

ADDENDUM TO NARRATIVE APPENDIX STYLED
"TESTIMONY OF SUPERVISORY SPECIAL AGENT ALVIN R. CAIN, JR."
(September 1995)

At a meeting during the week of December 12, 1994, Associate Deputy Attorney General David Margolis raised the question of whether, assuming that Dean had in fact called Cain, it necessarily followed that Cain's responses to the questions put to him by O'Neill did not reflect his (Cain's) best recollection of the specifics of the call from Dean. In that regard, whatever may be said of Cain's responses to the first and third questions put to him by O'Neill, Cain's denial of a recollection that Dean had called him "mentioning John Mitchell to you and the fact that he made money as a consultant being information within the report" would appear inconsistent with any plausible interpretation of the specifics of Dean's call to Cain. It nevertheless is worth appraising the OIC's conduct based on the assumption, albeit quite improbable, that each of Cain's three denials of recollection was literally correct.

Suppose then that Dean did call Cain and did learn from him that the check was maintained in a HUD field office, but that it is also true that Cain's recollection of what Dean specifically said to him in the call was consistent with his responses to the three questions put to him by O'Neill in court. Presumably, if the OIC fulfilled its obligation to investigate the issues raised in Dean's motion, OIC attorneys did know shortly after Dean filed her motion (if they did not know it earlier) that Dean had called Cain and had learned from him that the check was maintained in a HUD field office. Thus, one is still left with the situation that, on January 18, 1994, though knowing that Dean had made the call to Cain, Independent Counsel Arlin M. Adams wrote the U.S. Probation Officer arguing to have Dean's sentence increased because she had lied in testifying that she made the call. One is also left with the situation that, at the hearing on February 22, 1994, though knowing that Dean had learned that the check was maintained in a HUD field office from her call to Cain, Deputy Independent Counsel Bruce C. Swartz argued to the court that Dean in fact had surmised that the check was maintained in a field office from an entry in the HUD IG report and therefore should have her sentence increased for falsely stating that she learned this from a call to Cain. Indeed, that the OIC believed that it had a rationale by which Cain's statements were literally true is most significant in that it would seem to render it all the more likely that, both when O'Neill elicited from Cain testimony aimed at leading the jury to believe that Dean had not called Cain at all and when he later engaged in inflammatory argument aimed also at leading the jury to believe that Dean had not called Cain at all, O'Neill knew for a fact that Dean had called Cain.

An obvious avenue for further investigation of the matter would be an interview of Cain, questioning him about his communications with OIC attorneys both before and after he testified. The OIC's other actions with respect to the verifying of testimony that was likely to be false suggests that, if in fact the OIC attorneys handling post-trial matters were not aware that Cain had testified falsely prior to receiving Dean's motion for a new trial, upon reviewing that motion and the information provided with it, those attorneys did not confront Cain with such information. The presumptive reason for the

failure to confront Cain would be the fact that those attorneys already knew Cain's testimony was probably or certainly false or that, in any case, they did not wish to chance eliciting from Cain information supporting a belief that the testimony was false. Thus, apart from what an interview of Cain might elicit about the truthfulness of his testimony, it could yield highly significant information about the OIC's actions and motives.

One here needs also to consider the possibility that before Cain testified, he was asked by OIC counsel whether he remembered a call from Dean, with the call then being described in the terms O'Neill would later use in his questioning. If Cain said he did not, one would expect counsel to ask Cain whether Deans' repeated statements that she had asked him about a check refreshed his recollection. If such a question was not asked, it is fair to assume that trial counsel elicited Cain's testimony while believing either that Cain was truthfully testifying that he failed to recall a telephone conversation that did occur or that Cain was falsely testifying that he failed to recall a telephone conversation that he did recall.