**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **UNITED STATES OF AMERICA** | |
| **v.** | **CR 92-181-TFH** |
| **DEBORAH GORE DEAN** | |



**GOVERNMENT'S MOTION TO STRIKE DEFENDANT DEAN'S MOTION FOR DISMISSAL OF THE SUPERSEDING INDICTMENT OR FOR A NEW TRIAL, AND TO STRIKE THE MEMORANDUM IN SUPPORT, AND POINTS AND AUTHORITIES IN SUPPORT THEREOF**

On February 4, 1997, only six weeks after she filed her first motion for a new trial based on allegedly newly discovered evidence, on the day originally scheduled for oral argument on that motion, well over three years after she was convicted, and after full consideration of prior post-trial motions and appeal, defendant Deborah Gore Dean once again moved this Court for post-trial relief. Her present motion seeks dismissal of the superseding indictment or, alternatively, a new trial.[1]

The United States, by and through the Office of Independent Counsel, hereby moves to strike Dean's motion on the ground that the motion is frivolous because Dean is barred from raising at this stage arguments she has previously raised or has waived by not

[1] Dean cites no authority for the proposition that an indictment can be dismissed or a new trial motion granted on the grounds she cites in her motion.

previously raising them. In her motion, Dean improperly repackages certain arguments that have already been rejected by the jury, this Court, and the Court of Appeals, suggests others that were available to -- if not raised by -- her before her appeal of her conviction, and repeats arguments that were raised in her previous motion for a new trial on the basis of allegedly newly discovered evidence. Because Dean's present motion is not based on any additional allegedly newly discovered evidence, it must also be dismissed as untimely under Fed. R. Crim. P. 33, which provides a seven-day jurisdictional limitation on motions for new trial on other grounds.

Additionally, pursuant to Rule 108(e) of this Court's local rules, the government moves to strike the Memorandum in Support of Dean's motion on the ground that the memorandum, which is 107 pages long, grossly exceeds the 45-page limit imposed by Rule 108(e).

I. THIS COURT SHOULD STRIKE DEAN'S MOTION AS FRIVOLOUS.

The Court should strike Dean's motion as frivolous because she has already had a full opportunity to challenge her convictions on all grounds presented in the present motion:

1. It is axiomatic that issues and arguments already decided adversely to a defendant by the Court of Appeals cannot be reconsidered by the district court. See 1B Moore's Federal Practice ¶ 0.404[10] (1994) ("the mandate rule is broader than the law of the case; the district court may no more exceed the directions of the mandate by retrying facts or altering its findings than by disregarding the law as decided by the appellate

court"). See also United States v. Singleton, 759 F.2d 176, 182 (D.C. Cir. 1985) (district court may not reconsider or readjudicate issues addressed on prior appeal); Saunders v. United States, 192 F.2d 409, 410 (D.C. Cir. 1951) (matters raised in defendant's first motion for new trial, which was denied by district court, were "res judicata" when defendant attempted to raise the same matters in a later motion for new trial).

2. Any issues and arguments not preserved and not raised before the Court of Appeals have been waived. See, e.g., United States v. Haldeman, 559 F.2d 31, 78 n.113 (D.C. Cir. 1976) (per curiam) (defendant waived argument by not including it in principal brief on appeal), cert. denied., 431 U.S. 933 (1977). "Adherence to the rule that a party waives a 'contention that could have been but was not raised on [a] prior appeal,' . . . is, of course, necessary to the orderly conduct of litigation." Laffey v. Northwest Airlines, 740 F.2d 1071, 1089-90 (D.C. Cir. 1984) (per curiam), cert. denied, 469 U.S. 1181 (1985) (quoting Munoz v. County of Imperial, 667 F.2d 811, 817 (9th Cir.), cert. denied, 459 U.S. 825 (1982)).

3. The general rule barring relitigation of matters previously raised or which could have been raised does not, however, bar motions for new trial based on allegedly "newly discovered evidence," which may, in certain circumstances, be made after an appeal has been decided. See, e.g., 3 C. Wright, Federal Practice and Procedure: Criminal § 558 at 361 (1982).

Not a single argument Dean sets forth in her present motion

warrants further review under these standards. Each and every one of the arguments has either already been raised and rejected; could have been raised at trial, in post-trial motions, or upon appeal; or was made in her motion of December 24, 1996, for a new trial, which this Court has not yet decided. Thus, her motion is barred by the general principles relating to previous adjudication and waiver and does not fall within the exception for motions for new trial based on newly discovered evidence set forth above.

Dean's 107-page Memorandum in Support of her motion is a manifesto that, first of all, reargues certain factual inferences that the jury was entitled to draw from the evidence, as well as various legal issues already decided. Dean herself admits that she has previously raised these issues, stating, for example, "[w]hen this matter was raised in Dean's motion for a new trial . . . " and "[a]mong the matters previously brought to the court's attention . . . ." Motion, 2/4/97, at 59, 104.

Examples of recycled contentions abound in the motion. Dean refers once again, for example, to (1) the Wilson message slips found in Attorney General Mitchell's files and complains that the government did not categorize them as Brady material or show them to Assistant Secretary Barksdale; (2) the statement in a memorandum referring to "the contact at HUD"; (3) a HUD document, a "faxed rapid reply," and certain statements of Richard Shelby that she alleges should have been turned over as Brady material; (4) certain statements to the Metro Dade Housing Authority; (5) the use of the Sankin credit card receipts; and (6) the alleged perjury of Thomas

T. Demery and Ronald L. Reynolds at her trial.[2] Motion, 2/4/97, at 27-31, 44-45, 53-60, 62-65, 72-83, 93-99, 104-05. She has previously raised these matters in her joint post-trial motions for judgment of acquittal and for a new trial, filed in November 1993.[3] Motion, 11/30/93, at 98-120, 134-43, 145-50, 152-60, 187-91, 194-201. She also repeated certain of these arguments on appeal. See Brief of Appellant Deborah Gore Dean, 8/17/94, at 47 n.27, 48 nn.30-31, 49-51, 51 n.34, 55 n.39. See also United States v. Dean, 55 F.3d 640, 663-64 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 1288 (1996).

The remaining arguments Dean raises in her present motion either could have been raised in earlier proceedings,[4] were raised in her first motion based on newly discovered evidence,[5] which is scheduled for oral argument on February 18, 1997, or both. Consequently, she is barred from raising these issues in her present motion.

For the same reasons, the matters set forth in Dean's motion

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[2] The second and third issues referred to here concern evidence relating to the Park Towers project; the appellate court found that the evidence relating to that project was insufficient to support Dean's conviction on Count One. See United States v. Dean, 55 F.3d 640, 648-49 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 1288 (1996).

[3] Dean also made unsubstantiated allegations regarding race (Motion, 2/4/97, at 16-21) in her post-trial motion (see, e.g., Motion, 11/30/93, at 121-27, 164, 217-19).

[4] See, e.g., Motion, 2/4/97, at 26-27, 45-47, 49-53, 60-62, 68-72, 83-88, 99-104.

[5] Compare Motion, 2/4/97, at 27-45, with Motion for New Trial, 12/24/96, at 7-19.

do not fit within the exception for newly discovered evidence contemplated by Fed. R. Crim. P. 33. Arguments that have either already been raised and rejected or that could have been raised in prior proceedings simply cannot be "newly discovered" evidence. See United States v. Sensi, 879 F.2d 888, 901 (D.C. Cir. 1989) (setting forth five-part test for granting such motions). The present motion therefore violates the time limitation set forth in Rule 33 for motions for new trials on grounds other than newly discovered evidence. That seven-day time limit is jurisdictional. 3 C. Wright, Federal Practice and Procedure: Criminal § 558 at 360; United States v. Reese, 561 F.2d 894, 902 (D.C. Cir. 1977).

The matters set forth in Dean's present motion have already been, or could have been, raised in other proceedings. Because it is not based on any additional newly discovered evidence, this Court also lacks jurisdiction to entertain the motion. Accordingly, the Court should strike the motion as frivolous, without further time-consuming and costly briefing and argument.[6]

## II. THIS COURT SHOULD STRIKE THE MEMORANDUM IN SUPPORT.

Additionally, the government urges the Court to strike the

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[6] Dean's motion is an imposition on the government, and on this Court. In fact, although the government has not sought sanctions in this pleading, courts have imposed sanctions for frivolous litigation when parties have attempted to relitigate issues decided on a former appeal. See, e.g., May Department Stores Co. v. Reynolds, 140 F.2d 799, 801 (8th Cir. 1944) ("the opinion of this court on the former appeal had, for all practical purposes, settled the law of the case"). In addition, this Court also has the authority to impose sanctions under 28 U.S.C. § 1927 and the inherent power of this Court to impose sanctions on counsel who abuse the judicial process. See, e.g., United States v. Blodgett, 709 F.2d 608, 610 (9th Cir. 1983).

Memorandum in Support of Dean's motion because it grossly exceeds the length allowed for such pleadings. Local Rule 108(e) provides that such a memorandum cannot exceed 45 pages without prior approval of the court.

Dean's Memorandum in Support of her present motion consists of 107 pages, accompanied by an appendix of attachments consisting of 300-plus pages. Together, the memorandum and the attachments are nine times the 45-page limit imposed by Rule 108(e) -- without even taking into account the motion for a new trial Dean filed only a few weeks ago, on December 24, 1996, consisting of a 20-page memorandum of law in support of the motion and exhibits of well over 150 pages.

The government should not be required, particularly after Dean has had a full opportunity to challenge her convictions, to expend the enormous amount of time and resources that would have to be devoted to responding to her inflated memorandum. Likewise, the Court should not have to undertake the burden of considering a memorandum of such excessive length and prolixity. See, e.g., Corson and Gruman Co. v. NLRB, 899 F.2d 47, 50 n.4 (D.C. Cir. 1990) (per curiam) (circuit court will not consider arguments contained in portion of brief in excess of page limits of Rule 11(d) of the Rule of the Court of Appeals, since "[t]hese page limits are important to maintain judicial efficiency and ensure fairness to opposing parties").

As far as the government is aware, Dean did not seek prior approval of this Court to file this 107-page Memorandum in Support,

as the local rules require. Accordingly, this Court should strike the Memorandum in Support on the ground of its length.

## CONCLUSION

There is no legal basis for Dean's motion for dismissal or for a new trial. Accordingly, this Court should strike the motion as frivolous, without the necessity of further response from the government. Because this threshold issue should obviate the need for a wasteful, lengthy response to Dean's 107-page Memorandum in Support of her motion, the government respectfully requests expedited consideration of this motion to strike. Additionally, the Court should strike the Memorandum in Support of the motion for violating the Court's local rules setting limits on the length of such memoranda. Finally, in a separate motion filed on this date, the government also requests that the time for its response to Dean's present motion be extended for 30 days, if necessary, after the government's motion to strike is decided.

Respectfully submitted,

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