

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

APPEARANCES:

FOR THE GOVERNMENT: ARLIN M. ADAMS, ESQ.
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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 Meczowski 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 favoritism. 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