

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

1 UNITED STATES OF AMERICA, . Criminal No. 92-181-01  
2  
3 vs. . Washington, D.C.  
4 . February 25, 1994  
DEBORAH GORE DEAN, . 10:00 a.m.  
5  
6 Defendant. .  
7 . . . . .

8 TRANSCRIPT OF SENTENCING HEARING  
9 BEFORE THE HONORABLE THOMAS F. HOGAN  
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 FOR THE GOVERNMENT: ARLIN M. ADAMS, ESQ.  
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24 (Pages 1 - 35)

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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 Judge Arlin Adams, Bruce Swartz, Claudia Flynn for the government; Stephen Wehner for Deborah Gore Dean; Gregory Hunt and Michael Meczkowski representing the Probation Office.

THE COURT: All right, good morning, counsel. I've had a chance to review this again, and I've met again with the Probation Office to review the calculations, make sure that they're following in accordance with my rulings of yesterday, and I'm ready to proceed today with the sentencing.

I have received a government's supplemental memorandum regarding the sentencing as to an upward departure. I received the defendant's supplemental memorandum as to upward departure after my rulings of yesterday. I've received a letter from Ms. Dean that will be made part of the record along with all the other correspondence that was filed. It showed a copy to the Independent Counsel. I don't know if they've received it or not yet.

MR. SWARTZ: Yes.

THE COURT: You did, all right.

I have also received today a government's opposition to defendant's motion for release pending appeal or, in the alternative, a stay pending appellate review of a denial of

1 release. I think that's all that's come in since yesterday or  
2 the day before yesterday.

3 All right, we're ready to proceed. Mr. Wehner, I'll  
4 start with you to see whether there are under rule 32 any  
5 further objections as to material factual issues under the  
6 guidelines that we have not ruled upon just to make sure we've  
7 considered this under the rule, all these issues, beyond what  
8 we've already heard. I take it there is nothing else that  
9 you're aware of that you wanted the Court to consider?

10 MR. WEHNER: Not that you haven't already ruled upon,  
11 Your Honor.

12 THE COURT: All right. And I believe I've ruled upon  
13 the issues raised by the Independent Counsel in their objections  
14 to the presentence report as I did to the defendant's from my  
15 rulings the other day.

16 All right, now the Court will consider with its ruling  
17 the other day that the guideline 2F1.1 of 1990 is applicable,  
18 that is, the base level of 10 does not apply under the new  
19 guideline, but a base level of 6 under the fraud guideline of  
20 1990, and that the loss provision does not apply directly, that  
21 is, any quantifiable monetary sum.

22 The government requests that the Court should make it  
23 an eight-level upward departure minus the two levels that  
24 account for the abuse of trust adjustment already that I made  
25 plus the two for minimal planning, that it would be appropriate

1 under the application note 9, as the loss does not fully capture  
2 the harmfulness and seriousness of the conduct, including where  
3 the offense caused a loss of confidence in an important  
4 institution.

5 All right, did you want to supplement that at all,  
6 Mr. Swartz, that argument with anything? I have read through  
7 it, and I'm going to hear from the defendant as to any  
8 objections they have about the increase, but I just wanted to  
9 know if you wanted to supplement that argument at all.

10 MR. SWARTZ: Your Honor, we're prepared to submit on  
11 the papers.

12 THE COURT: All right, I appreciate that.

13 All right, Mr. Wehner, you had filed a supplemental  
14 memorandum of law as to departure upward as warranted on the  
15 grounds that the loss does not capture the harmfulness and  
16 seriousness of the conduct and whether if it's warranted an  
17 eight-point departure is appropriate, and I've read your memo.  
18 What did you wish to add to that?

19 MR. WEHNER: Your Honor, I would only state in  
20 addition to that that I believe that the increases the Court has  
21 already applied and the two-point increases for more than  
22 minimal planning and abuse of trust clearly encompass the  
23 conduct in this case and that therefore an additional increase  
24 over and above that already encompassed by the increases the  
25 Court has already ruled upon would be inappropriate, because

1 this is not the rare case that is not encompassed by the  
2 guidelines that the Court has followed.

3           The one issue that takes us out of that rare case,  
4 frankly, Your Honor, is the fact that Ms. Dean did not receive  
5 money. She did not receive a bribe, and there is no indication  
6 that she personally in her own pocket benefited, which I believe  
7 is what is encompassed in terms of that increase that is focused  
8 on.

9           In this case, the people the program was designed to  
10 benefit in fact benefited. It may well be that different people  
11 would have benefited if the program would have been run  
12 differently, but Ms. Dean walked into a situation she didn't  
13 create. Admittedly, she did not handle it well. She handled it  
14 very poorly. She made very significant mistakes in both  
15 judgment and conduct, but to suggest that somehow this was borne  
16 out of greed or her conduct was venal, I do not believe that the  
17 evidence supports the type of rare conduct that should reproduce  
18 an eight-point increase.

19           MR. SWARTZ: Your Honor, may the government be heard  
20 briefly?

21           THE COURT: All right, certainly.

22           MR. SWARTZ: Thank you. Just in response, Your Honor,  
23 it is the government's position, of course, that defendant did  
24 benefit personally, and beyond that, defendant's family  
25 benefited extensively from the schemes that were proved up and

1 were found to be the judgments of conviction by the jury.

2 THE COURT: All right, thank you.

3 All right, the Court is going to make the following  
4 ruling considering all the factors in this case as to whether an  
5 upward departure is appropriate under the guidelines considering  
6 application note 9 in the 1990 guidelines, under 2F1.1.  
7 Application note 9 says, "Dollar loss often does not fully  
8 capture the harmfulness and seriousness of the conduct. In such  
9 instances, an upward departure may be warranted. Examples may  
10 include the following: The offense caused a loss of confidence  
11 in an important institution."

12 In this case, it is evident the defendant's conduct  
13 along with others at HUD caused a major scandal that certainly  
14 eroded the public confidence in HUD, if not in the federal  
15 government. There's no question that individuals were favored  
16 because of political connections and not because of merit in the  
17 federal funding awards and that this conduct of the defendant's  
18 was intentional and serious. It's without question that it  
19 eroded the public's trust in the operations of our government.

20 The Court believes an upward departure is well  
21 warranted under the convictions rendered by the jury in this  
22 case. The Court's rulings, by not applying the present  
23 guidelines of 2C1.7, which the Court had ruled would be  
24 applicable, would start the defendant off with a much higher  
25 base level and with additions would subject her to much longer

1 penalties, but because of the dates of these offenses -- of the  
2 effective date of the guidelines, rather, the Court believes  
3 would pose an ex post facto problem, so the '90 have to be  
4 applied, but the 2C1.7 guideline now in effect reads as if it  
5 was meant for this case.

6 "This guideline applies only to those offenses  
7 committed by public officials or others acting with them that  
8 involve depriving others of the intangible right to honest  
9 services . . . or conspiracy to defraud the United States by  
10 interfering with governmental functions. 'Public official,' as  
11 used in this guideline, includes officers and employees of  
12 federal, state, or local government. 'Official holding a  
13 high-level decision making or sensitive position' includes . . .  
14 prosecuting attorneys, judges, agency administrators,  
15 supervisory law enforcement officers, and other governmental  
16 officials with similar levels of responsibility."

17 In addition, this new guideline states, "Where the  
18 court finds that the defendant's conduct was part of a  
19 systematic or pervasive corruption of a government function,  
20 process, or office that may cause loss of public confidence in  
21 government, an upward departure may be warranted" beyond the  
22 higher base level that is included in this new guideline. The  
23 new guideline is called "Fraud involving deprivation of the  
24 intangible right to the honest services of public officials;  
25 conspiracy to defraud by interference with governmental

1 functions."

2           Because of the nature of the offenses here and the  
3 dates that are applicable, the Court cannot apply that  
4 guideline. However, the Court can certainly consider without  
5 running into ex post facto issues the eight-level increase as  
6 being appropriate.

7           The other comparative or analogous guidelines in the  
8 1990 guidelines that we looked at were the gratuity guidelines.  
9 They didn't provide for an eight-level increase for officials  
10 holding high-level decision making or sensitive positions. The  
11 bribery guidelines in the 1990 guidelines provided the same.  
12 The conflict of interest did not, but the original finding by  
13 the Probation Office was that the gratuity guidelines applied,  
14 so that the eight-level offense increase could apply as well  
15 even on the 1990.

16           Where the guidelines adopted this identical  
17 eight-level increase in the new guidelines for a conspiracy to  
18 defraud the United States, which is the offense here, it seems  
19 that that was the thinking of the commission all along.

20           Because of the offenses in counts 1 and 2 the  
21 defendant was convicted of, which the jury found proven beyond a  
22 reasonable doubt that she, in essence, manipulated along with  
23 others the federal housing program to favor certain friends and  
24 political consultants, and because she was the executive  
25 assistant to the secretary of HUD and the testimony has been



1 without rebuttal that it was in many times a situation where the  
2 secretary was not intimately involved with the decision making  
3 process, even though she was not an assistant secretary who had  
4 the final say-so, the defendant had substantial input into the  
5 process of awardance of these rehab funding matters, and the  
6 guidelines, it seems to the Court, suggests and indeed it's  
7 appropriate to increase the base level in this case by the full  
8 eight-level increase provided minus two for the already incurred  
9 increase of the abuse of trust adjustment, so that the final  
10 level will be as follows in this matter.

11           And this makes a substantial difference, because if  
12 the Court did not increase, the defendant, Ms. Dean, would be  
13 eligible for some type of interim confinement and service of her  
14 sentence at other than perhaps a confinement as normally  
15 contemplated, that is, a jail or penitentiary confinement, but  
16 this increase will make that unavailable.

17           So the Court finds a base offense level to counts 1  
18 and 2, which are grouped under United States Sentencing  
19 Guideline 3D1.1(d), as the underlying offense is fraud. That's  
20 under 2F1.1, as I ruled the other day. That comes about by  
21 applying, for the record, again the guideline for the offense of  
22 18 U.C.S. 371, 2X1.1. That's a base offense level of 6. A  
23 specific offense characteristics of more than minimal level, a  
24 two-level increase is warranted under guideline 2F1.1(b)(2)(A).  
25 Adjustment for role in the offense is she abused a position of

1 public trust in a manner that significantly facilitated the  
2 commission and concealment of this offense, and there's another  
3 two-level increase under 3B1.3. There is no longer an  
4 adjustment for obstruction of justice based upon the Court's  
5 ruling of two days ago. So that's a base level of 10.

6 We will increase that because the amount of loss,  
7 according to the Court's ruling, did not fully capture the  
8 harmfulness and seriousness of the defendant's conduct, so an  
9 upward departure is warranted for the reasons I've already  
10 given. It's clear that there was a loss of confidence in an  
11 important institution involving her false statements, and it was  
12 essentially non-monetary as to Ms. Dean at least in nature.

13 Therefore, I will use an eight-level increase  
14 warranted for a high government official under 2C1.2(b)(2)(B),  
15 minus a two-level increase for abuse of trust, that's a level 16  
16 for the final offense level.

17 Level 16 in the 1990 guidelines in a criminal history  
18 category of I, that says no prior convictions, is an  
19 imprisonment range of 21 to 27 months. It will carry with it a  
20 supervised release up to three years and a fine of \$5,000 to  
21 \$50,000. This is just addressing counts 1 and 2. So that will  
22 be the ruling of the Court.

23 I'll hear from the parties, beginning with the  
24 government, the Independent Counsel, as to an appropriate  
25 sentence within that range and also as to appropriate sentences

1 for counts 3 through 12.

2 MR. ADAMS: With deference to the Court, it's obvious  
3 from the Court's remarks that you have given a great deal of  
4 thought to the entire sentencing process and certainly to the  
5 guidelines, and therefore I think my remarks should be brief.  
6 You know this case. You know the facts. You sat through an  
7 extensive trial, and your patience has permitted you to read  
8 very extensive briefs. I think this case, given the fact that  
9 there's a single defendant, has been briefed almost as well as  
10 anything I've ever seen and probably as much as you've ever  
11 seen.

12 The only thing I would say is that we all have to be  
13 mindful of the perceptions in the community regarding crime and  
14 the sentences. There is a perception that I have observed and  
15 perhaps the Court has that frequently affluent defendants,  
16 well-connected defendants, defendants who are well educated and  
17 can afford expensive lawyers, do not receive punishments that  
18 are commensurate with punishments that those from minority  
19 communities receive.

20 It is very serious when a young minority representa-  
21 tive goes into a liquor store and steals a couple of bottles of  
22 liquor, and he should be punished, and the courts do punish him.  
23 But the consequences of that conduct really pale in comparison  
24 with what the public perceives when an affluent defendant, well  
25 educated, without any economic pressures whatsoever, distorts an

1 entire department, certainly a program under the department,  
2 that was designed to help the less-advantaged people in our  
3 community, and that's what happened.

4           This entire department was seriously jeopardized for  
5 more than four years. From what I hear, it still has not  
6 regained its former composure. Confidence in these programs has  
7 been seriously eroded. There are very few programs today for  
8 low-cost housing to help the less fortunate in our country,  
9 which is a major, major problem. There are some people who  
10 believe that it's one of the core problems creating a good deal  
11 of the pervasive crime.

12           So that what happened here is not another infraction,  
13 but a very serious infraction that impacts on the entire  
14 community, not only the District of Columbia community, which  
15 is, of course, very important, but the national community. And  
16 the Court in its sentencing, of course, as it always does, sends  
17 a community -- a message to the community as to what is viewed  
18 as serious, less serious, and not so serious, and it's because  
19 of those considerations that I would urge that the Court  
20 consider the higher end of level 16 which it's now determined.  
21 Thank you.

22           THE COURT: All right. Thank you, Mr. Adams.

23           Mr. Wehner, I'll hear from you, sir, and then from  
24 Ms. Dean.

25           MR. WEHNER: Thank you, Your Honor. With all due

1 respect, Your Honor, I disagree with the eight-count increase in  
2 terms of the finding of the level 16. I think that it is highly  
3 excessive given the fact that the calculation reached by the  
4 Court previously clearly encompasses the conduct for which  
5 Ms. Dean stands convicted and recognize the Court can have a  
6 difference of opinion on those issues, but I would like the  
7 Court to please consider the following, and I will rebut Judge  
8 Adams' statement at the same time, if I may.

9 Ms. Dean is deserving of justice based upon the facts  
10 of the case. Ms. Dean is not deserving of some different breed  
11 of justice because she happens to not be a member of a minority  
12 group who stole money from a liquor store. She's entitled to  
13 the same deference, same compassion, and the same understanding  
14 from the criminal justice system that any other defendant can  
15 find in this courtroom, and I frankly find it insulting to the  
16 system for Judge Adams to suggest that somehow Ms. Dean does not  
17 get the same kind of justice from this Court or any other  
18 courtroom in this courthouse that anyone else has the right to  
19 expect.

20 Ms. Dean -- and with all due respect, Your Honor, to  
21 the extent it matters, I'll just make one factual correction.  
22 Ms. Dean is basically bankrupt, and her family is bankrupt. Now  
23 I say that not because it's relevant. I say that only to  
24 correct the record.

25 This case should be determined in terms of a sentence,

1 Your Honor, based upon the evidence that was taken and listened  
2 to at trial, and you should be able to substitute X for  
3 Ms. Dean. But at sentencing, you need to look, I think, at what  
4 was proven at trial and then add to that, which the Court has  
5 clearly already determined, how the sentence can be appropri-  
6 ately set for this defendant.

7           Given Your Honor's ruling on the eight-level increase,  
8 there is absolutely no reason, given the facts that were proven  
9 in this case, to increase the sentence over and above the lowest  
10 possible level, no reason based upon status or power or white or  
11 black. It just doesn't exist. If there is deterrence, which I  
12 believe I can infer from what the Court was focusing on your  
13 remarks previously, in this matter, a 21-month sentence sends  
14 that signal about as convincingly as it can be sent.

15           I submit to the Court and I beg the Court to  
16 reconsider the entire eight-level increase, because as your  
17 Court recognized -- as the Court recognized, that indeed is a  
18 dramatic increase in terms of the, the options that are  
19 available to the Court at sentencing, and when the Court assumes  
20 that entire increase, nonetheless decreasing that by the two  
21 points as previously discussed, it's very difficult within the  
22 sentencing guidelines as they are drafted to find alternatives,  
23 as the Court pointed out.

24           I would also suggest to the Court that based upon the  
25 letter that Ms. Dean submitted to the Court, that there is a

1 basis in that letter for the Court to re-review the issue in  
2 terms of acceptance of responsibility and in terms of whether  
3 she should be eligible for the two-point reduction in terms of  
4 her statement to the Court, which was provided to Judge Adams.

5 I think this case represents a very difficult  
6 situation, because the facts in this case are largely  
7 circumstantial, and they can be interpreted in different  
8 fashions. There is no doubt that the Court is correct and Judge  
9 Adams is correct that the facts taken in the light most  
10 favorable to the Independent Counsel show a systematic  
11 corruption of the government process.

12 At the same time, Your Honor, Ms. Dean was a very  
13 young lady when she undertook this position. She was 31 years  
14 old. She was beset with a very high position in which she  
15 clearly did not have the experience that was necessary to handle  
16 it. What she should have done in retrospect is had nothing to  
17 do with the Moderate Rehabilitation program. Maybe she could  
18 have continued to do her job.

19 Those aren't said in terms of excuses, Your Honor, but  
20 I would request that you reconsider the eight-level increase, I  
21 request that you consider the decrease by two points for  
22 acceptance of responsibility, and with the Court's permission, I  
23 request that you allow Ms. Dean to self-report if your sentence  
24 includes a sentence of incarceration. I request that you  
25 recommend that the designated institution be Lexington,

1 Kentucky, which seems to be appropriate. I request that you  
2 allow her to continue on bond. And I think that summarizes our  
3 position, Your Honor.

4 THE COURT: All right.

5 All right, Ms. Dean, would you have anything to  
6 address the Court? I have received your letter, and I've  
7 reviewed it carefully, and I think that that should be made part  
8 of the record in this case. Would you like to come to the  
9 podium and address the Court?

10 THE DEFENDANT: Yes.

11 THE COURT: And I'll refer to the letter in a few  
12 minutes further.

13 All right, Ms. Dean, you have an opportunity to  
14 address the Court and make your statement before the Court has  
15 to pass sentence upon you for the convictions that have been  
16 rendered against you in this matter.

17 THE DEFENDANT: I spent the entire day yesterday  
18 writing that letter, and I hope that it will tell you how I feel  
19 and anything that I could say here today, so I have nothing  
20 further.

21 THE COURT: All right. Thank you, Ms. Dean.

22 For the record -- thank you, Ms. Dean. You can stay  
23 there with Mr. Wehner for a second. I tell you, why don't you  
24 sit down for a minute, because I'm going to have a ruling to  
25 make, and it will take a minute.



1           One, the letter of February 24, 1994, that will be  
2 filed as part of the record this Court received from the  
3 defendant. It's a page-and-a-half letter indicating to the  
4 Court that Ms. Dean, while contesting vigorously the charges  
5 against her and disagreeing with the factual conclusions drawn  
6 by the Independent Counsel and the jury, she recognizes she had  
7 made significant and serious mistakes, recognized these mistakes  
8 have harmed people she cared about and have caused people to  
9 believe less in the integrity and honesty of their government  
10 and the people who serve in it.

11           She recognizes that people of the United States have a  
12 right to expect the programs administered by the government are  
13 handled in a manner that is consistent with the law and the  
14 representatives in government would discharge their  
15 responsibilities with honor and integrity.

16           Ms. Dean states she failed to maintain the proper  
17 degree of separation between her public and private life that  
18 every public official should maintain, that she was young,  
19 impassioned, inexperienced, and overly trusting of people when  
20 she came to HUD and did not question people's motivations, and  
21 that she should have handled her relationship with others  
22 differently. She should not have entertained inquiries from  
23 John Mitchell on any HUD matters, inquiries from Colonel  
24 Brennan, or anyone else connected with or someone close to her  
25 family.

1 She should have distanced herself from Mr. Shelby,  
2 Mr. Sankin as well, and she did not do her part to curb the  
3 oppressive influence from various politicians, consultants, and  
4 others that they had on this or other HUD programs.

5 She acknowledged previously and does again that her  
6 involvement with Mr. Kitchin was the worst mistake in her life,  
7 and her own judgment should have told her better that it was  
8 wrong.

9 She said she cannot find the words to express the  
10 sadness that she feels and that she knows she could not make  
11 these verbally, so she wrote this letter instead as her  
12 statement basically to the Court at the time of sentencing. She  
13 felt she had went to HUD out of a desire to serve the  
14 disadvantaged in this country but that she understands service  
15 with her country means service with honor and that what she  
16 mourns more than anything else is the dishonor that's been cast  
17 upon herself, her family, and a department whose missions she  
18 heartily admires.

19 That will be made part of the record. Thank you.

20 What the Court has today is the duty to sentence  
21 Ms. Dean in accordance with its rulings of the lengthy  
22 presentence hearings that we have had as to the guideline  
23 application and as to the other ten counts that are not covered  
24 by the guidelines in accordance with the Court's ruling.

25 As a basis for its ruling, reflecting on the remarks

1 by Mr. Adams and Mr. Wehner and Ms. Dean, there is no question  
2 that the trial brought forth there was systematic corruption of  
3 the government process at the Department of Housing and Urban  
4 Development in the past years. It was a program passed by  
5 Congress but poorly implemented by the Executive. It's a  
6 program where not just Ms. Dean, who was a staff person, who had  
7 no legal authority to issue any documents that were binding, but  
8 had to have an assistant secretary sign off or a deputy  
9 assistant secretary, that has resulted in various individuals  
10 who had those positions pleading guilty, Mr. DeBartolomeis,  
11 Mr. Demery, other less involved people as well.

12           Mr. DeBartolomeis, who pled guilty to conspiracy and  
13 illegal supplementations of an official salary and making false  
14 statements, was sentenced to one year probation to run on all  
15 counts concurrent, a fine of \$750, and he was an assistant  
16 secretary of HUD. He was given that sentence because of his  
17 cooperation with the Independent Counsel.

18           Mr. Demery has pled guilty to one count of illegal  
19 receipt of a gratuity and a count of obstruction of justice and  
20 has not been sentenced but is cooperating with the Independent  
21 Counsel.

22           Philip Winn, who was involved as a developer as well  
23 as formerly with HUD, has pled guilty to conspiracy and has not  
24 been sentenced but is cooperating. Other officials have been  
25 charged and convicted after trial, Lance Wilson being one who

1 was convicted of only one count of an illegal gratuity and  
2 sentenced. He's out pending appeal now on bond.

3           It is apparent from the testimony at trial that once  
4 this program was put into effect, that the institution at HUD  
5 was subject to great manipulation by those in positions of  
6 influence either in Congress or in the private sector, who had  
7 political ties and political power. It is evident from the  
8 testimony that it was historic at HUD apparently to make awards  
9 to help out various members of the majority party at that time  
10 or at least to the political party in the Executive Branch at  
11 least, to their advantage.

12           Listening to the testimony of the consultants that  
13 descended upon the HUD with this discretionary funding and rehab  
14 that became available under Secretary Pierce and apparently  
15 other programs that existed in the past somewhat similarly and  
16 the political interference in the awarding of these programs,  
17 it's sort of like locust descending on a lettuce patch in their  
18 approach to the goods that were to be gained from the program.

19           It is apparent to the Court that some of this  
20 influence was brought to bear to make these various awards, and  
21 it was not only brought about by the developers attempting to  
22 use Washington contacts, which has been with us since we've had  
23 our government for over 200 years and is not per se wrong, but  
24 perhaps brought about by a frustration with the bureaucratic  
25 maze and intransigence and Byzantine regulations and long delays

1 inherent in the process of attempting to obtain funds for  
2 various programs at HUD.

3           That does not excuse a favortism. At the best, it  
4 could be described as the worst corrupt awarding of these  
5 contracts or these rehab awards, these moderate rehabilitation  
6 awards that was given, according to the testimony in this case,  
7 to individuals who had access to Ms. Dean and to others at HUD  
8 who have pled guilty or have been accused as unindicted  
9 co-conspirators and have testified under grants of immunity. It  
10 is evident there was a lack of leadership at the highest levels  
11 and a failure to give appropriate direction at HUD during those  
12 particular years.

13           What concerns the Court the most and is part of the  
14 rationale for the eight-level increase which forbades Ms. Dean  
15 from going out on probation and makes her serve a term of  
16 imprisonment in a jail, despite the fact she's a first offender  
17 with a spotless record and has done some very good things in her  
18 life, is not the argument that she should be treated differently  
19 than a minority person who appears before Court.

20           Congress sets the laws in the sentencing mechanism in  
21 the federal court these days, and the mandatory minimums give  
22 the Court very little discretion in sentencing a drug defendant.  
23 That simply is not within our purview as judges in the federal  
24 system any longer to have great discretion in sentencing under  
25 the guidelines, under the mandatory minimums in certain

1 offenses.

2           But what gives the Court concern is a sense of honor  
3 that apparently was lost in that particular era at HUD among the  
4 political appointees and not just Ms. Dean, but the others as  
5 well, and how that does corrupt and diminish the quality of  
6 service of the government, and for those young people growing up  
7 who wish to serve in the government or consider what their  
8 government means to them as a private citizen, it's all too easy  
9 today to be cynical when we see examples of the evidence that  
10 came out in this case of how the department operated with the  
11 interference of various Congresspersons as well as these outside  
12 political consultants, many of whom had no knowledge of HUD  
13 business of the development of moderate rehab housing and were  
14 not experts in any such area, but because of their political  
15 influence were perceived to be able to obtain favorable action  
16 on these applications that the developers had filed or would  
17 file and simply got to a position after a while, according to  
18 the evidence, that the moderate rehab units were for awarding to  
19 politically connected individuals who used the right consultants  
20 and had the right people from the Congress and the Senate on  
21 their side and could through connections and through large fees  
22 paid to these consultants, who had no real expertise in the  
23 area, obtain these lucrative moderate rehabilitation awards.

24           One thing should be clear, I think, in the record, and  
25 that is there's no evidence that any awards that were made were

1 made to developers who were not otherwise fully qualified to  
2 receive these awards, and that they did not go to benefit the  
3 areas in the cities and the communities needed. There's no  
4 evidence that, at least in this case -- I don't know about other  
5 cases -- that the developers were somehow unqualified developers  
6 who pocketed these funds illegally.

7           The only evidence is they went to competing  
8 jurisdictions because of a scarcity of funds. There was a great  
9 competition to receive these awards, and they went to areas, all  
10 of which needed housing. It just didn't go by a fair process,  
11 but there's no evidence that the awards did not eventually go to  
12 properties for rehabilitation that did not need it and did not  
13 eventually result in better housing for the disadvantaged.

14           But in today's world, when we see what I think is a  
15 loss in the government that the community feels -- there was a  
16 recent survey in the paper as to truthfulness and who do you  
17 believe, and politicians came out towards the very bottom, a  
18 very low percentage, I think under 10 percent somewhere, and I  
19 think that reflects perhaps the country's feeling, the  
20 community's feeling as to the trustworthiness of their elected  
21 officials, and that also ties in, I believe, with the type of  
22 activities that we heard of in this trial.

23           While I think Ms. Dean -- and I've considered this at  
24 length in the type of sentence that I've structured for her  
25 under both the law and that I'll give as to the other ten counts

1 for which she's convicted -- was wrong, I do not think and I  
2 don't think the evidence supports she was a mastermind of this  
3 whole process and was some brilliant strategist, some  
4 Machiavellian person who was solely responsible for these  
5 awards. That would be to bely the evidence in the case of the  
6 other corrupt assistant secretaries and the other consultants  
7 and the way the program had been established in HUD as well as  
8 by Congress.

9           That is not to diminish her responsibility I think  
10 that she has of late begun to realize. It is too late to give  
11 her two points credit for acceptance of responsibility under the  
12 guidelines, after having gone through a full trial and  
13 testimony. Her exposure would have been much greater had  
14 guidelines applied to other counts that I ruled they did not and  
15 had the charges that she was convicted of in the other counts  
16 been covered by the guidelines.

17           I do believe she was a young, immature individual, who  
18 was given responsibilities far beyond her capabilities at HUD  
19 and should never have been placed in that position and that  
20 there was a total failure to oversee her activities by the  
21 secretary in an appropriate fashion, and I do believe the  
22 evidence shows there were multiple levels of political  
23 appointees at HUD who operated inappropriately in that time  
24 frame.

25           That does not excuse Ms. Dean for her conduct,



1 however, but has perhaps some basis of why she did these things,  
2 because it was one of the things in the Court's mind as to the  
3 motivation involved, and I did not see greed as an underlying  
4 motivation, where you find many of these public corruptions come  
5 from. There were gratuities, there were dinners, there were  
6 lunches, flowers, some presents not of great value, but nothing  
7 of the level that one would consider to be in accordance with  
8 the amount of the awards that were made in this case of millions  
9 upon millions of dollars and the hundreds and hundreds of  
10 thousand dollars earned by the consultants through her  
11 assistance. There's no evidence of any of that in those sums at  
12 least of being given to Ms. Dean.

13 I think the motivation was something different. I  
14 think that her actions exhibited a lack of understanding of her  
15 obligations and responsibilities as a high government official,  
16 total failure to comprehend her duties and obligations to the  
17 country, and an atmosphere that existed of political influence  
18 improperly exercised -- there may be cases where it's properly  
19 used -- and a naivete and an egotism perhaps about herself in  
20 feeling that she was essentially the head person there to make  
21 these decisions and to influence the others and to run the  
22 office as she wished and for which she must be held accountable.

23 For those reasons, the Court is going to pass the  
24 following sentence in this matter upon Ms. Deborah Gore Dean:  
25 It will be the judgment of this Court, Ms. Dean, pursuant to the

1 Sentencing Reform Act of 1984, as in existence in 1990, that  
2 defendant Deborah Gore Dean is committed hereby to the custody  
3 of the U.S. Bureau of Prisons for a term of 21 months on counts  
4 1 and 2, to run concurrently. That is the lowest level allowed  
5 under my eight-point increase that I've given you and does not  
6 allow you to be released on probation or other type of community  
7 confinement, but must be served in a federal institution.

8 Under the sentencing guidelines, there's truth in  
9 sentencing; that means 21 months will be served absent a very  
10 few days. This is an upward departure based upon the nature of  
11 the loss in this case and for the reasons I've previously given  
12 as being appropriate.

13 As to counts 1 and 2, the sentence is concurrent, and  
14 upon your release from imprisonment, you will be subject to a  
15 term of supervised release for two years, to run concurrent in  
16 counts 1 and 2.

17 Within 72 hours of your release from the custody of  
18 the Bureau of Prisons, you will report in person to the  
19 Probation Office to the district in which you're released, and  
20 while on supervised release, you will not commit another  
21 federal, state, or local crime. You will follow all the  
22 standard conditions of supervised release that have been adopted  
23 by the Court, and additionally the following special conditions  
24 will apply:

25 One, you will not possess firearms or dangerous

1 weapons, and two, provide the Probation Office access to any  
2 requested financial information.

3           Additionally, I'm going to penalize you as follows,  
4 finding that you do have some abilities, if not now, through  
5 your capabilities in the future to pay a fine. It is ordered  
6 that you will pay a fine of \$5,000 on counts 1 and 2 in toto.  
7 That fine may be paid in installments to be worked out by the  
8 Probation Office in accordance with your financial means.

9           As to counts 3 through 12, of which you were  
10 convicted, the other conspiracy counts, the counts involving an  
11 illegal gratuity from Mr. Kitchin, perjury counts, and the  
12 scheme to falsify, conceal, or cover up false statements, many  
13 of those run together, counts 5 through 12 basically. Count 4,  
14 the illegal gratuity count, the others are the conspiracy  
15 counts.

16           The sentence on those counts will be under the  
17 sentencing laws that pertained prior to the guidelines'  
18 effective date, since they were committed prior to that time,  
19 and it will be the judgment of the Court as to the sentence  
20 imposed in that case that defendant Deborah Gore Dean will be  
21 sentenced in counts 3 through 12 to serve a term of 21 months,  
22 to run concurrent with the sentence given in counts 1 and 2.  
23 There will be no fine beyond that already imposed in counts 1  
24 and 2 and no additional terms or conditions to that sentence on  
25 counts 3 through 12.

1           Defendant will pay a special assessment for the  
2 conviction on each case of \$50, on each count, for a total of  
3 \$600, which will be due in the next 24 hours.

4           I've expressed the rationale for this sentence,  
5 deeming that it is appropriate, Ms. Dean, because of the  
6 convictions under the guidelines reflecting substantial  
7 systematic corruption of the government process, you have to  
8 serve a period of incarceration in prison. As opposed to those  
9 other individuals who have pled guilty to the same thing and  
10 have been given probation or lesser sentences, this will be the  
11 longest sentence I know of given in the HUD scandal to date.

12           The sentence is not given so much with the thought  
13 that it's rehabilitative, because I do not believe Ms. Dean  
14 would be in the position or would do these actions again, being  
15 older and wiser, but is necessary because of the nature of the  
16 harm to the government and to the community by these actions and  
17 to satisfy the community's need that such actions cannot go  
18 unpunished.

19           It is hoped that those who are serving in government  
20 now in various positions would take heed of this situation and  
21 be apprised of this sentence that the Court deems appropriate in  
22 in circumstance, even though I have a first offender before me,  
23 who many times, unless Congress mandates a mandatory minimum  
24 sentence be imposed, would be eligible for probation in other  
25 circumstances.

1 All right, counsel, there is the matter to take up of  
2 the defendant's availability for bond pending appeal.  
3 Additionally, obviously, Ms. Dean has ten days from today to  
4 file her notice of appeal, and if she can't afford counsel, one  
5 would be appointed for her to represent her through her  
6 appellate process.

7 The government has opposed the motion for the  
8 defendant to remain at large pending appeal. She has asked that  
9 she be released under the law that requires the Court to  
10 consider whether or not there's a substantial question of law or  
11 fact likely to result in reversal under the meaning of Title 18,  
12 section 3143 of the Bail Reform Act for release pending appeal.  
13 The presumption of release pending appeal is the presumption of  
14 a valid conviction, referring to the standards set forth in the  
15 law as to whether or not there's a close question that could be  
16 decided either way.

17 Let me ask Mr. Wehner a couple of questions on that  
18 issue. As to the areas of law or close questions of fact that  
19 could be decided either way that would affect the verdict, how  
20 would that apply as to the Kitchin count in this matter, count  
21 4? You've made some general allegations in your omnibus motion  
22 about perhaps misconduct of the Independent Counsel's trial  
23 attorney in his closing argument that I chastised him for or  
24 their use of witnesses that I critiqued them for, the way they  
25 used them, etc., but what other areas beyond that that should

1 affect the Court's analysis under the Bail Reform Act of whether  
2 Ms. Dean is eligible for being released on bond at this time?

3 MR. WEHNER: In terms of Mr. Kitchin's testimony, Your  
4 Honor, I do not believe that Mr. Kitchin testified that he,  
5 referring specifically to count 4, participated in a conspiracy  
6 with Ms. Dean that resulted in him giving her a gratuity as  
7 provided for under the statute. I think that specifically goes  
8 to counts 3 and 4, which is what the Court's referring to.

9 Secondly, the violations pretrial in terms of the  
10 Brady information obviously go to all counts. It's clear to  
11 me and Your Honor has referred to it as zealousness as opposed  
12 to misconduct. I think there's a very fine line between  
13 zealousness and misconduct, and I think if the Court of Appeals  
14 reviews the record, especially as it pertains to Brady and  
15 especially as it pertains to Mr. Kitchin, because if Your Honor  
16 will recall the Brady material that was provided pursuant to  
17 Mr. Kitchin, he didn't remember whether he'd made -- my  
18 recollection is some of the Brady material provided he didn't  
19 remember whether he'd made such a payment and what the amount  
20 was and whether it had been paid back, and that Brady material  
21 was given to us very, very late in the process, and in fact, the  
22 availability of it was -- its existence was denied before the  
23 trial started by the Independent Counsel.

24 So clearly the pretrial rulings regarding Brady  
25 clearly applied not only to the counts that Your Honor is

1 referring to, but clearly also to the Kitchin counts.

2 I think secondly, Your Honor, I think the attack upon  
3 Ms. Dean's credibility during the closing clearly related to  
4 inviting the jury to disbelieve the entire context of her  
5 testimony, and if the jury had believed Ms. Dean as to the  
6 Kitchin payments, the jury could have found that they were not,  
7 not because of her official status. They could have found that  
8 they were for some other purpose, thus defending as a matter of  
9 fact and law the gratuity allegation.

10 With regards to -- those are the two issues that could  
11 result in a reversal as pertain to the Kitchin count, Your  
12 Honor.

13 THE COURT: All right. At this time, the Court has  
14 before it the motion for bond pending appeal. In looking at  
15 this, I asked as to the status of similar matters. Mr. Lance  
16 Wilson was convicted of a count of gratuity and sentenced to a  
17 period of imprisonment and was, in the colloquial, stepped back  
18 and denied bond pending appeal. He took an emergency appeal to  
19 the Court of Appeals. The Court of Appeals released him in  
20 another HUD matter, holding that he had a substantial or close  
21 question, one that could be decided the other way, disagreeing  
22 with the trial judge's assessment of his situation, and that  
23 involved a statute of limitations issue.

24 There's no question in my mind that the defendant is  
25 not likely to flee or pose a danger to the community and any

1 appeal would not be for the purpose of delay. The issue is  
2 whether or not the various charges of which she's convicted  
3 raise substantial questions of fact or law likely to result in  
4 an order for a new trial or reversal.

5 That puts the Judge somewhat in the anomalous position  
6 of saying he's made error. If you read the statute strictly, I  
7 think the courts of appeal have approached the analysis a little  
8 differently, so we are not totally boxed in as to whether or not  
9 there's a close question or one that could very well be decided  
10 the other way.

11 Quoting the United States, United States v.  
12 Perholtz, at 836 F.2d 555, a 1987 case, referring to an  
13 earlier First Circuit case, United States v. Bayco, 774 F.2d  
14 at 523, an '85 First Circuit case, it is apparent to the Court  
15 that this case is not a simple one, that there are various  
16 issues that could have been decided either way that could affect  
17 the outcome materially of this case as to all counts, that is,  
18 that the statute of limitations is a substantial issue of law,  
19 that the guidelines themselves have presented substantial issues  
20 that could substantially change the sentence if it's determined  
21 they do not apply; for instance, the defendant could be eligible  
22 for parole very early on with this sentence or at least could  
23 have had considerations of probation as to the first two counts.

24 It's apparent that there are questions as to the  
25 effect of certain evidence that was admitted by the Court, such



1 as the documents involving Mr. Sankin being connected up with  
2 Ms. Dean or not and what was known or not prior to their  
3 admission by the Independent Counsel about their reliability;  
4 that there are questions, substantial questions as to the  
5 characterization of Ms. Dean's testimony by the trial counsel in  
6 closing argument; and as to the theories advanced by the  
7 Independent Counsel as to the conspiracies being conspiracies  
8 and the testimony as to the perjuries and what is perjury or not  
9 on the perjury and false statements counts, all of which lead  
10 the Court to believe there are close questions and substantial  
11 issues that can be decided either way upon review, and that  
12 being the fact, the Court will grant Ms. Dean's request for bond  
13 pending appeal under the statute, finding that to be so, and  
14 that she'll not be detained, but released on the same terms and  
15 conditions previously that she has been released on.

16           The matter in the Court of Appeals may take a year to  
17 two years to be resolved. If the defendant is required to serve  
18 her period of incarceration now, she could face the anomalous  
19 situation, which has happened previously and I think is unfair,  
20 of serving a sentence and having her convictions reversed.

21           So therefore under the Bail Reform Act as referred to  
22 by the Court, it believes that the defendant has qualified to  
23 remain out on bond at this time with the findings that I've  
24 made.

25           Mr. Wehner, I don't know if you're going to represent

1 Ms. Dean on appeal or not, but I've advised you here on the  
2 record of her rights to appeal and the timeliness in which the  
3 appeal must be noted or her rights could be waived, and I take  
4 it on you to follow up on that.

5 MR. WEHNER: Your Honor, I've informed Ms. Dean of  
6 that, and she has retained appellate counsel.

7 THE COURT: All right.

8 MR. WEHNER: Your Honor, can I ask again that you make  
9 reference in your judgment that she be ordered to Lexington?

10 THE COURT: I can make a request for it. I cannot  
11 guarantee it.

12 MR. WEHNER: Yes, sir.

13 THE COURT: But at such time as she would have to  
14 report to service of her sentence, I would request that it would  
15 be at Lexington. I would also provide for a voluntary  
16 reporting; that is, she would not be arrested and taken in. She  
17 would voluntarily report to the prison to which she would be  
18 assigned.

19 MR. WEHNER: Thank you, Your Honor.

20 THE COURT: All right, I want to thank counsel for  
21 their hard work on both sides in this case and the efforts they  
22 put into it. Thank you, counsel.


23 We'll stand in recess.

24 (Which were all the proceedings had  
25 at this time.)

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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.

  
Anneliese J. Thomson

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