

Counts One and Two; and

d. The Court imposed concurrent sentences on the remaining, non-Guidelines counts.

2. On May 26, 1995, the Court of Appeals reversed the conviction on one perjury count and all four substantive § 1001 counts alleging misrepresentation and concealment before Congress. The Court of Appeals affirmed defendant's convictions on the remaining seven counts, but found the evidence insufficient to support three fourths of the housing projects alleged in Count One and three fifths of the housing projects alleged in Count Two. United States v. Dean, 55 F.3d 640 (D.C. Cir. 1995). Because the overall sentence was based on the sentences for Counts One and Two, which had been narrowed considerably, the Court of Appeals vacated the sentences on all counts and remanded for resentencing. For purposes of resentencing, the Court of Appeals held that the Sentencing Guidelines should not apply to Count One. The Court of Appeals also provided the following instruction: "[i]n light of our ruling that much of the government's evidence of overt acts in furtherance of the conspiracy alleged in Count Two was insufficient, the district court should reassess whether circumstances still warrant its upward departure." Id. at 667; accord 55 F.3d at 666 and 667 n. 18.

3. Defendant Dean filed a motion with the Court of Appeals

for reconsideration of its affirmance and seeking rehearing en banc. The Court of Appeals eventually denied the motion.

Defendant Dean's petition for certiorari to the Supreme Court was later denied.

4. After the denial of defendant Dean's motion for reconsideration and her petition for certiorari, and following the remand by the Court of Appeals, defendant Dean filed a motion with this Court for a new trial based upon newly discovered evidence. The Court denied that motion at a hearing on February 18, 1997, after which the defendant filed a post-hearing motion to provide additional authority.

5. Defendant also filed a motion to dismiss or for a new trial based upon alleged prosecutorial misconduct. The government moved to strike that motion, and both of those motions remain pending.

6. A revised Presentence Investigation Report was prepared by the Probation Office on November 22, 1996.

7. Defendant Dean has not yet been resentenced.

Joint Sentencing Recommendation

8. The United States and defendant Dean agree with the Sentencing Guidelines calculations set forth in the November 22, 1996, revised Presentence Investigation Report, and, consistent with those calculations, the parties recommend that the Court sentence the defendant as follows:

- a. Under Count Two, the only remaining count governed by the Sentencing Guidelines, the offense level is 10;
- b. In light of the Court of Appeals' opinion, defendant should be sentenced at an offense level of 10, and no upward departure from the sentencing range for level 10 is warranted;
- c. Based upon an offense level of 10, defendant should be sentenced to a term of probation that includes six months of alternative confinement in the form of home detention;
- d. The government will take no position regarding the specific conditions of home detention;
- e. Defendant should be ordered to pay a fine of \$2,000; and
- f. Defendant should be sentenced to concurrent terms on the remaining non-Guidelines counts.

Pending Matters

9. The parties shall withdraw all pending motions at the time of sentencing, and defendant Dean will file no further direct or collateral challenges to her conviction.

Conclusion


10. The parties respectfully request that the Court accept the parties' joint sentencing recommendation and enter an Order: (1) directing that the United States Probation Office prepare an updated Presentence Investigation Report; (2) setting a hearing


to review with the defendant the terms of the parties' agreement;
and (3) setting a sentencing date.


Respectfully submitted,

FOR THE DEFENDANT

FOR THE UNITED STATES


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