

**JAMES P. SCANLAN**  
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January 22, 2000

H. Marshall Jarrett  
Counsel  
Office of Professional Responsibility  
United States Department of Justice  
10th Street & Constitution Ave., N.W.  
Washington, D.C. 20530

Re: United States of America v. Deborah Gore Dean,  
Criminal No. 92-181-TFH (D.D.C.)

Dear Mr. Jarrett:

I received your letter dated January 18, 2000, which you stated was a response to a December 26, 1999 letter that I had sent to the Attorney General and other Department of Justice officials. In explaining your confidence in the Office of Professional Responsibility's handling of what you term my "allegations against certain attorneys from the Office of Independent Counsel who prosecuted Deborah Gore Dean," you again noted that "the Department's institutional concerns about investigating the activities of an Office of Independent Counsel" had guided your review.<sup>1</sup>

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<sup>1</sup> Your letter read:

This Office has been asked to respond to your December 26, 2000 letter to the Attorney General and other Department officials in which you discuss your dissatisfaction with the Office of Professional Responsibility's handling of your allegations against certain attorneys from the Office of Independent Counsel who prosecuted Deborah Gore Dean.

As I explained in my December 20, 1999 letter to you, we are confident that this Office's review, which was guided by the Department's institutional concerns about investigating the activities of an Office of Independent Counsel, was thorough and impartial.

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although we regret that you have concerns about the inquiry, based on the information that you have provided us, we do not intend to investigate this matter further.

The same concern was cited by Michael E. Shaheen, Jr. in responding to me regarding this matter several years ago and by you in your letter to me dated December 20, 1999. That concern was a legitimate consideration at the time of Mr. Shaheen's letter. But, as I explained in the December 26, 1999 letter to the Attorney General, the case is now is no longer being prosecuted by an Independent Counsel. It is now being prosecuted by the Department of Justice. Indeed, the December 26, 1999 letter makes clear that the its addressees were chosen on the basis that they are the Department officials having supervisory responsibility for the continuing prosecution of this case. For you to respond as you did on their behalf is essentially for each of them to say that institutional concerns restrain him or her from inquiring into whether the manner in which he or she is prosecuting the case entails the concealment of criminal conduct.

Moreover, it is my understanding that one of the attorneys to whom you refer to somewhat abstractly as an "attorney[]" from the Office of Independent Counsel who prosecuted Deborah Gore Dean"--namely one Robert J. Meyer--is now the lead attorney in the prosecuting of Deborah Gore Dean by the Department of Justice. You have yet even to acknowledge that my allegations that Mr. Meyer's conduct in prosecuting the Dean case demonstrated that he was unfit to represent the United States were referred to you more than sixteen months ago, much less that it was while you were supposed to be reviewing those allegations that the Department of Justice decided to assign Mr. Meyer to represent it in the continuing prosecution of the case.

Thus, suppose for a moment that I am correct that (a) Independent Counsel attorneys attempted to deceive a court and probation officer in order to conceal that Supervisory Special Agent Alvin R. Cain, Jr. had been coached by Independent Counsel attorneys to give answers under oath that would lead a jury to believe things those attorneys knew to be false; (2) that such effort at concealment constituted the crime of obstruction of justice; and (3) that the continued concealment of the actions of Independent Counsel attorneys in this regard by attorneys now handling the case (including an attorney involved with the original effort to deceive the court) would also constitute obstruction of justice. If that is the case, then each of the Department of Justice attorneys now handling the case could be guilty of such crime. Institutional concerns about investigating activities of an Office of Independent Counsel have no bearing on your responsibility to investigate such a matter. The same holds with respect to my claim, among others, that Independent Counsel attorneys conspired to make a false entry in the Superseding Indictment and introduce a false document into evidence in support of that entry.

In any event, I have for some time been making extremely serious allegations against a number of present or former Department of Justice officials, which I would not do if I did not have strong reason to believe that the allegations are true. I would expect that the Department of Justice and its Office of Professional Responsibility would share my desire that I not make such allegations if they are not true. Yet the Office of Professional Responsibility's actions in responding to me have merely provided additional reason to believe that the allegations are true. As you know, I have maintained that certain statements in Mr. Shaheen's letters to me dated June 28, 1995, and January 30, 1996, were intended to conceal from me the Department's conclusions concerning certain matters. For reasons described in my December 26, 1999 letter to the Attorney General (at 7-8), your letter to me dated December 20, 1999, was at best evasive with respect to the three issues on which I had specifically focused in my November 8, 1998 letter to you. What do you expect me, or anyone, to make of your refusal to address these quite specific issues?

In order to resolve the issue of my dissatisfaction with the Office of Professional Responsibility's handling of this matter without unnecessary further correspondence, let me pose to you just three questions.

1. Do you deny that Independent Counsel Arlin M. Adams and Independent Counsel attorneys Bruce C. Swartz, Robert J. Meyer, and Claudia J. Flynn conspired to deceive a court and probation officer in order to conceal from the court that Independent Counsel attorneys had coached Supervisory Special Agent Alvin R. Cain, Jr. to give answers under oath that were intended to lead the jury to believe things those attorneys knew to be false?
2. Do you deny that Jo Ann Harris conspired with Bruce C. Swartz to make a false entry in the Superseding Indictment and thereafter to introduce a false document into evidence to support that entry?
3. Do you maintain that though this conduct occurred, it does not constitute (a) crimes, (b) serious prosecutorial abuses, or (c) matters that the Department of Justice attorneys now prosecuting the case have an obligation to bring to the attention of the court?

With regard to nos. 1 and 2, I recognize that your true belief may be that you are not completely sure that either proposition is true, though you presumably are confident enough that an investigation would reveal that each is true in its essentials respects. But I think the questions posed are satisfactory means of determining what the Office of Professional Responsibility's review of my allegations revealed.

Should you choose to respond to these questions, I trust you will recognize that any response to nos. 1 and 2 that attempts to mislead me would violate 18 U.S.C. § 1001 and probably be obstruction of justice as well. Moreover, a denial, for example, that the first statement is true on the basis that you do not think Arlin M. Adams was involved would be an effort to mislead me if you otherwise regarded the statement to be essentially true. In any event, since I am quite sure that you do not doubt the essential accuracy of the statements in nos. 1 and 2, I would certainly seek further clarification of any denial.

I suspect, however, that, like Mr. Shaheen, your inclination will be not to respond to these questions. If so, I urge you to consider carefully the implications of a refusal to respond.

Let us assume that while you agree with my interpretation of what occurred, you disagree with my view that such conduct constituted crimes when undertaken or that the continued concealment of such conduct by Department of Justice officials now prosecuting the case would constitute crimes. Let us even assume that the Office of Professional Responsibility regards the described conduct as reasonable prosecutorial tactics. Indeed, suppose you regard these tactics simply as "Prosecution 101," to use a phrase that Assistant Attorney General Jo Ann Harris employed when she defended the Department of Justice against charges that it had interfered with an effort by the Treasury Department to investigate the events at Waco and that she may have used when persuading less experienced attorneys that it was permissible prosecutorial conduct to fail to confront Maurice L. Barksdale and Eli M. Feinberg with information indicating that the testimony the government intended to elicit from them under oath was false or when persuading them that it was permissible to make a false entry in an indictment and to introduce a false document into evidence to support that entry. (Please correct me if any of these characterizations of the tactics decided upon while Ms. Harris was lead counsel in the Dean case is inaccurate). I believe Mr. Shaheen is already on record that, in his view, none of the conduct described in materials I supplied the Department constitutes outrageous government conduct, and you are already on record that, in your view, none of that conduct, individually

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or in the aggregate, would constitute grounds for the termination of a federal prosecutor engaging in such conduct.

Allowing that such is genuinely your view, there would remain an important question concerning your motivation in refusing to acknowledge that my interpretation of the facts is correct. If that motivation is that you do not wish to allow me to use that acknowledgment to secure further inquiry into the conduct of present and former Department of Justice attorneys by courts, congress, or other law enforcement officers, or to use it to further publicize the nature of that conduct--things for which I indeed would attempt to use such acknowledgment--then is not your true motivation for not responding a desire to conceal the nature of that conduct?

To put the matter somewhat more concretely, by referring my December 26, 1999 letter to you for response, the addressees of that letter would appear to have together determined, for example, that if Independent Counsel attorneys did conspire to deceive a court and probation officer in order to foreclose inquiry into whether Independent Counsel attorneys had suborned the perjury of Supervisory Special Agent Alvin R. Cain, Jr., they (the addressees) will attempt to perpetuate that deception in the continuing prosecution of the Dean case. The perpetuation of the deception would be greatly complicated if the Office of Professional Responsibility were to acknowledge that Independent Counsel attorneys did indeed conspire to deceive a court and probation officer in order to foreclose inquiry into whether Independent Counsel attorneys had suborned the perjury of Agent Cain. Thus, I suggest that, if you consider the matter carefully, you must conclude that a refusal to respond to the questions posed is in significant part motivated by a desire to assist in the continued deception of the court and probation officer concerning this and related matter. Further, for a person in your position, is there a material difference between affirmatively choosing words to achieve the desired end of concealing the conduct or refusing to respond in order to achieve the same desired end?

This ought not to be so complicated a matter. I am simply endeavoring to cause the disclosure of the truth. And, while the Department of Justice may have an institutional interest in sometimes concealing its mental processes, in a matter of this nature at least, the Department has no institutional interest in the concealing of the truth. If you participate in the concealment of the truth in the name of the Department of Justice, you are doing the Department as an institution a great disservice.

Sincerely,

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**/s/ James P. Scanlan**

James P. Scanlan

c: Janet Reno  
Attorney General

Eric Holder  
Deputy Attorney General

David Margolis  
Associate Deputy Attorney General

James K. Robinson  
Assistant Attorney General  
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Lee J. Radek, Chief  
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