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HAND DELIVERED **CONFIDENTIAL**

Michael R. Bromwich, Esq.
Inspector General
United States Department of Justice
10th Street & Constitution Ave., N.W.
Washington, D.C. 20530

Re: Request for Expedited Investigation Into the Handling by Department of Justice Officials of Allegations of Prosecutorial Misconduct by the Office of Independent Counsel Arlin M. Adams in the Prosecution of United States of America v. Deborah Gore Dean, Criminal No. 92-181-TFH (D.D.C.)

Dear Bromwich:

This is a request for an expedited investigation into the Department of Justice's handling of allegations of prosecutorial misconduct by attorneys of the Office of Independent Counsel Arlin M. Adams in the prosecution of United States of America v. Deborah Gore Dean, Crim. No. 92-181-TFH (D.D.C.). I made those allegations in materials provided to the Department of Justice and White House Counsel Abner J. Mikva between December 1994 and March 1996 in connection with requests for an investigation of the Office of Independent Counsel and for the removal of Assistant Attorney General Jo Ann Harris and other former Independent Counsel attorneys from positions in the Department of Justice. The Department of Justice officials most directly responsible for the Department's handling of these matters are Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr., Associate Deputy Attorney General David Margolis, and Acting Assistant Attorney General John C. Keeney.

In a letter to Acting Assistant Attorney General Keeney dated October 6, 1997 (at 7) (Attachment 1), I expressed my intention eventually to assert to the Inspector General of the Department of Justice that the Department had failed to investigate my allegations in good faith out of a concern that an investigation would establish that high-ranking officials of the Department had violated federal laws while serving as attorneys for the Office of Independent

Counsel.[1] And I provided Mr. Keeney materials supporting contentions that subsequent to the Department of Justice's last advising me that it refused to take any action in this matter, the Independent Counsel had violated federal law with the actual or imputed knowledge of Mr. Shaheen and other Department of Justice officials.

On February 24, 1997, I mailed to the Department of Justice an extensive Freedom of Information Act request (Attachment 5) concerning, among other things, the employment by the Criminal Division of persons I maintain violated federal laws or otherwise abused their positions as Independent Counsel attorneys in the prosecution of the Dean case, as well as the handling by Mr. Shaheen and other Department officials of my complaints against the Office of Independent Counsel and complaints by other persons supportive of my allegations. As it happened, on the same afternoon I mailed the Freedom of Information Act request in significant part directed to the actions of Mr. Shaheen, Mr. Shaheen announced his retirement from the Department of Justice, indicating, I am led to understand, that he will leave the Department at the end of the year. Because of the imminent departure of Mr. Shaheen, I have decided to raise these matters with you immediately and to request that you give the matters expedited consideration.

Expedited consideration is fully warranted in these circumstances. Apart from the fact that important information Mr. Shaheen possesses can best be secured from him while he remains with the Department, if there is merit to my allegations concerning Mr. Shaheen's prior handling of these issues, he should not be allowed to leave the government without having this matter reflected on his record.

A fuller description of the matters underlying my request for this investigation is set out below. I note, however, that I will shortly be requesting Attorney General Janet Reno to again examine the conduct of the Office of Independent Counsel in the prosecution of the Dean case, both because Department officials did not previously consider the matter in good faith and because developments subsequent to the Department's last communication to me on the matter provide independent justification for reconsideration of the Attorney General's earlier determination. When doing so, I shall suggest that because of the involvement of the Office of

[1] My letter to Mr. Keeney (Attachment 1) sought the removal of Claudia J. Flynn from the position of Chief of Staff to the Assistant Attorney General for the Criminal Division because of her involvement with former Deputy Independent Counsel (now Counsel to the Assistant Attorney General for the Criminal Division) Bruce C. Swartz in deceiving the court in resisting discovery into whether a government agent committed perjury in the Dean case. By letters dated June 10 (Attachment 2), July 6 (Attachment 3), and August 18, 1997 (Attachment 4), written to Ms. Flynn in her private capacity, I had advised Ms. Flynn of my intention eventually to raise with the Department of Justice the appropriateness of her continued employment with the Department. (Copies of the letters were enclosed with my October 6, 1997 letter to Mr. Keeney). Ms. Flynn's absence from the Fall 1997 Federal Yellow Book suggests that she was no longer in the position of Chief of Staff at the time I wrote to Mr. Keeney. I do not know whether Ms. Flynn was still in that position when I wrote to her in June 1997. Ms. Flynn's tenure with the Department of Justice is one of the subjects of my November 24, 1997 Freedom of Information Act request discussed infra, as well as my letters to Mr. Keeney and the Freedom of Information Officer of the Attorney General's Office dated December 5, 1997.

Professional Responsibility, the Office of the Deputy Attorney General, and the Criminal Division in the Department's prior handling of the matter (as well as the involvement of Bruce C. Swartz, Counsel to the Assistant Attorney General for the Criminal Division, in the underlying actions of the Office of Independent Counsel), the reexamination of whether there exist grounds for the Attorney General to seek the removal of the Independent Counsel should be conducted by the Department's Inspector General.

Various of these developments are also relevant to the Inspector General's investigation of the Department's prior handling of this matter. For example, as discussed in many places in the materials I previously provided the Department of Justice, the principal focus of the Independent Counsel's case against Deborah Gore Dean involved Count One of the Superseding Indictment brought against her in July 1992, which alleged that Dean conspired with former Attorney General John N. Mitchell (a person Dean regarded as a stepfather) and others to cause the Department of Housing and Urban Development (HUD) to fund three moderate rehabilitation projects between 1984 and 1986. A substantial part of the misconduct alleged in materials I provided the Department, including the matter addressed in my recent letter to Mr. Keeney, also involved that count.

While Department of Justice officials were still considering the issues I brought to the Department's attention, the court of appeals found that there was sufficient evidence to sustain a verdict as to only one of those projects. At that time the Department possessed information indicating that the principal witness on whose testimony the court of appeals relied to sustain that verdict had given testimony known by Independent Counsel attorneys to be false, and I had urged the Department to verify whether in fact the witness had committed perjury. Materials filed in the Dean case earlier this year seem to establish that the witness in fact did commit perjury. Other matters, including certain of those addressed in Section III infra, appear also to implicate Department of Justice officials at least passively in a continuing pattern of Independent Counsel misconduct.

Thus, whether or not the Attorney General decides to follow my suggestion to have the materials I provide her reviewed by the Inspector General, I will be providing copies of the same materials to you because of their pertinence to your investigation of earlier actions by Department officials.

In light of the recent attention given in American Lawyer and elsewhere to disagreements between you and Mr. Shaheen over the appropriate roles of the Inspector General and the Office of Professional Responsibility, the following observations may be warranted. The interpretations set out in this letter suggest that the Office of Professional Responsibility cannot be relied upon to investigate competently and in good faith allegations of prosecutorial abuse by federal prosecutors. Indeed, with regard to the subject of my recent letter to Mr. Keeney, which I there cited as a principal reason I would eventually persuade the Inspector General that the Department had not investigated my allegations in good faith, on March 11, 1996, I had written to Mr.

Shaheen that if a certain rationale underlaid the Department's basis for taking no action in a matter apparently involving an obstruction of justice and that fact should ever be publicly revealed, the Office of Professional Responsibility would lose any credibility it might have as an objective reviewer of prosecutorial conduct. And, as I explain below, I have since come to understand that such rationale was in fact underlying the conduct of the Independent Counsel attorneys whose conduct Mr. Shaheen was supposed to be reviewing, whether or not Mr. Shaheen relied on it to support his conclusions.

But the Department's prior handling of my allegations suggests not merely that the Office of Professional Responsibility has failed effectively to address prosecutorial abuses. It suggests as well that the very existence of the Office of Professional Responsibility may have undermined a regime of responsible law enforcement by affording an avenue by which otherwise conscientious officials absolve themselves of responsibility for oversight of their subordinates by habitually deferring matters to an entity of presumed competence, integrity, and judgment that either will fail to vigorously investigate allegations of prosecutorial abuse or will fail to honestly report the results of its investigations. I believe many aspects of the Department's handling of my allegations will support that characterization. In order for you to conclude that the characterization is valid, however, you need find no more than that when Michael E. Shaheen wrote to me on January 30, 1996, he was possessed of information demonstrating that Arlin M. Adams, Bruce C. Swartz, and other Independent Counsel attorneys (which inquiry would have revealed to include Robert J. Meyer now of the Criminal Division and Claudia J. Flynn, until recently Chief of Staff of the Criminal Division) had conspired to obstruct justice with regard to the matter addressed in my recent letter to Mr. Keeney.

I recognize, however, that in light of the publicized disagreements between you and Mr. Shaheen, you may face criticism if you are perceived unfairly to question Mr. Shaheen's conduct at the time of his retirement from an ostensibly distinguished career or are seen to opportunistically employ this complaint to enhance the status of the Inspector General at the expense of the Office of Professional Responsibility. Yet, whether or not I have accurately interpreted the roles or motivations of Mr. Shaheen and other Department of Justice officials and whether or not I have correctly interpreted every aspect of the events underlying my allegations, that there was something sorely amiss in the Department's handling of the issues I brought to its attention is a matter about which I do not believe intelligent people, fully informed of the facts, will differ.

Thus, I suggest that the Department of Justice's credibility as an institution is at issue. If I am successful in presenting my version of the Department's conduct to date to a substantial segment of the informed public, that credibility is sure to be seriously damaged. The actions you take upon reviewing the matters I am now bringing to your attention can either commence a process of repairing that credibility or be but a further episode in the decline of an institution ill-served by leaders who believed that a government agency can have institutional interests more important than truth.

That said, please overlook the suggestion that an Inspector General might allow public perceptions to influence the discharge of his responsibilities. I have no basis to suspect that of you personally.

Finally, I note that there exists the possibility that the matters I now bring to your attention may have previously been brought to your attention. Probably they should have been, and Request No. 4.k. of my pending Freedom of Information Act request is an attempt to determine whether they in fact were. If they were, however, that would suggest to me that my request for an investigation at this time will receive less attention than I believe it otherwise might, and I would hence be less inclined to delay other actions in the expectation of appropriate action on your part. Therefore, I would appreciate your informing me at your earliest convenience whether these matters were previously brought to your attention. In the event that you believe the disclosure of such information would be inappropriate, I would nevertheless appreciate your at least informing me that you are not able to comment at this time.

In broad summary, the matter addressed in my recent letter to Mr. Keeney and addressed at length below involves Independent Counsel actions concerning an African-American government agent called as an Independent Counsel rebuttal witness to contradict the emotional testimony of Deborah Gore Dean that she had called the agent in April 1989 to complain of the treatment of former Attorney General Mitchell in the HUD Inspector General's report released that month, and to demand to know whether there existed a check showing that Mitchell had earned a HUD consulting fee as stated in the report. The Independent Counsel relied on the agent's testimony to devastating effect in undermining Dean's testimony before an entirely African-American jury.

Following the verdict Dean moved for a new trial on the basis, among other things, that the agent had committed perjury. I submitted a sworn affidavit in support of Dean's motion, stating that in April 1989 Dean told me about the call to the agent and told me that the agent had told her that a check existed but he did not have a copy because it was then maintained in a HUD field office. Dean argued that if the check was maintained in a HUD field office it would tend to corroborate her story about calling the agent. The Independent Counsel did not respond to this evidence by maintaining that even though Dean had called the agent about a check in April 1989, there existed some rationale by which the agent's testimony was nevertheless literally true. Had the Independent Counsel done so, there is every reason to expect that the court, which during the trial had repeatedly criticized the prosecution for various aspects of its behavior including what the court perceived to be an effort to appeal to the racial differences between the defendant and the jury and which proved to be extremely troubled by other issues raised in Dean's motion, would have dismissed the indictment. There is also reason to believe that the court would have taken measures to see that the involved Independent Counsel attorneys were disciplined.

The Independent Counsel instead maintained that the agent's testimony showed that Dean committed perjury and implied that my affidavit was false. At the same time, the Independent Counsel persuaded the probation officer to recommend a six-month increase in Dean's sentence on the basis that the agent's testimony showed that Dean committed perjury on the stand. In resisting discovery on whether the agent committed perjury, the Independent Counsel continued to maintain that the agent's testimony showed that Dean had committed perjury and that Dean had surmised that the check showing the payment to Mitchell was maintained in a field office through an entry in the HUD Inspector General's Report. The Independent Counsel did not state whether it contended that in April 1989 Dean had surmised that the check was maintained in a field office from the entry in the Inspector General's Report and then falsely told me that she had learned it from the call to the agent, or that it maintained that Dean and I had both recently fabricated our stories concerning the conversations in April 1989. The evident implication, however, is that Dean and I had recently conspired to cause me to give a false affidavit.

The evolution of my thinking on this matter following Associate Deputy Attorney General David Margolis's suggesting to me in December 1994 the possibility that there existed some rationale by which the agent's testimony was literally true even though Dean had called him in April 1989 is reflected in the correspondence described below, particularly in the places where I repeatedly explained to the Department of Justice that the possible literal truth of the agent's testimony did not materially detract from the enormity of the Independent Counsel's actions or make the effort to deceive the court in resisting discovery on the matter any less an effort to obstruct justice. Only on December 3, 1997, however, did I receive specific information that the agent, though considering himself to be highly principled, was persuaded by Independent Counsel attorneys to give certain precise answers and that Independent Counsel attorneys were greatly relieved when cross-examination failed to reveal the circumstances that led the agent to give those answers. Presumably, the attorneys had contrived some rationale by which those answers might be deemed literally true even though the agent remembered the call from Dean.

Thus, at each point when the Independent Counsel relied on the agent's testimony to cause the jury, the court or the probation officer to believe that Dean had committed perjury on the matter--when first eliciting the testimony, when relying on it in closing argument, when opposing Dean's motion for a new trial, when persuading the probation officer to recommend an increase in Dean's sentence, and when resisting discovery--those attorneys knew with absolute certainty that Dean's testimony was true. For that matter, when attempting to lead the court to believe that I had committed perjury in my affidavit, those attorneys believed that my affidavit was true.

As you consider the likelihood that these attorneys acted as I have suggested, it would be useful to keep in mind the documented conduct of these same attorneys concerning other matters in this case, including the instances where they refused to confront government witnesses with information indicating that the witnesses' expected testimony was false and other efforts to lead the jury to believe things Independent Counsel attorneys had reason to know, or knew for a fact,

were false. That conduct suggests that persuading the agent to give a literally true answer that would lead the jury to believe something that was false is precisely the sort of conduct the involved attorneys would engage in.

Of particular relevance is the statement of Associate Independent Counsel Robert E. O'Neill made with regard to his efforts to lead the jury to believe that certain receipts of an individual named Andrew Sankin applied to the defendant Deborah Gore Dean, even though they did not identify her by name or position and even though Independent Counsel attorneys believed, and in some cases knew with virtual certainty, that the receipts in fact did not apply to her. Vigorously objecting to what he perceived as an attack on his integrity, Mr. O'Neill stated:

> Mr. Sankin on direct examination identified receipts. He identified his handwriting on them. Many of them either said Miss Dean's name or some reference to a high level HUD official. If Mr. Wehner wants to cross-examine about that, to show it was not Miss Dean, if he can prove it was not Miss Dean, that's fine.
>
> The government did not say when it was unnamed, it was Miss Dean.

Mr. O'Neill could not deny, however, that the Independent Counsel had intended that the jury should infer that receipts applied to Dean even when the official was unnamed and even when Independent Counsel attorneys knew that the receipt did not apply to her. In any event, the court made clear that it did not consider it permissible to lead the jury to believe something that was false, regardless of what the government said.

Notably, however, upon revelation of facts suggesting that Dean had called the agent and that they had discussed a check, the Independent Counsel was unwilling to tell the court that the agent had never said Dean did not call him to ask about a check or offer some other rationale reconciling the agent's testimony with Dean's statements and my statements concerning the check. And that failure transformed a fraud upon the court to a conspiracy to obstruct justice.

Please also keep in mind that just as other actions of Independent Counsel attorneys reflect on their conduct concerning the agent's testimony, a conclusion that those attorneys persuaded the agent to testify as he did even though he remembered the call from Dean will also aid in the interpretation of other Independent Counsel conduct. More germane to the specific issue I have requested you to address is that Department of Justice officials previously handling the matter certainly would have understood this as well. This point has particular relevance with regard to the matter, referenced in my October 6, 1997 letter to Mr. Keeney (at 7 n.6) and discussed in Section III.A. infra, where subsequent to the Department's prior handling of this matter, the Independent Counsel violated federal law with the knowledge of Department of Justice officials.

The matter concerns an important Independent Counsel witness who repeatedly denied ever having lied to Congress despite having months earlier acknowledged to Independent Counsel attorneys that he had lied to Congress numerous times. In my prior correspondence to the Department I suggested that it was virtually impossible to believe that a rational person in the witness's position would have denied having lied to Congress in these circumstances unless he had been instructed to do so by Independent Counsel attorneys, and I urged those official to question the witness about his pretestimonial discussions with Independent Counsel attorneys. I also suggested that the Independent Counsel had or would falsely represent to the court in the witness's own case that he had testified truthfully in the Dean case, which the Independent Counsel then proceeded to do four weeks after Mr. Shaheen refused to tell me whether the Department of Justice had ever talked to the witness. Once one concludes that Independent Counsel attorneys contrived a rationale that allowed the agent mentioned above to respond as he did even though he remembered the call from Dean, an interpretation whereby Independent Counsel attorneys contrived some comparably strained rationale to allow the other witness to deny that he had ever lied to Congress becomes immensely plausible.

In any case, Mr. Shaheen is on record that his investigation did not find the actions of Independent Counsel attorneys concerning the agent or other behavior of those attorneys addressed in the materials I provided the Department to be outrageous government misconduct or to violate federal law. He can advise you directly of the extent to which the belief that the agent's testimony was literally true underlaid that determination.

Also warranting summarization here, though not addressed below until Section III.B., is the action Mr. Shaheen apparently took when in November 1996 a former employee of the Office of Independent Counsel alleged that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz had destroyed interview reports that did not further the Independent Counsel's case and suggested that Judge Adams and Mr. Swartz had edited interview reports for content. The complaint provided additional reason to act on the allegations I had previously made. The complaint also warranted serious attention in its own right, and special attention when considered in light of the detailed allegations I had previously made.

The record suggests, however, that Mr. Shaheen originally intended to delay any action on the complaint until Deborah Gore Dean was resentenced. When ultimately prompted to take some action by imminent news coverage of the case more than three months after receipt of the complaint, Mr. Shaheen merely forwarded the matter to the Independent Counsel, while having ample reason to know that, however valid the allegations in the complaint might be, they would go unaddressed. Further, in the transmittal letter that would be the only record of the complaint available to the public, Mr. Shaheen eliminated all reference to the most serious allegation of prosecutorial abuse--that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz had destroyed interview reports--and described the allegation concerning the editing of reports to greatly diminish the implication that the reports were edited for content.

Section I (infra at 12-42) describes the principal events following my first bringing these matters to the attention of the Attorney General on December 1, 1994, in seeking an investigation of the Office of Independent Counsel Arlin M. Adams, as well as following my bringing the matter to the attention in White House Counsel Abner J. Mikva in seeking the removal of Assistant Attorney General Jo Ann Harris. It also describes how, following the resignation of Ms. Harris and Judge Adams as well as the court of appeals ruling (all occurring in May 1995), Mr. Shaheen informed me of the Department of Justice's decision to take no action. And it describes my correspondence shortly thereafter to Judge Mikva and Mr. Shaheen, questioning Mr. Shaheen's proffered explanation and posing to Mr. Shaheen certain questions concerning the actions the Department of Justice had taken to investigate the allegations.

Section II (infra at 43-56) describes events between September 1995 and March 1996 concerning my efforts to cause the removal of former Deputy Independent Counsel Bruce C. Swartz and former Associate Independent Counsel Robert E. O'Neill from positions in the Department of Justice and to cause Independent Counsel Larry D. Thompson to correct the abuses of his predecessors. Matters of particular consequence in this section include my making Mr. Shaheen aware that Mr. Thompson now had complete knowledge of all conduct of his predecessors, my confronting Mr. Shaheen directly with the possibility that the Department of Justice's actions were influenced by a belief that the testimony of the government agent mentioned above was literally true, and my demands that Mr. Shaheen inform me if that were the case. That section also addresses the evidence that Mr. Shaheen's January 30, 1996 letter to me itself constituted an effort to conceal that nature of Independent Counsel actions.

Section III (infra at 57-83) describes a number of developments following the Department's last advising me that it would take no action. These development include subsequent Independent Counsel misconduct that occurred or may have occurred with knowledge of Department of Justice officials, Mr. Shaheen's handling of the complaint by the former employee of the Office of Independent Counsel, the employment of Claudia J. Flynn in the position of Chief of Staff for the Criminal Division and my efforts to cause her removal from that position, and my own coming fully to understand that Independent Counsel attorneys knew with absolute certainty that Dean had called the agent even before they elicited the agent's testimony to contradict her.

In the course of the discussion that follows, I will from time to time quote my earlier correspondence at length. I do so partly because it easier than to paraphrase it. But I do so also because an issue of concern to you is the nature of the communications to Department of Justice officials and how those officials reacted to the communications in light of other information that was or could be made available to them. In that context, the words I in fact used present the issue most precisely.[2]

[2] The more crucial documents are provided in hard copy in the attached binder, identified by attachment numbers that correspond with the numbers on the tabbed dividers. The bulk of the referenced material is provided

I. CORRESPONDENCE WITH THE DEPARTMENT OF JUSTICE BETWEEN DECEMBER 1, 1994, AND AUGUST 15, 1995

A. Background

Between December 1, 1994, and January 17, 1995, I provided to the Department of Justice approximately 400 pages of single-spaced narrative material, with extensive supporting exhibits, detailing what I maintained were serious prosecutorial abuses by attorneys in the Office of Independent Counsel Arlin M. Adams in the prosecution of United States of America v. Deborah Gore Dean, Crim. No. 92-181-TFH (D.D.C.), some of which I suggested may involve federal crimes. In the initial transmittal letter (Attachment 9), I advised the Attorney General that while serving as an Associate Independent Counsel, Assistant Attorney General Jo Ann Harris was involved in certain of the matters addressed in the materials. I also informed the Attorney General that I was a close friend of Deborah Gore Dean and that I had filed an affidavit in support of her motion for a new trial.

At the time that I provided these materials to the Department, Deborah Gore Dean stood convicted of twelve felony charges, including three conspiracies, one gratuity, and eight charges of perjury or false statements, concerning actions she had taken while serving as Executive Assistant to HUD Secretary Samuel R. Pierce, Jr. between June 1984 and July 1987 and statements she had made to the Senate Banking Committee shortly after leaving that position. The conviction had followed a six-week trial conducted during September-October 1993.

Just prior to trial Dean moved to dismiss the case when, after representing for more than a year that it was aware of no exculpatory material, the Independent Counsel provided on August 20, 1993, seven pages of material containing summaries of possibly exculpatory statements. At a hearing on August 30, 1993, Associate Independent Counsel Paula A. Sweeney represented to the court that the material had not previously been disclosed because the witnesses had later qualified their statements. Though sharply criticizing the Independent Counsel's failure to disclose the information earlier, the court denied Dean's motion, but warned the prosecution

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on diskettes in WordPerfect 6.0, with correspondence to me in hard copy, in groups of material identified as Attachments 6 through 9. Attachment 6 includes a diskette containing (on Directory M) a complete set of the narrative materials provided the Department of Justice between December 1, 1994, and January 17, 1995, as well as a hard copy index to that directory. Attachment 7 includes a diskette containing a complete set of my correspondence to the Department of Justice between December 1, 1994, and December 20, 1997 (on Directory DOJ), the correspondence to me in hard copy, and a hard copy index to the correspondence. Attachment 8 includes a diskette containing a complete set of my correspondence between September 18, 1995, and December 9, 1997, to Independent Counsel Larry D. Thompson and other attorneys representing the Office of Independent Counsel (on Directory OIC) (exclusive of Freedom of Information Act correspondence), the correspondence to me in hard copy, and a hard copy index to the correspondence. Attachment 9 includes a diskette containing a complete set of my Freedom of Information Act correspondence to the Office of Independent Counsel (on Directory OICFOIA), the principal correspondence to me in hard copy, and a hard copy index to the correspondence. References to correspondence to me will simply be to the attachment where documents are maintained in chronological order.

against any subsequent conduct of a similar nature. The prosecution made no subsequent Brady disclosures.

Following the verdict, Dean had filed lengthy motion for a new trial maintaining that pervasive prosecutorial misconduct had denied her a fair trial. Dean presented evidence that certain Independent Counsel witnesses committed perjury with the knowledge of Independent Counsel attorneys. Relying on Jencks material provided the day trial opened, Dean also argued that the Independent Counsel had purposely failed to make Brady disclosures of information specifically contradicting points the Independent Counsel would seek to prove at trial. For example, the sole evidence that Dean was aware that John Mitchell was involved with a consultant named Richard Shelby in a project called Park Towers was the fact that the day after Dean had lunch with Mitchell and Shelby, Shelby had sent Dean some materials on the project. The Independent Counsel never made a Brady disclosure of Shelby's statement that he went out of his way to ensure that the project was not discussed at the lunch.

The district court agreed with many of Dean's contentions. The court appeared to find that two government witnesses--Thomas T. Demery and Ronald L. Reynolds--had committed perjury with the knowledge of Independent Counsel attorneys, and it criticized the lead trial counsel, Associate Independent Counsel Robert E. O'Neill, for conduct that the court indicated it would not have expected from any Assistant United States Attorney who had ever appeared before it. The court summarized its concerns about the Independent Counsel's actions as follows:

> It evidences to me in the Independent Counsel's Office, where there were Brady requests made a long time ago, statements that there were no Brady materials, which is obviously inaccurate, where these witnesses are put on that I've just reviewed, where there was substantial questions and information that they may not have been telling the truth in the prosecution's files or the prosecution didn't ask if they were telling the truth to make sure they were before they went on the stand, it evidences to me by the Independent Counsel's Office at least a zealousness that is not worthy of prosecutors in the federal government or Justice Department standards of prosecutors I'm very familiar with, and that concerns the Court and is not the first time I've seen it in Independent Counsel cases.

The court also observed that it was almost impossible to evaluate the cumulative impact of the identified abuses, but ultimately concluded that, given the evidence supporting the verdict, the misconduct it had identified was not sufficient to warrant a new trial. The court then sentenced Dean to 21 months in prison.

Dean appealed arguing that there was insufficient evidence to sustain the verdict on any count, that the prosecutorial misconduct required a new trial, and that the court had imposed an improper sentence. Very little of her brief, however, was devoted to prosecutorial misconduct issues, and the arguments presented showed no familiarity with the arguments raised in Dean's

memorandum below that had caused the district court to question the possibility of evaluating the cumulative effect of the identified abuses.

Nevertheless, on November 15, 1994, a lengthy court of appeals argument focused almost entirely on issues of prosecutorial misconduct, particularly the Independent Counsel's Brady violations. Appearing for the Independent Counsel, Deputy Independent Counsel Bruce C. Swartz represented to the court that the Independent Counsel did not intentionally fail to disclose any Brady materials, stating that Independent Counsel attorneys may merely have made mistaken judgment calls. Deputy Independent Counsel Swartz attributed the general approach to the production of exculpatory material employed by the Independent Counsel to Jo Ann Harris, who Swartz noted was now the Assistant Attorney General for the Criminal Division. He also represented that a reexamination of evidence during the preparation for trial had led Independent Counsel attorneys ultimately to disclose certain exculpatory material several weeks before trial. Nothing in Mr. Swartz's statements to the court would suggest that he himself conducted important interviews, where statements were made directly contradicting points on which the Independent Counsel had heavily relied at trial, but which statements were never made part of a Brady disclosure.

The materials I brought to the Attorney General's attention on December 1, 1994, addressed in detail the matters that had been addressed in the district court, pointing out with respect to most of these matters ways in which I maintained that in responding to Dean's allegations, the Independent Counsel had attempted to deceive the court. I also raised a number of other issues that had not been raised in the district court.

The materials were comprised of a 54-page document styled "Introduction and Summary" (Attachment 6, Document M/00-INTRO.C) which attempted to generally address the most important issues in the context of the chronology of the trial. Eleven documents (including a supplementary document delivered on January 17, 1995), termed "Narrative Appendixes" and ranging from eight to 84 pages, treated issues or groups of issues in great detail. Each appendix included a summary of the issues addressed in the appendix, and the summaries were collected together as well. All of the materials are provided on Directory M in Attachment 6. I also include the collected summaries in hard copy (Attachment 11), as well as a copy of my September 18, 1995 letter to Larry D. Thompson (Attachment 12), which I am inclined to believe provides (at 5-22) the most accessible summary of the most important issues. In reading either group of summaries, however, it will be useful to keep in mind that there occurred a number of significant subsequent developments some of which are discussed in this letter.

The materials focused principally on the conduct of four Independent Counsel attorneys: Jo Ann Harris, Bruce C. Swartz, Robert E. O'Neill, and Paula A. Sweeney.

Jo Ann Harris, who was the Assistant Attorney General for the Criminal Division at the time I brought these matters to the attention of the Attorney General, had, as an Associate

Independent Counsel, been lead trial counsel in the case at the time that the Superseding Indictment was issued in July 1992. She was thus lead counsel when decisions were made to include allegations in the Superseding Indictment that were contradicted by witness statements or other information, to fail to make Brady disclosures of information contradicting points the Independent Counsel intended to prove at trial, and to fail to confront certain government witnesses with information indicating that their expected testimony was false.

Ms. Harris would have resigned from the Department of Justice prior to the Department's making a decision relating to my allegations. The date of her resignation letter is unknown, but the announcement in the press would occur on May 19, 1995, two days after I delivered a letter to White House Counsel Abner J. Mikva complaining that Ms. Harris remained in her position almost six months after I had alerted the Department to the nature of her conduct in the Dean case. Though Ms. Harris's resignation appeared abrupt, the press would be informed that she had advised the Attorney General on assuming the position of Assistant Attorney General for the Criminal Division that she (Ms. Harris) intended to serve only two years. Determining whether the complaints I made to the Department of Justice and then to the White House had anything to do with Ms. Harris's resignation is one purpose of my November 24, 1997 Freedom of Information Act request.

Deputy Independent Counsel Bruce C. Swartz had been Ms. Harris's supervisor at the time the Superseding Indictment was issued. He apparently was also quite involved in the development of the case just prior to the issuance of the Superseding Indictment, notably with regard to interviews of Richard Shelby and Eli M. Feinberg concerning a matter not addressed in the district court that would receive much attention in materials and correspondence I provided the Department. Mr. Swartz apparently also closely supervised the trial. Most significant with regard to the principal matter addressed in this letter, however, Mr. Swartz had an important role in defending against the charges or prosecutorial abuse. It was with regard to that role that I would repeatedly maintain to Department of Justice officials, most recently in the October 6, 1997 letter to Mr. Keeney, that Mr. Swartz conspired with other Independent Counsel attorneys to obstruct justice by deceiving the court in resisting discovery concerning whether a government agent had committed perjury.

Mr. Swartz left the Office of Independent Counsel some time following the oral argument in the court of appeals in the Dean case and joined the Department of Justice to become a Special Assistant to Assistant Attorney General Harris in the Criminal Division. He is now Counsel to the Assistant Attorney General for the Criminal Division.[3]

[3] The exact dates various former Independent Counsel attorneys joined the Criminal Division and the positions they held there is a subject of Section A.1. of my Freedom of Information Act request dated November 24, 1997, as well as my letter to Acting Assistant Attorney General John C. Keeney dated December 5, 1997.

Associate Independent Counsel Robert E. O'Neill and Paula A. Sweeney were trial counsel prior to and during the trial and were responsible for all conduct in which they were involved, whether or not they were the principal decisionmakers. Immediately following the trial, each left the Office of Independent Counsel, Mr. O'Neill to return to the Department of Justice as an Assistant United States Attorney in the Middle District of Florida and Ms. Sweeney to become Deputy General Counsel of the Central Intelligence Agency.

An Associate Independent Counsel named Robert J. Meyer was signatory to the Independent Counsel's opposition to Dean's motion for a new trial and would appear on the court of appeals brief. In light of his signing of the former document, which is the only matter as to which I believe I mentioned him in the materials provided the Department, he would have been responsible for any efforts to deceive the courts in that opposition, which I maintained were numerous. The claims I have made against Mr. Swartz and Ms. Flynn in my October 6, 1997 letter to Mr. Keeney concerning the effort to conceal the perjury of a government witness would apply to Mr. Meyer.

I learned only recently that Mr. Meyer holds a position in the Criminal Division, which I now understand he has done since at least 1996, though I do not yet know the position or when Mr. Meyer first joined the Department of Justice. I have not yet advised Mr. Meyer of any intention to bring to the attention of his superiors my reasons for believing that he should not be allowed to represent the United States, nor I have I yet raised that matter with Mr. Keeney or Mr. Meyer's immediate superior.

Associate Independent Counsel Claudia J. Flynn, who was the subject of my October 6, 1997 letter to Mr. Keeney, to my knowledge had no role in the case other than to address certain sentencing issues, which is to say she had an exceedingly limited role in the matter. As reflected in my letter to Mr. Keeney and my earlier letter to Ms. Flynn, however, if my interpretation of the underlying facts is correct, Ms. Flynn conspired with Mr. Swartz to lead the court to believe that the defendant had committed perjury while knowing that the defendant's testimony alleged to be perjured was in fact true. Moreover, Ms. Flynn did so not only to uphold a verdict that had been secured in significant part through a government agent's falsely contradicting the defendant's truthful testimony, but to increase the defendant's sentence by six months on the basis of the false claim that the defendant had committed perjury. Thus, however limited her role, and whether or not I am correct in my view that Ms. Flynn engaged in a conspiracy to obstruct justice, her conduct was unspeakable, and my claims to Ms. Flynn and Mr. Keeney that Ms. Flynn is unfit ever to represent the United States are justified.

It nevertheless will be useful for you to keep in mind as you attempt to determine whether there is merit to my allegations that in all probability Ms. Flynn was simply doing what she was told to do by Deputy Independent Counsel Swartz, a person who remains Counsel to the Assistant Attorney General for the Criminal Division more than three years after I brought this matter to the attention of the Department of Justice.

B. Meeting With Associate Deputy Attorney General David Margolis and the Testimony of Supervisory Special Agent Alvin R. Cain, Jr.

Several days after I initially delivered the materials to the Department, I received a call from Associate Deputy Attorney General David Margolis, who wished to schedule a meeting after he had an opportunity to review the materials. Some time during the week of December 12, 1994, I met with Mr. Margolis and an assistant in Mr. Margolis's office. The meeting principally concerned two subjects.

First, citing institutional concerns Mr. Margolis asked what I thought of the Department's first referring the materials for investigation by Independent Counsel Arlin M. Adams. I stated that Judge Adams seemed to be very implicated in the misconduct and that I did not think that first submitting the materials to Judge Adams would be an appropriate course of action.

The second subject involved the testimony of Independent Counsel rebuttal witness Supervisory Special Agent Alvin R. Cain, Jr., the matter as to which I had filed an affidavit and one with which Mr. Margolis appeared to have some familiarity.[4] Since this is a matter that I suggested to Mr. Keeney would eventually form the basis for my persuading the Department's Inspector General that Department officials failed to investigate my allegations in good faith, I am giving it considerable attention in this letter. My doing so, however, should not be perceived as a suggestion that the numerous other matters addressed in the materials are in any sense minor or even that, when all facts are known, certain of the other matters might not be deemed even more serious than the matter concerning Agent Cain. While if Agent Cain had never testified it is unlikely that I would have ever come to sense the scope of the abuses of the Office of Independent Counsel, most characterizations of the nature of Independent Counsel conduct would nevertheless remain apt.

As noted earlier, a central aspect of the Independent Counsel's case involved the claim that Deborah Gore Dean had conspired with former Attorney General John N. Mitchell and others to cause the funding of three projects three moderate rehabilitation projects in Dade County, Florida between 1984 and 1986 (Arama, Park Towers, and South Florida I). It would be with regard to Dean's alleged involvement with Mitchell that Associate Independent Counsel O'Neill would many of his most provocative statements both in opening and closing argument, particularly with regard to the efforts in closing argument to undermine Dean's credibility before an entirely African-American jury.[5]

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[4] The Narrative Appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr.," including the two Addendums added in 1995, and a Subappendix summarizing other issues, is attached as Attachment 13.

[5] During the trial, the court three times chastised Associate Independent Counsel O'Neill for treating Dean in a manner that the court interpreted to be motivated by the fact that a white person was being tried before an entirely black jury. Repeatedly pressing a theme in closing argument that Dean's actions had interfered with the

No one testified that he or she knew or believed that Dean was aware of Mitchell's HUD involvements. One immunized witness testified that he had concealed Mitchell's involvement with the Park Towers project from Dean. Another testified that Mitchell had refused to do anything on the South Florida I project because of Dean's position at HUD and that Dean had been shocked when he (the witness) told her of Mitchell's HUD involvements.

Dean, who was on the stand for all or part of eight trial days, denied any knowledge that Mitchell earned HUD consulting fees until she read in the HUD Inspector General's Report when it was released in April 1989 that Louie B. Nunn had paid Mitchell a $75,000 fee on the Arama project, which was funded as a result of HUD actions in 1984. Testifying on October 12, 1993, Dean first described how she had sent Mitchell's daughter, Marti Mitchell, to pick up a copy of the report from Agent Cain. Dean stated that she opened the report and saw the discussion of Mitchell in the report. Dean then testified as follows:

> Q. Okay. After you learned -- was that the first time you knew that John Mitchell was receiving dollars based on consulting with HUD?
>
> A. Yes.
>
> Q. This was in May -- or, I'm sorry, April of 1989.
>
> A. Yes, the day the report came out.
>
> Q. Was John Mitchell alive, or had he passed away by then?
>
> A. He had died the previous November.
>
> Q. Did you place any telephone calls after you heard that in the report -- after you discovered that information.
>
> A. Yes.
>
> Q. Who did you call.
>
> A. I called Al Cain.

---

priorities of local housing authorities, O'Neill three times referred to the testimony of an official in Dade County that the system had interfered with efforts to give opportunities to black developers. For a fuller description of the Independent Counsel's attempts to incite racial hostility, see the document styled "Independent Counsel Actions to Prejudice the Jury Against Dean" (Attachment 8, Document OIC\07-08-04.V)

Q. What did you say to Mr. Cain?

A. I told him that I considered him to be a friend and I couldn't believe that he wouldn't have told me about this before now and that I knew it wasn't true, that John would never have done that, and that he better be prepared, because I was really mad, and I wanted to see the check, and if there had been a check written to John Mitchell, Al better have a copy of it, and I was coming down there, and if I found out that he was, in any way had misinterpreted or had misrepresented John's actions, I was going to have a press conference and I was going to scream and yell and carry on.

And Al said, Al told me that he --

Tr. 2617-18.

Dean started to testify as to what Cain had told her when she called him, but an objection to that testimony was sustained.

Dean remained on the stand for all or part of three more trial days, concluding her testimony on Monday, October 18, 1993. During a lengthy cross-examination no questions were asked about the call to Agent Cain.

Shortly after Dean left the stand, however, the Independent Counsel called Agent Cain as its second rebuttal witness. Questioned by Associate Independent Counsel O'Neill, Cain first testified, in details essentially consistent with Dean's testimony, about providing Dean a copy of the HUD Inspector General's Report. Tr. 3197-98. O'Neill then elicited the following testimony from Cain:

Q. At or about that date, do you recall any conversation with the defendant Deborah Gore Dean in which she was quite upset with you about the contents of the report?

A. No, I do not.

Q. Do you recall her mentioning John Mitchell to you and the fact that he made money as a consultant being information within the report?

A. No, I do not.

Q. Do you recall her telling you that she was going to hold a press conference to denounce what was in the report?

A. Absolutely not.

Tr. 3198-99.[6]

Though Cain had merely stated that he did not remember Dean's call, given the detail with which he recalled to the jury the events related to Dean's securing from him a copy of the Inspector General's Report, the impression conveyed by Cain's testimony that he did not recall the telephone call was that, if Cain was telling the truth, the call did not happen. Thus, within approximately an hour after leaving the stand following eight days of testimony, Dean had been directly contradicted by an agent of the United States Government. Moreover, she had been directly contradicted on testimony that she had delivered with apparent feeling and sincerity. And, while being tried before an all black jury, she had been contradicted by a government agent who happened to be an African American.

Defense counsel cross-examined Agent Cain on certain seemingly extraneous matters relating to whether Dean paid for a party attended by Cain and whether Dean had brought improprieties about a certain project to his attention. Cain denied knowledge of either matter. But defense counsel asked no questions whatever about the call, possibly because he believed that questioning Cain would lead only to firmer denials that the call had occurred.

The following day, Dean requested to present surrebuttal as to Independent Counsel rebuttal witnesses Agent Cain and Ronald L. Reynolds. After strenuous objection by Associate Independent Counsel Paula A. Sweeney, the court denied the request.

The next day, Associated Independent Counsel Robert E. O'Neill carried out a highly inflammatory closing argument with repeated references to the testimony of a Dade County housing official suggesting that alleged actions of Dean and her co-conspirators interfered with local housing authority efforts to provide opportunities to black developers. The argument was principally focused on Dean's credibility, particularly with regard to her statements concerning John Mitchell and her denials of knowledge that Mitchell earned HUD consulting fees.

O'Neill asserted that Dean's defense rested entirely on her credibility: "... Everything she's told you rests on her word, on what she says" (Tr. 3377); "Her entire case rests on her credibility, her believability" (Tr. 3413); "... and that's what her whole case hinges upon, her veracity, her honesty, her credibility." Tr. 3502. In the course of attacking Dean's credibility, O'Neill provocatively stated approximately fifty times that Dean had lied during her testimony.

A fairly comprehensive summary of the remarks is set out in Attachment 2 to the Introduction and Summary (Attachment 6, Document M\00-INTRO.A2). Some of the statements follow: Tr. 3416 ("It was a lie."); Tr. 3417 ("It was a lie ... out and out"); Tr. 3418 ("it was

[6] The transcript of Cain's entire direct examination may be found in Attachment 14.

filtered with lies"); Tr. 3419 ("Then Miss Dean lied."); Tr. 3421 ("She lies when it benefits her..she lies about that.. if she's going to lie on that will she lie on anything else"); Tr. 3422 ("it's so clear why she would lie"); Tr. 3425 ("She lied about that ... It was just another lie"); Tr. 3426 ("And probably the biggest lie of all ..."); Tr. 3429 ("Just as she's deceived you, or attempted to do so, ladies and gentlemen ..."); Tr. 3431 ("She has lied to this court, to this jury ... But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It is lies piled upon lies..."); Tr. 3432 ("listen [to defense counsel's closing] and wonder why she lied to you throughout her testimony."); Tr. 3501 ("I told you during closing argument that Miss Dean lied to you very clearly and that she lied to you a series of times thereafter and, I repeat, you can take her testimony and throw it in the garbage where it belongs ..."); Tr. 3502 ("I'm saying that's where it belongs, in the garbage. Because it was a lie..... She lied to you."); Tr. 3507 ("They were lies ladies and gentlemen. Lies, blatant attempts to cover up what occurred, to sway you."); Tr. 3508 ("So you can throw her testimony in the garbage."); Tr. 3509 (... a series of misstatements, of falsehoods, of lies."); Tr. 3511 ("They unequivocally show that she lied to you, ladies and gentlemen, on the stand, under oath..."); Tr. 3518 ("... she lied about it.").

In attacking Dean's credibility, O'Neill relied heavily on two witnesses who had given rebuttal testimony to Dean's testimony concerning her relationship with John Mitchell. One of these was HUD driver Ronald L. Reynolds. The court would later find that the Independent Counsel had information indicating that Reynolds' testimony was not true. See Narrative Appendix styled "Testimony of Ronald L. Reynolds" (Attachment 6, Document M\02-REYNO). The other witness on whose testimony O'Neill relied heavily in attacking Dean's credibility was Agent Cain.

Three quarters of the way through the first day of the closing argument, O'Neill attacked Dean's credibility with particular acerbity, stating:

> Based on her lies, you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you.

Tr. 3418.

Moments later, O'Neill derisively turned to Dean's denial that she knew Mitchell had earned HUD consulting fees and Agent Cain's contradiction of Dean's testimony about calling him to question the treatment of Mitchell in the HUD Inspector General's Report. O'Neill stated the following:

> Shocked that John Mitchell made any money. Remember she went into great length about that. That she was absolutely shocked. And the day the I.G. Report came out she called Special Agent Alvin Cain, who was at HUD at the time, and

> said I'm shocked. I can't believe it. I thought you were my friend. You should have told me John Mitchell was making money. You'd better be able to defend what you said and if you can't I'm going to hold a press conference and I'm going to do something, I'm going to rant and rave. That's exactly what she told you.
>
> So we had to call in Special Agent Alvin Cain for two minutes' of testimony. And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. They asked him a bunch of questions about the Wilshire Hotel, and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that.

Tr. 3419-20.

During rebuttal the following day, while continuing the attack on Dean's credibility, O'Neill again turned to Cain, asserting:

> Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

Tr. 3506.

In support of a motion for a new trial filed on November 30, 1993, Dean argued that Cain was one of three government witnesses who had committed perjury. The other two were Thomas T. Demery and Ronald L. Reynolds, the other rebuttal witness on whose testimony O'Neill had placed great weight in attacking Dean's credibility concerning John Mitchell in closing argument. The court essentially agreed that the Independent Counsel should have known that the testimony of both witnesses was false. See Narrative Appendixes styled "Testimony of Ronald L. Reynolds" and "Testimony of Thomas T. Demery" (Attachment 6, Document M\05-DEMER). See also my letter to Independent Counsel Larry D. Thompson Larry D. Thompson dated August 13, 1997 (Attachment 8, Document OIC\97-08-13.LDT), and Part III.A. infra.

With regard to Cain, Dean argued that it would have been absurd to have fabricated the story about calling Cain, being also ready to fabricate a story about what he had told her when she asked him about the check, knowing that Cain was assigned to the Office of Independent Counsel and available to contradict her. But she also filed an affidavit stating that when she called Cain, he had told her that there did exist a check showing Nunn's payment to Mitchell but that the check was then maintained in HUD's Atlanta Regional Office. Dean also stated that immediately after calling Cain in April 1989, she had told me, whom she was then dating, about the call to Cain, including what Cain had told her about the whereabouts of the check. I submitted an affidavit stating that I clearly remembered Dean's telling me about the call and telling me that Cain had said the check was maintained in a HUD field office. Dean argued that

if the check was maintained in a field office in April 1989, it would tend to corroborate her testimony about the call to Cain.

Though not logically impossible that Dean could have been lying when she told me about the call to Cain and that Cain had told her the check was in a field office, it was inconceivable that she would have done so at a time when there was no purpose in fabricating such a story. Thus, if my affidavit was true, it was virtually impossible to believe that Cain's testimony was true. Despite the fact that I was a career government attorney, close to retirement eligibility, the Independent Counsel made no effort to contact me during the weeks in which it was preparing its opposition in order to attempt to determine whether I had lied in my affidavit or whether the circumstances in which Dean told me about the call admitted of the possibility the Dean had fabricated the story.

It is necessary to interject at this point that the period between the filing of Dean's motion on November 30, 1993, and the Independent Counsel's response date three weeks later, and more generally the period until the court would rule on Dean's motion for a new trial and her later effort to secure discovery concerning Cain in February 1994, would have been a difficult one for the Independent Counsel. Dean's motion had presented seemingly conclusive evidence that three Independent Counsel witnesses had committed perjury with the knowledge of Independent Counsel attorneys--four including Maurice Barksdale, though Dean's motion treated that issue in terms of the failure to confront Barksdale with information indicating that his contemplated testimony was false. Dean had also presented evidence seeming to demonstrate conclusively that Associate Independent Counsel Paula A. Sweeney's representations to the court on August 31, 1993, as to the reasons for the belated Brady disclosures were false and that the Independent Counsel thereafter continued to withhold information that would contradict things the Independent Counsel intended to prove at trial.

For a time it appeared that the Independent Counsel's problems would have been further complicated because a former Independent Counsel employee had filed a complaint against the Office of Independent Counsel with the Office of Special Counsel, which intended to commence an investigation in January. I am uncertain of the specifics of the complaint, save that one of the allegations concerned Jo Ann Harris's steering of a contract to a friend, though the complaint would be made by the same individual discussed infra in Section III.B. who would later allege to the Office of Professional Responsibility that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz edited and destroyed interview reports. So it is quite possible that the allegations concerning the destruction and editing of interview reports were contained in the complaint to the Office of Special Counsel. Such complications as this investigation might have caused the Independent Counsel while it was attempting to respond to Dean's motion, however, were obviated because Assistant Attorney General Harris's immediate subordinate, Deputy Assistant Attorney General John C. Keeney, intervened to persuade the Office of Special Counsel to delay its investigation for three months because the Department of Justice intended to investigate the complainant. The precise facts concerning Mr. Keeney's

intervention in this matter are a subject of my November 24, 1997 Freedom of Information Act request.

The Independent Counsel's opposition, signed by Associate Independent Counsel Robert J. Meyer, is discussed with regard to various of the issues in the materials I provided the Attorney General three years ago. Therein I cite numerous statements that I maintain are intended to deceive the court with regard to matters where the government is obligated to be entirely truthful with the court. A particularly remarkable aspect of the brief is the material at 60-68, explaining that when Thomas T. Demery repeatedly and unequivocally denied ever having lied to Congress, notwithstanding his having months earlier acknowledged to Independent Counsel attorneys that the statements underlying his two charges of perjury for lying to Congress were false, neither Demery nor trial counsel recognized that the denials that he had ever lied to Congress were false. In various places, I have stated that this was at least an implied representation that the Independent Counsel believed that in fact neither Demery nor trial counsel realized that Demery's statements were false. In a recent response to a Freedom of Information Act request, the Independent Counsel has taken the position that the document was not intended to lead the court to believe that Demery or trial counsel were not aware the Demery's statements that he had never lied to Congress were false.

With regard to the Cain testimony to which I give such attention in this letter, one thing that the Independent Counsel did not do is suggest any possibility that, though Dean had called Agent Cain near the end of April 1989 to ask about a check, there was some explanation as to why Agent's Cain's testimony was nevertheless true. As noted, had the Independent Counsel offered such an explanation, apart from overturning the verdict and very likely dismissing the indictment on grounds of outrageous government misconduct, the court might have taken steps to see that the involved attorneys were disciplined. Instead, the Independent Counsel insisted that Cain's testimony was true and Dean's testimony was false.

Another notable aspect of the opposition was that the Independent Counsel said nothing whatever about the whereabouts of the check in April 1989, and, but for a reference to my affidavit, the Independent Counsel in no manner acknowledged Dean's argument that if the check had been in HUD's Atlanta office in April 1989 it would corroborate her account of the call to Agent Cain.

The words the Independent Counsel used warrant careful reading and may warrant rereading should you conclude, as I believe you will, that at the time the Independent Counsel made these statements, Independent Counsel attorneys knew that Dean had called Cain about a check and knew that the statements in Dean's affidavit and my affidavit concerning the call to Cain in April 1989 and concerning our discussion about the call were true.

After introducing Dean's argument, the opposition stated:

> Agent Cain, a career government employee, is currently a Supervisory Special Agent for the HUD Office of Inspector General. He has been detailed to the Office of Independent Counsel. Defendant would have this Court conclude not only that Special Agent Cain deliberately perjured himself, but that he did so with the complicity of this office.
>
> Such a charge should not be lightly made; and a false charge of this nature should not be dealt with lightly. As we show below, defendant's allegations against Agent Cain constitute at best a wholly unfounded and reckless slander against a career employee of the United States. But, as we further show, there is evidence here the defendant's allegation are not merely reckless, but perjurious and a deliberate fraud on the court.
>
> …
>
> With respect to defendant's first allegation of perjury -- that Agent Cain testified falsely with regard to his telephone conversation with defendant regarding Mitchell -- it suffices as a legal matter to point out that defendant's allegations of falsity are based on nothing more that the fact that Agent Cain's testimony conflicted with her own. Irrespective of defendant's protestations the "improbability that [she] would have testified about [the mention of Mitchell in the phone call]" if it were not true, Defendant's Memorandum at 163, the unlikelihood that "defendant [would have] fabricated the story," id. at 164, and the "the absurdity of defendant's falsely testifying that she called [Cain] about the Mitchell payment," id. at 167, the law provides that inconsistent testimony between witnesses presents at most a credibility question for the jury and does not support an inference of false or perjured testimony. United States v. Brown, 634 F.2d 819, 827 (5th Cir. 1981)
>
> What is more, the true "absurdity" here is that defendant premises her first allegation against Agent Cain on her word. If nothing else, the jury's verdict in this case stands for the proposition that defendant should not be believed. Not only did the jury find beyond a reasonable doubt that defendant perjured herself on four occasions before the United States Senate, the jury must necessarily have concluded, as evidenced by its verdict, that defendant perjured herself before this Court as well. Under such circumstances, it is absurd for defendant to use her own apparently perjured testimony to argue that other testimony in conflict with it must be false.

Opposition at 73-75 (original emphasis).

The footnote referencing my affidavit appeared at this point, stating:

> The affidavit of James P. Scanlan adds nothing in this regard, for Mr. Scanlan -- aside from his obvious bias -- has no first-hand knowledge of defendant's purported conversation with Agent Cain. Rather, he relies solely on what defendant told him.

Meanwhile, on January 18, 1994, Arlin M. Adams, wrote the probation officer requesting that he recommend that Dean's sentence be increased because Dean had committed perjury in her testimony about the call to Agent Cain. The probation officer agreed and recommended a two-level upward adjustment of Dean's sentencing level, which would have increased Dean's sentence by six months.

I have so far omitted discussion of the fact that in her affidavit Dean had made statements concerning her paying for a party attended by Cain and her suggesting that Cain investigate a certain project, and that in her brief Dean argued that Cain's evasive answers on these matters should have alerted Independent Counsel trial counsel that his testimony about the call was false. With its opposition the Independent Counsel would present exhibits showing, apparently conclusively, that Cain was not at the party described by Dean and calling into question whether Dean had alerted Cain to the improprieties in the project. The Independent Counsel argued vigorously that Dean had perjured herself regarding these matters in her affidavit. In a reply, Dean acknowledged that she had been mistaken on the former matter and disputed the Independent Counsel's account of the latter matter, and pointed out that the Independent Counsel had said nothing whatever concerning the whereabouts of the check. Nevertheless, the issues raised by these inconsistencies caused the Cain matter to be entirely ignored at the February 14, 1994 hearing where the court at times appeared ready to require a new trial solely on other matters.

I have in a number of places pointed out why the Independent Counsel could not have believed that Dean intentionally fabricated the story about the party and that the Independent Counsel's claims that it believed Dean had done so were themselves efforts to deceive the court.[7] I suggest that you will find those arguments persuasive. I will not belabor them here, however, since I think that you will conclude from this letter that Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr., Associate Deputy Attorney General David Margolis, and Acting Assistant Attorney John C. Keeney, assuming they gave the materials I provided them even minimal attention, have not the slightest doubt that Deborah Gore Dean called Supervisory Special Agent Alvin R. Cain, Jr. at the end of April 1989 to ask whether there existed a check showing that John Mitchell received a $75,000 payment on the Arama project.

I suggest that you also will conclude that these officials have no doubt whatever that when Associate Independent Counsel Robert E. O'Neill elicited Agent Cain's testimony that he

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[7] See Introduction and Summary at 36 n.36; Cain Appendix at 36-37.

had no recollection of the call from Dean and when he later told the jury that "that conversation never ever happened," when Associate Independent Counsel Robert J. Meyer signed the Independent Counsel's opposition described above, when Arlin M. Adams requested the probation officer to increase Dean's sentence by six months because she lied about calling Cain, when in resisting discovery into whether Cain committed perjury Deputy Independent Counsel Bruce S. Swartz sought to lead the court to believe that Dean surmised that the check was in a field office from an entry in the HUD Inspector General's Report, and when Associate Independent Counsel Claudia J. Flynn stood ready to make these same arguments in order to increase Dean's sentence by six months, these Independent Counsel attorneys knew beyond a shadow of a doubt that Deborah Gore Dean called Supervisory Special Agent Alvin R. Cain, Jr. at the end of April 1989 to ask whether there existed a check showing that John Mitchell received a $75,000 payment on the Arama project.

After the court denied the motion for a new trial, Dean filed a motion for reconsideration, requesting discovery concerning the whereabouts of the check in April 1989 and whether Cain had committed perjury and whether that perjury could be imputed to the Office of Independent Counsel. At a hearing on February 22, 1994, the Independent Counsel responded for the first time concerning the check. Appearing for the Independent Counsel, Deputy Independent Counsel Bruce C. Swartz argued that Dean had surmised that the check was maintained a field office from an entry in the HUD Inspector General's Report indicating that certain contracts on the Arama project showed to Louie B. Nunn in a December 12, 1988 interview had come from an audit file in the Atlanta Regional Office.[8] Swartz also argued that Dean should have her sentence increased for filing the motion for reconsideration.

Mr. Swartz did not indicate whether the Independent Counsel maintained that it was in April 1989 that Dean had surmised that the check was maintained in the Atlanta Regional Office and that she had then lied to me about the call to Cain, or that I had been party to a recent fabrication of the story about the call to Cain.[9] The latter, however, is clearly the more reasonable implication of Mr. Swartz's contention.

At a hearing later in the day, Associate Independent Counsel Claudia J. Flynn apparently stood ready to make the same arguments in support of the probation officer's recommendation to increase Dean's sentence by six months because of her testimony about the call to Cain. Ms.

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[8] The interview said nothing about the check and clearly indicated that the HUD investigators did not then have a copy of the check. There was no mention of requesting a copy of the check from Nunn.

[9] I provided a rather detailed discussion of Mr. Swartz's Swartz argument in the Cain Appendix (at 24-26). The entire argument warrants reading, however, with the reader considering the implication of the argument as to the character of Mr. Swartz, and as to whether Mr. Swartz engaged in an effort to obstruct justice, assuming Mr. Swartz in fact believed that Dean had called Cain in April 1989 and that Cain had told her the check was maintained in the Atlanta Regional Office.

Flynn was not called upon to do so, however, because the court, without hearing argument on the issue, refused to accept the recommendation, indicating that it believed that Dean may have made the call. In a related ruling shortly afterwards, the court appeared to indicate that it in fact it believed that Dean had made the call.

At my meeting with Associate Deputy Attorney General David Margolis during the week of December 12, 1994, he asked whether I believed that it was possible that even though Dean had called Agent Cain, it necessarily followed that Cain had testified falsely. I understood Mr. Margolis's question to go to whether it was possible that Dean did not accurately recount the specifics of her call to Cain or that, though Cain did remember that Dean called him, his responses to O'Neill's questions did reflect his best recollection of the specifics of the call. I pointed out that, assuming Dean had called Cain, it did not seem possible that Cain could have truthfully responded to the question of whether he recalled Dean's mentioning John Mitchell and the fact that had made money as a consultant being information in the report. Mr. Margolis appeared to agree with my point. In any case, he did not offer an alternative rationale for reconciling the two testimonies.

C. Correspondence With the Department of Justice and White House Counsel Abner J. Mikva Between December 25, 1994, and May 25, 1995

On December 25, 1994, pursuant to Mr. Margolis's request, I wrote him a letter (Attachment 15) advising him that I did not represent Deborah Gore Dean and expressing my reasons for believing that the materials should not first be referred to Arlin M. Adams for his review. Among other things, I noted that by mid-January 1994, Judge Adams had to have been made aware of the issues raised in Dean's motion for a new trial, including the issues raised about the whereabouts of the check in April 1989, as well as the failure of Independent Counsel attorneys to respond on that matter; nevertheless, Judge Adams had still authored a letter to the probation officer requesting that Dean's sentencing level be increased because of Agent Cain's contradiction of her testimony about the call. I also pointed out that the Independent Counsel had adamantly refused to acknowledge any wrongdoing on the part of its attorneys, noting that Judge Adams sat at counsel table as Deputy Independent Counsel Bruce C. Swartz made the patently implausible representations to Judge Laurence Silberman that there had been no intentional violation of the government's Brady obligation by trial counsel. Noting the suggestion of bias on the part of Judge Adams in his comments to USA Today that he might have been on the Supreme Court had he not offended John Mitchell, I pointed out that within days of denying Dean's request for his recusal Judge Adams had signed an indictment containing inferences intended to reflect a conspiracy between Mitchell and Dean, despite the fact that the Independent Counsel's immunized witness had stated that those inferences were false.[10]

[10] On June 22, 1992, Deborah Gore Dean had written Independent Counsel Arlin M. Adams concerning the investigation's apparent focus on Mitchell. Citing Judge Adams' statement to USA Today, Dean requested that any case concerning Mitchell be placed with a special counsel appointed by the Attorney General. Judge Adams responded to Dean's counsel the following day, refusing Dean's request for his recusal. Denying any animosity

I also called to Mr. Margolis's attention the danger that providing these materials to Judge Adams might compromise any subsequent investigation by the Department of Justice or other appropriate entity. I noted that this was an especially pertinent consideration with regard to a number of issues where as yet Independent Counsel attorneys had no basis for perceiving that the matters might be investigated, noting that there existed a danger that evidence might be tampered with in ways that would impair a subsequent investigation of the actions of Independent Counsel attorneys.

Pursuant to Mr. Margolis's request, I enclosed copies of the appellate briefs. Mr. Margolis and Mr. Shaheen can advise whether or not awareness of the contents of these briefs in fact influenced the Department's actions over the ensuing months. As I noted earlier, however, the briefs showed no familiarity with most of the issues raised in the district court. They focused almost entirely on things that came to light prior to and during trial, and regarding which, for the most part, the defendant would have great difficulty showing serious prejudice. Agent Cain was not mentioned at all, and when his name would eventually be mentioned in Dean's certiorari petitions during the Department's second consideration of these issues (see Section II), it would be used to refer erroneously to a different witness. In any case, upon receipt of these briefs, the Department of Justice had some assurance that if it took no action until the court of appeals ruled, the court would not order a new trial based on Dean's claims of prosecutorial misconduct and that the court of appeals presumably would not address the Cain matter at all.

By letter dated January 17, 1995, I delivered to Mr. Margolis an additional 44-page document concerning what I maintained was the Independent Counsel's false use of certain documents in the case (Attachment 6, Document M\SUPPI). In my letter to Mr. Margolis (Attachment 7, Document DOJ\95-01-17.DM), I noted, as an additional reason not to refer the matter to Judge Adams, that the allegations in the materials then being provided had not previously been brought to the attention of Independent Counsel attorneys, and that investigation of the matter was more likely to reveal the truth if the Independent Counsel attorneys were not informed of the content of the materials.[11]

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toward John Mitchell, Judge Adams observed that "to the extent that the ongoing investigation involves Ms. Dean's family and John Mitchell, it does so solely because Ms. Dean chose to involve John Mitchell in the conduct of her official duties at HUD." Judge Adams also stated: "I believe you know from our past dealings that I place a high priority on fairness and impartiality. Indeed, due process must be high on any list of goals for any prosecutor of judge." Some time later, Dean wrote to Attorney General Richard Thornburgh asking that Judge Adams be recused from involvement in the prosecution of a charge involving John Mitchell. By letter dated July 10, 1992, signed for Assistant Attorney General Robert S. Mueller III, by Deputy Assistant Attorney General John C. Keeney, the Department refused to take action stating that "[w]e have no reason to believe Judge Adams is not fully aware of the standards for recusal."

[11] The apparent disappearance from the Independent Counsel's files of the original of the most crucial of those documents is one of the developments I will be bringing to the Attorney General's attention. See Section III.C. infra. Independent Counsel Larry D. Thompson's refusal to allow me examine the originals of those

By letter dated February 9, 1995 (Attachment 7, Document DOJ\95-02-09.AJM), I provided to White House Counsel Abner J. Mikva the same materials I had provided to the Department of Justice. Pointing out that the materials indicated that certain actions of Independent Counsel attorneys may have constituted federal crimes, I suggested that whether or not crimes had been committed, the actions of Jo Ann Harris as an Associate Independent Counsel in the Dean case warranted her removal from the position of Assistant Attorney General for the Criminal Division. That same day I informed Mr. Margolis that I had provided the materials to Judge Mikva, and Mr. Margolis informed me that, based on the considerations in my letter to him dated December 25, 1994, the Department of Justice had decided to provide the materials to the Office of Professional Responsibility for review. By letter dated March 9, 1995 ((Attachment 7), Judge Mikva advised me that he had forwarded the materials I had provided the White House to the Deputy Attorney General, stating that he had "every confidence that the Department of Justice will consider the matter carefully and take appropriate action."

At this point, it would perhaps be useful to consider how a responsible agency should be approaching allegations brought to its attention by a citizen, who maintains that he had documented proof of impropriety by government officials. And in that regard my own credibility is a relevant factor.

To be sure, I was not a disinterested party. Though Dean had been married since 1993, I remained a close friend to her and her family. But I was also a person who had spent his entire legal career working for the United States Government and was in fact eligible to retire as of January 1995.[12] For about six of 22 years with the Equal Employment Opportunity Commission I had written appellate briefs under the direction of Beatrice Rosenberg. I had been the lead trial counsel in the largest civil rights case ever fully tried (EEOC v. Sears, Roebuck and Co.). And by that time I had published over 30 articles on law and public policy, few of which were ordinary and many of which were exceptional. Three articles had been published in The Public Interest and articles from other journals or newspapers had been reprinted Current twice, as well as in The Corporate Board, Annual Editions: Social Problems, and the Proceedings of the Criminal Justice Section of the American Bar Association.

This is not to say that a person with that background would never make a false affidavit to assist a close friend, though such a person would seem unlikely to falsely state that someone told him a check had been maintained at a certain location at a particular point in time, in

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documents or to state whether a document he represented to be a true copy of Government Exhibit 25 (though with the crucial part missing) is in fact a true copy of that exhibit may shortly be one of the subjects of a Freedom of Information Act suit against the Independent Counsel. See my letter to Independent Counsel Thompson dated November 14, 1997, at 3-12 (Attachment 28).

[12] I retired from the federal government on March 31, 1995. Presently I am of counsel with the firm of Akin, Gump, Strauss, Hauer & Feld, L.L.P.

circumstances where records presumably existed to confirm whether or not the check had been in that location. Nor is such a background a guarantee that the person would never make baseless allegations. But the likelihood would be that a person of such a background would limit his allegations of serious misconduct to those he had a fair prospect of substantiating. In any event, I suggest that a fair reviewer of the materials I provided the Attorney General would find them to be more thorough and more objective that the vast majority of Department of Justice court filings. Thus, the allegations were not something that could reasonably be dismissed on the basis of my bias any more than my affidavit could have been reasonably dismissed on the basis of that bias.

I had heard nothing from anyone at the Department of Justice by May 17, 1995, when I wrote again to Judge Mikva, detailing some of the aspects of the prosecutorial misconduct with which Ms. Harris was involved (Attachment 16). Noting that Ms. Harris had already remained in the position of Assistant Attorney General for the Criminal Division six months since the materials were brought to the attention of the Department and three months since I had brought the matter to Judge Mikva's attention, I questioned Judge Mikva's decision to leave the matter of Ms. Harris's suitability for serving as an Assistant Attorney General to the Department of Justice. I suggested, however, that if the matter were to be left to the Department, it should be investigated separately from the broader issues raised in the materials I had provided the Attorney General.

Meanwhile, on May 19, 1995, the Washington Post announced that Ms. Harris had resigned from the position of Assistant Attorney General for the Criminal Division and would leave the Department at the end of the summer. The article noted that Ms. Harris had informed the Attorney General when she (Ms. Harris) took office that she would serve only two years. Apparently, on May 15, 1995, Judge Adams had tendered his resignation as Independent Counsel, though that would not be reported in the press until June 2, 1995.

By letter dated May 24, 1995 (Attachment 7), Judge Mikva informed me that he believed the issues I had raised were most appropriately handled by the Department of Justice, adding: "Be assured that your concerns will receive careful attention."

By letters to Associate Deputy Attorney General David Margolis dated May 25, 1995 (Attachment 17), I questioned the length of time it was taking the Department to address the issues, and specifically asked whether the Department of Justice had yet interviewed certain individuals who had crucial information concerning the allegations in the materials I had provided the Department. Pointing out that only a portion of the misconduct issues raised in the materials had been addressed with the court of appeals, I questioned the appropriateness of awaiting action by the court of appeals.

In the letter I gave particular attention to three matters, one of which was the testimony of Agent Cain.[13] After summarizing and elaborating previously presented accounts of the matter, I pointed that it was virtually impossible that my affidavit and Cain's testimony were both true. I suggested that if there were any doubt about the truth of my affidavit, one would expect a representative of the Office of Professional Responsibility to contact me. Noting that no such representative had contacted me, I questioned the progress of the investigation.

And I made the following statement to Mr. Margolis concerning the question he had posed to me in his office more than five months earlier (at 11-12):

> While on the subject of the testimony of Agent Cain, it would be useful to digress slightly to consider again your point about the possibility that Cain was telling the truth even though Dean had in fact called him. As you may recall, I pointed out that it seemed to me that, whatever may be said of the specific terms of the other denials by Cain, his 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 Independent Counsel'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 Robert O'Neill in court. Presumably, if the

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[13] The other matters concerned the testimony of Eli M. Feinberg and the testimony of Thomas T. Demery. Feinberg is the witness from whom the Independent Counsel would elicit sworn testimony that he (Feinberg) was unaware of Mitchell's involvement with the Park Towers project, without confronting him with Richard Shelby's three statements (two of them to Bruce Swartz and Robert O'Neill) that Feinberg was aware of Mitchell's involvement. The Independent Counsel then would place great emphasis on the supposed concealment of Mitchell's role in Park Towers and Arama as evidence of conspiracy. Most notably, at the end of the rebuttal portion of his closing argument, Associate Independent Counsel O'Neill relied on Feinberg's testimony in asserting that the secrecy reflected in the supposed concealment of Mitchell's role from Feinberg and Martin Fine was "the hallmark of conspiracy" and repeatedly noted that no one had challenged the testimony. In the letter to Mr. Margolis (at 14-15), I questioned whether the Department of Justice had yet contacted Mr. Feinberg, and, if not, why the Department had not yet contacted Mr. Feinberg.

With regard to Demery, who has been mentioned in various places, I noted (at 16) that he was in a position where he must cooperate with government inquiries concerning whether he had falsely denied ever lying to Congress because pretestimonial discussions with Independent Counsel attorneys had caused him to do so. I questioned whether the Department had yet contacted Demery, and, if not, why not. See Section III.A.

Independent Counsel fulfilled its obligation to investigate the issues raised in Dean's motion, Independent Counsel 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.

An obvious avenue for further investigation of the matter would be an interview of Cain, questioning him about his communications with Independent Counsel attorneys both before and after he testified. The Independent Counsel's other actions with respect to the verifying of testimony that was likely to be false suggests that, if in fact the Independent Counsel 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 Independent Counsel's actions and motives. Thus, a question arises as to whether Cain has so far been interviewed and, if not, why he has not been interviewed.

By letter dated May 25, 1995 (Attachment 7, Document doj\95-05-25.AJM), I provided Judge Mikva a copy of my May 25, 1995 letter to Mr. Margolis. At the time I had not yet received Judge Mikva's May 24, 1995 letter reaffirming the decision to leave to the Department of Justice the issue of Ms. Harris's suitability to serve as Assistant Attorney General. In my cover letter to Judge Mikva, I cited the planned departure of Ms. Harris as an additional reason for giving prompt attention to the issues raised in my letter to him dated May 17, 1995, and the materials I provided him on February 9, 1995.

D. Court of Appeals Ruling

On May 26, 1995, the court of appeals ruled in the Dean case overturning one perjury count and four counts of violating 18 U.S.C. §1001. United States of America v. Deborah Gore Dean, 55 F.3d 640 (D.C. Cir.). Though the court upheld all other counts, it substantially reduced the scope of two of the conspiracy counts. The court upheld the count concerning John Mitchell only as to the Arama project, relying on the testimony of former Assistant Secretary Maurice L. Barksdale in doing so. The court also vacated Dean's 21-month sentence and remanded the case for resentencing.[14]

Though this would not be evident until the Independent Counsel filed an opposition to a petition for rehearing, the court also held that 18 U.S.C. § 1001, which makes it a felony for a person to make a false statement or conceal or cover up a material fact concerning a matter within the jurisdiction of a department or agency of the United States, covers a statement by a government official concerning matters within the jurisdiction of the official's department or agency. This ruling would appear to make it a crime for a government lawyer to make a false statement or otherwise deceive a court in the prosecution or criminal action, hence rendering numerous actions by Independent Counsel attorneys in the Dean case violations of 18 U.S.C. § 1001, as detailed throughout my 1997 correspondence with Mr. Thompson. And this would seem exactly as it should be. While criminal defendants and other private litigants may well have valid interests in keeping the truth hidden, the government does not. By its nature, the government cannot intentionally deceive a court, and any government lawyer who attempts to do so, and any government official who purports to approve such action, act outside the scope of their authority and obstruct the lawful functioning of the government they purport to represent.[15]

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[14] The Independent Counsel's failure to confront Barksdale with information indicating his testimony was false is one of the issues addressed in the materials I provided the Attorney General, as well as in my May 17, 1995 letter to Judge Mikva (at 11-12) concerning matters with which Assistant Attorney General Harris was directly involved. The emergence of evidence that the testimony on which the court of appeals specifically relied was false, and known by Independent Counsel attorneys to be false, is one of the subsequent developments that I will be bringing to the attention of the Attorney General.

[15] With regard to the court of appeals' interpretation of the statute see my letter to Independent Counsel Thompson dated February 11, 1997. Whether the Department of Justice agrees with my interpretation of the holding in the Dean case, or whether it even considers it not to be taken for granted that a federal prosecutor who deceives a court violates 18 U.S.C. § 1001, is a subject of my November 24, 1997 Freedom of Information Act request. In recently taking the position that the Independent Counsel can make a false statement in responding to my Freedom of Information Act requests without violating 18 U.S.C. § 1001, the Independent Counsel appears to disagree with certain aspects of my interpretation of the court of appeals holding in the Dean case. See letter from Deputy Independent Counsel Dianne J. Smith to me dated November 24, 1997 (Attachment 9). See also my letter to Deputy Independent Counsel Smith dated November 29, 1997 (Attachment 9, Document OICFOIA\97-11-29.DJS).

The implications of such ruling are substantial with regard to the Independent Counsel's actions in the Dean case. For if Associate Independent Counsel Paula A. Sweeney's representation to the court at the August 31, 1993 hearing concerning the Independent Counsel's reasons for the belated Brady disclosures was false, then she violated 18 U.S.C. §1001. If Ms. Harris and other Independent Counsel attorney's conspired to make a false statement in Paragraph 30 of Count One of the Superseding Indictment and to thereafter introduce into evidence Government Exhibits 20 and 25 in support of that claim while knowing those exhibits were not what they were represented to be, she and the other attorneys would remain involved in a continuing conspiracy to violate that statute. If Independent Counsel Larry D. Thompson and Deputy Independent Counsel Dianne J. Smith attempted to lead the Honorable Stanley S. Harris to believe that Thomas T. Demery had fulfilled his plea agreement to give completely truthful testimony in a document filed on February 27, 1996, in United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), while knowing that was not true, they violated 18 U.S.C. §1001. And if Independent Counsel Arlin M. Adams, Deputy Independent Counsel Bruce S. Swartz, Associate Independent Counsel Robert E. O'Neill, Associate Independent Counsel Paula A. Sweeney, Associate Independent Counsel Robert E. O'Neill, Associate Independent Counsel Robert J. Meyer, and Associate Independent Counsel Claudia J. Flynn conspired to lead the court and jury to believe that Deborah Gore Dean had falsely stated that she called Agent Cain to ask about a check while they believed that she had called Cain, those attorneys are involved in a continuing conspiracy to violate 18 U.S.C. §1001. I suggest, however, that there are legitimate theories whereby such conduct would be criminal regardless of the court of appeals interpretation of 18 U.S.C. §1001.

In any event, after denial of a certiorari petition in early 1996, the Dean case is now in the district court. In December 1996, Dean moved to dismiss Count One based on newly-available or newly-discovered evidence, including the affidavit of Lance H. Wilson indicating that, as suggested by the Mitchell telephone message slips that Independent Counsel attorneys had refused to confront Maurice Barksdale with in May 1992 or any time thereafter, Wilson had talked to Barksdale about the Arama funding and Barksdale had indicated to Wilson that he would make the allocation. The Independent Counsel opposed the motion on grounds that the evidence was not newly-discovered, but also suggested that Wilson's testimony was not true. At a hearing on February 18, 1997, the court denied the motion on grounds that Wilson's testimony was not newly-discovered evidence. A motion for reconsideration is pending.

On February 4, 1997, Dean again moved to dismiss all counts or for a new trial on the grounds that prosecutorial abuses denied her a fair trial, and she has raised many of the matters addressed in the materials I provided the Attorney General and some additional matters as well. Dean has argued that the court, which in ruling on her earlier motion had observed that it was almost impossible to determine the cumulative effect of the abuses then identified, must now balance the net effect of the previously-identified abuses and certain newly-identified abuses, including the Independent Counsel's efforts to mislead the court in responding to the earlier allegations, against the diminished evidence of guilt in light of the court of appeals' rulings as to

the scope of the conspiracies. On March 3, 1997, the Independent Counsel moved to strike the motion, without responding substantively to Dean's claims, save to represent that the Independent Counsel did not make misleading arguments in responding to Dean's earlier motion. The court has yet to rule on the motion to strike.

The pendency of Dean's new motion, and the issues raised therein, are among the subsequent developments I will be bringing to Attorney General Reno's attention along with information regarding a variety of events occurring following the filing of Dean's motion. These developments include Mr. Shaheen's bringing to Independent Counsel Thompson's attention by letter dated February 25, 1997, allegations by a former Independent Counsel employee that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz altered or destroyed interview reports that did not further the Independent Counsel's case, and reminding Mr. Thompson that if he should determine that any criminal prosecutions were tainted by misconduct he would be expected to take appropriate steps to inform the affected courts, as discussed in Section III.B., infra. They also include the matters addressed in Section III.A. and III.C., infra. More generally, they will include the fact that Independent Counsel Larry D. Thompson, having been fully informed of the actions where his predecessors had deceived the courts with regard to matters previously brought to the attention of the Attorney General, has chosen to perpetuate those deceptions.

E. Correspondence With The Department of Justice and White House Counsel Abner J. Mikva Between June 28, 1995, and August 15, 1995

By letter dated June 28, 1995 (Attachment 7), Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr. wrote me on behalf of Associate Deputy Attorney General David Margolis (who I understand was then recovering from heart surgery) to state that the Department of Justice had declined to take any action in the matter. In the five-paragraph letter, in addition to noting that institutional concerns suggest that the Department of Justice not lightly initiate an investigation of an Independent Counsel, Mr. Shaheen stated that a close review of the materials I provided revealed no evidence of outrageous government misconduct. Mr. Shaheen also stated that "virtually all the misconduct issues you raise were the subject of extensive motions filed with the District Court and the misconduct issues that were addressed by the District Court and the Court of Appeals were of a type suitable for judicial resolution" and that "the fact that both the District Court and the Court of Appeals declined to find any due process violation supports our independent assessment that no outrageous government misconduct appears to have occurred."

Mr. Shaheen further stated that the Office of Professional Responsibility found an "absence of evidence of systemic prosecutorial abuses in the Office of Independent Counsel generally," and that given the absence of such systemic abuse and the fact that "the principal Associate Independent Counsel about whom you complained are no longer employed by the Office of Independent Counsel," the Office of Professional Responsibility believed that "further

investigation by the Department of Justice into the investigative and prosecutorial activities of the HUD Independent Counsel is not likely to deter any improper or unlawful conduct."

Mr. Shaheen's letter stated nothing about the inquiry into the conduct of Jo Ann Harris that Judge Mikva assured me would be conducted.

In a letter dated July 14, 1995 (Attachment 18), I wrote to Judge Mikva, expressing my disagreements with the views expressed in Mr. Shaheen's letter dated June 28, 1996, and suggesting that the Department had been lax in failing to seek the appointment of an Independent Counsel upon receipt of the materials provided on December 1, 1994, containing the allegations against Ms. Harris.

I responded to Mr. Shaheen by letter dated August 15, 1995, requesting that the Department reconsider its decision to refuse to investigate the Office of Independent Counsel, and taking issue with Mr. Shaheen's characterization of the facts and with his conclusions. That letter (Attachment 19) can speak well enough of for itself.

Certain portions of the letter concerning Agent Cain, however, warrant summarization or quotation here. In addition to summarizing that matter at some length (at 3-11), as well as noting my having previously raised with Mr. Margolis whether the Department of Justice had yet contacted Agent Cain (at 21), I stated the following concerning Agent Cain in the context of similar points made about other matters raised in the materials I had provided the Department (at 24):

> First, as I suggested in my May 25, 1995 letter to Mr. Margolis, I assume from the fact that the Office of Professional Responsibility failed to interview me with regard to the statements in my affidavit that the Office of Professional Responsibility does not seriously doubt the truthfulness of the statements made therein, in particular, the statement that in April 1989 Ms. Dean told me that she had called Agent Cain and that Agent Cain had told her that a check showing a payment of $75,000 by Louie B. Nunn to John N. Mitchell was maintained in a HUD field office. If my statement was true, it seems necessarily to follow that Agent Cain's testimony was false. I believe, however, that most observers in and out of the Office of Professional Responsibility would conclude, based simply on the implausibility of Dean's making up the story about the call and the OIC's evasiveness in responding concerning the whereabouts of the check, that, regardless of my affidavit, Agent Cain testified falsely and OIC attorneys came to believe that Cain testified falsely after Dean's post-trial motion was filed, if they did not believe it earlier.
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> In any case, I assume also that the Office of Professional Responsibility did not interview Agent Cain to attempt to determine whether his testimony was false or

> to determine what questions OIC attorneys asked Agent Cain to determine whether his testimony was true, either before or after the filing of Dean's motion. I also assume that you did not question any present or former OIC attorneys regarding the inquiries they made of Agent Cain before or after the receipt of Dean's motion.
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> In closing the letter, I stated (at 32):
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> If the Office of Professional Responsibility adheres to its decision to investigate this matter no further, I would appreciate a letter indicating whether the Office of Professional Responsibility interviewed Supervisory Special Agent Alvin R. Cain, Jr., Eli M. Feinberg, Thomas T. Demery, Ronald L. Reynolds, Russell Cartwright, Maurice C. [sic] Barksdale, or any of the OIC attorneys named above. If the Office of Professional Responsibility found any factual misstatement in the materials I provided or uncovered information demonstrating that any allegation was unfounded, I would appreciate your advising me of that as well. In my further efforts concerning this matter, I have no interest in pressing any issue not fully supported by the facts.

Mr. Shaheen did not respond to the letter for more than five months, and I think it is safe to assume that he would never have responded to it but for my again raising these matters in the context of an effort to cause the removal of Bruce C. Swartz and Robert E. O'Neill from their positions with the Department of Justice.

II. CORRESPONDENCE WITH THE DEPARTMENT OF JUSTICE AND INDEPENDENT COUNSEL LARRY D. THOMPSON BETWEEN SEPTEMBER 18, 1995, AND MARCH 11, 1996

A. September 18, 1995 Letter to Independent Counsel Larry D. Thompson

I initially raised the issue of the removal of former Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill by letter to Acting Assistant Attorney General John C. Keeney dated November 30, 1995 (Attachment 20). Before doing so, however, by letter dated September 18, 1995 (Attachment 12), I provided the same materials I had provided the Department of Justice to Independent Counsel Larry D. Thompson, along with a cover letter summarizing the principal issues and explaining the Department of Justice's prior handling of the matter as well as the reasons I disagreed with the Department's conclusions. I also pointed out that, whatever the merit of the Department of Justice's reasons for refusing to take action, Mr. Thompson's obligations differed from those of the Department with regard both to ensuring the disciplining or prosecution of culpable Independent Counsel attorneys and to bringing to the attention of the courts any matters where Independent Counsel attorneys presented evidence or made representations that those attorneys believed to be false.

The conclusion of the summary of the issue concerning Agent Cain in the letter to Mr. Thompson, which I would eventually provide also to Mr. Shaheen, reflected my evolving perspective regarding the possibility that, as originally suggested by Mr. Margolis, there existed some rationale by which Agent Cain's testimony might literally be true. I stated:

> As discussed in the Addendum to the Cain Appendix, as well as in a number of the letters, at a meeting during the week of December 12, 1994, Associate Deputy Attorney General David Margolis raised the issue of whether assuming that Dean had in fact called Agent Cain, it necessarily followed that Cain had testified falsely. I understood Mr. Margolis' question to go to whether it was possible that Dean did not accurately recount the specifics of her call to Cain or that, though Cain did remember that Dean called him, his responses to O'Neill's questions did reflect his best recollection of the specifics of the call. In response to Mr. Margolis' question, I pointed out that it seemed that, assuming Dean had called Cain, it did not seem possible that Cain responded truthfully to O'Neill's question of whether Dean had mentioned that the report indicated Mitchell earned money as a consultant.
>
> Yet, any possibility that Cain's testimony was literally true, though affecting Cain's culpability for perjury, makes the OIC's conduct in the matter no less heinous. 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.

As discussed in various places, there exist crucial questions regarding what OIC attorneys said to Agent Cain before eliciting his testimony in court and after receiving Dean's motion raising the issue of the whereabouts of the check. I suspect that you will find that, whether or not trial counsel mentioned the fact that Dean had testified that she had asked Cain about a check before having him testify, at no time subsequent to the OIC's receiving Dean's motion with the materials claiming that Dean had asked Cain about a check and that Cain had said it was maintained in a field office did OIC attorneys ask Cain about any conversation with Dean about the check. What would be particularly damning to the OIC is that subsequent to receiving Dean's motion, the OIC did not interview Cain at all to attempt to determine whether he had told the truth in court. Yet, there is ample reason to suspect that in fact no such interview has yet been conducted.

Finally, in the event that you have any doubts about the truthfulness of my affidavit, I, of course, am available to speak to you at any time.

I included with the letter to Mr. Thompson an Appendix to the Cain Appendix, addressing Mr. Margolis's suggestion that Cain may have told the truth at slightly greater length than in the text immediately above.

B. November 30, 1995 Letter to Acting Assistant Attorney General John C. Keeney

In my November 30, 1995 letter to Acting Assistant Attorney General Keeney (Attachment 20), I described the Department's prior handling of the matter, providing all relevant correspondence. Noting that I believed the materials would show that Mr. Swartz and Mr. O'Neill had been involved in prosecutorial abuses of exceptional dimensions, I stated my reasons for disagreeing with the conclusions stated in Mr. Shaheen's letter dated June 28, 1995. But I also pointed out that Mr. Shaheen's reliance on the fact that the principal offending Independent Counsel attorneys had left the Office of Independent Counsel had no bearing on the responsibility of the supervisors of involved individuals to determine their fitness to serve as attorneys in the Department of Justice in light of documented behavior in the Dean case. Letter at 2-3. I also summarized three matters in which Mr. Swartz and Mr. O'Neill were involved (at 5-21), including the matter of the testimony of Agent Cain (at 5-14).

In treating the Cain matter, I again discussed (at 14) Mr. Margolis's question as to whether it was possible that Cain's testimony was literally true. Noting that the matter was now addressed in an Addendum to the Cain Appendix that I had provided to Mr. Keeney, I once more explained why the existence of a rationale whereby Cain's testimony was literally true would not materially affect the nature of the Independent Counsel's actions. After explaining my response to Mr. Margolis's question, I added (at 14):

> Yet, any possibility that Cain's testimony was literally true, though affecting Cain's culpability for perjury, makes the OIC's conduct in the matter no less heinous. 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 and other OIC attorneys, including Swartz, knew for a fact that Dean had called Cain.

By a letter of the same date, I transmitted my letter to Mr. Keeney and its enclosures to United States Attorney for the Middle District of Florida Charles R. Wilson (Attachment 7, Document DOJ\95-11-30.CRW), in support of a request that Mr. Wilson remove Robert E. O'Neill from his position as an Assistant United States Attorney in Mr. Wilson's office.

C. Correspondence With Independent Counsel Larry D. Thompson Between December 5, 1995, and February 18, 1996

Meanwhile, by letter dated December 5, 1995 (Attachment 21), I provided Independent Counsel Larry D. Thompson some additional materials, including a Second Addendum to the Cain Appendix. The Second Addendum contained information strongly suggesting that Independent Counsel Arlin M. Adams, who had met with Independent Counsel attorneys the day before Cain testified, was himself involved in the decision to call Cain. The primary purpose of the letter, however, was to question Mr. Thompson as to why he had not yet taken any action to bring to the attention of the courts and the defense that certain evidence presented in the case was false and that certain representations OIC attorneys impliedly or explicitly made to the courts were also false.

In the letter I also questioned whether Mr. Thompson had yet taken action to determine whether certain allegations were true, including by interviewing Agent Cain, stating (at 4-5):

> The Cain Narrative Appendix should have left you with little doubt that Cain testified falsely and that OIC attorneys knew 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 Nunn-to-Mitchell check was maintained in a HUD field office. More likely, however, OIC attorneys knew that Cain's testimony was false at the time it was elicited in court. Further, documented actions of OIC attorneys with regard to other efforts to rely on testimony they believed was false and otherwise to lead the jury to believe things that OIC attorneys knew or believed to be false suggest[] that it is entirely possible that Cain testified falsely because one or more OIC attorneys either asked him to testify that he did not remember the call or otherwise approached him in a manner to cause him to indicate that he would testify that he did not remember the call, regardless of whether he did remember the call.
>
> It is possible that this matter could be wholly resolved simply through your calling Cain into your office and, among other things, asking him to detail his discussions with OIC attorneys concerning the call both before and after the filing of Dean's motion for a new trial. The fact that Cain was not pressed about the

> information provided with Dean's motion--if in fact he was not pressed--would be compelling evidence that OIC attorneys believed that an interview of Cain would lead to the discovery that Cain had testified falsely and would be only slightly less compelling evidence that OIC attorneys knew that Cain's testimony was false when Associate Independent Counsel Robert E. O'Neill elicited that testimony in court. You now have had eleven weeks to conduct such an interview of Cain.

By letter dated December 21, 1995, I provided Mr. Thompson additional information concerning the involvement of Deputy Independent Counsel Swartz and Associate Independent Counsel O'Neill in the eliciting of, and reliance on, the testimony of Eli M. Feinberg, without confronting Feinberg with the evidence that the contemplated testimony was false.

By letter dated January 3, 1996 (Attachment 8, Document OIC\96-01-03.LDT), I advised Mr. Thompson that it had come to my attention that the Independent Counsel's own documents showed that a report of a March 22, 1993 interview of government witness Maurice L. Barksdale had not been provided to the defense. I suggested that Mr. Thompson now provide the document to the defense and determine the reasons why it was not previously provided. The Independent Counsel did not thereafter advise the court or the defense of the failure to provide this document.[16] By letter dated January 16, 1996, I brought one additional matter to Mr. Thompson's attention. By letter dated February 18, 1996, Mr. Thompson advised me that the materials I had provided him would be reviewed.

D. January 30, 1996 Letter From Michael E. Shaheen, Jr.

By letter dated January 30, 1996 (Attachment 7), Mr. Shaheen advised me that the materials I had provided to Acting Assistant Attorney General Keeney and United States Attorney Wilson had been forwarded to the Office of Professional Responsibility for review. Mr. Shaheen also stated that the Office of Professional Responsibility regarded my letters to Messrs. Keeney and Wilson as an attempt to cause the Department to reconsider its earlier decision not to investigate the Office of Independent Counsel and that the Department declined to reconsider that decision.

In his letter, Mr. Shaheen stated that "we continue to believe that the record at trial fails to reflect evidence of unaddressed criminal conduct or other outrageous government misconduct

[16] This interview report might be of some consequence, since among the developments I will be bringing to the attention of the Attorney General is that in the weeks preceding the March 22, 1993 interview of Barksdale, Barksdale's executive assistant provided Independent Counsel attorneys with information indicating that Barksdale's testimony on which the court or appeals later would rely to find sufficient evidence of a conspiracy involving Dean and Mitchell was false. In responding to Dean's motion to dismiss Count One more than a year after I advised the Independent Counsel of its obligation to provide the document to the defense, the Independent Counsel, after suggesting that it had been compromised in its ability to respond because the defendant had only recently brought the matter it attention, stated that it did not know whether the document had been provided to the defense or not.

warranting a Department of Justice probe into the activities of the Independent Counsel." After noting that my submissions to the Department "make clear that [I] believe strongly that not one, but several important government witnesses committed perjury at trial," and that the Office of Professional Responsibility does not share my "assessment that the record demonstrates that the government's witnesses were patently untrustworthy or that the Independent Counsel knowingly procured false testimony," Mr. Shaheen stated (at second page):

> Significantly, we note as well that the credibility of these witnesses appears to have been put directly at issue during the trial of Ms. Dean and most of the arguments you have made are based on facts known to the parties and developed (and argued) during trial. Each of the witnesses you suspect of lying were cross-examined under oath by able counsel, and the jury was specifically instructed on how to assess the credibility of the witnesses who appeared at trial. The fact remains that the jury apparently chose to believe these government witnesses and to disbelieve as not credible the testimony of Ms. Dean.
>
> Obviously, the Department of Justice will not hesitate to investigate facts suggesting that one of its prosecutors knowingly presented false evidence to a court or jury. Yet, the lengthy arguments you have made to this Office and to Messrs. Keeney and Wilson seek largely to relitigate credibility issues which appear to have been resolved at trial. As we expressed before, institutional concerns arising out of the involvement in this case of the HUD Independent Counsel argues against Department intervention in this case without an adequate basis to conclude that some fundamental injustice occurred at trial, or that the court and the parties were presented with an inadequate opportunity to address the misconduct you believe occurred.

Noting that specific allegations had been lodged against Bruce C.. Swartz and Robert E. O'Neill, Mr. Shaheen stated that "[w]e simply do not concur that the materials you have supplied present indisputable evidence of 'prosecutorial abuses of exceptional dimensions,' or that the record at trial demonstrates a conspiracy among prosecutors at the HUD Independent Counsel to fabricate a case against Ms. Dean."

Mr. Shaheen then stated (id.):

> Consequently, absent some independent or newly discovered evidence unavailable to the litigants at trial suggesting the knowing use of perjured testimony, or some other due process violation, we do not believe there exists an appropriate basis for this Office to commence an investigation of either Mr. O'Neill or Mr. Swartz for their activities while employed by the HUD Independent Counsel.

Mr. Shaheen closed his letter by refusing to respond to the questions I had posed to him in my letter dated August 15, 1995, stating (at third page):

> Unfortunately, we also do not view as productive the exercise you proposed in your letter of August 15, 1995, that this Office correct any erroneous assumptions you have made about the Department's handling of this matter or any misunderstandings you may have about the facts at issue. Consequently, we consider the matter closed at this time.

E. March 11, 1996 Letter to Michael E. Shaheen, Jr.

I responded to Mr. Shaheen by letter dated March 11, 1996 (Attachment 22). In my letter I stated that Mr. Shaheen's statements appeared to condone the notion of prosecutorial ethics underlying so much of the misconduct in this case--that the government may attempt to lead the jury to believe any version of events that supports the government's case, notwithstanding substantial evidence contradicting that version, and without confronting government witnesses with information indicating that their contemplated testimony is almost certainly false; it is the defense's burden to show that the government's evidence is false. I went on to point out that the first paragraph quoted above reflected remarkably little understanding of the facts underlying the perjury issues I raised in the materials and correspondence.

I will leave to the letter itself the explanations of why with regard to four of the five witnesses whose testimony I had maintained Independent Counsel had reason to know was false--Eli M. Feinberg, Maurice C. Barksdale, Ronald L. Reynolds, and Thomas T. Demery--Mr. Shaheen's statements were either inaccurate or beside the point. In reviewing that material, it would be useful to keep in mind that Mr. Shaheen, acting on behalf of the Department of Justice, has represented that he did not regard the disputed testimony of these witnesses to be patently untrustworthy. And I suggest that you consider whether, assuming Mr. Shaheen was in fact familiar with the materials, the representation is a plausible one.

With regard to the testimony of Agent Cain, after pointing out with respect to certain witnesses that Mr. Shaheen's statement that the jury believed the government witnesses rather than Dean had nothing to do with the disputed testimony, I noted (at 6) that Mr. Shaheen was certainly correct that there was reason to believe that the jury believed Cain's testimony rather than Dean's and that that fact suggests that Cain's testimony had an impact on the outcome of the case. I then again stated the reasons to believe Cain's testimony was false, including my own affidavit but also the Independent Counsel's actions in responding to Dean's motion. I also stated the following (at 7-10):

> In my earlier letter to you, I noted that I assumed both that you did not doubt the truthfulness of my affidavit and that the Office of Professional Responsibility had made no effort to investigate this matter. With regard to the

statement in your recent letter declining to indicate whether the assumptions in my letter were correct, several matters concerning the Cain testimony warrant attention. In your letter you state that it is clear to you that I "believe strongly that not one, but several important government witnesses committed perjury at trial." While that statement was advanced in support of the claim that the Department must base its decision on what the facts suggest rather than what I personally believe, it nevertheless suggests that you do not doubt the veracity of the statement in my affidavit that in April 1989, Deborah Gore Dean told me about her call to Agent Cain and told me that Agent Cain had told her that a check showing a payment to John Mitchell was maintained in a HUD field office. Yet, if I did tell the truth in my affidavit, the question arises as to how the Office of Professional Responsibility could fail to conclude that Cain testified falsely in court, or, at a minimum, that some investigation into that matter is warranted. Further, as I have noted, regardless of my affidavit, the simple facts of the absurdity of Dean's making up a story about the call to Cain, not to mention being ready to make up a story of what Cain had told her, if the call did not occur, and the OIC's evasiveness in responding concerning the check suggest a substantial probability that the OIC sought to conceal what it believed to be the perjury of a government agent.

In the face of such evidence, I must accept a possibility that the Office of Professional Responsibility did engage in some investigation into this matter. As I have previously discussed in [a] number of places, 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 Cain's best recollection of the specifics of the call from Dean. Thus, partly because of the suggestion in your letter that the Office of Professional Responsibility may have made some inquiries in this matter, I think it useful to consider the possibility that such inquiries led the Office of Professional Responsibility to conclude that, though Dean had called Cain in April 1989 to ask about the check showing a payment to Mitchell, Cain's testimony was literally correct, and therefore Cain had not committed perjury in court.

If that reasoning does underlie the Department of Justice's conclusions in this matter, and that matter is ever publicly revealed, I suggest that the Office of Professional Responsibility will lose any credibility it may have as an objective reviewer of prosecutorial conduct. Apart from the difficulty of any interpretation that would allow Cain's testimony to be true even though Dean had called him to ask about a check,[footnote 2] there remain the facts that the OIC sought to lead the jury, the probation officer, and the court to believe that Dean never made any call to Cain, and to lead the probation officer and the court to believe as well that

> Dean had lied in her affidavit by stating that Cain had told her that the check was maintained in a field office. Thus, with regard to the Cain testimony, the only defensible justification for your conclusion that there exists no "evidence of unaddressed criminal conduct or outrageous government misconduct" is that it is improbable that Dean in fact called Cain, which I think you clearly do not believe.

In footnote 2, I addressed for the first time the possibility that a rationale existed for reconciling the two testimonies on the basis of the reference to "at or about that date." The note stated:

> I have previously noted that Cain's denial of any recollection of a call from Dean where she "mention[ed] John Mitchell to you and the fact that he made money as a consultant being information within the report" (Tr. 3199) would seem inconsistent with any plausible interpretation of Dean's call to Cain. Robert O'Neill does begin his questioning with the words "[a]t or about that date," suggesting the possibility that the date may be relevant to any interpretation whereby Cain's testimony could be true notwithstanding that Dean had called him to ask about a check. In his testimony, Cain initially gave April 17, 1989, as the date of publication of the report. Tr. 3197. The report was not actually released, and Dean did not secure a copy, for about another ten days. Yet, the antecedent of "that date" would seem to be the day that Cain provided Dean a copy of the report rather than the day it was published. So even if Dean did not call Cain until the day after she received a copy of the report (hence, ten or more days after April 17), it is difficult to see how timing could reconcile the two testimonies. In any event, Robert O'Neill would tell the jury: "That conversation never ever happened." Tr. 3506.

The text of the letter then continued:

> I suggest, however, that if the Office of Professional Responsibility is of the view that while Dean did call Cain to ask about a check, Cain's testimony was literally true, that is something the Office of Professional Responsibility does have an obligation to tell to me, for two reasons. First, such an interpretation of events merely confirms my own good faith in bringing this matter to the attention of the Department of Justice. In such circumstances, both basic decency and the government's legitimate interest in preventing my further dissemination of allegations that the government believes to be based on a good faith misunderstanding of the facts would seem to require that the government inform me of its basis for concluding that I have misunderstood this matter. Second, since it ought to be evident to you that I will be disseminating these allegations on an increasingly wider basis, the government would seem also to have an obligation to its employee Agent Cain to correct the understanding that has led me

> to allege repeatedly that he committed perjury. If Cain was persuaded by OIC attorneys that he could truthfully testify that he had no recollection of the events described in the questions put to him by O'Neill, the government already has grossly ill-used an African-American employee in order to mislead an African-American jury in its judgment of a white defendant. If your investigation into this matter would cause Agent Cain's conduct to be seen in a better light than I have been portraying it, you ought to bring that to my attention.
>
> In any case, contrary to the suggestion in your letter, the issues raised regarding the testimony of Agent Cain are by no means merely a matter of the jury's having accepted Cain's testimony over Dean's.

In the letter to Mr. Shaheen, I also reviewed with him some additional information that had become available subsequent to my initial submission to the Department of Justice. This included evidence concerning Deputy Independent Counsel Bruce C. Swartz's involvement in matters related to the testimony of Eli M. Feinberg, evidence that Arlin M. Adams and Bruce C. Swartz were involved in the decision to call Agent Cain, and information that Lance Wilson had at some point in time decided to cooperate with the Independent Counsel, which I stated I believed had occurred while Arlin M. Adams and Bruce C. Swartz were both still with the Independent Counsel. With regard to the last matter I noted:

> If at that time the OIC failed to inquire of Wilson whether he had in fact contacted Barksdale about the Arama funding, that failure was presumably motivated by the OIC's fear that truthful testimony by Wilson would show that the OIC had secured a conviction on the Count involving John Mitchell based on the false testimony of Maurice Barksdale.

One of the subsequent developments I will be bringing to Attorney General Reno's attention is that Wilson eventually would file an affidavit in the Dean case making clear that the Independent Counsel had not questioned him on that matter. In his affidavit, Wilson also would state that, just as the Mitchell telephone message slips the Independent Counsel had declined to include in a Brady disclosure or to bring to the attention of Maurice Barksdale had suggested, Wilson had talked to Barksdale about the Arama funding and Barksdale had led Wilson to understand that he (Barksdale) would approve the funding. This, of course, is something that Arlin M. Adams, Bruce C. Swartz, and Jo Ann Harris knew with virtual certainty when they first decided not to confront Barksdale with the information. The Independent Counsel has now taken the position that it does not believe Wilson.

In my March 11, 1996 letter, I also provided Mr. Shaheen with all my correspondence to date with Mr. Thompson, noting:

> Fourth, as the correspondence to Independent Counsel Larry D. Thompson indicates, the matters originally raised in the materials I provided the Department of Justice have also been brought to Mr. Thompson's attention. Thus, whatever may be said concerning the Office of Independent Counsel's knowledge of the actions of its agents at earlier points in time, that Office as an institution is now fully informed concerning those actions, and is in the position now either to address those actions or to ratify them. Mr. Thompson advises that the allegations in the materials are under review and I await the outcome of that process.

Mr. Shaheen never responded to my request that he state whether the Office of Professional Responsibility believed that while Dean did call Agent Cain to ask about a check, Cain's testimony was literally true.

At this point, it would perhaps be useful to more carefully consider the language in Mr. Shaheen's letter in light of the possibility that Mr. Shaheen and other Department of Justice officials believed, as Associate Deputy Attorney General David Margolis had originally suggested, that Independent Counsel attorneys knew that Dean had called Agent Cain about the check when they persuaded Cain to provide the testimony he did, something that I think you will find that some of those officials certainly did believe. Regardless of whether that belief was a determinative factor in the Department's decisions in this matter, one still must consider in light of such belief the implications of Mr. Shaheen's repeated statements in his January 30, 1996 letter about credibility issues and the fact that the jury believed the government witnesses and not Dean. Each such statement is consistent with the scheme of deception engaged in by Independent Counsel attorneys when, following Dean's motion, they decided not to explain how Cain's testimony could be reconciled with Dean's having called him to ask about a check, but instead maintained that Agent Cain's testimony showed that the call never occurred and that the jury properly believed Cain. Thus, by Mr. Shaheen's letter, he and other Department officials may have joined that scheme of covering up the fact that Agent Cain had been persuaded to give the answers he did notwithstanding that Dean had called him about the check. They may have done so carelessly or after deliberation.

In any event, presumably Mr. Shaheen and others involved with this matter can explain to you precisely what their understanding was as of January 30, 1996, and Mr. Shaheen can explain, in light of that understanding, the nature of his motives in addressing the credibility issues in the manner he did.

F. March 11, 1996 Letters to Acting Assistant Attorney General John C. Keeney and United States Attorney Charles R. Wilson

By letter also of March 11, 1996 (Attachment 23), I wrote to Mr. Keeney, providing him a more complete summary of information concerning the involvement of Bruce C. Swartz and Robert E. O'Neill in the interviews indicating that the contemplated testimony of Eli M. Feinberg was false. I also provided Mr. Keeney a copy of my letter to Mr. Shaheen, advising Mr. Keeney that the Office of Professional Responsibility's determinations concerning that matters brought to its attention cannot resolve Mr. Keeney's own responsibilities in the matter. I noted (at 2-3):

> In fulfilling your individual responsibilities as a federal attorney overseeing the conduct of Bruce Swartz and Robert O'Neill, it is appropriate that you accord significant deference to views of the principal arbiter of professional ethics in the Department of Justice if such views appear to be well-reasoned and based on a thorough understanding of the issues raised. As my enclosed response to Mr. Shaheen indicates, however, Mr. Shaheen's letter demonstrates remarkably little understanding of the issues raised even in my letter to you of November 30, 1995. In such circumstances, I suggest that the Office of Professional Responsibility's views ought to be given little weight as you exercise your own responsibilities in this matter.
>
> That you review these issues yourself is particularly appropriate with regard to your continued supervision of Bruce Swartz and Robert O'Neill in the event that they are permitted to continue to serve in the federal government. In the case of Bruce Swartz, who holds a high position on your own staff, any assignment involving the oversight of the ethics of federal prosecutors ought not to be made without his superiors' having a full understanding of the nature of his conduct in the Dean case.
>
> According to The Tampa Tribune, Robert O'Neill works on the Organized Crime and Drug Enforcement Task Force in the Middle District of Florida, and is involved in the increasing numbers of prosecutions on money laundering charges that carry very substantial penalties. [footnote omitted] Mr. O'Neill's continued service as an Assistant United States Attorney carries with it a danger that individuals will be charged or convicted on the basis of false evidence, as well as a danger that otherwise legitimate prosecutions will be compromised by the use of deceitful tactics like those Mr. O'Neill repeatedly employed in the Dean case.
>
> At a minimum, in the event that in ongoing or future prosecution issues are raised about Mr. O'Neill's conduct, his superiors ought not to be able to claim that they had no basis for anticipating such conduct. Ideally, however, if Mr. O'Neill continues to serve as an Assistant United States Attorney, his actions will be

monitored closely enough that no legitimate complaints concerning those actions will arise.

That same day, I wrote to United States Attorney Charles R. Wilson, providing him copies of the same materials provided Mr. Keeney. In the letter to Mr. Wilson, I pointed out that the letter to Mr. Keeney had explained why Mr. Keeney was not relieved of his individual responsibilities in overseeing the conduct of his subordinate attorneys simply because the Office of Professional Responsibility had concluded that no action is warranted, and noted that the points applied as well to Mr. Wilson in his oversight of the conduct of Robert E. O'Neill.

III. DEVELOPMENTS SUBSEQUENT TO MICHAEL E. SHAHEEN JR.'S LETTER OF JANUARY 30, 1996

Set out in the Sections below are certain developments subsequent to Michael E. Shaheen's, Jr.'s advising me by letter dated January 30, 1996, that the Department of Justice refused to reconsider its decision not to investigate the Office of Independent Counsel and that the Department did not believe there existed an appropriate basis to investigate the conduct of Department of Justice attorneys Bruce C. Swartz or Robert E. O'Neill while serving as Independent Counsel attorneys. Each has some relevance to an interpretation of the nature of the handling by Mr. Shaheen and other Department of Justice officials of allegations I brought to the Attorney General's attention in December 1994.

A. The Representation to The Honorable Stanley S. Harris That Thomas T. Demery Fulfilled His Agreement to Give Completely Truthful Testimony

The first significant event following the January 30, 1996, decision of the Department of Justice to take no action occurred on February 26, 1997, where in securing a downward departure from the guidelines range for the crimes to which Thomas T. Demery had pled guilty, the Independent Counsel represented to the Honorable Stanley S. Harris in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), that Thomas T. Demery had given completely truthful testimony in the Dean case.

Thomas T. Demery is a government rebuttal witness who, shortly after acknowledging to Independent Counsel attorneys that he had made at least a dozen false statements to Congress, repeatedly and unequivocally testified in the Dean case that he had never lied to Congress.[17] Independent Counsel attorneys present in the courtroom made no effort to correct that testimony, but instead proceeded to close the Independent Counsel's case-in-chief by eliciting Demery's most important testimony on redirect. In defending the failure to correct Demery's testimony, Independent Counsel attorneys made a number of misleading arguments intended to lead the courts falsely to believe that neither Mr. Demery nor trial counsel recognized that Demery's repeated denials that he had ever lied to Congress were false.

I presented this matter in the Introduction and Summary and a lengthy narrative appendix provided to the Department on December 1, 1994 (Attachment 6, Documents M\00-INTRO.C and M\00-05-DEMER). In doing so, I pointed out that it was difficult to understand how Demery, who several months earlier had informed Independent Counsel attorneys that he had

[17] Actually the Independent Counsel had evidence indicating that Demery may have committed perjury more than 30 times when testifying before two Congressional subcommittees in 1989 and 1990. See my letter to Independent Counsel Larry D. Thompson dated August 13, 1997, and Appendix D thereto (Attachment 8, Documents OIC\97-08-13.LDT and OIC\97-08-13.APD).

repeatedly lied to Congress, could testify under oath that he had never lied to Congress without having been led to believe he should do so by Independent Counsel attorneys. I also pointed out that an obvious avenue for fulfilling the government's obligations to determine the truth was to interview trial counsel and Demery concerning their conversations before he testified. And I raised the issue of what the Independent Counsel had or would advise the court in Demery's own case, noting that very likely the Independent Counsel would make no mention of Demery's perjury in the Dean case. Demery Appendix at 18.

I again raised this issue in my May 25, 1995 letter to Associate Deputy Attorney General Margolis. Believing at that time that Demery had probably already been sentenced, I stated (at 15-16):

> Almost certainly any inquiry into what the Office of Independent Counsel communicated to the U. S. Probation Officer and the sentencing court about Demery's fulfilling his agreement to testify truthfully will reveal that the Office of Independent Counsel failed to indicate that Demery had committed perjury when testifying in court.

I added, however, that Demery must cooperate with any governmental investigation into these matters and thus was available to be required to disclose the nature of his pre-testimonial discussions with Independent Counsel attorneys. I inquired whether the Department of Justice had yet contacted Demery and, if it had not, why it had not.

In my August 15, 1995 letter to Mr. Shaheen (at 21-22), I raised the same matter once again in requesting the Department of Justice to reconsider its decision not to investigate the Office of Independent Counsel. I also noted (at 25-26) that I assumed that the Department of Justice had failed to contact Demery, and I specifically requested a letter from Mr. Shaheen indicating whether the Office of Professional Responsibility had interviewed Demery.

I brought the matter to the attention of the Department of Justice once more in my November 30, 1995 letter to Mr. Keeney, though I gave it only passing attention (at 5, 11, 13). As noted above, by letter dated January 30, 1996, Mr. Shaheen responded to my November 30, 1995 letter to Mr. Keeney. As suggested earlier, I believe that the letter can be fairly interpreted as a representation by Mr. Shaheen that the Department of Justice did not regard Mr. Demery's statements that he had never lied to Congress to be patently untrustworthy. In any event, Mr. Shaheen refused to respond to my question concerning whether the Independent Counsel had ever questioned Demery to determine whether he had repeatedly denied ever having lied to Congress because he had been instructed to do so by Independent Counsel attorneys.[18]

[18] Meanwhile, I had raised the matter of Demery's false testimony in my letter to Independent Counsel Larry D. Thompson of September 18, 1995 (at 19-20), noting to Mr. Thompson, as I had to the Department of Justice, that Demery must cooperate in an investigation concerning the pretestimonial discussions with Independent Counsel attorneys that led him to deny ever having lied to Congress. I raised the matter again in my letter to Mr.

Over the next month, the Independent Counsel would twice attempt to deceive courts concerning the testimony of Thomas T. Demery. In the Independent Counsel's brief in opposition to the petition for certiorari, the Independent Counsel would tell the Supreme Court that Dean contended that Demery had testified falsely with regard to only one question and that the question was ambiguous.[19] Then, on February 27, 1996, four weeks after Mr. Shaheen had refused to tell me whether the Independent Counsel had made any effort to determine whether Demery had committed perjury because he had been told to do so by Independent Counsel attorneys and advised by those attorneys that they would nevertheless tell the court in Demery's own case that he had given completely truthful testimony, the Independent Counsel filed a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C). In that motion, the Independent Counsel effectively represented to the Honorable Stanley S. Harris, not that trial counsel had failed to recognize that Demery had testified falsely, but that in fact Demery's testimony was entirely truthful. The Independent Counsel did not reveal to Judge Harris that allegations had been made in the Dean case that Demery had testified falsely in repeatedly denying that he had ever lied to Congress or that the district court in the Dean case had essentially agreed with those allegations. Relying on the Independent Counsel's representations in its motion, Judge Harris granted Demery a downward departure from the guidelines range for the crimes to which he pled guilty, which allowed Demery to be sentenced to probation.

Thus, in circumstances where it was virtually impossible to believe that a witness would have falsely denied every having lied to Congress unless attorneys representing the United States government had advised him that they would tell the court in the witness's own case that he had testified truthfully, the Independent Counsel proceeded to do precisely that. It did so with the actual or imputed knowledge of the Office of Professional Responsibility.

The Independent Counsel's actions in this regard are now a subject of Dean's pending motion for a new trial (though without discussion of the fact that Demery's perjury in the Dean case had been repeatedly brought to the attention of Mr. Thompson and the Department of Justice before the Independent Counsel represented to Judge Harris that Demery gave completely truthful testimony in that case). An additional element has been added to Dean's claims,

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Thompson dated December 5, 1995 (at 8), noting that Mr. Thompson had had ample time to contact Demery in fulfilling the Independent Counsel's obligation to learn whether Demery had committed perjury at the instigation of Independent Counsel attorneys. I would not provide copies of this correspondence to Mr. Shaheen, however, until March 11, 1996.

[19] Specifically, the Independent Counsel stated to the Supreme Court that it was "apparent from the record" that "the question as to which petitioner now claims that Demery perjured himself was ambiguous." Brief in Opposition 13.

however, in that she now cites information in the court record suggesting that the substantive testimony elicited from Demery on redirect was also false. Whether or not the record demonstrates that Demery's testimony was false, it does seem clearly to show that the Independent Counsel failed to advise Demery of the testimonial and documentary evidence contradicting Demery's crucial testimony that Dean initially brought a Dade County moderate rehabilitation to his attention with which the Independent Counsel would chose to close its case-in-chief. See Dean 1997 Mem. at 93-95. Presumably, the failure to confront Demery was motivated by the same considerations underlying the failures to confront Maurice Barksdale and Eli Feinberg with information indicating that their expected testimony was false--that Independent Counsel attorneys feared that confronting the witness with such information would cause the witness to truthfully reveal that the contemplated testimony was false.

There have been other developments concerning Demery since the filing of Dean's motion. I have repeatedly advised the Independent Counsel that the representations to Judge Harris were false and that by making those false representations, Independent Counsel attorneys violated 18 U.S.C. § 1001. I have also impressed upon Mr. Thompson that the Independent Counsel has an obligation to disclose to Judge Harris that the Independent Counsel deceived him on this matter.

And I have filed Freedom of Information Act requests in which, after noting my contention that Independent Counsel attorneys violated 18 U.S.C. § 1001 by deceiving Judge Harris, I have sought copies of any documents in which the Independent Counsel impliedly or expressly represented to any court, or attempted to lead any court to believe, either that Thomas T. Demery had not given false testimony in the Dean case or that Independent Counsel trial attorneys did not recognize that Demery's statements that he had never lied to Congress were false. The Independent Counsel now takes the position that no such documents exist. See my letters to Independent Counsel Larry D. Thompson dated September 8 and 24, 1997, and November 14, 1997 (at 12-17) (Attachment 28).

Finally, as noted in the introductory section, assuming that you conclude that Independent Counsel attorneys contrived some rationale by which Agent Cain's answers were literally true even though Dean did call Cain and that this was known to Department of Justice officials reviewing my allegations, the actions of both Independent Counsel attorneys and Department of Justice officials regarding Demery must be appraised in light of that understanding. In particular, that Independent Counsel attorneys were prepared to present Cain's testimony based on some strained interpretation whereby his answers were literally true makes it all the more plausible that Independent Counsel attorneys contrived some rationale whereby Demery could adamantly deny ever having lied to Congress despite his acknowledgments that he had repeatedly lied to Congress.

B. Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr.'s Handling of the November 15, 1996 Allegation by a Former Independent Counsel Employee That Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz Destroyed Interview Reports and Edited Interview Reports for Content

The second significant event following Mr. Shaheen's last letter to me concerned a complaint filed by a former Independent Counsel employee with Mr. Thompson by letter dated November 15, 1996. The complaint was filed by the same individual concerning whose complaint with the Office of Special Counsel near the end of 1993 Deputy Assistant Attorney General John C. Keeney had requested that office to delay its investigation.

The complaint was a four-page letter (Attachment 24). Most of the first two pages contained narrative material concerning general observations about abuses of power, the complainant's efforts to correct the problems he observed, his perceived retaliatory termination, and a three-year investigation of the complainant by the Department of Justice, concluding with the complainant's request that Mr. Shaheen review Jo Ann Harris's involvement in that investigation. The complainant then provided what he termed a partial list of allegations concerning things he witnessed or learned about, listing nine items.

The fifth, sixth, and seventh items specifically involved prosecutorial abuses relating to the concealment of exculpatory information. They read:

> [5] The Independent Counsel Arlin Adams and his Deputy, Bruce Swartz destroyed dozens of FBI 302s. The reason offered for the collection (and shredding) of all copies (and the originals), was that the interview did not further the case.
>
> [6] The Independent Counsel Arlin Adams, Deputy Bruce Swartz, and Office Administrator, Terry Duggan, edited hundreds of FBI 302s. Special Agent Matthew Kelliher expressed to me his uneasiness with 302s (the final version of an interview) being edited at all, much less edited by personnel who were not present at the actual interview.
>
> [7] Deputy Independent Counsel Bruce Swartz knowingly and willfully suppressed evidence, and violated discovery rules, including Brady and Jencks.

The fifth item was the most significant, because of its gravity and concreteness, and because it had not previously been alleged that the Independent Counsel destroyed interview reports. The sixth item, standing alone, would be somewhat interpretable with regard to whether the interview reports were edited for content, even though the Independent Counsel and Deputy Independent Counsel ordinarily would not be expected to edit interview reports for grammar.

Following the allegation that both Adams and Swartz destroyed dozens of FBI 302s that did not further the Independent Counsel's case, however, the suggestion is clear that Adams and Swartz edited the 302s to remove information that might be useful to the defense. The seventh item was the least concrete; it was also something that had been raised before.

Most of the remainder of the allegations involved the misuse of government resources, including a claim that Jo Ann Harris gave a lucrative contract to a friend.

The single Independent Counsel target mentioned in the document was Deborah Gore Dean. The complaint alleged that Associate Independent Counsel Paula A. Sweeney directed certain Independent Counsel employees to prepare a chronology of persons Dean had slept with and suggested that substantial government resources had been devoted to soliciting information concerning Dean's sex life. While possibly suggestive of factors underlying the Independent Counsel's approach to the prosecution of Dean, however, the allegation did not involve concealment of exculpatory information or other matters directly affecting the trial.

The complainant closed the letter with general observations about the handling of his allegations, and asked, among other things, why the Criminal Division under Jo Ann Harris had caused the Office of Special Counsel to hold its investigation in abeyance for three months and why he had been investigated for three years.

However the Office of Professional Responsibility might have handled an allegation of this nature where there had been no prior allegations of prosecutorial abuse by the Office of Independent Counsel, in this instance these allegations followed my detailed submissions to the Department recounting a pattern entirely consistent with the allegations in the complaint. Further, the allegations against Judge Adams and Mr. Swartz, if true, would certainly have contradicted Mr. Shaheen's claim, expressed in his June 28, 1995 letter to me, that there was no evidence of systemic prosecutorial abuse. In addition, the complaint was made more than nine months after my March 11, 1996 letter advising Mr. Shaheen that as early as September 18, 1995, Mr. Thompson had been informed in great detail of the many instances where his predecessors had deceived the court. Mr. Shaheen certainly knew that Mr. Thompson had taken no action to correct the record and had ample reason to know that Mr. Thompson was unlikely to bring any prosecutorial misconduct to the attention of a court.

Mr. Shaheen certainly would have also known that Dean's petition for certiorari had been denied in March and that her case was again in the district court where she could at any time be sentenced to up to 21 months in prison. Thus, in light of Mr. Shaheen's apparent failure to do anything with these allegations until late February 1997, there is reason to believe that Mr. Shaheen initially intended at least to wait until Dean was sentenced to do anything with these allegations and that he might in fact never have done anything at all with them. Mr. Shaheen can advise you, however, as to what his intentions were while he held for more than ninety days a

complaint suggesting that the abuses in the Dean case were even greater than the materials I had provided the Department of Justice made it appear.

In any event, in December 1996, Dean filed a motion to dismiss Count One based, in part, on an affidavit of Lance Wilson stating that, just as the Mitchell message slips had indicated to Independent Counsel attorneys when those slips were first found in May 1992, in early 1984 Wilson had approached Assistant Secretary Maurice L. Barksdale about the Arama funding and Barksdale had said he would fund the project. The motion was also based on other things, including evidence indicating that Barksdale's testimony on which the court of appeals had specifically relied in upholding the verdict as to the Arama project was false.

The motion led to a hearing on February 18, 1997, where the court, while acknowledging that the evidence might have caused the jury to reach a different result, concluded that Dean's failure to attempt to call Wilson as a witness during the trial precluded her reliance on his testimony. By the time of the hearing, Dean had already filed a motion for a new trial on all counts. The hearing was covered by the Washington Post, which then would, on February 26, 1997, print a long story on the hearing and the fact that Dean was seeking a new trial on grounds that prosecutorial abuses had denied her a fair trial.

By letter dated February 25, 1997 (Attachment 26), Mr. Shaheen submitted the material he had received in mid-November 1996 to Independent Counsel Larry D. Thompson. Even assuming that the letter was in fact mailed on February 25, 1997, there is nevertheless reason to believe that Mr. Shaheen had been prompted to act by knowledge of the hearing or knowledge of the forthcoming article.[20] Again, Mr. Shaheen can tell you what his precise motives were.

The two-page letter from Mr. Thompson, which purported to summarize the enclosed complaint, would be susceptible to disclosure under the Freedom of Information Act (with names redacted), while the underlying complaint would not be.

In his transmittal letter, which did not give the date of the enclosed complaint, Mr. Shaheen described the letter as one "recently received" by the Office of Professional Responsibility. Mr. Shaheen then stated that the writer had requested that the Office of Professional Responsibility investigate a number of allegations, "including the following." At that point, Mr. Shaheen listed summaries of the allegations in the same order as they appeared in the underlying letter, with the following inconsequential and consequential exceptions. An inconsequential difference between the two lists is that the first item on the underlying list was broken into two items on Mr. Shaheen's list, a fact I note only to avoid confusion.

[20] Whether the letter was in fact mailed on February 25, 1997, is a subject of my Freedom of Information Act request to the Office of Professional Responsibility dated December 20, 1997.

The most consequential difference is that Mr. Shaheen omitted entirely from his list the most serious allegation of the three quoted above--that Independent Counsel Adams and Deputy Independent Counsel Swartz had destroyed FBI 302s. The remaining two of those three allegations appeared as follows in Mr. Shaheen's letter:

> Independent Counsel [ ] and others edited FBI interview reports, in some cases without having been present for the interview.
>
> A Deputy Independent Counsel purposely suppressed evidence and violated discovery rules.

The allegation concerning editing of interview reports, because it no longer followed the allegation of the destruction of interview reports, was now largely bereft of the suggestion that the interview reports were edited for content. And, contrary to the clear implication in the underlying allegation that the persons editing the 302s had been present at none of the interviews, Mr. Shaheen's paraphrasing of the allegation stated that those persons were not present for some of the interviews. Even the third allegations has been rendered more vague than it was previously.[21]

Following the list, Mr. Shaheen described the Attorney General's jurisdiction to remove an Independent Counsel for cause, but noted that the allegations did not rise to a sufficient level and that in any event Independent Counsel Adams was no longer in office and the removal power could therefore not apply to him. Mr. Shaheen then stated that he was referring the matter for investigation by Mr. Thompson, observing: "Of course, if your investigation should determine that any criminal prosecutions were tainted by misconduct, we expect that you will take appropriate steps to inform the affected courts."

In another letter dated February 25, 1997 (Attachment 27), Mr. Shaheen wrote to the complainant advising him that the allegations were being referred to Independent Counsel Thompson. Much in the manner of Mr. Shaheen's letter to me of June 28, 1995, the letter did not acknowledge that the complainant had sought an investigation of Jo Ann Harris for her conduct, in this instance, while serving as the Assistant Attorney General for the Criminal Division of the Department of Justice.

In light of things Mr. Shaheen knew at this time, it is doubtful that he actually expected Mr. Thompson to inform courts of instances where prosecutions were tainted by misconduct. In

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[21] The suggestion that Associate Independent Counsel Sweeney had used elaborate government resources to maintain a sex chronology on Dean was largely eliminated, with the allegation now reading merely: "An OIC prosecutor caused the creation of a chronological chart of sexual activity by [ ] a target of the OIC's investigation; the chart had no relevance to the charges at issue."

any event, six days later, in opposing Dean's motion for a new trial on all counts, Mr. Thompson would represent that, contrary to Dean's claim that the Independent Counsel had made misleading arguments in responding to her earlier allegations of prosecutorial abuse, the Independent Counsel made no such misleading arguments.

In addition to explaining why he waited more than three months to do anything with the complaint, Mr. Shaheen can explain to you why he described the underlying complaint in the manner he did and whether by doing so he intended to assist in the Independent Counsel's efforts to conceal the nature of its conduct in the Dean case. Mr. Shaheen can also explain to you whether he did investigate the role of Jo Ann Harris in the earlier investigation of the complainant by the Department of Justice or in Mr. Keeney's intervention with the Office of Special Counsel that allowed the Independent Counsel to avoid an investigation by that office while it was responding to Dean's motion for a new trial.

Until December 3, 1997, I had seen only the underlying November 15, 1996 complaint and Mr. Shaheen's February 25, 1997 letter to the complainant stating that he (Mr. Shaheen) had forwarded the material to Mr. Thompson. I had not yet seen the transmittal letter, and portions of my November 24, 1997 Freedom of Information Act request were directed to learning precisely what Mr. Shaheen had forwarded to the Office of Independent Counsel.

Responding to my Freedom of Information Act request, the Office of Independent Counsel has represented that no records existed falling under the description of the complaint Mr. Shaheen forwarded to Mr. Thompson by letter dated February 25, 1997. See my letter to Deputy Independent Counsel Dianne J. Smith dated October 24, 1997 (at 3-2).[22]

[22] See also Ms. Smith's letter to me dated November 24, 1997 (at 1) (expressing offense at the suggestion that the Independent Counsel would make a false representation in response to my FOIA request, but maintaining that agents of the Independent Counsel would not violate 18 U.S.C. §1001 by doing so, and seeming to reaffirm that no such record exists). But see my letter to Ms. Smith dated November 29, 1997 (at 1-6) (inquiring whether Ms. Smith has suggested that some unclaimed exemption entitles the Independent Counsel to refuse to disclose whether such a document exits). Deputy Independent Counsel Dianne J. Smith responded to the request for clarification in my letter of November 29, 1997, by letter dated December 19, 1997, stating that the Office of Independent Counsel had fully complied with its obligations under the Freedom of Information Act and refusing to provide further information.

C. The Apparently Missing Copy of the Arama Consultant Agreement in Government Exhibit 25 and the Possible Alteration of the Martinez Interview Report

1. Background

A matter addressed in the materials I provided to Mr. Margolis on January 17, 1995, involved what I maintained was the Independent Counsel's false use of certain exhibits. In my transmittal letter I advanced as an additional reason not to refer my allegations to Judge Adams that this matter had not previously been brought to the attention of Independent Counsel attorneys and that an investigation was more likely to reveal the truth about the matter if Independent Counsel attorneys were not advised of the contents of the materials I was providing.

The Independent Counsel had alleged in the Superseding Indictment that the co-conspirators in Count One would tell their developer clients of their relationship with John Mitchell and that Mitchell was related to Deborah Gore Dean. Consistent with that allegation, the Independent Counsel intended to elicit the testimony of Arama developer Aristides Martinez that in early 1984 he had been told by John Mitchell or Louie B. Nunn that John Mitchell was related to Deborah Gore Dean and that she held an important position at HUD. Martinez, who in January 1984 had entered into an attorney agreement and a consultant agreement with Nunn to secure 300 units for the Arama project, knew that Mitchell was helping Nunn, and stated in a May 15, 1992 interview that he interpreted the statement about Mitchell and Dean to mean that Nunn and Mitchell had important contacts at HUD. At one point Associate Independent Counsel O'Neill would tell the court that eliciting this testimony could be crucial to establishing a conspiracy involving Mitchell and Dean.

Evidently to increase the chance that the court would allow the Independent Counsel to elicit, and to enhance the impact of, this testimony the Independent Counsel desired to create the impression that Martinez knew that Mitchell was to receive half the Arama consultant fee. Nunn, who had reached a tentative agreement with Martinez on January 25, 1984, had written on that agreement: "1/25/84. In event of death or disability, 1/2 of above amount belongs to John Mitchell. Louie B. Nunn." Nunn, however, had not made that annotation until subsequent to April 3, 1984, after the agreement had been modified in certain respects, and it is clear that, while Martinez knew that Mitchell was helping Nunn, he knew nothing about the fee arrangement and had never seen the annotation.

Nevertheless, in order to make it appear that Nunn knew about the annotation and possessed a copy of the consultant agreement bearing the annotation, the Independent Counsel made a false entry in the Superseding Indictment and introduced certain exhibits into the record representing them to be things they were not. The Independent Counsel also made a number of written and oral false representations regarding these exhibits.

This particular deception is unlikely to have influenced the outcome of the trial, however, because immediately after the court refused to allow Associate Independent Counsel O'Neill to elicit the testimony concerning the conversation about Mitchell and Dean, O'Neill proceeded to elicit from Martinez testimony that he was not aware that he was hiring anyone other than Nunn or that Nunn was hiring anyone else. Tr. 250-51. That testimony would then be relied upon by the Independent Counsel to support a theory directly contrary to the theory in the Superseding Indictment--namely, that, rather than being touted to the developers as suggested in the Superseding Indictment, Mitchell's role was concealed from the developers and that this concealment, like the supposed concealment of Mitchell's involvement with the Park Towers project from Feinberg and Fine, was evidence of conspiracy. Nevertheless, the introduction of documents into evidence representing them to be things they are not is a serious matter (though, of course, so too is attempting to lead the court to believe that Mitchell's role was concealed from Martinez when Independent Counsel attorneys knew with absolute certainty that such claim was false).

In any event, the most important of the exhibits by which the Independent Counsel sought to deceive the court and jury on this matter were Government Exhibits 20 and 25. Government Exhibit 20 is a copy of the Arama consultant agreement bearing Nunn's annotation concerning Mitchell entitlement to half the fee. The Independent Counsel introduced this document into evidence in a manner to lead the court and the jury to believe that the annotation had in fact been made on January 25, 1984, and also made a number of explicit representations to that effect.

Government Exhibit 25 is an April 3, 1984 letter from Martinez to Nunn, enclosing, among other documents, a copy of the Arama consultant agreement bearing Nunn's annotation concerning Mitchell's right to have the consultant fee. The Independent Counsel introduced this document into evidence in a manner to lead the court and the jury to believe that the annotation was on the copy of the consultant agreement in Government Exhibit 25 when Martinez mailed it to Nunn. If that had been the case, it would conclusively establish that Martinez had been aware of the annotation and at some point have possessed a copy of the agreement bearing the annotation. As Independent Counsel attorneys knew, however, the annotation was not made until after Nunn received the letter from Martinez.

2. <u>February 26, 1997 Letter to Independent Counsel Larry D. Thompson Requesting the Opportunity to Examine the Originals of Certain Exhibits and Advising Him of Reasons to Believe That Information Was Excluded From the Martinez Interview Report</u>

I first brought this matter to the attention of Independent Counsel Larry D. Thompson in the materials delivered to him on September 18, 1995. In addition to addressing the matter in a 45-page appendix (Attachment 6, Document M\11-SUPPI), I specifically discussed the matter in the September 18, 1995 letter (at 21-22). I discussed the matter further in my letter of December

5, 1995, in which I questioned why Mr. Thompson had not yet informed the court concerning this and other matters where Independent Counsel attorneys had attempted to deceive it. I noted (at 7) that the materials I had provided eleven weeks earlier should have left Mr. Thompson with no doubt that the annotation on the copy of the consultant agreement attached to the April 3, 1984 letter from Aristides Martinez to Louie B. Nunn was not made until after the letter was received by Nunn.

By letter dated February 26, 1997, I explained this matter again to Mr. Thompson, this time in the context of a request to review the originals of Government Exhibits 20, 21, 22, 25, and 33. Each of these exhibits in some manner pertained to my contentions regarding the Arama consultant agreement or other documents the Independent Counsel had introduced into evidence while representing them to be things they were not. These are court records, but, pursuant to district court procedures, they are held by the Independent Counsel.

In the letter (at 4-5), I also noted something that I had not previously brought to Mr. Thompson's attention. I pointed out that there was reason to believe that in the interview on May 15, 1992, Aristides Martinez told representatives of the Office of Independent Counsel that he was unaware that John Mitchell was to receive half the Arama consultant fee, but such information was excluded from the Martinez interview report provided to the defense.

As noted above, immediately after the court refused to allow Associate Independent Counsel Robert E. O'Neill to elicit the testimony concerning the conversation about Mitchell and Dean, O'Neill proceeded to elicit from Martinez that he was not aware that he was hiring anyone other than Nunn or that Nunn was hiring anyone else (Tr. 250-51), which means that Martinez could not have known about the annotation. The response was obviously anticipated by O'Neill. Martinez may well have made this disclosure in the same May 15, 1992 interview in which he told representatives of the Office of Independent Counsel about the conversation concerning Mitchell and Dean. This interview occurred one month after Nunn had told Independent Counsel attorneys that they would have to ask Martinez if he knew about the annotation.[23]

Yet the written report of the Martinez interview that the Independent Counsel provided to the defense (Exhibit 1 to Dean's 1997 Memorandum) shows no questioning of Martinez whatever about the consultant agreement that would be Government Exhibit 20, the attorney agreements that would be Government Exhibits 21 and 22 (before and after a $50,000 increase), or the copies of the consultant and attorney agreements that would be attached to Government Exhibit 25. The interview report does show, however, that Martinez was questioned serially about the documents that would become Government Exhibits 19, 23, and 24, and the transmittal letter in Government 25. Interview Report at 4-5. This suggests that Martinez was questioned about the agreements,

[23] See Nunn Grand Jury Testimony at 36 (Exhibit 61 to the Memorandum in Support of Defendant Deborah Gore Dean's Motion for Dismissal of the Superseding Indictment or, in the Alternative, for a New Trial on All Counts (Feb. 4, 1997) in United States of America v. Deborah Gore Dean, Crim. No. 92-181-TFH (D.D.C.)).

including questioning as to whether he was aware of Nunn's annotation concerning Mitchell's right to half the consultant fee, but Independent Counsel attorneys excluded that questioning and Martinez's response from the report of the interview provided to the defense.

At the time I expressed my basis for believing that statements that would have interfered with the Independent Counsel's false use of certain exhibits had been excluded from the Martinez interview report, I had not yet heard of the allegations by the former Independent Counsel employee that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz had destroyed or edited interview report. The near coincidence of my raising the issue with Mr. Shaheen's providing Mr. Thompson a copy of the underlying complaint containing allegations supporting my allegations occurred because the same events that presumably prompted Mr. Shaheen finally to forward the letter he had held for over three months to Mr. Thompson had prompted my renewed correspondence with Mr. Thompson, who had not further responded following his February 18, 1996 representation that the materials I provided him in the five preceding months would be reviewed.[24]

I have attempted to develop evidence concerning the alteration of the Martinez interview report through the Freedom of Information Act. Having been led to understand that the same person who submitted the November 15, 1996 complaint has also alleged that the dates on the interview reports as the dates they were prepared are not in fact the true dates on which they were prepared, I have sought to secure a copy of the Martinez report showing the date that it was supposed to have been prepared. After the Independent Counsel twice represented that there exists no copy of the Martinez interview report showing that date, the Independent Counsel now maintains that it misunderstood my request and that such a document does exist. See my letter to Deputy Independent Counsel Dianne J. Smith dated November 29, 1997 (at 6-9), and Ms. Smith's letter to me dated December 19, 1997. The next level of inquiry will involve determining whether the dates supposedly reflecting the transcription of the interview report are false.[25]

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[24] I initially resumed my correspondence with Mr. Thompson concerning certain aspects of the Independent Counsel's position in the court of appeals regarding 18 U.S.C. §1001 and whether he agreed that under the court's decision in the Dean case, as interpreted by the Independent Counsel, any false statement by an official or agent of a department or agency of the United States in the course of the prosecution of a civil or criminal matter in the federal courts violate that statute. By letter dated February 18, 1997, Mr. Thompson stated that he could not comment at that time. The interpretation of 18 U.S.C. §1001 in my letter to Mr. Thompson dated February 11, 1997, as well as in my letter to him dated March 26, 1997 (at 1 n.1), would underlie my repeated statements to Mr. Thompson over the ensuing months concerning ways in which actions of Independent Counsel attorneys in deceiving courts violated 18 U.S.C. §1001.

[25] Responding to my Freedom of Information Act request, the Independent Counsel has refused to reveal the identities of the Independent Counsel attorneys questioning Martinez in his interview.

With regard to my February 26, 1997 request to review the originals of certain Independent Counsel exhibits, I had not heard from Mr. Thompson when, before 9:00 a.m. on March 26, 1997, I faxed him a letter inquiring as to why he had not yet responded to my request to review the documents. In the letter I suggested that any delay in responding in order to interfere with my exposing the Independent Counsel's actions concerning this matter would itself violate 18 U.S.C. § 1001.

In my letter of March 26, 1997, I also explained in greater detail my interest in reviewing the originals of the exhibits, particularly the consultant agreement introduced into evidence as part of Government Exhibit 25. I explained that I believed that the Independent Counsel had used the original of the consultant agreement bearing Nunn's annotation concerning Mitchell as Government Exhibit 20, but that, while the Independent Counsel used an original of the Martinez April 3, 1984 letter in Government Exhibit 25, it had used a photocopy of the Arama consultant agreement in that exhibit. The use of a photocopy for the consultant agreement in Government Exhibit 25, in particular a copy where Nunn's annotation concerning Mitchell was photocopied rather than in ink, would confirm to observers the false impression that the annotation was on the document when it was sent by Martinez to Nunn. I urged Mr. Thompson to ensure that the exhibits were not tampered with.

C. The Apparently Missing Consultant Agreement

On Saturday, March 29, 1997, I received from Mr. Thompson a letter dated March 25, 1997, apologizing for the delay in responding to my letter of February 26, 1997, but refusing to allow me to review the originals of the exhibits. Mr. Thompson stated that he had reviewed my letter and related materials with his staff, but that the "materials utterly failed to convince us that the conclusions you have drawn therein are correct or, even if your conclusions were correct, that these matters were relevant, material, or unknown to the defense at the time of trial, or indeed, relevant or material to any possible issue that could be raised at this late juncture."[26]

Mr. Thompson did enclose with his letter dated March 25, 1997, documents that he represented to be copies of the exhibits I had requested to see, including Government Exhibit 25. Missing from Government Exhibit 25, however, was the consultant agreement that I had repeatedly discussed in the many places where I had raised this issue with Mr. Thompson.

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[26] Whether Mr. Thompson in fact mailed his letter dated March 25, 1997 (which was mailed in Washington D.C.) before receiving my letter faxed to him before 9:00 a.m. on March 26, 1997, is a matter I am attempting to resolve through the Freedom of Information Act. I do know that Mr. Thompson was not in Washington on March 25, 1997, though he apparently was in Washington on March 24, 1997. See my letter to Mr. Thompson dated November 14, 1997 (at 17-20) (Attachment 28).

On March 31, 1997, I faxed a letter to Mr. Thompson, pointing out that the consultant agreement was missing from Government Exhibit 25. I requested that he immediately inform me whether the consultant agreement that was included with that exhibit when it was provided to the defense was introduced into evidence but the original is now missing, or whether the consultant agreement was pulled from the exhibit before it was admitted into evidence.[27]

By letter dated April 3, 1997, Mr. Thompson stated that he was taking my letter dated March 31, 1997, under advisement. In the months that followed, I wrote Mr. Thompson repeatedly to inquire as to why he had not yet responded to my letter dated March 31, 1997. In letters dated May 14, 1997, May 26, 1997, June 9, 1997, July 3, 1997, July 28, 1997, and August 18, 1997, I pointed out that any delay in responding to my question in order to delay or interfere with my efforts to reveal that the Independent Counsel deceived the court and the defense on this matter would itself violate 18 U.S.C. § 1001.

Since for almost five months Mr. Thompson had refused to state why the Arama consultant agreement was missing from the copy of Government Exhibit 25 he had provided me, I submitted Freedom of Information Act requests dated August 27, 1997, and August 28, 1997, requesting, respectively, a copy of Government Exhibit 25 and an opportunity to review the originals of Government Exhibits 20, 21, 22, 25, and 33, which are the same exhibits I had requested to see in my letter to Mr. Thompson February 26, 1997.

As summarized in my November 14, 1997 letter to Mr. Thompson (at 1-12) (Attachment 28), however, to date the Independent Counsel has refused to allow me to review the originals of those exhibits, citing dubious authority to support that determination. The Independent Counsel has also refused to provide me a copy of Government Exhibit on the basis that it was provided to me by letter dated March 25, 1997, without acknowledging or responding to my requests that it state what happened to the most crucial part of that exhibit.

In any event, the unusual behavior of Independent Counsel Thompson concerning the original of the consultant agreement in Government Exhibit 25 suggests that the document may indeed be missing from Independent Counsel files. Further, Mr. Thompson's response dated March 25, 1997, suggests that when he signed that response he was not even aware that the document was missing. Thus, the possibility exists that the document disappeared from

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[27] As noted above, after the court refused to allow the Independent Counsel to elicit the testimony from Martinez that he had been told the Mitchell was related to Dean and that she held an important position at HUD, the Independent Counsel completely changed its theory, and claimed that Mitchell's involvement with the Arama project was concealed from Martinez. In my March 31, 1997 letter to Mr. Thompson (at 5-6), I suggested the possibility that after deciding to lead the court falsely to believe that Mitchell's involvement with the Arama project was concealed from Martinez, the Independent Counsel may have pulled from Government Exhibit 25 the consultant agreement that, had it in fact been what the Independent Counsel represented it to be, would have conclusively established that Martinez knew that Mitchell was to receive half the consultant fee.

Independent Counsel files as a result of my raising this matter with the Department of Justice on January 17, 1995.

I cannot say I believe that there is a strong likelihood that some communication between the Department of Justice and present or former Independent Counsel attorneys led to the unauthorized removal of the original of the consultant agreement in Government Exhibit 25 from Independent Counsel files. Nor for that matter would there have been anything improper in the Department of Justice's alerting the Independent Counsel of the exact nature of my allegations after the Department decided to take no action. Indeed, as suggested in my letter to Judge Mikva dated July 14, 1995, having decided to take no action on the basis that there was no evidence of systemic abuses by the Independent Counsel, the Department was obliged at least to alert the Independent Counsel of instances where the Independent Counsel was relying on false evidence.

The nature of the communications to the Independent Counsel concerning this matter, however, is a subject of my Freedom of Information Act request dated November 14, 1997 (Nos. A.4.g. and i.), and should be a subject of your investigation as well.

D. Correspondence Concerning Claudia J. Flynn

In late spring 1997, I came to understand that Claudia J. Flynn was the Chief of Staff to the Assistant Attorney General for the Criminal Division. By letter dated June 10, 1997 (Attachment 2), I wrote to Ms. Flynn requesting that she advise me of the positions (with dates) she had held with the Office of Independent Counsel and Department of Justice and that she provide me a copy of any official Department of Justice biography on her.

In my letter, I explained in some detail the reasons to believe that she had conspired to obstruct justice concerning the testimony of Agent Cain as a result of her apparently standing ready at the hearing on February 22, 1994, to mislead the court in support of the probation officer's recommendation to increase Dean's sentence because of her testimony about the call to Cain in the same manner Mr. Swartz had attempted to mislead the court in resisting discovery. I also advised her (at 6-7) that I would again be raising these issues with the Department of Justice and that, absent reason to believe that my understanding of her involvement with the matter was incorrect, I would raise with the next Assistant Attorney General the appropriateness of Ms. Flynn's continued employment with the Department of Justice.

I also invited Ms. Flynn to advise me of any way in which I might have misconstrued the events described in my letter, though noting that it might be necessary for her to secure the permission of Independent Counsel Larry D. Thompson in order to do so.

In my letter to Ms. Flynn, I once more addressed the possibility that the Independent Counsel's actions were premised on the belief that, though Agent Cain did remember that Dean called him to discuss the check, Cain's testimony was literally true, stating (at 4-5):

Be mindful, moreover, that the conclusion that Independent Counsel attorneys conspired to obstruct justice would hold even if there existed some rationale by which Agent Cain's testimony was literally true. In that regard, I note that in a meeting on December 12, 1994, Associate Deputy Attorney General David Margolis raised the question of whether it was possible that, though Ms. Dean had called Agent Cain, Agent Cain's testimony was nevertheless literally true. But even if it there existed some rationale by which Agent Cain's testimony could be literally true--for example, because he did not remember Ms. Dean's calling him on or about a certain date,[footnote 1 to the letter goes here] or because he simply could not remember a call that did occur--the Independent Counsel did not advance such rationale in seeking to uphold the verdict against Ms. Dean's charges of prosecutorial misconduct, in seeking to have Ms. Dean's sentence increased because of her testimony about the call, or in opposing discovery on the whether Agent Cain committed perjury with the knowledge or complicity of Independent Counsel attorneys. Rather, the Independent Counsel attempted to persuade the court that Ms. Dean never made the call and that she had fabricated that story about the whereabouts of the check, just as Associate Independent Counsel Robert E. O'Neill had asserted to the jury, in reliance on Agent's Cain's testimony, that "that conversation never ever happened." Tr. 3506. Thus, if Independent Counsel attorneys believed that at some time near the end of April 1989 Ms. Dean called Agent Cain and asked whether there existed a check showing the payment to Mr. Mitchell, there can be little doubt that those attorneys engaged in a conspiracy to obstruct justice that continues to this day.

In footnote 1, I had stated:

The crucial questioning of Agent Cain concerning his recollection of the call from Ms. Dean began with the words" "At or about that date..." Tr. 3198. The only specific date Agent Cain had mentioned was April 17, 1989, which he gave as the date of publication of the HUD Inspector General's Report. Tr. 3197. Though dated April 17, 1989, however, the report was not actually released to the public until April 26, 1989, when it was issued in conjunction with an audit report of the latter date. Ms. Dean's written request to Agent Cain for a copy of the report was also dated April 26, 1989. Thus, Ms. Dean did not call Cain to ask about the check until at least April 26, 1989. Some might consider April 26, 1989, not to be "at or about" April 17, 1989, and it is perhaps noteworthy that in the initial part of Associate Independent Counsel O'Neill's closing argument he described Ms. Dean's testimony thusly: "And the day the I.G. Report came out, she called Special Agent Cain..." Tr. 3419.

> However, after giving April 17, 1989, as the date of publication of the report, Agent Cain testified that he provided Ms. Dean a copy of the report "at or about the time that it was published." Tr. 3197. Thus, the logical antecedent of "that date" in the questioning of Agent Cain concerning Ms. Dean's call about John Mitchell was the day that Agent Cain provided a copy of the report to her. This does not, however, rule out the possibility that Agent Cain gave the responses he did because Independent Counsel attorneys persuaded him that "that date" could be reasonably interpreted as April 17, 1989.

I also stated the following with regard to actions Ms. Flynn should take assuming she was or was not a party to a conspiracy to deceive the court in resisting discovery concerning Agent Cain's testimony (at 5):

> I suggest that if you were in some manner involved in such a conspiracy, you take immediate affirmative steps to withdraw from it. I also suggest that if you were not party to such a conspiracy, but have knowledge of actions of Independent Counsel attorneys that may have violated federal laws, you bring the matters to the attention of a proper authority.

By letter dated July 6, 1997 (Attachment 3), I again requested from Ms. Flynn the information concerning her tenure with the Department of Justice and the Office of Independent Counsel. By letter dated August 18, 1997 (Attachment 4), I again requested that information.

In the letter of August 18, 1997, I also provided Ms. Flynn with additional information concerning the Cain matter. And I pointed out to Ms. Flynn that, while I entertained few doubts about her knowing involvement in an effort to obstruct justice concerning the matter, if I was mistaken in that regard, it would not resolve certain issues. In particular, I pointed out that unless Ms. Flynn continued to believe that Mr. Swartz in fact believed that Dean had surmised that the check showing Louie B. Nunn's $75,000 payment to John N. Mitchell was maintained in a HUD field office in April 1989 from an entry in the HUD Inspector General's Report, as he had argued to the court in resisting discovery, Ms. Flynn nevertheless had certain responsibilities based on her earlier involvement in the matter.[28] I noted that her failure to make any effort to discharge such responsibilities by bringing her knowledge concerning this matter to the attention of an appropriate authority ordinarily would be interpreted as suggesting that she was knowingly involved from the outset. Ms. Flynn never responded to these letters.

On October 6, 1997, while believing that Ms. Flynn was still the Chief of Staff to the Assistant Attorney General for the Criminal Division, I wrote to Acting Assistant Attorney General John C. Keeney, enclosing copies of my correspondence with Ms. Flynn and related

[28] A phrase is missing from the portion of page 2 of my letter to Ms. Flynn where I made this point. I think the point was nevertheless clear enough.

materials. I first summarized the Cain matter and my prior exchanges with the Department of Justice concerning the matter, noting that I believed that compelling evidence of criminal activity in the matter and several others like it would enable me eventually to persuade the Inspector General that the Department failed to investigate my allegations in good faith, and that part of the reason for that failure was the belief that such an investigation would establish that high-ranking officials of the Department, including Mr. Swartz and Ms. Harris, had violated federal laws through their action in the prosecution of the Dean case. I also noted that there was considerable reason to believe that, subsequent to the Department of Justice's last refusal to act concerning this matter, Independent Counsel attorneys had committed further criminal acts, at least one of which Mr. Shaheen and other Department of Justice officials either knew about or should have known about, citing my letters to Independent Counsel Larry D. Thompson discussing Independent Counsel actions concerning Thomas T. Demery and the consultant agreement in Government Exhibit 25.

I then explained my understanding of the involvement of Ms. Flynn with regard to the February 22, 1994 hearing where, in resisting discovery concerning whether Agent Cain committed perjury, Mr. Swartz attempted to lead the court to believe that Dean had surmised that the check showing the payment to Mitchell on the Arama project was maintained in a HUD field office from the entry in the HUD Inspector General's Report rather than from the call to Cain. I also explained my prior communications to Ms. Flynn, noting that if Mr. Swartz did attempt to obstruct justice through actions including his effort to mislead the court at that hearing, Ms. Flynn would seem necessarily to have been a party to that effort. I suggested that if that was the case, Ms. Flynn was not fit to continue to serve in her position as Chief of Staff.

I pointed out that in reviewing the matter with Ms. Flynn a relevant consideration in an appraisal of any denial by Ms. Flynn of knowing involvement in the matter is whether she brought this matter to the attention of an appropriate Justice Department official upon receipt of my recent letters.

Finally, I stated (at 9):

> If you conclude that Ms. Flynn did not believe that Dean had surmised that the check was located in a HUD field office in April 1989 from the entry in the HUD Inspector General's Report, it would seem necessarily to follow that you must conclude that Ms. Flynn engaged in a conspiracy to obstruct justice. In that event, your responsibility would be not merely to see that Ms. Flynn is removed from her position with the Department, but to bring to the attention of an appropriate authority evidence indicating that Ms. Flynn or others associated with the matter violated federal laws.

Mr. Keeney did not respond to my letter. From the absence of Ms. Flynn's name from the Fall 1997 issue of the Federal Yellow Book, which first came to my attention shortly after

sending the letter to Mr. Keeney, I believe that Ms. Flynn had almost certainly left the Department of Justice prior to my sending the October 6, 1997 letter to Mr. Keeney.

When Ms. Flynn left the Department of Justice and what Mr. Keeney did as a result of my letter to him dated October 6, 1997, are subjects of my Freedom of Information Act request dated November 24, 1997.

E. Freedom of Information Act Request Dated November 24, 1997

On November 24, 1997, not then knowing that on that same day Mr. Shaheen would announce his intention to retire from the Department of Justice, I mailed an extensive Freedom of Information Act request to the Department of Justice. Prior to doing so, in addition to learning that Claudia J. Flynn was no longer the Chief of Staff for the Criminal Division, I came to understand that former Associate Independent Counsel Robert J. Meyer, signatory to the Independent Counsel's opposition to Dean's original motion for a new trial, had for some time held a position in the Criminal Division. I did not then know the specific position Mr. Meyer held or when he joined the Department, though I have since come to learn that he has been a member of the Criminal Division at least since 1996.

The request sought information concerning former Independent Counsel attorneys who went on to hold positions in the Criminal Division in Washington, including Jo Ann Harris, Bruce C. Swartz, Robert J. Meyer, and Claudia J. Flynn (Section A.1)[29]; whether in responding to a Freedom of Information Act request the Independent Counsel has concealed allegations of prosecutorial misconduct Mr. Shaheen had forwarded to Independent Counsel Larry D. Thompson in early 1997 (Section A.2); the Department of Justice's oversight of Independent Counsels and any role former Independent Counsel attorneys had in such oversight (Section A.3); and the Department's general oversight of actions of federal prosecutors (Section A.5). The requests also sought information concerning the Department's prior handling of my allegations of misconduct in the Dean case, including the interaction with the Office of Independent Counsel relating to the matters addressed in my recent letter to Mr. Keeney (Section A.4).

[29] The Freedom of Information Act request also seeks some information on former Independent Counsel attorneys Robert E. O'Neill and George Ellard. Mr. O'Neill, lead trial counsel in the Dean case, has already been discussed at length. To my knowledge, Mr. Ellard, who is an Assistant Counsel with the Office of Professional Responsibility, was not involved in the Dean case or responsible for any misconduct in the case. Presumably, however, as lead counsel in the prosecution of the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), until the plea agreement was signed in that case in June 1993, he is one of the persons to whom Thomas T. Demery acknowledged that numerous of his statements to Congress were false, and hence is quite knowledgeable about certain issues raised in the materials I provided the Department. The requests concerning Mr. Ellard (3.f., 4.a., 4.n.) are largely related to any involvement he may have had in the Department's' investigation of my allegations.

The Freedom of Information Act request also seeks a waiver of costs and reproduction fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (Section B). In support of the request for the waiver, I stated in the letter that I am writing a book regarding hearings concerning abuses of HUD's moderate rehabilitation program conducted by the Employment and Housing Subcommittee of the House Committee on Government Operations in 1989 and 1990 and the investigation and prosecutions that followed pursuant to the appointment of Independent Counsel Arlin M. Adams. I pointed out that I intended to give particular attention to the actions of Independent Counsel attorneys in the prosecution of the Dean case and that an important element of the work involves what I maintain were prosecutorial abuses and violations of federal laws by Independent Counsel attorneys who went on to hold high positions with the Department of Justice; my efforts to persuade the Department of Justice to investigate the Office of Independent Counsel and to remove certain officials from their positions in the Department of Justice; the actions the Department of Justice took in response to those efforts; and subsequent actions of the Office of Independent Counsel that I maintain violated federal law and that were taken with the actual or imputed knowledge of Department of Justice officials.

As reflective of my ability to widely disseminate the information about the workings of government, which is a requirement in qualifying for the fee waiver, I noted the volume of material I have already produced on this matter and provided information on my background, including a fairly extensive publication record.

By letter dated December 5, 1997 (Attachment 29), I advised the Freedom of Information Officer in the Attorney General's Office of my intention to submit a complaint to the Inspector General by December 15, 1997, stating that I therefore requested expedited attention to the requests for information concerning the tenure of certain individuals with the Criminal Division. By letter to Acting Assistant Attorney General John C. Keeney of the same date (Attachment 30), I requested Mr. Keeney to provide me the same information at his earliest convenience.

I have not received a response to either letter. By letter dated December 16, 1997, from the Justice Management Division (Attachment 7), however, I was advised that my request of November 24, 1997, has been forwarded to Department of Justice components, including the Offices of the Attorney General, the Deputy Attorney General, and the Associate Attorney General, as well as the Criminal Division, the Justice Management Division, the Office of Professional Responsibility, the Office of Public Affairs, and the Executive Office for United States Attorneys.

I suggest that ensuring that each component responds in complete good faith to every aspect of my Freedom of Information Act request, including the fee waiver request, ought to be an integral part of your investigation.

F. Communications From the Former Employee of the Office of Independent Counsel Concerning Agent Cain

While initially preparing this letter I had occasion, on December 3, 1997, to talk to the former employee of the Office of Independent Counsel who had filed the complaint with the Office of Special Counsel in late 1993 and who had filed the complaint with the Office of Professional Responsibility on November 15, 1996. I had learned the individual's name only the day before.

I had attempted to contact him solely to determine whether he had any objection to my revealing that I possessed a copy of his November 15, 1996 complaint to Mr. Shaheen, and I did not seek to question him about anything in the complaint. I did ask him, however, if he was aware of the issues being raised in the Dean case at the same time that he had filed his complaint with the Office of Special Counsel and whether he was aware of the issues Dean had raised concerning the testimony of Agent Cain.

The question prompted the former employee to state that he remembered that Independent Counsel attorneys had deemed Agent Cain's testimony to be crucial. The former employee also stated that Agent Cain had been very principled and a number of prosecutors had had to take Cain into a room for some period of time to get Cain to agree to give certain answers. The former employee gave the impression that this occurred over several days, which would presumably have been the days between the time of Dean's giving her testimony on October 12, 1993, and Cain's giving his testimony on October 18, 1993. The former employee indicated that when Cain did testify, Independent Counsel attorneys feared that he would be effectively cross-examined with serious consequences. When that did not happen the prosecutors were elated.

If you should talk to this individual, I think that you will find him to be very credible. But I do not know whether you actually will need to do that with regard to the Cain matter. Bruce C. Swartz and Robert J. Meyer in the Criminal Division and any number of other persons in the Office of Independent Counsel presumably will acknowledge that Cain agreed to give the answers he did even though he remembered the call.[30]

And Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr., Associate Deputy Attorney General David Margolis, and Acting Assistant Attorney General John C. Keeney can each tell you whether he recognized that at the time that Cain's testimony was elicited Independent Counsel attorneys knew that Dean had called Cain to ask about the check. Messrs. Shaheen, Margolis, and Keeney can also tell you when they came to such understanding. They, or in any case Mr. Margolis and Mr. Shaheen who dealt with me directly, can also advise you whether any of their actions in dealing with me or otherwise addressing the allegations I brought to the Attorney Generals' attention were intended to assist in the concealment of the fact that Independent Counsel attorneys knew that Deborah Gore Dean had called Agent Cain in

[30] Since the Department of Justice already has the former employee's name, there is no reason to place it in this letter.

April 1989 to discuss the check and that the statements in her and my affidavits concerning that matter were true.

CONCLUSION

While not directly related to your investigation of the handling of my allegations by Department of Justice officials, it would perhaps be useful for you to know that subsequent to March 11, 1996, I continued to address the Cain matter with Independent Counsel Larry D. Thompson periodically pointing out to him the same things I periodically pointed out to Department of Justice officials, and copying him with my recent letters to Ms. Flynn and Mr. Keeney. The history of that correspondence is reflected in my December 9, 1997 letter to Mr. Thompson (Attachment 32). Thus, if Independent Counsel attorneys engaged in a criminal effort to obstruct justice through their attempts to deceive the court concerning Agent Cain's testimony, Mr. Thompson presumably is now a party to that effort as well, if he was not a party to it when he first assumed the position of Independent Counsel.

I still do not understand the rationale by which Agent Cain's testimony might have been deemed literally true notwithstanding his remembering a discussion with Dean concerning the check. Given Associate Independent Counsel Robert E. O'Neill's initial eliciting of April 17, 1989, as the date the report was published, which was ten days before Dean received a copy, and that O'Neill began the crucial questions with "at or about that date," I am disposed to believe that the date had something to do with the Independent Counsel's rationale. As noted in the various letters quoted above, however, the logical antecedent of "that date" was the day that Cain provided a copy of the report to Dean. Of course, it is possible that the questioning did not flow in exactly the manner it was intended and hence the intended literal truthfulness of Cain's testimony was not effected in the event, and it is possible as well that Independent Counsel attorneys somehow persuaded Cain to accept their rationale notwithstanding its logical flaw.

But, as I repeatedly noted to various Department of Justice officials and to Mr. Thompson, the literal truthfulness of Cain's testimony is of little consequence. And if there exists in the Department of Justice a widespread perception that it is permissible to elicit literally true testimony from a government witness in order to lead a jury to believe something that is false, in any circumstances much less the racially charged situation at issue here, then the Department of Justice is indeed a corrupt institution.

In any case, as I have already noted, the matter did not end with the eliciting of the testimony or with Robert O'Neill's inflammatory reliance on that testimony in closing argument. For, presumably recognizing at least that the court would consider the eliciting and the use of Cain's testimony to be outrageous government conduct, Independent Counsel attorneys, including Mr. Swartz, Mr. Meyer, and no doubt Independent Counsel Arlin M. Adams himself, decided to deceive the court in covering up what the Independent Counsel had done. Since the testimony of Agent Cain could reasonably be perceived as perjured regardless of the Independent Counsel's

rationale for reconciling it with Cain's remembering the call from Dean, deceiving the court in resisting an inquiry into the matter was obstruction of justice. But I trust experienced prosecutors could find an assortment of theories whereby the efforts to deceive the court in this manner violated federal laws, including 18 U.S.C. § 1001 as interpreted by the court of appeals in the Dean case. And certainly, assuming that Mr. Shaheen's representations that he did not find any of the conduct described in the materials to be outrageous was made in all candor, few other intelligent people would concur in that view.

Let us assume, however, that you should find that neither the actions of Independent Counsel attorneys nor those of Department of Justice officials were based on an understanding that Cain gave literally true testimony notwithstanding that he remembered the call from Dean. Should that be the case, the situation remains one where it is impossible not to believe that in resisting discovery on the matter Deputy Independent Counsel Bruce C. Swartz attempted to lead the court to believe that Dean surmised that the check was maintained in a field office while believing that Dean had learned that fact from the call to Cain. The only difference is that Swartz would have been resisting discovery into whether an agent committed perjury where there did not exist some rationale by which the underlying testimony might be literally true.

Be mindful, moreover, that my suggestion that the Department's failure to investigate my allegations in good faith because of a concern that it would reveal that laws were violated by Independent Counsel attorneys who went on to join the Department of Justice is by no means limited to the Cain matter. The calculated flouting of Judge Gesell's disclosure order in order to facilitate the Independent Counsel's effort to lead the jury to believe things that Independent Counsel attorneys believed to be, or knew for a fact to be, false, as described in the Introduction and Summary and the Park Towers appendix, among other places, presumably constituted federal crimes, as did the fraudulent use of the Arama consultant agreement and related documents. Former Assistant Attorney General Jo Ann Harris was deeply involved in all these matters.

The potentially most troubling aspect of the Department's handling of the matter, however, would be that the identity of the involved attorneys had no role in the Department's decisions, and that Mr. Shaheen accurately stated that he did not find the described abuses to be exceptional. For that would offer a disturbing insight into the nature of the oversight of the ethics of federal prosecutors for the last generation, and suggest that the actions of experienced federal prosecutors acting as Independent Counsel attorneys in the Dean case were themselves a product of a flawed understanding of a government lawyer's responsibilities toward the truth for which many senior Department officials would share responsibility.

I recognize that at a minimum my allegations call into question the moral sense of some distinguished public servants. I know that Mr. Keeney is a recent recipient of the Beatrice Rosenberg Award for Outstanding Government Service and that Mr. Margolis is one of the most respected attorneys in the Department of Justice. I also understand that Mr. Shaheen, whom the

Attorney General recently described as "one of the most dedicated public servants I have known," is very well respected.

But not all reputations are justified. According to the Washington Post, Jo Ann Harris was "highly regarded" at the Department, and the Department allowed her to be a spokesperson to inform the public that lawyers engaging in prosecutorial abuses "need to be dealt with in the firmest kind of way." Appeals Court Judge John Butzner recently described Arlin M. Adams as "a man of great integrity." And it would hardly surprise me to find that Bruce C. Swartz is considered within the Department to be a person of outstanding character.

Yet, Mr. Shaheen's representations to me notwithstanding, the materials I provided the Department showed Ms. Harris, Judge Adams, and Mr. Swartz to have approached the prosecution of Deborah Gore Dean with a contemptuousness of the truth that would shock the conscience of anyone outside of the Department of Justice. When the exact nature of their conduct in the Dean case is publicly revealed, the question will be why it apparently shocked the conscience of no one in a position of responsibility within the Department.

In any event, no one ought to enjoy a reputation for distinguished service to the United States unless that reputation is deserved. At the same time, however, an agency should vigorously defend its employees against unjustified attacks arising as a result of the honorable performance of their duties. That is another reason why you should conclusively determine whether there is merit to my charges.

Should you wish to discuss any matter addressed in this letter, I can be reached during the day at (202) 887-4453, though I shall out of town for most of the period until the New Year. In order to ensure that this letter could be delivered before I left town, I had to prepare it with less care than I would have liked. So I may well provide you a corrected copy within a week or so.[*] At that time, I will also provide a copy to the Attorney General and alert her to my intentions to request that the Department of Justice reexamine whether an investigation of the Office of Independent Counsel is warranted.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

Attachments

[*] This version of this letter contains corrections described on errata sheet dated January 5, 1998.