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To: Robert.O'Neill@usdoj.gov

Cc: Lee.Bentley@usdoj.gov

Date: Monday, June 15, 2009 02:57 pm

Subject: Web Materials on Misconduct in US v. Dean

Dear Mr. O'Neill:

This note is to alert you to the posting of some additional materials on the internet regarding your actions in the prosecution of *United States of America v. Deborah Gore Dean* and to pose a discrete question regarding an exhibit introduced into evidence in that case.

1. By [letter of July 9, 2008](#), I advised you of the creation of an extensive web page (the [Prosecutorial Misconduct](#) page (PMP) on jpscanlan.com) containing materials related to my efforts between 1994 and 2001 to cause an investigation of the conduct of Independent Counsel attorneys in the prosecution of the *Dean* case and to cause you and other Independent Counsel attorneys involved in that prosecution to be removed from positions later held in the Department of Justice. Further, by emails of [July 14](#) and [July 17](#), 2008, I advised the Department of Justice that there continued to be issues of whether your conduct in the *Dean* case ought to cause your removal from the Department of Justice and whether similar conduct may have affected prosecutions in the Middle District of Florida. If my instructions in the emails were complied with, you should have been provided copies of those emails.

In the ensuing months, in addition to modifying the web page materials in various respects, I made some efforts to cause them to receive widespread attention. In my letter to you dated September 8, 2008, I advised you of the [August 2008 treatment](#) of Independent Counsel conduct on Powerlineblog.com. While the treatment does not mention you by name, it involves your persuading Supervisory Special Agent Alvin R. Cain, Jr. to provide testimony that might have been intended to be literally true but that was used to lead the court and the jury to believe things you knew to be false, and your heavy reliance on the testimony to provocatively assert in closing argument that the defendant had lied in circumstances where you knew with absolute certainty that she had told the truth. This is also the subject of Section [B.1](#) and [B.2](#) of PMP. While the use of Cain's testimony in this matter would itself seem an egregious prosecutorial abuse, in various places I have emphasized the significance of the Independent Counsel's post-trial actions in covering up the nature of your conduct regarding Agent Cain, maintaining that such actions might well constitute obstruction of justice. To my knowledge, you were not involved in the Independent Counsel's post-trial response.

The matter is also touched upon [in Section B.11a](#) of PMP, which involves my complaint to the District of Columbia Bar. There, without addressing the way you and other respondent attorneys in fact responded to my allegations regarding the use of Agent Cain's testimony, I raised the issue of whether those not involved in the response to the matter in the district court would now join an effort to deceive the tribunal in responding to the allegations. The matter is also addressed in the May 31, 2008 document styled "[The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge](#)," which is listed in Section C of PMP (and which discusses several other matters involving efforts to lead the jury or the court to believe things you know or believed to be false).

Recently, in light of the attention given to prosecutorial abuses by Department of Justice attorneys in the case against Senator Ted Stevens, and the Attorney General's representations as to the actions the Department of Justice would take to ensure the integrity of federal prosecutions, by [email of April 9, 2009](#), I raised again with Department issues concerning your conduct in the *Dean* case in the event that conduct was also reflected in cases you prosecuted or supervised on the Middle District of Florida. I also mentioned your situation in a May 12, 2009 [letter to the Honorable Emmett G. Sullivan](#), the judge in the case where Senator Stevens was prosecuted, copying the Attorney General and certain other officials.

In addition, I expanded the materials on PMP page somewhat and added additional pages containing profiles on involved Independent Counsel attorneys, including a lengthy [profile on you](#) and your conduct in the *Dean* case. It, too, gives attention to the use of Agent Cain's testimony, though it also addresses a number of other issues of prosecutorial abuse. The request in my letters of July and September 2008 that you advise me if you think anything I have written is inaccurate or unfair, either with regard to the Cain testimony or any other matter, applies to the recently-posted materials as well.

2. This email also involves a discrete question related to some of the recently-posted materials. Added to PMP is a section ([Section B.9a](#)), which is styled “Developments Regarding the Fabrication of Government Exhibit 25 and Alteration of the Martinez Interview Report.” The section involves certain Independent Counsel actions regarding the referenced government exhibit, a matter also addressed on your profile page. In broad summary, I explain in those places or the places they reference that Government Exhibit 25 in the form provided to the defense – and which may be found [here](#) (with attachment numbers added by me) – was a fabricated document (or, as discussed in your profile (at page 9 in the [PDF version](#)), a document that in any event was intended to be used in a manner that would constitute a fraud upon court). The document had presumably been fabricated to support the false entry in the Superseding Indictment that on January 25, 1984, Louie B. Nunn annotated the Arama consultant agreement to indicate that John Mitchell was entitled to one half the Arama consultant fee and the false inference in the Superseding Indictment that Arama developer Aristides Martinez was aware that Mitchell was to receive half the Arama consultant fee. It appears that such statement and inference were intended, among other things, to facilitate your persuading the court to allow you to elicit testimony from Martinez that he had been told that John Mitchell was related to the defendant Deborah Gore Dean and that she held an important position at HUD. Such testimony was to be supportive of the entry in the Superseding Indictment indicating that Mitchell’s involvement in securing HUD subsidies and his relationship to the defendant were to be touted to developers. See Para. 16 of the Statutory Allegations Section of Count One of the [Superseding Indictment](#).

Government Exhibit 25 was an April 3, 1984 letter from Martinez to Louie B. Nunn transmitting certain attachments. The key item in the exhibit with regard to falsely indicating that Martinez was aware that Mitchell was to receive half the Arama consultant fee was the copy of the consultant agreement bearing Nunn’s annotation (identified as Attachment A in the online copy of the exhibit). As you knew, however, the annotation was added after Martinez sent the letter and Martinez knew nothing about Mitchell’s entitlement to half the consultant fee. As discussed in the profile or Section B.9a, the consultant agreement that was part of Government Exhibit 25 when it was provided to the defense was missing from the copy of the exhibit that Independent Counsel Larry D. Thompson provided to me by [letter dated March 25, 1997](#), representing it to be a true copy of the exhibit that was introduced into evidence.

As also discussed in various places, after the court refused to allow you to elicit the testimony from Martinez that he had been told that John Mitchell was related to Dean and she held an important position at HUD, you instead elicited from Martinez cryptic testimony that he did not know Nunn was hiring anyone else. Independent Counsel attorneys then would rely on that testimony to falsely maintain, not as maintained in the Superseding Indictment that Mitchell’s involvement in securing HUD subsidies and his relationship to Dean were touted to developers, but that Mitchell’s involvement was concealed from developers, including Martinez. (To my knowledge, you did not yourself maintain that Mitchell’s involvement was concealed from Martinez, though in the profile and elsewhere I do give a good deal of attention to your remarks in closing argument about the supposed concealment from Eli Feinberg and Martin Fine of Mitchell’s involvement in securing the Park Towers funding).

In a few places I raised issues about whether the absence of the consultant agreement from the copy of Government Exhibit 25 provided to me by Independent Counsel Thompson indicated that the consultant agreement might be missing from Independent Counsel files. But I also raised the possibility that after a decision was made to create a record that would allow Independent Counsel attorneys to lead the jury or courts falsely to believe that Mitchell’s involvement in securing the Arama funding was entirely concealed from Martinez, you decided to pull the consultant agreement from Government Exhibit 25 before it was introduced into evidence.

Against that background, my question is the simple one of whether the consultant agreement was pulled from Government Exhibit 25 before it was introduced into evidence. Of course, any information you could provide with regard to the interpretations I have set out on this matter (or other matters) here or elsewhere would be appreciated as well.

Finally, while I do not give constant attention to the prosecutorial abuses in the *Dean* case, I trust I have made clear that I will take a variety of measures to make the public and various government officials aware of the nature of conduct by you and other Independent Counsel attorneys in that case. Thus, even if you were to maintain that the descriptions and interpretations of your conduct in the posted materials are false or inaccurate, or, though the descriptions and interpretations are accurate, the conduct does not constitute any sort of prosecutorial abuse, I suggest

that you have an obligation to inform your superiors in the United States Attorney's Office and the Department of Justice of the existence of the posted materials and, in doing so, to candidly advise them regarding the accuracy of my descriptions and interpretations. For the existence of materials has the potential to increase the likelihood that defendants in cases you have prosecuted will raise misconduct issues. The materials also have the potential to generally cause embarrassment to the Office of the United States Attorney and the Department of Justice and to diminish the faith of the public in the integrity of the criminal justice system.

Since I understand that you are a candidate for the position of United States Attorney for the Middle District of Florida, I note that it would also seem appropriate that in seeking support for nomination to that position you reveal the existence of these materials to the persons from whom you seek such support.

While I have posted a great deal of material concerning this matter, I have not posted everything of relevance or even everything that I reference. I have, for example, posted your [opening](#) argument and [closing](#) argument (including [rebuttal](#)) as well as the testimony regarding the Cain matter (as part of the [Barrett](#) document referenced above), but (due to its size) I have not posted the entire trial transcript. If you believe there are trial materials not posted on the site that are pertinent to issues you might raise as to the accuracy of my account, please let me know. If I have them, I will either provide them or post them.

I am taking the liberty of copying this e-mail to the First Assistant United States Attorney, whom I understand to be your immediate superior. As with most correspondence of this nature, I likely will post a copy of this email on my web site as well.

Sincerely,
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cc:
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