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December 17, 1999

Robert J. Meyer
Attorney
Public Integrity Section
United States Department of Justice
Bond Building
1400 New York Ave., N.W.
Washington, D.C. 20005

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

Dear Mr. Meyer:

Enclosed is a copy of a letter I sent to Lee J. Radek, Chief of the Public Integrity Section, on August 3, 1998. The letter discussed your role in deceiving the courts concerning whether certain government witnesses committed perjury in the case of United States of America v. Deborah Gore Dean, Crim. No. 92-181-TFH (D.D.C.) I suggested to Ms. Radek that in light of such conduct you were not fit to represent the United States. Also enclosed, on diskette, is a copy of an 86-page letter to Department of Justice Inspector General Michael R. Bromwich, dated December 23, 1997, in which I summarized certain matters where the facts suggested you became involved in a conspiracy to obstruct justice in consequence of your authoring Government's Opposition to Defendant Dean's Motion for New Trial Pursuant to Fed. R. Crim. P. 33 (Dec. 21, 1993).

As discussed in the letters to Ms. Radek and Mr. Bromwich, I believe that you became involved in a conspiracy to obstruct justice at least by attempting to deceive the court in responding to the defendant's claims that Supervisory Special Agent Alvin R. Cain, Jr. and former Assistant Secretary for Housing Thomas T. Demery committed perjury while testifying as government witnesses in the Dean case. In the near future, I shall again be bringing these matters to the attention of Department of Justice officials and otherwise publicizing the nature of your actions in an effort to secure your removal from the Department of Justice and the prosecution of you and any other willful participants in schemes to

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deceive the courts or to suborn perjury in this matter. I shall also be requesting the District of Columbia Bar to investigate the suitability of you and others involved in these schemes to continue the practice of law. And I shall generally be seeking to publish my interpretation of your conduct in this matter on as wide a basis as possible.

In light of these intentions, I thought it appropriate to offer you the opportunity to review the details of my allegations and to alert me to any matter concerning which you believe my interpretation of events in general, or of your conduct in particular, is inaccurate or unfair. While the principal matters to which I have recently given attention are largely summarized in the letter to Mr. Bromwich, you will find details of these and other matters among materials I submitted to Independent Counsel Larry D. Thompson on September 18, 1995. Those materials are largely the same as those I provided to the Department of Justice and the White House between December 1994 and February 1995 seeking an investigation of the Office of Independent Counsel and the removal of

Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division.¹

¹ In various places I have maintained that, among other acts she committed while serving as an Associate Independent Counsel on the Dean case, Ms. Harris conspired with Bruce C. Swartz and others to violate 18 U.S.C. § 1001 by making a false entry in the Superseding Indictment and introducing a false document into evidence in support of that entry. The details underlying that particular allegation were contained in a 45-page document provided to Associate Deputy Attorney General David Margolis on January 17, 1995, which is also included in the materials provided to Mr. Thompson. On February 9, 1995, I provided the same materials to White House Counsel Abner J. Mikva, who then forwarded them to the Deputy Attorney General on March 8, 1995. Later that month, Ms. Harris advised the Attorney General that she (Ms. Harris) intended to leave the Department. Unaware of that fact, by letter delivered to Judge Mikva on May 17, 1995, I questioned how Ms. Harris could be allowed to continue to serve as Assistant Attorney General for the Criminal Division in light of the misconduct documented in the materials I had provided the Department of Justice months earlier. On May 18, 1995, Ms. Harris formally submitted her resignation. Before

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Among the matters in these materials that warrant your attention are allegations concerning the attempts in the document you signed on December 21, 1993, to lead the court to believe (a) that Independent Counsel attorneys failed to make a Brady disclosure of certain telephone message slips of former Attorney General John Mitchell, which suggested that Assistant Secretary for Housing Maurice Barksdale had caused the Arama funding at the request of Lance Wilson rather than the request of Deborah Gore Dean, because those attorneys did not perceive the message slips to be exculpatory; and (b) that when Independent Counsel attorneys attempted to cause the jury to believe that certain receipts reflected meals bought for Dean, those attorneys believed that the receipts in fact pertained to Dean. The materials allege that at the time you attempted to lead the court to believe these things to be true, you knew them to be false. The materials are out of date in certain requests. For example, the main material on Supervisory Special Agent Alvin R. Cain, Jr. was written before it was suggested to me by Associate Deputy Attorney General David Margolis that Agent Cain's testimony might be literally true (as discussed below), and the material on the false use of Government Exhibit 25 was written before I came to understand that the crucial part of that exhibit was apparently missing from Independent Counsel files. More generally, the material was written before the court of appeals would hold that there was sufficient evidence to sustain a verdict that Deborah Gore Dean conspired with former Attorney General John N. Mitchell to defraud the United States only with respect to one of the three projects identified in the Superseding Indictment--i.e., the Arama project that was funded in 1984 as a result of actions by Assistant Secretary for Housing Maurice L. Barksdale.

The material was also written before Lance Wilson provided an affidavit stating that--as Independent Counsel attorneys certainly assumed when they first reviewed John Mitchell's telephone message slips and decided neither to include

leaving her position, however, on June 26, 1995, Ms. Harris hired Bruce C. Swartz as her Senior Special Assistant. Mr. Swartz remained as Special Assistant or Counsel to the Assistant Attorney General for the Criminal Division until at least 1998.

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them in a Brady disclosure nor confront Barksdale with the information on them-- Wilson, not Dean, caused Barksdale to fund the Arama project. And it was written before the Independent Counsels made allegations concerning Barksdale in a case against James Watt that, if true, demonstrated that the Independent Counsel had elicited false testimony from Barksdale in the Dean case.

Further, the material concerning the Independent Counsel's efforts to conceal that Thomas T. Demery had committed perjury was prepared prior to the Independent Counsel's representing to the Honorable Stanley F. Harris in Demery's own case that Demery had given completely truthful testimony in the Dean case. Moreover, the material concerning the Independent Counsel's actions regarding Demery is somewhat naive. Demery had lied to Congress more than thirty times, had been indicted for lying to Congress, had thereafter admitted to Independent Counsel attorneys that he had lied to Congress more than a dozen times, and had even explained to Independent Counsel attorneys why he had lied in the statements underlying the indictment. Then, when appearing as government witness in the Dean case, Demery repeatedly and unequivocally denied ever having lied to Congress. See my letter to Independent Counsel Larry D. Thompson dated August 13, 1998, and attachments thereto. Thus, particularly when one understands how Independent Counsel attorneys coached Agent Cain to give the answers he did (as discussed below), but in any event, it is clear enough that Demery denied ever having lied to Congress because Independent Counsel attorneys told him he should. Presumably, as with Agent Cain, Independent Counsel attorneys had contrived a rationale whereby Demery's statements that he had never lied to Congress might be deemed literally true. When the Independent Counsel was required to respond to claims that Demery committed perjury, however, those attorneys considered such rationale too absurd to advance it to the court. They instead made the arguments at pages 60 to 68 of the document signed by you on December 31, 1993, which, by their nature, could not have underlaid the rationale that caused Demery to repeatedly deny that he had ever lied to Congress. See my letter to Mr. Bromwich at 58-62. This understanding of Independent Counsel conduct was not reflected in the materials provided to Independent Counsel Thompson on September 18, 1995.

Despite these shortcomings, however, those materials, along with my subsequent correspondence to Independent Counsel Thompson and Deputy Independent Counsel Dianne J. Smith and the enclosed letter to Mr. Bromwich, provide a fair picture of the scope of the allegations that I shall continue to make about you and other former Independent Counsel attorneys in various forums. If

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there is anything in these materials that you can show to be inaccurate or unfair, I shall correct it in the further publication of allegations against you.

For purposes related to the actions I shall be taking in the immediately ensuing weeks, however, it would be useful to focus on the conduct concerning Supervisory Special Agent Alvin R. Cain, Jr., which is the principal subject of my letter to Mr. Bromwich. My interpretation of the relevant facts is the following:

1. The Independent Counsel's case against Deborah Gore Dean was principally focused on Count One of the Superseding Indictment, which alleged that Dean had conspired with former Attorney General Mitchell to cause the funding of three moderate rehabilitation projects in Dade County, Florida between 1984 and 1986. The HUD Inspector General's Report that had been issued in April 1989 (which was dated April 17, 1989, but not actually released until about ten days later) mentioned only one of these project. This was the project called Arama, which, as noted above, was funded as of a result of actions by Assistant Secretary for Housing Maurice L. Barksdale in 1984. The report said Mitchell earned a \$75,000 consulting fee on the project.

2. At her trial, Dean denied knowing that Mitchell earned any HUD consulting fees prior to reading the HUD Inspector General's Report released in April 1989. Immunized witnesses who allegedly had conspired with Dean and Mitchell to cause the funding of projects other than Arama also gave testimony that was inconsistent with Dean's being aware that Mitchell was earning HUD consulting fees. Dean emotionally testified that, after reading the discussion of Mitchell in the HUD IG report, she had called Al Cain, the HUD IG Agent who authored the report, to complain about the treatment of Mitchell in the report and to demand to know whether there existed a check showing the payment to Mitchell. Specifically, Dean stated:

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 here, 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. At this point a prosecution hearsay objection was sustained and Dean was prevented from stating what Cain told her when she asked about the check.

3. Deputy Independent Counsel Bruce C. Swartz and other Independent Counsel attorneys then pressured Agent Cain into providing certain answers to precise question posed to him as a rebuttal witness. They did so in order to cause the jury to believe that Cain had no recollection of receiving a telephone call from Deborah Gore Dean in April 1989 in which she questioned the treatment of Mitchell in the HUD IG report and that Dean had lied under oath about calling Cain.

4. As discussed in my letter to Mr. Bromwich, however, apparently Agent Cain did remember the call and had so informed Independent Counsel attorneys. But Independent Counsel attorneys had contrived a rationale whereby Cain could consider his answers to be literally true even though any auditor would interpret his responses to mean that he had no recollection of the call. That rationale probably had something to do with Cain's initially giving April 17, 1989, as the date the report was published and the crucial series of questions' being prefaced with the phrase "At or about that date." Obviously Dean had not called Cain on or about April 17, 1989, since neither she nor other members of the public received the report until about ten days later. However, as I have noted in a number of documents sent to Department of Justice officials (see my letter to Mr. Bromwich at 76-77), assuming Cain remembered the call, his testimony was not even literally true, since the antecedent of "that date" was the day Cain provided the report to Dean rather than April 17, 1989.

5. In any event, after eliciting detailed testimony from Agent Cain about the release of the report on April 17, 1989, and about Cain's providing a copy of it to Dean, Associate Independent Counsel Robert E. O'Neill conducted the following questioning:

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. Assuming that Independent Counsel attorneys did pressure Agent Cain into giving literally true answers in order to deceive the jury, it is reasonable to believe that some part of the reason for doing so involved the facts that Agent Cain was African-American and Dean was being tried before an entirely African-American jury. Shortly before the Independent Counsel called Cain, the court for the third time chastised Associate Independent Counsel Robert E. O'Neill for tactics that the court perceived to be directed to appeal to the racial difference between the defendant and the jury. Indeed, rather obviously the exploitation of the racial differences was an important factor in causing Independent Counsel attorneys to undertake the parlous scheme of pressuring a government agent to give testimony aimed at deceiving a jury in circumstances where the fact that the agent had been coached to give the answers he did might be revealed on the stand. See my letter to Mr. Bromwich at 7. While racial considerations may help to explain why Independent Counsel attorneys acted as they did, however, whether or not such considerations were involved has no bearing on the criminal nature

of the initial actions of the involved Independent Counsel attorneys or of the subsequent efforts to conceal those actions.

7. In an inflammatory closing argument, Associate Independent Counsel Robert E. O'Neill's stated to the jury approximately 50 times that Dean had lied on the stand. In support of that claim, O'Neill emphasized Agent Cain's testimony both in the initial and the rebuttal part of the argument. In first doing so, although O'Neill recounted Dean's testimony about the call in some detail, he mentioned nothing about her claim that she had called Agent Cain to ask about the check.

8. Late in the first day of the closing argument, O'Neill heightened his attack on Dean's credibility, 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.

9. During rebuttal the following day, while continuing the attack on Dean's credibility in a similarly inflammatory manner, O'Neill again relied on Cain, asserting:

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

Tr. 3506.

10. In seeking a new trial, Dean claimed, among other things, that Agent Cain had committed perjury in testifying that he had no recollection of the call. She submitted affidavits by her and by me, in which we both testified concerning a conversation we had about the April 1989 call to Agent Cain shortly after it occurred. Dean stated in her affidavit that she had demanded to know whether there existed a check showing that Mitchell had received a \$75,000 payment on the Arama project, and that Cain told her that there did exist a check but that it was maintained in a HUD field office. Dean also stated that she had then told me about the call and what Cain had told her about the whereabouts of the check. In my affidavit I confirmed Dean's account of the conversation, including what she had told me about what Cain had told her about the check. Dean argued that the only way that she could have learned of the whereabouts of the check in April 1989 was through the call to Cain, and that, if the check had been maintained in the field office in April 1989, it would tend to corroborate her story.

11. At this point, you became involved in responding to Dean's motion, and your role was such that in later seeking a position with the Department of Justice you would describe yourself as having been co-lead counsel in the case. Also at this point, Independent Counsel attorneys were forced to decide whether to explain to the court the rationale by which, though Cain did remember the call, it was nevertheless deemed proper to elicit testimony from him intended to lead the jury to believe he did not remember the call. Had such explanation been proffered to the court at that time, there was a good chance that the court, which almost ordered a new trial solely for other demonstrated prosecutorial abuses, would have dismissed the indictment. There was also the chance that the court would have sought the disciplining or prosecution of the involved Independent Counsel attorneys for suborning perjury, whether or not Cain's testimony might have been deemed literally true.

12. Thus, Independent Counsel attorneys made the decision not to reveal to the court that Cain did remember the call but that there existed some rationale to reconcile his testimony with that fact. Instead, Independent Counsel attorneys decided to attempt to lead the court to believe that Cain's and Dean's testimonies could not be reconciled, and that Cain's testimony was true and Dean's was false. This scheme was effected, first, through the document signed by you on December 21, 1993, maintaining that Dean had lied about the call in court and in her affidavit and suggesting that my affidavit was false as well. In the memorandum, however, you said nothing whatever about the whereabouts of the check in April 1989 or about Dean's argument that if the check was maintained in a field office in April 1989, it would tend to corroborate her story about the call.

13. The scheme was also effected through a letter to the probation officer signed by Arlin M. Adams on January 18, 1994, seeking (successfully) to cause the probation officer to recommend an increase in Dean's sentencing level for lying about the call to Cain. It is my understanding that Independent Counsel attorneys also spoke to the probation office some number of times. The communications to the probation officer concerning the call to Agent Cain certainly were at least partly for the purpose of concealing from the court information concerning the possible suborning of perjury by Independent Counsel attorneys. The probation officer had informed

Dean that he would personally investigate whether Cain had committed perjury.

14. The Independent Counsel was finally forced to respond to Dean's arguments concerning her knowledge of the whereabouts of the check in April 1989 when Dean moved for discovery into whether Agent Cain committed perjury with knowledge of Independent Counsel attorneys. In opposing that motion at a hearing on February 22, 1994, Deputy Independent Counsel Bruce C. Swartz attempted to lead the court to believe that Dean had surmised that the check was maintained in a field office, not from the call to Cain, but from an entry in the Inspector General's report.

15. The district court refused to increase Dean's sentencing level for lying to Cain, stating that the court believed that the call could have occurred. In the appeal, the Independent Counsel continued to rely on Cain as demonstrating that Dean had lied about her call to Mitchell. In its appellate brief dated September 16, 1994, which bears your name as well those of Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz even though you were then an employee of the Department of Justice, the Independent Counsel stated.

[Deborah Gore Dean] also testified that she first learned of the payments Mitchell had received when she read a HUD Inspector General's report in 1989, and that she had expressed her disbelief and anger to HUD agent Al Cain. Tr. 2617. But Agent Cain testified that to his recollection this conversation never occurred. Tr. 3198-99.

Assuming that the drafters of the brief knew that Dean had called Cain, this was a further effort to deceive a court in order to conceal the nature of Independent Counsel conduct. This would be so in any event, but it would be especially so if the rationale by which Cain was persuaded to give the testimony he did was that, while Dean had called him, she had not done so at or about April 17, 1989.

16. I maintain that at least by deceiving the court in resisting discovery, the involved Independent Counsel attorneys engaged in a conspiracy to obstruct justice, whether or not there was any

underlying conspiracy to suborn perjury. The statements to the probation officer also would seem part of a conspiracy to obstruct justice. Indeed, even if the Department of Justice should maintain that it is not a violation of 18 U.S.C. § 1512(a)(3) for a federal prosecutor to attempt to mislead the court itself in order to conceal from the court information concerning the possible violation of federal law by those prosecutors, such arguments would not apply to the misleading of the probation officer. Participants in that conspiracy at that time included you, Bruce C. Swartz, Arlin M. Adams, as well as Claudia J. Flynn, who appeared at the February 22, 1994 hearing for the purpose of persuading the court that the probation officer had properly recommended an increase in Dean's sentence for lying about the call to Cain. Subsequent participants in the conspiracy would be any attorney involved in the case who, knowing of these actions, failed to alert the court of the Independent Counsel's efforts to deceive it.

17. The conspiracy would seem to be a continuing one so long as the case remains in court. Specific subsequent overt acts in furtherance of the conspiracy, however, include a representation at page 9 of the Government's Reply to Defendant Dean's Opposition to Government's Motion to Strike Defendant Dean's Motion for Dismissal of the Superseding Indictment or for a New Trial, and to Strike the Memorandum in Support (Mar. 3, 1997), that Independent Counsel attorneys made no misleading arguments in defending against earlier charges of prosecutorial abuse. That representation is now a representation by you and each of your superiors at the Department of Justice with responsibility for the case. The representation, moreover, is a current representation, since the government's motion to strike is still before the court. And it is a representation that you, more even than the signatories to that document, know to be false.

Having focused on this particular aspect of the Independent Counsel's conduct to which you were a party, I pose to you the following simple question:

Did you seek to lead the court to believe that Deborah Gore Dean had not called Agent Cain to ask about a check in April 1989 even though you knew not only that she had called Agent Cain but that he remembered the call?

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I would be interested as well in knowing whether you believe that it is a crime for a government attorney to deceive a court regarding any fact in the context of upholding a verdict or resisting discovery into whether a government agent committed perjury. I would also be interested in knowing anything that you might think would justify your actions in this matter, assuming that an affirmative answer to the question posed is the true answer. But it is an affirmative answer to that question that by itself would justify my continuing to seek your removal from the federal government, your prosecution for the crime of obstruction of justice, the revocation of your license to practice law, and the public disclosure of the nature of your conduct. And presently, while I have very few doubts even as to the complete accuracy of the interpretation of events I set out above, I have no doubt whatever that you did attempt calculatedly to deceive the court to believe something that you knew to be false. I also have no doubt that you did so at least partly to foreclose inquiry into circumstances that reasonable observers would regard as the suborning of perjury by federal prosecutors. If you can disabuse me of my beliefs in this regard, it will be to your advantage to do so.

When I previously brought this and related matters to the attention of the Department of Justice, the Department had a certain discretion in addressing the matters because the prosecution was being conducted by an Independent Counsel. To be sure, I have in many places suggested or maintained that the Department exceeded the bounds of that discretion by failing to act on this matter and that part of its motivation for doing so was concern that a conscientious investigation would lead to the disclosure that certain high-ranking Department officials, including Assistant Attorney General Jo Ann Harris and Special Assistant and Counsel to the Assistant Attorney General Bruce C. Swartz, committed crimes through their actions in the prosecution of the Dean case. I have also suggested that Department Officials participated in covering up the nature of Independent Counsel conduct through such actions as Michael E. Shaheen's letters to me dated June 28, 1995, and January 30, 1996. For example, the statement in the latter letter that "[t]he fact remains that the jury apparently chose to believe these government witnesses and to disbelieve as not credible the testimony of Ms. Dean," if made while Mr. Shaheen believed that Agent Cain had been coached to provide literally true answers aimed at deceiving the jury, constituted an effort to conceal from me the Department's perception of Independent Counsel conduct as well as the nature of the underlying conduct itself. Similarly, with respect to the allegations that Thomas T. Demery and Eli Feinberg had committed perjury with the knowledge of Independent Counsel attorneys--and Mr. Shaheen certainly knew at least that Demery had committed perjury--Mr. Shaheen's statement had nothing whatever do with my contention. See my letters to Mr. Shaheen dated August 15, 1995, and March 11, 1996.

Thus, viewed in the light most favorable to Mr. Shaheen, he was evasive and misleading concerning a matter about which, like all matters, a representative of the Department of Justice has an obligation to be candid and straightforward.²

² As discussed in my letter to Ms. Radek, on January 14, 1998, and March 2, 1998, I raised the same issues with the Attorney General that I had raised in the December 23, 1997 letter to Mr. Bromwich. By letter dated April 8, 1998, Inspector General Bromwich advised me that he could not address the issues raised in my December 23, 1997 letter to him because, by Attorney General order, the Office of Inspector General did not have jurisdiction to investigate matters concerning Department of Justice attorneys' exercise of their authority to investigate, litigate, or provide legal advice. Apparently, sometime subsequent to April 8, 1998, the Attorney General forwarded my letters of January 14, 1998, and March 2, 1998, to Mr. Bromwich. In a letter dated May 4, 1998, Mr. Bromwich advised me that my correspondence to the Attorney General had been forwarded

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Regardless of the merit of my contentions regarding the Department of Justice's prior actions, however, the prosecution is now being conducted by the Department itself. All Independent Counsel actions are now the actions of the Department of Justice. Prior to learning of your current involvement in the matter, it had been my intention to inform the Department of Justice attorneys handling the case of the nature of the conduct of the Office of the Independent Counsel in sufficient detail that the Department of Justice attorneys could claim no lack of knowledge, and to confront them with the choice of taking the appropriate corrective measure or joining in the continuing deception of the court concerning Agent Cain's testimony and other matters. If the deception and the perpetuation

to him for response. Referencing his letter to me dated April 8, 1998, Mr. Bromwich advised me that the Inspector General did not have jurisdiction to address the matters raised in my correspondence to the Attorney General. By letter to the Attorney General and to Mr. Bromwich dated June 17, 1998, I pointed out that it was unusual for the head of an agency having jurisdiction over a matter to refer the matter to an arm of her agency that did not have jurisdiction over the matter. I therefore requested clarification of whether the Attorney General had in fact intended to refer the matter addressed in my earlier letters to a division of the Department that did not have jurisdiction over the matter, and suggested that, if such had been the Attorney General's intention, she reconsider the appropriateness of such course and instead refer the matter to a division of the department that does have jurisdiction. The Attorney General has not responded to that letter.

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of that deception involved crimes, as I maintain, those attorneys then would have the choice of whether to commit those crimes.

Given your own prior involvement in various of these matters including the efforts to deceive the court regarding Agent Cain, however, there does not seem to be any purpose in addressing you in that manner (though you may not in 1993 have been aware of the full range of Independent Counsel abuses). Each of your superiors, however, stands in the same position as the attorney of record in the case with respect to either revealing to the court the nature of earlier efforts to deceive it or joining in the perpetuation of that deception, including the joining of such conspiracies to obstruct justice, to suborn perjury, or to violate 18 U.S.C. § 1001, of which that superior is aware. My understanding is that such superiors include Lee J. Radek, Chief of the Public Integrity Section, Deputy Assistant Attorney General John C. Keeney, Assistant Attorney General James K. Robinson, and Attorney General Janet Reno.

I am uncertain how Deputy Attorney General Eric Holder stands in this chain of authority. Nevertheless, it was the Office of the Deputy Attorney General that first addressed this matter. And it was Associate Deputy Attorney General David Margolis who first suggested to me that even if Dean had called Agent Cain, Agent Cain's testimony might be literally true--and therefore, by implication, that Cain had been coached to give answers that would lead the jury to believe things the government's attorneys knew to be false and that the Independent Counsel's post trial actions, including the document signed by you on December 21, 1993, constituted a scheme to cover up the nature of the conduct of Independent Counsel attorneys. So I will treat the Deputy's Office as if it also shares responsibility for this prosecution.

Very shortly, I will be confronting each of these officials directly and posing to him or her a variation of the question posed to you. I also will be urging the official to carefully consider whether, assuming my version of events is substantially accurate, inaction on the official's part will implicate him or her in a conspiracy to obstruct justice, or at least prosecutorial abuses that would shock the conscience of most citizens. Therefore, you may wish in the ensuing weeks to discuss with your superiors what you know about the conduct of the Independent Counsel in the initial prosecution of the case.

Should you voluntarily or involuntarily address these matters with your superiors, I urge you to be cognizant of your obligation to be completely truthful with them. Although I believe that in attempting to deceive the court in order to cover up the nature of Independent Counsel actions concerning Agent Cain and

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other matters you became involved in a conspiracy to obstruct justice, that you were committing a crime may not have occurred to you at the time. Further, some might maintain that such actions, however reprehensible, do not constitute federal crimes. But there can be no doubt that any lack of candor on your part in now stating to your superiors the nature of Independent Counsel actions and your involvement in such actions at a minimum would violate both 18 U.S.C. § 1001 and 18 U.S.C. § 1512(a)(3).

Be mindful that unless these matters are satisfactorily resolved during this administration, I will be addressing them with the next administration, and, if necessary, the one after that. Be mindful as well that satisfactory resolution means not merely that the Department of Justice candidly apprise the court of every instance in which Independent Counsel attorneys sought to deceive it or in which those attorneys otherwise breached their duties as federal prosecutors. Satisfactory resolution means also that the Department conscientiously review whether the actions of Independent Counsel attorneys warrant prosecution or in any event render such attorneys unfit to represent the United States. So do not consider this to be a matter that you may shortly put behind you--or that the other officials may shortly put behind them--unless you and the Department address this matter with a commitment to the discovery and the disclosure of the truth that the public has a right to expect from its servants.

With regard to your advising me of any way in which my statements are inaccurate or unfair, please do so soon, since I hope to commence the process of confronting your superiors in the immediate future. Because I may be unable to contact them as soon as I would like, however, I am providing them with copies of this letter at the same time that I provide it to you. I am also providing copies to other persons, named or not named below, for reasons that I need not belabor here. If there are other attorneys in parallel or subordinate roles to yours in the prosecution of this case, I would appreciate your providing them copies of this letter as well.

In the event that you do not have ready access to any of the materials I mentioned above or in the letters to Mr. Bromwich or Ms. Radek, I would be happy immediately to provide them to you. I can be reached during the day at (202) 887-4453.

Sincerely,

/s/ James P. Scanlan

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c: Janet Reno
Attorney General
Eric Holder
Deputy Attorney General

David Margolis
Associate Deputy Attorney General

James K. Robinson
Assistant Attorney General
Criminal Division

John C. Keeney
Deputy Assistant Attorney General
Criminal Division

Lee J. Radek, Chief
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H. Marshall Jarrett, Counsel
Office of Professional Responsibility

Louis J. Freeh, Director
Federal Bureau of Investigation

Enclosures