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December 21, 1995

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444 North Capitol Street
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CONFIDENTIAL

Re: Misconduct by Attorneys of the Office of Independent
Counsel in United States of America v. Deborah Gore
Dean, Criminal No. 92-181-TFH (D.D.C.)

Dear Mr. Thompson:

Enclosed is a revision to the Second Park Towers Addendum that I provided you by letter of December 5, 1995. The revised version adds a section giving greater details of the May 19, 1992 interview in which Richard Shelby again informed Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill that Eli M. Feinberg was aware of John Mitchell's involvement with Park Towers.

Given the additional information contained in the Revised Second Addendum, I thought it would be useful to set out in one place a full description of the known facts regarding the Office of Independent Counsel's (OIC's) use of the sworn testimony of Eli M. Feinberg. Feinberg is the witness OIC attorneys called to the stand to testify under oath that he was unaware of John Mitchell's involvement in Park Towers, notwithstanding that the OIC's immunized witness had three times told OIC attorneys that Feinberg was aware of Mitchell's involvement. It appears that Feinberg was never confronted with these statements before OIC attorneys elicited his testimony. The OIC then would place great weight on this testimony and the fact that it was not impeached in arguing that the defendant was involved in a conspiracy concerning the funding of Park Towers. This and related matters are discussed in much greater detail in the Narrative Appendix styled "Park Towers: 'The Contact at HUD'; Dean's Knowledge of Mitchell's Involvement; the Post-Allocation Waiver; and the Eli Feinberg Testimony." The matter has not been addressed in documents filed with the court.

A. Background

One of the projects the Superseding Indictment alleged Dean caused to be funded for the benefit of Mitchell was Park Towers, a 143-unit moderate rehabilitation project in Dade County, Florida, which was funded as a result of HUD actions in 1985 and 1986. The Park Towers developer was a Miami lawyer named Martin Fine. In the spring of 1985, Martin Fine secured the services of a Miami consultant named Eli M. Feinberg in order to assist in securing HUD funding for Park Towers. Feinberg then secured the services of Washington political consultant Richard Shelby, who then retained John Mitchell. Though Shelby at times communicated directly with Fine, for the most part it was Feinberg who kept Fine apprised of Shelby's progress in securing funding for the project as well as in securing a later waiver of certain HUD regulations. The initial fee was \$150,000, but after Shelby joined The Keefe Company in May 1985, the fee was increased to \$225,000. Fine ultimately paid \$225,000 to The Keefe Company, which paid Mitchell a total of \$50,000 in connection with the Park Towers project.

Some of Associate Independent Counsel Robert E. O'Neill's more inflammatory remarks both in opening and closing argument would be related to Park Towers.¹ The court of appeals, however, would ultimately hold that there was insufficient evidence to establish a conspiracy concerning that project.

There were many undeniable instances of prosecutorial misconduct with regard to Park Towers. The central premise underlying the charge concerning that project was that Shelby secured Mitchell's services because of Mitchell's relationship to Dean. Yet prior to issuance of the Superseding Indictment, Shelby, already under a grant of immunity, had told OIC attorneys that he did not know of Mitchell's relationship to Dean until after he had secured Mitchell's services, and, after learning of the relationship, ceased to seek material assistance from Mitchell. Shelby also had told OIC attorneys that he did not believe Dean was aware of Mitchell's involvement in the project and that he (Shelby) had sought to conceal Mitchell's involvement from Dean.

The Superseding Indictment was intended to create inferences that a conspiratorial reference to "the contact at HUD" with whom Shelby was to meet was a reference to Dean, and that Park Towers

¹ In addition to the remarks concerning the concealment of Mitchell's involvement that are treated in detail below, see Tr. 55-57; 3391-94, 3406, 3425, 3519, 3521. See in particular Tr. 3392 ("... so [Fine and Feinberg] hire Richard Shelby.... They're hiring an influence peddler, a guy who can go to the right place, knock on the right doors, and get the right answers."); Tr. 3521 ("It is your government... not for a few insiders who have access to high ranking public officials like Mr. Shelby He knew he had access to high ranking public officials.")

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was discussed at a September 9, 1985 lunch attended by Shelby, Mitchell, and Dean. Yet, prior to the issuance of Superseding Indictment, Shelby had told OIC attorneys that the reference to "the contact at HUD" was not a reference to Dean and that Park Towers had not been discussed at the September 9, 1985 lunch. Yet, these and other statements of Shelby specifically contradicting inferences in the Superseding Indictment either would never be produced as Brady material or would be withheld from the defense for more than a year while the OIC explicitly represented to the court that it was aware of no exculpatory material.

At trial, aided by its Brady violations, the OIC would attempt to lead the jury to believe that the reference to "the contact at HUD" was in fact a reference to Dean and that Park Towers was in fact discussed at the Park Towers lunch, as well as a number of other things related to the Park Towers that OIC attorneys had reason to believe, or knew with absolute certainty, were false. One of these was that Shelby had concealed Mitchell's involvement with Park Towers from Feinberg and Fine.

The Superseding Indictment had alleged that the co-conspirators involved in Count One would tell their developer/clients that Mitchell was Dean's stepfather. Ultimately, however, the OIC would instead argue that Shelby had concealed Mitchell's involvement from Feinberg and Fine, and that argument would play a significant role in the OIC's attempt to show that Shelby, Mitchell, and Dean were involved in a conspiratorial relationship.²

The key testimony in this regard would be that of Feinberg, who, on September 17, 1993, would testify under oath that he was unaware of John Mitchell's involvement with the Park Towers project. Yet, prior to a telephonic interview of Feinberg on May 18, 1992, Shelby, already under a grant of immunity, had told representatives of the OIC that he had told Feinberg about Mitchell's involvement with Park Towers, and that he (Shelby) assumed that Feinberg had told Martin Fine.

The second instance in which Shelby informed the OIC that Feinberg was aware of Mitchell's role occurred in an interview, conducted by Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill on May 18, 1992.

That same day, Swartz and O'Neill conducted a telephonic interview of Feinberg in which Feinberg stated that he was not aware of Mitchell's involvement in Park Towers. Feinberg's interview report indicates that he was not at that time advised

² As shown in the Narrative Appendix styled "Nunn's Annotation Regarding Mitchell's Right to Half the Arama Consultant Fee," the OIC would contend the Mitchell's involvement with the Arama project was concealed from the developer of that project, Art Martinez, though OIC attorneys knew with absolute certainty that Mitchell's involvement was not concealed from Martinez.

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by Swartz or O'Neill that Shelby had explicitly stated the opposite.

In an interview on May 19, 1992, the day following the telephonic interview of Feinberg, Shelby was interviewed again by Swartz and O'Neill. The following is a description of the relevant parts of the Interview Report (which may be found as Attachment 5e to the Park Towers Narrative Appendix.)

In the interview Shelby was apparently advised that Feinberg had stated that he was unaware of Mitchell's involvement with Park Towers. Shelby nevertheless firmly stated that Feinberg was aware of Mitchell's involvement and even provided details of Feinberg's role in determining Mitchell's fee. The pertinent portions of the Interview Report are described below.

Early in the interview, and apparently before being advised that, on the day before, Feinberg had stated that he was unaware of Mitchell's involvement with Park Towers, Shelby provided this information (in the words of the transcriber):

Shelby recalled that before he went with TKC [Shelby's employer, The Keefe Company], Feinberg was accommodating in coming to an agreement on this project. Shelby, Mitchell, and Feinberg reached an agreement on the fee. Shelby recalled that he was to get the lion's share of the fee; possibly he would get \$80,000, and Mitchell and Feinberg would split the rest with each receiving \$35,000. Shelby did not recall saying that Mitchell's money should come out of Feinberg's share.

In summary, initially Shelby and Feinberg talked about Park Towers, and possibly agreed to a 50/50 split on the fee of \$150,000, which seemed excellent. Then, Shelby called Mitchell. Shelby then called Feinberg, who was accommodating and willing to include Mitchell. Feinberg said that Shelby should get the largest portion of the fee because he would be doing the most work. This led to a breakdown of \$80,000/\$35,000/\$35,000.

Attachment 5e to Park Towers Appendix at 2.

After several paragraphs concerning Shelby's discussions with his employers regarding Dean and Mitchell, the Interview Report states:

It was pointed out to Shelby that [his employer Clarence] James' June 7, 1985 memo to him (Shelby) regarding the fee mentioned a 50/50 split between TKC and Feinberg, and did not mention Mitchell receiving any fee. Shelby stated that the only explanation he had for this was that possibly it was drafted earlier, sat around on

someone's desk, and was not typed until June 7. However, this was purely speculation. Shelby pointed out that he had mentioned earlier that the announcement card dated May 1, 1985 reflecting his association with TKC did not go out until maybe as late as August because of lack of secretarial help.

Shelby could not recall what he told TKC as far as the percentage or dollar amount of the fee that was to go to Mitchell. He recalled that based on a conversation at some point with TKC, \$50,000 came up as the "operative number" for the fee for Mitchell. He recalled Feinberg saying that Mitchell should be happy with this because of the potential for future deals.

Out of the \$225,000 fee that was negotiated [after TKC became involved], Shelby's recollection was that \$100,000 was to go to TKC; \$80,000 was to go to Feinberg, and that \$45,000 was to go to Mitchell. Shelby believed that the bookkeeper made a mistake in paying Mitchell \$50,000 rather than \$45,000, which left TKC with only \$95,000, rather than \$100,000.

Id. at 2.

Three paragraphs later, after Shelby near the end of the interview was advised in some manner that Feinberg had or might have denied knowledge of Mitchell's involvement with Park Towers, Shelby provided this response (in the words of the transcriber);

Shelby knew of no reason that Feinberg would not want to mention that he knew of Mitchell's involvement. If Feinberg said that Mitchell was not involved, he was mistaken.

Id. at 4.

On May 19, 1992, Swartz and O'Neill OIC also reinterviewed Clarence James, the President of The Keefe Company, which had employed Shelby while he was attempting to secure funding for Park Towers. James had previously been interviewed on February 6, 1992, and, like Feinberg, had denied any knowledge of Mitchell's involvement with Park Towers. At the time of James's first interview, Shelby, who was no longer with The Keefe Company,³ had not yet been interviewed by the OIC. In the first interview James had told representatives of the OIC that he did not think The Keefe Company had paid Mitchell any money in connection with Park Towers and that Shelby had never told him that Mitchell had anything to do with Park Towers. Interview Report at 3. Subsequent to that interview, however, Shelby had

³ Shelby left The Keefe Company in 1988. The Keefe Company had brought a civil action against him in 1990.

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made clear that James was aware of Mitchell's involvement. For example, in Shelby's May 18, 1992 interview, Shelby had described discussions with James about Mitchell's role. Shelby also stated that The Keefe Company had agreed to pay Mitchell because of Shelby's prior commitment to Mitchell, though The Keefe Company had not been pleased in doing so. Exhibit DD to Dean's Rule 33 Memorandum at 9-10.

In the May 19, 1992 interview, while still vague about his recollection of Mitchell's having a role in Park Towers, James acknowledged that he had been the person who authorized payments totalling \$50,000 to Mitchell and that there would have had to have been some discussion of the payments. James suggested that a possible scenario was that he had agreed to honor a prior obligation to Mitchell by Shelby. Interview Report at 4.

On May 19, 1992, Swartz and O'Neill also reinterviewed Terrence M. O'Connell, II, Executive Vice President of The Keefe Company. Like James, O'Connell had been previously interviewed on February 6, 1992. In the earlier interview, however, O'Connell had stated that he had been aware that Mitchell had been involved in Park Towers, indicating that he thought Mitchell had received "some sort of a finder's fee," and suggesting that because of the payment to Mitchell, The Keefe Company had not received an appropriate share of the fee on Park Towers. Interview Report at 2. In the May 19, 1992 interview O'Connell reaffirmed his knowledge of Mitchell's involvement in Park Towers, indicating that Mitchell had been paid because Shelby had made an agreement with Mitchell that The Keefe Company felt obliged to fulfill. Id. at 3.

The May 19, 1992 interview of James and O'Connell do not indicate that either of them was asked whether he knew whether Feinberg had been aware of Mitchell's involvement with Park Towers.

During the sixteen months between the time that the OIC's immunized witness Shelby had reaffirmed in detail that Feinberg was aware of Mitchell's involvement with Park Towers and the time that the OIC elicited from Feinberg the sworn testimony that he was unaware of that involvement, the OIC apparently did not confront Feinberg with Shelby's statements that Feinberg was aware of Mitchell's role. At any rate, if the OIC did confront Feinberg with Shelby's statements, no record of the matter would be provided to the defense.

Feinberg had a partner named Marie Petit, who received half of Feinberg's \$80,000 fee. If the OIC ever contacted Petit to inquire whether she knew of Mitchell's involvement with Park Towers (or of Feinberg's knowledge of that involvement), no record of that contact would be provided to the defense.

If indeed Feinberg had not told the truth when he first denied knowing of Mitchell's involvement, any thoughtful

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questioning by counsel for the OIC ought to have revealed that. Among other things, given the detail with which Shelby had accounted for the fee split, it would seem difficult for Feinberg to construct an alternative rationale for a fee split among two persons instead of three. There would be reason to expect, however, that confronted with Shelby's statement, Feinberg would simply have acknowledged that in fact he had been aware of Mitchell's involvement, if such was the case, just as Clarence James had essentially done when confronted with the fact that his firm had paid Mitchell \$50,000.⁴

Although the OIC apparently intended to call Feinberg to testify that he was unaware that Mitchell was involved in Park Towers, and to argue that the concealment of Mitchell's role from Feinberg and Fine was compelling evidence of the conspiratorial relationship between Dean, Mitchell, and Shelby, none of Shelby's statements that Feinberg was aware of Mitchell's involvement would ever be produced as Brady material.

B. The Trial

The trial commenced on September 13, 1993. About a week before trial (exact date not known), the OIC produced Jencks files (a total of 35 items) for nine persons described as the first week's witnesses. On September 9, 1993, the OIC produced Jencks files (a total of 28 items) for seven more persons, including Feinberg and Fine. On September 9, 1993, the OIC produced Jencks files (a total of 42 items) for five more witnesses.

On September 13, 1993, the day of opening argument, the OIC produced Jencks files (a total of 284 items) for another 36 persons, including Shelby. The entire Jencks production was sufficient to fill over 15 large ring 3-ring binders. Shelby's Jencks material was comprised of ten items including grand jury testimony and interview reports running as long as 27 single-

⁴ Notwithstanding Shelby's statement that he did not know why Feinberg would not want to mention his knowledge of Mitchell's involvement, it is understandable that Feinberg, like James, would be reluctant to acknowledge involvement with a person of Mitchell's notoriety. Further, Feinberg might understandably have been concerned about the implications of the connection between Dean and Mitchell, which had received considerable publicity. For example, in the August 7, 1989 issue of Newsweek, a feature article focusing on HUD Secretary Samuel R. Pierce, Jr. and Dean would note that a Miami developer had paid Mitchell \$75,000 to lobby at HUD and that Mitchell was a close companion to Dean's mother. At the end of 1989, People Magazine had profiled Dean as one of "The 25 Most Intriguing People of the Year." The magazine concluded its profile with a discussion of Dean's relationship to Mitchell, observing: "So here's a mystery for a rainy night: how Dean, with Mitchell's notorious example before her, fell into the same sink--and even cut Mitchell in for \$75,000 in consulting fees."

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space pages. Of the 57 persons for whom the OIC produced Jencks files, 20 (138 items) were not called in the OIC's case-in-chief.⁵ At the time this material was produced, Dean was represented by a single attorney.

Though Shelby was not scheduled to testify during the first week of trial, and not before Feinberg and Fine, he in fact would testify on the third day of trial, September 16, 1993, and ahead of both Feinberg and Fine. He would be examined by Associate Independent Counsel Robert E. O'Neill. That Shelby testify ahead of Feinberg and Fine, and with the defense's having as little opportunity as possible (with as little notice as possible) to review the Shelby Jencks materials, was important to O'Neill's effort to lead the jury to believe a number of things that the OIC knew Shelby, if asked, would contradict and that the OIC otherwise knew not to be true.

For example, Government Exhibit 72 was a July 31, 1985 memorandum Martin Fine had written to the file referencing a conversation with Feinberg where Feinberg had stated that Shelby would be having meeting with "the contact at HUD." The OIC knew that, if asked, Shelby would state that the reference to "the contact at HUD" was not a reference to Dean, but a reference to a HUD Official named Silvio DeBartolomeis, which is what Shelby had informed the OIC in an interview conducted between April 8 and May 6, 1992. O'Neill did not ask Shelby about the meeting. Instead, after Shelby testified, O'Neill introduced the document into evidence through the testimony of Martin Fine, without eliciting testimony from Fine or Feinberg as to the identity of the person referred to as "the contact at HUD." The OIC would then include entries in its charts that it acknowledged were intended to lead the jury to believe that the reference was to Dean.

The OIC would base the claim that Dean, Mitchell and Shelby had discussed Park Towers together solely on the fact that the three had lunch together on September 9, 1985, and the following day Shelby sent Dean "the information concerning the Section Eight Moderate Rehab Program in Miami." O'Neill would bring these facts out during his redirect examination of Shelby. He would not ask Shelby, however, whether Park Towers was discussed at the lunch. O'Neill knew that had he asked that question, Shelby would have said that Park Towers was not discussed at the lunch, because in an interview conducted between April 8 and May 6, 1992, Shelby stated that to the best of his recollection Park Towers had not been discussed, and that he (Shelby) had gone out of his way in order to see that Park Towers was not discussed. Shelby had also testified before the grand jury that Park Towers had not been discussed at the lunch. Neither of these statements had been provided as Brady material, and the defense failed to

⁵ The OIC did attempt to call Ronald L. Reynolds (one item of Jencks material) in its case-in-chief.

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elicit testimony on the matter. The OIC then would rely on the fact that materials were sent on the day after the lunch as its only evidence that Mitchell, Dean, and Shelby ever had a discussion concerning Park Towers.

Government Exhibit 90 contained a May 29, 1986 letter from Shelby to Martin Fine by which Shelby provided Fine a copy of a post-allocation waiver on the Park Towers project that had been signed by Silvio DeBartolomeis on May 28, 1985. Shelby's letter did not state how he had secured a copy of the waiver. The OIC, however, knew that Shelby had received a copy of the document from DeBartolomeis, because it possessed a June 5, 1986 letter by which Shelby transmitted the same document to Eli Feinberg. In the letter to Feinberg, Shelby stated that he had received the copy of the waiver from DeBartolomeis. O'Neill would not ask Shelby about how he secured a copy of the document. Instead, he would introduce the waiver and Shelby's transmittal to Fine through the testimony of Fine, without eliciting testimony as to how Shelby secured a copy of the document from either Feinberg or Fine. The OIC would then include entries in its charts intended to lead the jury to believe that the reference was to Dean.

Most pertinent to the issue treated here, however, is that having Shelby testify ahead of Feinberg and Fine would facilitate the OIC's eliciting Feinberg's sworn testimony that he was unaware of Mitchell's involvement with Park Towers, without the danger that the testimony would be contradicted by Shelby. The following is how Shelby would happen to be called to the stand on September 16, 1993, three days after his Jencks materials had been provided along with thousands of pages of Jencks materials for other witnesses, and with as little notice to the defense as possible.⁶

At the close of the day on September 15, 1995, the court asked Associate Independent Counsel O'Neill what witnesses he had planned for the following day. After O'Neill had stated that he would call Maurice Barksdale and a person named Norman Larsen, "who is a custodial type witness out of the Georgetown Club," this colloquy ensued:

MR. O'NEILL: Right. And then with the Jewish holiday, we had Eli Feinberg, Martin Fine and Eli Feinberg, but we had to push those back. We're trying to get local HUD people we will call in to fill in, but we will have --

THE COURT: That's Thursday.

MR. WEHNER [defense counsel]: Local Washington HUD people?

⁶ The Park Towers Narrative Appendix (at 25-26 and n.16), though initially noting that Shelby testified on September 16, 1993, then three times refers to September 13, 1993, as the date of testimony. The latter three references are in error.

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MR. O'NEILL: Yeah, whoever lives here local.

MR. WEHNER: Can you be any more specific? Bob, I'd appreciate it. If I call you later, I'd appreciate it.

MR. O'NEILL: Yeah.

Tr. 424-25.

O'Neill's description of the types of people that he planned to call the following day in addition to Barksdale and Larsen did not encompass Shelby. Yet, Shelby would appear as the second witness on September 16, 1993, following Barksdale. It is not known when O'Neill told defense counsel Wehner that he was having Shelby testify on September 16. It would be revealed during Shelby's testimony, however, that Shelby met with O'Neill on the evening of September 15, 1993, shortly after O'Neill had led the court and the defense to believe that Shelby would not be among the witnesses called on the following day. Shelby presumably can provide information on when he had been told that he would testify on September 16, 1993.

When questioning Shelby, though knowing beyond any doubt that the government's immunized witness Shelby would have denied that he had concealed Mitchell's involvement from Feinberg, Associate Independent Counsel O'Neill avoided any questions that might elicit a statement on the matter. O'Neill first elicited testimony about Shelby's initial contacts with Feinberg and the initial contacts with Mitchell that followed. O'Neill did not, however, ask Shelby about whether he had advised or consulted with Feinberg regarding Mitchell's involvement. O'Neill then asked this question:

Q. And how much was he [Mitchell] to receive, did you know at that point?

A. I can't recall at this point whether I had had the conversation with Mr. Feinberg in which a fee was specifically discussed or whether that was subsequent to my first conversation with Mr. Mitchell. I believe that the discussion relative to a fee may have occurred subsequent to that conversation, but I can't be certain.

Tr. 546.

O'Neill did not then inquire as to the nature of the discussion with Feinberg to which Shelby referred or as to whether, as Shelby seemed to suggest and as Shelby had stated in the May 19, 1992 interview to O'Neill and Swartz, Feinberg had a role in determining Mitchell's fee. Rather, O'Neill dropped the subject of what fee Mitchell was supposed to receive and simply

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asked whether the agreement was in writing, which it was not.
Tr. 546.

Shortly after Shelby finished his second day of testimony, the OIC then called Feinberg, and, despite having compelling reason to believe that such testimony would be false, Associate Independent Counsel Paula A. Sweeney directly elicited Feinberg's sworn testimony that he was unaware of Mitchell's involvement with Park Towers. The OIC subsequently elicited sworn testimony to the same effect from Martin Fine.

Dean moved for a judgment of acquittal at the close of the OIC's case. In opposing that motion, the OIC noted that "neither Fine nor Feinberg were aware that Mitchell was involved in the Park Towers project, even though, through Shelby's company, Fine paid Mitchell \$50,000. Government's Opposition to Defendant Dean's Motion for Judgment of Acquittal at 16-17 (Oct. 4, 1993). Gov. Supp. Acq. Opp. at 16-17.

In oral argument on the motion, Associate Independent Counsel Sweeney would also state:

As was the case in the Nunn matters, Mr. Mitchell is getting a fee from Mr. Shelby but doesn't appear in any of the documents. His role is concealed from anybody -- from everybody including the individual who ultimately is paying his fee, that being Mr. Fine.

Tr. 2029-30.

In closing argument, in addition to seeking to cause the jury to draw various false inferences and otherwise seeking to lead the jury to believe things that OIC attorneys believed to be false (as documented throughout the materials),⁷ Associate Independent Counsel O'Neill would give special attention to the testimony that Eli Feinberg and Martin Fine were not aware of John Mitchell's involvement with Park Towers, asserting that secrecy was "the hallmark of conspiracy." And despite knowing with complete certainty that the government's immunized witness Shelby would have contradicted Feinberg's testimony, O'Neill would make a special point of the fact that the testimony was unimpeached.

⁷ Also documented is that O'Neill repeatedly made inflammatory statements that Dean had lied on the stand, often in circumstances where O'Neill had strong reason to believe, or knew for a fact, that Dean had not lied.

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Specifically, O'Neill stated:

[Dean's counsel] mentioned something about the conspiracies and saying, well, some of the people said they didn't know certain things. Jack Brennan didn't know that John Mitchell was involved in Arama. Well, isn't that the hallmark of conspiracy? Secrecy? Where people don't know it?

Remember Martin Fine, the developer for Park Towers? He said he did not know John Mitchell was involved. The consultant he hired, Eli Feinberg, he did not know Mr. Mitchell was involved. And both of those testimonies were unimpeached. Nobody ever contended that they did know. So the evidence is neither individual knew, and Mr. Fine paid \$225,000, 50,000 of which went directly to John Mitchell, and he didn't even know he was involved. His role was secret. That's what conspiracies are about.

Tr. 3519.

C. Post-Trial Matters

Following the jury's finding her guilty on all twelve counts in the Superseding Indictment, Dean moved for judgment of acquittal. She also moved for a new trial based on the basis of various acts of prosecutorial misconduct, citing, among other things, various matters concerning Park Towers and the OIC's failure to make Brady disclosures as well as the OIC's efforts to lead the jury to believe things that OIC attorneys knew or believed not to be true. Because of their bearing on those matters, Dean did include the two interview reports containing Shelby's first and second statements that Feinberg was unaware of Mitchell's involvement with Park towers. Still unaware that Shelby had in three separate interviews contradicted Feinberg's statement that he was unaware of Mitchell's involvement with Park Towers, Dean's counsel did not raise this issue in support of her motion for a new trial.

In opposing Dean's motion for judgment of acquittal and in its appellate brief, the OIC would continue to argue that Feinberg and Fine were not aware of Mitchell's involvement with Park Towers.

The OIC's actions with regard to the testimony of Eli Feinberg, of course, must be appraised in the context of OIC actions with regard to other witnesses who OIC attorneys had strong reason to believe were testifying falsely.

Over the next several weeks, I will be revising the materials I provided you on September 18, 1995. In my future uses of these materials, I do not wish to portray the OIC or any of its attorneys in a manner that is not fully justified by the

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facts. Accordingly, in the event that I have misstated or misinterpreted any of the actions I have described, or if there exist facts that would cause the actions of the OIC and its attorneys to be perceived as less malevolent than the materials I provided you make them appear to be, I would appreciate your calling these matters to my attention.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Dianne J. Smith
Deputy Independent Counsel

Enclosure