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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:

This letter is to bring to your attention a matter that recently came to my attention while reviewing the transcript in the referenced case.

Concerning the \$4,000 Deborah Gore Dean received from Louis Kitchin in 1987, Dean testified that on June 15, 1987, she wrote a check to Kitchin to return the money to him after he indicated that he was no longer interested in having her decorate his apartment. Dean introduced into evidence the check stub reflecting that check. Tr. 2744-49. Though Dean did not have sufficient funds to cover the item in her account, on the following day, she attempted to take out a loan for \$10,000. Tr. 2938.

Dean's counsel, Stephen V. Wehner, discussed the check stub in closing argument, contending that the stub was genuine and stating: "I challenge Mr. O'Neill to tell you why it's phony." Tr. 3482. Wehner then stated:

The FBI with all its resources, who had the check [sic] to examine the check and tell you if its phony, they'll tell you if the ink came from a year that it couldn't have been written, the best they can do is say she didn't have sufficient funds in her account.

Well, of course, she didn't have sufficient funds in her account. She'd taken the money from Mr. Kitchin, she'd spent it, and she had to get the money back to him. So she wrote him a check, and then she goes out the next day, and she applies for a loan for \$10,000. Now Mr. O'Neill would have you ignore that. She went out and she applied for a loan.

Id.

In the rebuttal portion of his closing argument, this would be the last factual issue addressed by Associate Independent Counsel Robert E. O'Neill. It would immediately follow O'Neill's provocative statements concerning the evidence of conspiracy in the supposed concealment of John Mitchell's role in the Park Towers project from Eli M. Feinberg and Martin Fine and O'Neill's repeated statements that the testimony on this matter was absolutely unimpeached. As I have pointed out in numerous places, O'Neill would make these statement while believing that, in all likelihood, Eli Feinberg had testified falsely under oath when he stated that he was unaware of Mitchell's involvement with Park Towers, and while knowing with absolute certainty that the government's immunized witness Richard Shelby would have testified that he had told Feinberg of Mitchell's involvement.

With regard to Wehner's statement about the check stub, O'Neill stated:

Mr. Wehner talked about the \$4000. And the fact that he has shown that that is really what happened because they have a have a bank stub. Well, to believe this you'd have to believe that Mr. Kitchin gave her \$4000 to decorate an apartment he never owned, aside from the fact that we found these documents later on to absolutely disprove the claim that she was trying to sell it as of June 15th. So she'd have to prove that the apartment that he never owned he was going to have decorated and that this \$4000 check was written when she had no funds whatsoever to pay it with.

And he told you that the FBI had time to analyze this and they would have shown that it was false. Well, that's not in evidence. There's no evidence here that the FBI had time to analyze that check stub. Or that they looked and made sure that the ink was two years old or three years old or whatever. That is not in evidence. It's the evidence on which you must base your decision, ladies and gentlemen.

Tr. 3519-20.

It seems a fair assumption that at the time O'Neill made these statements, he knew with moral certainty that Dean had written the check stub on June 15, 1987, and that the government

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did have time to analyze the stub. Assuming that the Office of Independent Counsel ever doubted the authenticity of the stub, it seems a virtual certainty that the government had analyzed the stub to determine, to the extent possible, when the information on it was written.

Yet, it seems clear that O'Neill was attempting to lead the jury to believe that the stub was false, that the government did not have time to analyze it, and that the government in fact did not analyze it. My point here, however, does not concern the propriety of O'Neill's attempting to lead the jury to believe things O'Neill knew to be false or his suggesting to the jury that there existed facts outside the record that did not in fact exist.

Rather, my point is that the government may in fact have analyzed the check and found it to be authentic. If it did so, given O'Neill's effort to lead the jury to believe that no analysis was performed and that the stub in fact was false, the results of the analysis are obviously Brady material. To my knowledge, no results of such an analysis were ever provided to the defense.

Accordingly, I suggest that you determine whether an analysis had been conducted as of the time that O'Neill made his statements. In the event that you find such a study had been performed, you should then provide the results to the defense.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Dianne J. Smith
Deputy Independent Counsel