

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

DEBORAH GORE DEAN

CR 92-181-TFH

GOVERNMENT'S MEMORANDUM REGARDING
SENTENCING GUIDELINES

Pursuant to the Court's order of February 8, 1994, the United States, by and through the Office of Independent Counsel, submits this memorandum regarding the application of the United States Sentencing Guidelines ("USSG") to this case. As the Presentence Investigation Report ("PSI") correctly concludes, the Guidelines apply to this case, since at least two of the conspiracies were "straddle offenses" that continued after November 1, 1987.

The appropriate sentencing range is not, however, established by the "gratuity" guideline of the 1990 USSG, as the PSI suggests. Rather, the appropriate guideline here is that for "conspiracy to defraud the United States," which was added to the Guidelines in 1991 precisely to cover the conduct for which defendant was convicted. At a minimum, that latter guideline makes clear that it would be improper to depart downward from the

gratuity guideline in order to sentence defendant under the "conflict of interest" guideline.¹

I. The Guidelines Apply Here.

In United States v. Dale, 991 F.2d 819 (D.C. Cir.), cert. denied, ___ U.S. ___, 114 S. Ct. 650 (1993), the Court of Appeals for this Circuit "agree[d] with every circuit which has addressed the issue that the Guidelines apply to offenses that begin before November 1, 1987, and continue after that date." Id. at 853 (citations omitted). This case involves such "straddle offenses." As the Probation Office correctly found, the Sentencing Guidelines apply here at least to Counts 1 and 2, since the co-conspirators in those counts continued to receive payments after November 1, 1987. See PSI at 32. In addition, because the United States continues, even now, to make the Mod Rehab payments caused by the conspiracies charged in Counts 1, 2, and 3, these counts should be subject to the Sentencing Guidelines for that reason as well.

A. Continuing Mod Rehab Payments: Counts 1, 2, and 3 each charged that defendant Dean conspired to defraud and to commit offenses against the United States in connection with the award of funds under HUD's Mod Rehab Program. The indictment alleged, and the government proved at trial, that defendant Dean

¹ Defendant Dean's Omnibus Motion seeks to stay her sentence pending her appeal to the Court of Appeals or, in the alternative, to stay her reporting to a designated correctional facility to allow her to seek a stay pending appeal from the Court of Appeals. Because this requested relief is premature and not ripe for judicial decision, we do not address it in this brief.

facilitated and caused to be facilitated the award of HUD Mod Rehab funds to the clients of her co-conspirators. The parties stipulated at trial that these 15-year Mod Rehab funding payments are still continuing, on a monthly basis, at the present. (Trial Tr. 2138).

Thus, these conspiracies were not completed prior to November 1, 1987, since the Mod Rehab payments that defendant Dean conspired to award to the clients of her co-conspirators are continuing to date. The payments of the HUD Mod Rehab funds to the developers were for a determinate period and were an "objective," not simply a "result," of the conspiracy; the conspiracy thus cannot be considered complete while these funds are being paid out. See United States v. Barsanti, 943 F.2d 428, 436-37 (4th Cir. 1991), cert. denied, ___ U.S. ___, 112 S. Ct. 1474 (1992). At a minimum, it was an objective of the conspirators that these Mod Rehab funds would continue to be paid to the developers until such time as the conspirators themselves had been paid by the developers. Id.

However, in its February 14, 1994 oral ruling denying defendant's motion for judgment of acquittal, this Court rejected the government's position that these continuing Mod Rehab payments extended the conspiracies for statute of limitations purposes. But even if the Court were to find these continuing payments are also irrelevant for Sentencing Guidelines purposes, the Guidelines nonetheless would apply here at least with regard to Counts 1 and 2, since -- as the next section shows -- as to

those counts it is not necessary to rest the Sentencing Guidelines determination on the continuing nature of the Mod Rehab payments.

B. Payments to Co-Conspirators: Under controlling case law, Counts 1 and 2 fall squarely within the Guidelines. As to these two conspiracies, it was not until after November 1, 1987, that defendant Dean's co-conspirators received the final installments of the payments that were one of the chief objectives of the conspiracies.² The conspiracies thus are subject to the Guidelines because they were not complete until after the effective date of the Guidelines. See Dale, 991 F.2d at 853.

The indictment alleged, and the proof showed, that it was a goal of each conspiracy that defendant's co-conspirators would be benefitted and enriched by the conspiracy, through receiving payments from developers for whom they had obtained Mod Rehab funds. See, e.g., Count 1, paragraphs 11, 20; Count 2, paragraphs 13, 22. As a result, the demands for, and receipt of, such payments by defendant's co-conspirators extended the conspiracies, since they were "in furtherance of the conspiracy, [were] within the scope of the unlawful project, and could be reasonably foreseen as a necessary or natural consequence of the

² In contrast, the co-conspirator in Count 3 received all of his payments from his developer-clients prior to November 1, 1987. Hence, application of the Guidelines to Count 3 rests on the continuing HUD payments.

unlawful agreement.'" United States v. Milton, 8 F.3d 39, 48 (D.C. Cir. 1993)(quoting United States v. Sampol, 636 F.2d 621, 676 (D.C. Cir. 1980)). Indeed, those payments were central to the conspiracies.

At the very least, then, the conspiracies in Counts 1 and 2 continued until defendant Dean's co-conspirators received the payments that the conspiracies were intended to provide them. At trial, the government proved, as the indictment charged, that a number of those payments occurred after November 1, 1987.³ Consequently, the conspiracies themselves clearly are "straddle" offenses and, as such, are subject to the Sentencing Guidelines.

Furthermore, it is irrelevant that these payments were made to defendant's co-conspirators, and not to defendant

³ As to Count 1, co-conspirator Louie Nunn, seeking final payment of the total fees due and owing on the Arama and South Florida I projects, wrote to Aristides Martinez on or about May 11, 1990. See Count 1, paragraph 57; Gov't Trial Exh. 61. That letter included an authorization for payment that was executed by Martinez on or about May 16, 1990. See Count 1, paragraph 58, Gov't Trial Exh. 61A. Nunn ultimately received these amounts. See Trial Tr. 255 (Martinez), 1386 and 1391-92 (Nunn).

As to Count 2, the co-conspirators received payments after November 1, 1987 from their developer clients for having obtained Mod Rehab funds for them: on or about December 4, 1987 (the first \$25,000 installment -- see Count 2, paragraph 65; Gov't Trial Exhs. 144, 144B; Trial Tr. 1170 (Sankin)); on or about March 21, 1990 (the second \$25,000 installment -- see Count 2, paragraph 66; Gov't Trial Exhs. 146, 146A; Trial Tr. 1175 (Sankin)); and on or about December 3, 1990 (the final \$25,000 installment -- see Count 2, paragraph 67; Gov't Trial Exh. 146C; Trial Tr. 1172 (Sankin)). See also Sankin's receipt on January 12, 1989 of a \$10,000 payment for his assistance on the Regent Street project.

herself.⁴ In Dale, the Court of Appeals for this Circuit flatly rejected the argument that the Sentencing Guidelines apply only to conspirators who themselves committed overt acts after November 1, 1987. "Instead," the court held, "the defendants had the burden of proving that they affirmatively withdrew from the conspiracy before that date, and because they failed to do so, the Guidelines were properly applied to them."⁵ 991 F.2d at 854 (emphasis added; citations omitted). The Court of Appeals reaffirmed Dale in United States v. Milton, 8 F.3d at 48, and again rejected the argument that each defendant must perform an overt act after November 1, 1987.⁶

⁴ It should be noted, moreover, that at least one post-Guideline overt act involved a payment directly for the benefit of defendant. The indictment charged, and the government at trial proved, that co-conspirator John Mitchell wrote a check on or about December 15, 1987, in the amount of \$3,324.83, in payment for a birthday party for defendant that was attended by HUD consultants and employees. See Count 1, paragraph 80; Gov't Trial Exh. 238. It was a goal of the conspiracy that defendant Dean would seek to use her official position to benefit and enrich co-conspirator Mitchell and that, in turn, co-conspirator Mitchell would provide tangible and intangible benefits to defendant Dean.

⁵ This Circuit has held that a defendant can be considered to have withdrawn from a conspiracy only if there is evidence that she affirmatively acted to defeat the conspiracy. "The statute of limitations begins to run for an individual defendant involved in a continuing conspiracy from the conclusion of the conspiracy unless an individual can show that he withdrew from the conspiracy by an affirmative act designed to defeat the purpose of the conspiracy." In re Corrugated Container Antitrust Litigation, 662 F.2d 875, 886 (D.C. Cir. 1981) (emphasis added).

⁶ The defendant in Milton argued that the Guidelines could not be applied to him because the conspiracy ended before November 1, 1987. But the court noted that, after November 1, 1987, one of defendant's co-conspirators, fulfilling a promise to participants in the illegal scheme, had sent a check to reimburse the participants for their expenses. United States v. Milton, 8 F.3d

As a result, defendant Dean is subject to the Sentencing Guidelines unless she can show that she affirmatively withdrew from the conspiracies charged in Counts 1 and 2. This she cannot do. Indeed, in denying defendant's motion for judgment of acquittal on statute of limitations grounds, this Court held that there was no evidence that defendant had affirmatively withdrawn from the conspiracies. Moreover, the Court also held that the conspiracies continued by virtue of, inter alia, the payments to defendant's co-conspirators. The same conclusions are equally applicable in the Sentencing Guidelines context.

II. The Total Offense Level
Here Is, At A Minimum, 19.

Defendant was convicted of three separate conspiracies to defraud the United States, in violation of 18 U.S.C. §371. The indictments charged, and the proof showed, that defendant conspired to deprive the United States of its right to her loyal and disinterested services, and its right to have HUD's business conducted in an honest and impartial manner; defendant also conspired to conceal and cover up her actions.⁷

In determining the appropriate sentencing guideline to apply to the conspiracies in Counts 1 and 2, the Probation Office

at 48.

⁷ Indictment, Count 1, paragraph 1; accord, id., Count 2, paragraph 1; id., Count 3, paragraph 1. Count 3 of the Indictment, in addition to the objects of the conspiracy contained in Counts 1 and 2, charges a fourth conspiratorial objective -- to give an unlawful gratuity, namely, \$4,000, to defendant Dean.

relied on the 1990 version of the Guidelines, on the ground that the last co-conspirator acts in each of those conspiracies occurred on or before December 3, 1990.⁸ However, the 1990 version of the Sentencing Guidelines -- unlike the current Guidelines -- does not contain a specific guideline for the conspiracy to defraud offense for which defendant Dean was convicted. The Probation Office therefore turned to the sentencing guideline for the payment of an unlawful gratuity, U.S.S.G. §2C1.2, which it determined was the "underlying offense" of the conspiracies charged in Counts 1 and 2 and was the most closely applicable sentencing provision.⁹ Relying on that guideline, the Probation Office concluded that the offense level here, as adjusted, was 19.

We submit that, for several reasons, the appropriate guideline to apply here is §2C1.7 of the current Guidelines, which specifically covers conspiracies to defraud the United States. But even if it is not applied, that guideline makes clear that it would be highly inappropriate to depart downward from the offense level of 19 set forth in the PSI.

⁸ Section 1B1.11 of the Sentencing Guidelines provides that "[t]he court shall use the Guidelines Manual in effect on the date that the defendant is sentenced," unless to do so would violate the ex post facto clause of the Constitution; in such an event, the court should rely on the Guidelines Manual in effect when the offense was committed. U.S.S.G. Section 1B1.11(a), (b)(1).

⁹ Section 2X5.1 of the Guidelines states that "[i]f the offense is a felony ... for which no guideline expressly has been promulgated, apply the most analogous offense guideline."

A. This Court Should Apply Section 2C1.7: Section 2C1.7, which was promulgated by the United States Sentencing Commission in its 1991 amendments to the United States Sentencing Guidelines,¹⁰ is entitled "Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud By Interference with Governmental Functions." It is specifically applicable to violations of 18 U.S.C. §371 -- the primary object of Counts 1 through 3 in this case and the offense for which defendant Dean stands convicted. It provides a base offense level of ten and adjustments based either on the amount of money gained by the co-conspirators or on the defendant's status as a high-level public official.¹¹ In

¹⁰ Section 2C1.7, which became effective November 1, 1991, was amended, effective November 1, 1992. The amendments, reflected in Appendix C, amendment 468 of the Sentencing Guidelines, involved matters not pertinent to the discussion here.

¹¹ Section 2C1.7 provides, in pertinent part:

(b) Specific Offense Characteristic

(1) (If more than one applies, use the greater):

- (A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded \$2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud & Deceit); or
- (B) If the offense involved an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

U.S.S.G. §2C1.7. Here, the large sums gained by the co-conspirators would require the monetary enhancement to be used. See OIC Letter to Gregory Hunt, 1/18/94, at 6 (calculating an 11

the Commentary to §2C1.7, Application Note 5 provides that, "[w]here the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted."

Thus, the conspiracy to defraud guideline reflected in §2C1.7 specifically covers the particular conduct for which defendant Dean was convicted -- conspiracies to defraud the United States. In addition, it explicitly recognizes that inherent in the conduct that it was designed to punish is the possibility that a much more serious harm was inflicted -- the public's loss of confidence in the integrity of its public institutions.

The Probation Office declined, however, to apply this guideline because of ex post facto concerns. PSI at 32. While defendants "are normally sentenced pursuant to the Guidelines that are in effect on the date of sentencing," this Circuit has held that "when an amendment to a Guideline increases the punishment imposed, the ex post facto clause of the Constitution prevents retroactive application of the amended Guideline to crimes committed prior to the effective date of the amendment." United States v. Molina, 952 F.2d 514, 522-23 (D.C. Cir. 1992). But see Miller v. Florida, 482 U.S. 423, 434-35 (1987).

But ex post facto concerns should not prevent application of §2C1.7 here. First, as argued above, the Mod

level increase, for an offense level of 21).

Rehab payments on the implicated projects continued past November 1, 1991; thus, because the conspiracies are ongoing, there is no ex post facto bar. But even if the Court concludes that these continuing payments may not be considered to determine the appropriate time frame, for sentencing guidelines purposes, of defendant Dean's crimes, the Court still could apply the conspiracy to defraud guideline in this case. Unlike the situation in which an existing guideline is amended to provide for enhanced penalties, in this case the Guidelines were deficient in that they did not contain a specific provision to cover defendant Dean's crimes. Thus, the 1991 amendment, rather than enhancing punishment for an existing guideline, simply fills a gap in the sentencing scheme.

B. At a Minimum, the Court Should Look to §2C1.7 for Guidance: Should the Court conclude that §2C1.7 cannot be applied here, it should nonetheless look to that provision for guidance as to the appropriate guideline range. The gratuity guideline upon which the Probation Office relies is at best an inadequate measure of the defendant's conduct.

In the first place, defendant was not charged with, or convicted of, conspiracy to commit gratuities, except in connection with Count 3, which the PSI treats as a non-guideline count.¹² Defendant Dean was convicted of having entered into three conspiracies to defraud the United States, the goals of

¹² Count 3, the Kitchin conspiracy count, charged both a conspiracy to defraud the United States and a conspiracy to commit a gratuity violation.

which were to enrich her family, herself, and her co-conspirators. This is not a case in which the proof showed simply a series of "gratuities" to a government official. Instead, the evidence was overwhelming that defendant Dean was at the center of three sophisticated illegal enterprises that corrupted a federal program for private purposes; and the jury so found.

Defendant Dean's family benefitted greatly from her conspiratorial actions: her "father," John Mitchell, and his company made more than \$240,000; her family obtained the benefit of free services, worth many thousands of dollars, from Andrew Sankin; and she herself received cash (including \$4,000 from Lou Kitchin at a time when she was in great financial difficulty), valuable gifts, and important support for her political ambitions. It is inconsistent with the proof in this case to suggest that all that occurred here were "gratuities."

Since the gratuity guideline provides an insufficient penalty in a case involving crimes of the magnitude of defendant Dean's offenses, the conflict of interest guideline is, contrary to defendant Dean's assertions in her Omnibus Motion, even less appropriate in this case. As an initial matter, defendant Dean was neither charged with nor convicted of a conflict of interest offense. Moreover, as the offense conduct portion of the Presentence Investigation Report demonstrates, this is not a case of a low-level government official who happened to engage in a conflict of interest or who received minor "gifts." The jury

found that defendant Dean was at the center of unlawful schemes that corrupted a major department of the federal government in order to benefit herself and her family. In view of the jury's verdict, it would be highly inappropriate to recast defendant Dean's conduct as merely "conflicts of interest."¹³

Indeed, an examination of the Guidelines themselves commands the conclusion that applying the conflict of interest guideline is unwarranted in this case. The Sentencing Commission emphasized the gravity of corruption offenses in its Introductory Commentary to Part C of Chapter Two, which contains the bribery, gratuity, conflict of interest, and, ultimately, the conspiracy to defraud the United States guidelines:

The Commission believes that pre-guidelines sentencing practice did not adequately reflect the seriousness of public corruption offenses. Therefore, these guidelines provide for sentences that are considerably higher than average pre-guidelines practice.

U.S.S.G. Chapter Two, Part C, Introductory Commentary.

Likewise, §2C1.7 recognizes that a conspiracy to defraud the United States of the honest services of its employees and its right to have its business conducted in a fair and

¹³ Similarly, the PSI's suggestion that a downward departure may be warranted here is particularly inappropriate in light of the fact that section 2C1.7 indicates that the very opposite should occur. Application Note 5 to that section provides that an upward departure may be warranted if the court finds that the defendant's conduct "was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government." That Application Note fits the facts here precisely.

impartial manner is a serious crime that substantially affects the public confidence in its government institutions. Defendant Dean was convicted of having engaged in not one but three of these conspiracies. Given her significant violations of law, she should not, as she asserts, be subject to sentencing under the "conflict of interest" guideline. Section 2C1.7, even if not directly applicable, makes clear that it would violate the intent of the Sentencing Guidelines to depart downward from the gratuity calculation set out in the PSI. To the contrary, the Court should grant an upward departure because defendant Dean's crimes have significantly contributed to the public's loss of confidence in HUD and in government generally.¹⁴

C. The PSI Correctly Calculated the Gratuity

Guidelines: Should the Court conclude that the gratuity guideline is applicable here, it should follow the related calculations of the Probation Office.

¹⁴ The application of the conflict of interest guideline here not only would make a mockery of the jury's verdict, but also would have the ironic effect of making it possible that defendant Dean -- despite having been convicted of twelve felony counts -- could receive a lighter sentence than Leonard Briscoe, who was sentenced to two years' imprisonment following his conviction on two counts of having given gratuities to Dubois Gilliam (then a HUD official), or even Lance Wilson, who was sentenced to six months' imprisonment following his conviction on a single count of having given a gratuity, after he left his position at HUD, to Gilliam. Such a disparity could not easily be explained and would be certain to raise charges of unequal justice. Cf. 18 U.S.C. Section 3553(a)(6) (a factor to be considered in imposing a sentence is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"). Application of the conflict of interest guideline also could result in defendant Dean's receiving a lighter sentence than individuals who have pleaded guilty and have cooperated with the government.

First, as the Probation Office correctly concluded, in calculating defendant Dean's crimes under the gratuity guideline, eight levels should be added to defendant Dean's base offense level for her status as an official holding a high level decision-making or sensitive position. Clearly, defendant Dean - - who, the proof showed, wielded enormous power as Executive Assistant to HUD Secretary Pierce and directed Mod Rehab funding awards to her co-conspirators -- was such an official. See, e.g., Application Note 1 (such officials include, "for example, prosecuting attorneys, judges, agency administrators, supervisory law enforcement officers, and other governmental officials with similar levels of responsibility"). Defendant held a high-level, sensitive position at the heart of HUD.¹⁵

In addition, the Probation Office properly assessed a two-level enhancement of defendant Dean's guideline level for her obstruction of justice at the trial of this matter. Indeed, an adjustment for obstruction of justice is required here not only because defendant Dean attempted to obstruct and impede the administration of justice by her perjury during the prosecution

¹⁵ Defendant is thus completely unlike low-level federal employees who have been held not to be covered by this section. See, e.g., United States v. Stephenson, 895 F.2d 867, 878 (2d Cir. 1990) (although defendant's "duties involved some degree of discretion and required him to possess a security clearance," that "does not set him apart from a multitude of personnel in the federal service"); United States v. Alter, 788 F. Supp. 756, 767 (S.D.N.Y. 1992) (although vested with some degree of discretion and authority, defendant's "position as director of a halfway house placed him at a low level in the Bureau of Prisons hierarchy"), vacated and remanded on other grounds, 985 F.2d 105 (2d Cir. 1993).

of this case, but also because she has continued to obstruct and impede her sentencing by "providing materially false information to a probation officer in respect to a presentence . . . investigation for the court." U.S.S.G. Section 3C1.1 & Application Note 3(h). See Letter of OIC to Gregory Hunt, 1/18/94, at 9-13 (setting out false statements in defendant's submission to Probation Office).

Finally, the Probation Office determined that defendant Dean is not entitled to a two-level downward adjustment for acceptance of responsibility. Defendant Dean bears the burden of showing, by a preponderance of the evidence, that she has in fact accepted responsibility for her crimes. See United States v. Williams, 952 F.2d 1504, 1516 (6th Cir. 1991). One need only read defendant Dean's statement to the Probation Office, which is included in its entirety in the PSI, to see that she continues to disclaim responsibility for her actions.¹⁶

D. The Court Should Look to the Guidelines For Guidance on the Non-Guidelines Offenses: Because defendant Dean's offenses in Counts 4 through 12 of the Indictment occurred before November 1, 1987, they are not subject to the Sentencing Guidelines. Hence, the PSI does not contain recommended sentences on each of those counts. It is the position of the United States, however, that the Court should look to the

¹⁶ The PSI also correctly added a two-level enhancement for multiple gratuities.

sentencing guidelines applicable to those counts for guidance in deciding a proper sentence on these pre-Guidelines crimes.¹⁷

The perjury guideline -- U.S.S.G. §2J1.3 -- provides for a base offense level of 12 and an upward adjustment of three levels "[i]f the perjury ... resulted in substantial interference with the administration of justice." U.S.S.G. §2J1.3(b)(2). "Substantial interference with the administration of justice" is defined, in Application Note 1 to that section, as including "the unnecessary expenditure of substantial governmental or court resources." Certainly defendant Dean's lies to the Senate, whereby she concealed from Congress and the public that HUD's Mod Rehab program was not being administered in accordance with the regulations or by any fair and impartial system, caused such an unnecessary expenditure of the resources of both the government and the court. Even aside from the continued improper allocations of Mod Rehab funds it permitted, the deceit of defendant Dean -- along with that of her co-conspirators and others at HUD -- ultimately resulted in congressional hearings, the appointment of an Independent Counsel, and the investigation and prosecution of this and other cases. Consequently, the 3-level adjustment clearly applies here, which would result in a

¹⁷ The calculation for the gratuity count (count four) would follow that set out in the preceding section, with the exception of the addition of two levels for multiple gratuities.

guideline level of 15 for each of defendant Dean's perjury offenses.¹⁸

Defendant Dean's convictions for her false statements to the Senate -- Counts 6, 8, 10, and 12 -- would be governed by §2F1.1. In its pertinent parts, that section provides for a base offense level of 6 and a two-level increase because the crime involved more than minimal planning. Moreover, pursuant to §3B1.3, an additional two-level increase is warranted because, in committing these crimes, defendant Dean abused her position of public trust as Executive Assistant to HUD Secretary Pierce. The resulting guideline level for each of the false statement counts would be 10.¹⁹

E. Defendant's Actions Caused Harm to the United States: The PSI states that "there are no actual losses in this case, as the Mod Rehab funds were distributed to legitimate enterprises for legal purposes." PSI at 13. To be sure, the Mod Rehab projects involved in this case were built. But that does not mean that the United States and its citizens did not suffer a real loss. By virtue of defendant Dean's conspiracies, scarce housing resources were sent, not to communities selected by HUD on the basis of need, but instead to developers designated by defendant Dean's co-conspirators. The interests of the low-

¹⁸ Because defendant Dean's four perjury counts -- Counts 5, 7, 9, and 11 -- all involve the same victim and the same transaction, they would be grouped pursuant to Section 3D1.2 of the Sentencing Guidelines.

¹⁹ Like the perjury counts, the false statement counts would be grouped under U.S.S.G. Section 3D1.2.

income families of this country had nothing to do with how these funds were distributed. Thus, the country has paid, and is still paying, a very substantial price for defendant Dean's actions.

The country has paid a price in another way as well. Defendant Dean's crimes were serious ones. She abused a high public office for private ends and, in so doing, contributed to the erosion of the public's trust in government. That trust will be further eroded if such a prominent defendant -- a person who had a central role in the HUD corruption that led to a major national scandal -- receives a sentence that suggests that there is no real sanction for corrupting a high government office and then lying about it before Congress, the Court, and the Probation Office.

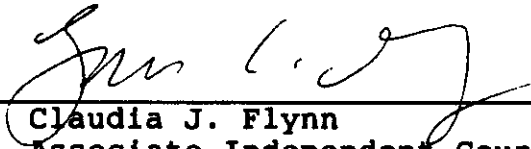
CONCLUSION

Under relevant case law, the Sentencing Guidelines clearly apply to Counts 1 and 2 in this case. In addition, because Mod Rehab payments to the projects implicated in the conspiracy charged in Count 3 of the indictment were paid after November 1, 1987, the Court should apply the Guidelines to Count 3 as well. The sentencing guidelines contained in Section 2C1.7 specifically cover the conduct for which defendant Dean was convicted, and therefore the Court should apply that section of the guidelines to Counts 1, 2, and 3 and sentence defendant Dean accordingly. At a minimum, the Court should follow the PSI's calculations and find that an offense level of 19 is appropriate here, and should not make any downward departures.

Respectfully submitted,

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Dated: February 16, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 1994, I caused a true and correct copy of the foregoing Government's Memorandum Regarding Sentencing Guidelines to be hand-delivered to the following:

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