my law clerk did, Mr. Farley, just came down in the  
6 beginning of February called United States v. Matzkin, it's a  
7 Fourth Circuit case, February 4, 1991, No. 93-5246, it's a  
8 Westlaw 26351, where a GS-15 Navy supervising engineer, who did  
9 not have the final authority, could influence procurement  
10 decisions by giving out bid information to certain preferred  
11 individuals who were paying him for the information, held a  
12 sensitive position within the guidelines because he was, quote,  
13 involved in decision making on multi-million-dollar Navy  
14 contracts and had considerable discretion and influence in these  
15 matters, and approved an eight-level increase of the defendant.  
16 There was a bribery actively in that case.

17           It sort of maybe expands the universe of those who  
18 could be assessed an eight-level increase by not limiting it to  
19 presidential employees or final decision makers at least in the  
20 context of that case.

21           What I'd like to do is I'm going to go through these  
22 this afternoon basically as to the factual challenges and  
23 statements by the defendant for the record both on the  
24 guidelines and under rule 32, and it will not take, I don't  
25 think, too long, and then I'm going to see if we can set up

1 another time after I talk to Mr. Hunt perhaps in a day or so to  
2 come in and take care of which guidelines we're applying and  
3 which year of the guidelines we're applying and so that when we  
4 come back for sentencing in a few days, we'll have the general  
5 range of guidelines assessed, and you can argue about increases  
6 or decreases as necessary.

7           So if we can come back, I have a hearing at 1:30  
8 already, it will take a little while, probably 2:30 this  
9 afternoon, and we'll resume briefly this afternoon, but I'm  
10 going to have to set another date in tomorrow or the next day to  
11 take care of which guidelines are going to apply after I talk to  
12 Mr. Hunt some more on these fraud guidelines.

13           All right, we'll take a recess for lunch.

14           (Recess from 12:17 p.m., to 2:30 p.m.)

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## A F T E R N O O N S E S S I O N

(Defendant present.)

THE CLERK: Criminal No. 92-181, United States of America v. Deborah Gore Dean. We have Bruce Swartz and Claudia Flynn for the government, Stephen Wehner for Ms. Dean.

THE COURT: All right, let me get back to where I was before the recess and put this together. A couple of things: One was I meant to mention I had passed an order and issued it today that all the letters received concerning Ms. Dean's sentencing will be made part of the public record in the case, and they're being filed today.

Secondly, I just want to indicate for the record in the event this matter is further reviewed that what I've had before me today in consideration of these arguments is correspondence to Gregory Hunt from Arlin Adams, Office of Independent Counsel, of January 18; memorandum and law in support of modifications of the presentence report, February 16, by defendant; defendant's supplemental memorandum, February 18; government's memorandum regarding sentencing guidelines, 16 February; and the reconsideration of ruling denying a motion for new trial by Ms. Dean, which we ruled on this morning, which was the 18th of February.

Additionally, we had a February 8 letter of Mr. Wehner of an omnibus motion that I think there are a couple of areas I may have to still rule upon on that, asking for, one of the

1 things, for a continuance of the sentencing, which we did. I  
2 also had the defense counsel receipt and acknowledgment of the  
3 presentence investigation report form with attachments, I  
4 believe, the government has attached as well as the presentence  
5 report, and I've had the presentence report.

6           One of the things I wanted to mention was on this  
7 omnibus motion, there was a motion for a stay of sentence  
8 pending appeal, and obviously I'm going to deny that and it has  
9 been, as well as staying the sentence until such time as it can  
10 be brought to the Court of Appeals of this circuit. I'm going  
11 to deny that. I did continue the sentencing as requested.

12           As for modifications of the presentence report, to  
13 hold a hearing in support of those modifications, I've been  
14 doing that for a hearing with regard to Deborah Gore Dean's  
15 motion for new trial, which I've done not evidentiary, but I've  
16 held a hearing. But I think we have responded to the issues  
17 raised in the omnibus motion.

18           MR. WEHNER: Your Honor, if I may be heard for a  
19 second?

20           THE COURT: All right.

21           MR. WEHNER: The omnibus motion was intended to  
22 address the issue of bond pending appeal.

23           THE COURT: Right. Well, the stay is what you  
24 entitled it as, stay sentencing pending appeal, the title of the  
25 motion. That is, for the bond pending appeal, I haven't ruled

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 further review of that.

2           The Court wants to review briefly the objections that  
3 the defendant has raised for the record and rule upon those as  
4 to the factual matters and as well as to the government's  
5 objections, too, that they have raised and attached to the  
6 presentence report beginning at page 44. Obviously, the result  
7 is still up in the air as to which guidelines apply, and that  
8 was the main complaint the government had, as far as I see it,  
9 in the proper departure.

10           By the defendant, beginning on page 45, the offense  
11 conduct, I think the evidence is what the jury has determined to  
12 believe that they accepted about how the funds were awarded, and  
13 I think that's probably true with many of the other objections  
14 that have been resolved by the jury's finding. And the same  
15 thing on the objection as to the defendant's position at HUD and  
16 her ability to make awards of specific units. I believe that  
17 that was returned by the jury's verdict.

18           As to paragraph 10, the offense conduct, defendant  
19 argues no evidence supports a statement that she was responsible  
20 for awarding any units to Metro Dade PHA and that Barksdale was  
21 the one who signed the documents and he didn't recall the  
22 defendant asking him to do it, again my recollection of the  
23 trial testimony and the evidence at trial is that could show the  
24 defendant was involved in the direction of funding of these  
25 projects. I think others were involved as well, but there's no

1 question, I think, that Ms. Dean was.

2           12, the offense conduct, again that's the South  
3 Florida I project, 219 units being used as a code, and whether  
4 or not there were actually more units awarded or not, again that  
5 was up to the jury, I think, to conclude as to the argument. I  
6 think it can go either way, but the jury's verdict, I think,  
7 concludes that there were units designed to fit the particular  
8 projects advanced by Ms. Dean in helping her consultants out.

9           The paragraph 13, the offense conduct, the \$500  
10 Christmas gift to Mr. Mitchell, again where it shows a familiar  
11 relationship to Mr. Mitchell and defendant is appropriate, but I  
12 don't think it is appropriate to demonstrate it there as a  
13 gratuity or set forth as a gratuity, and I'm going to leave it  
14 in only as showing that there's some relationship between  
15 Mr. Mitchell and defendant of a close nature, daughter-father is  
16 what's been, I believe, shown, in essence, as opposed to some  
17 gratuity or tip to her for helping get the business for  
18 Mr. Nunn.

19           Paragraph 15, the offense conduct, this is with  
20 regards to the relation between the defendant and Mr. Shelby in  
21 the Park Tower project, the defense argues there's no such  
22 evidence that she was connected to this at the time frame  
23 requested, as set forth, and no evidence she actually sent units  
24 to Metro Dade in '85 and that the number of units is different  
25 than as described.

1           There is no question in the Court's mind there was  
2 evidence that the defendant was engaged in the sending of these,  
3 providing a way for these units to be forwarded to Metro Dade.  
4 Whatever the amount is not important, I believe, of units. They  
5 were sent both for, there's testimony about her testimony Paul  
6 Hawkins needed it, but also that there was evidence that she had  
7 attended meetings with Mr. Shelby involving Park Towers, and  
8 Mr. Shelby certainly, testimony is before the jury as to support  
9 that defendant gave him in supplying these materials. Whether  
10 or not she sent the rapid reply letter, it was sent to him in  
11 any event.

12           The offense conduct in paragraph 16 as to Mr. Mitchell  
13 gave the defendant a birthday part for thirty-three-hundred-plus  
14 dollars, she said that had no relation to the May '86 waiver and  
15 the party occurred a year-and-a-half later, again it  
16 demonstrates the defendant's relationship to Mr. Mitchell. I  
17 believe that only relates to the, in the Court's mind, to  
18 demonstrate the close relationship between them but not as,  
19 again, some type of gratuity paid on behalf of Mr. Mitchell to  
20 her, although the government argued that, but I think the  
21 Court's view is somewhat different of that payment.

22           Paragraph 18, the offense conduct, the presentence  
23 report describes the financial relationship between Mr. Sankin,  
24 the defendant, and the defendant's family, argued that the  
25 finances of Stanley Arms was not dire; it was run at a deficit,

1 and that he did not perform other functions and didn't testify  
2 to that.

3 Mr. Sankin certainly, it was testified to, provided  
4 substantial services to the defendant's family with the Stanley  
5 Arms and other real estate settlement matters he went to as well  
6 as to do the petition and help change the rent status of Stanley  
7 Arms, and after he took it over and helped it, it went from a  
8 losing proposition to a money-making proposition, so there's no  
9 question that evidence was there. Whether it's a matter of  
10 terminology, whether it's dire financial straits or run at a  
11 deficit, it was not being properly run, and he provided help in  
12 that regard.

13 Paragraph 19, the offense conduct, the presentence  
14 sentence report reflects a description of events around the  
15 exception rents for Necho Allen Hotel, again that Mr. Sankin and  
16 defendant had meetings, they objected, saying that no testimony  
17 proved that and that there's no basis that the defendant  
18 obtained a waiver for Pennrose properties in February of '85.

19 There is no question and I think the presentence  
20 report should reflect that the exceptions had been twice  
21 requested by the HUD regional office and had local support.  
22 There's questions he had support from politicians locally and  
23 many other people, but he was not successful until Mr. Sankin  
24 intervened with Ms. Dean, and that only then was Mr. Rosenthal  
25 successful, and he did thank the defendant, it's clear in the

1 evidence, and I think that except for the fact that there is  
2 local support and that the HUD regional office had denied it  
3 twice, it is accurate.

4 Paragraph 20, the offense conduct, the presentence  
5 report describes the allocation of Mod Rehab units for the  
6 Regent Street Apartments in Philadelphia, again the defense  
7 disputes the factors set forth in that paragraph. A review of  
8 the defendant's statements as to what the effect of the evidence  
9 was as to the Regent Street project and Mr. Sankin's role and  
10 Mr. Rosenthal's role, I believe the allocations set forth by the  
11 government fairly summarizes it. It may be from the prosecution  
12 viewpoint, but there's no question that the project had been  
13 rejected, and after Mr. Sankin's interference with Ms. Dean as  
14 well as supported by the senators and other individuals, the  
15 units were eventually granted, and that she eventually was  
16 instrumental in getting the balance of the units as well, and I  
17 think it's accurate as set forth.

18 Paragraph 22, the offense conduct, describing Andrew  
19 Sankin speaking about obtaining units for Puerto Rico and she  
20 referred him to Thomas Broussard, again it involves the trial  
21 testimony can be set forth in the record, but the Court's  
22 recollection is that Mr. Broussard testified defendant suggested  
23 Mr. Sankin work with him. There's no question she testified  
24 Mr. Sankin needed experience and he should go to someone who he  
25 could learn from and that Mr. Broussard was the one that was

1 referred to.

2 Paragraph 23, that the defendant agreed to send  
3 Mr. Broussard 150 units for Puerto Rico and could get him 150  
4 more if he wanted, the defendant disputes this, saying the 300  
5 units were already in Puerto Rico and that is an inaccurate  
6 statement. There's no question in the Court's mind that  
7 Mr. Broussard thought he had the 150 units to dispose of as he  
8 wished. Whether or not they were already in Puerto Rico  
9 because they had been taken away from another developer or had  
10 to be sent from the home office, I think, is not material, and  
11 I'll accept the probation officer's statement.

12 Paragraph 25, as to the 260 units awarded to San Juan,  
13 again this is Mr. Broussard's testimony that is in the record.  
14 Defendant may dispute that, but it's in the record, and I'm  
15 going to accept the probation officer's report of that.

16 Paragraphs 26 and 27, as to the 172 units to P.G.  
17 County PHA and Mr. Shelby and Mr. Sankin meeting with the  
18 defendant about these, the defendant denies she did that, states  
19 it's inaccurate to say that Shelby contacted others regarding  
20 Foxglenn. There is evidence certainly that came out that  
21 Mr. Sankin was awarded these units, in essence, and that the  
22 defendant had discussed these with Mr. Sankin or Mr. Shelby, and  
23 I again do not believe it's an inaccurate recitation of the  
24 evidence in paragraphs 26 and 27.

25 Paragraph 28, the presentence report said the

1 defendant had 88 units designated to P.G. County. She denies  
2 that she did it, but Mr. Demery, the assistant secretary, and  
3 General Counsel Dorsy were there, and it was concurred on by  
4 Pierce. Mr. Dorsy had testified that she was associated with  
5 these projects and they were approved. He was not aware of  
6 Secretary Pierce's information.

7           There's no question that others were there. There was  
8 testimony about this committee that was set up to review these  
9 applications at a later time, although the testimony was that  
10 each had their own pet projects, at least Mr. Demery and  
11 Ms. Dean did -- I don't know about Mr. Dorsy -- already on a  
12 list when they came to this meeting to be approved, and I do not  
13 think that evidence set forth by the probation officer is  
14 inaccurate.

15           Paragraph 31, as to the defendant informed Mr. Kitchin  
16 he'd receive units and he went to find a developer, defense  
17 submits the following testimony from Mr. Kitchin that's set  
18 forth on page 50 of the presentence report. He said he talked  
19 to her about housing for Atlanta and he would like a chance to  
20 get a specific number of units in Atlanta for a particular  
21 developer, and the defense wants to add in there he talked to a  
22 lot of different people about these units.

23           There's no question that Mr. Kitchin worked with  
24 Ms. Dean and that as a result had certain units made available.  
25 I also think the presentence report should be amended to reflect

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.)  
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CERTIFICATE OF THE REPORTER

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



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Anneliese J. Thomson