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February 11, 1997

**BY FACSIMILE AND MAIL**

Larry D. Thompson, Esq.  
Independent Counsel  
Office of Independent Counsel  
444 North Capitol Street  
Suite 519  
Washington, D.C. 20001

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

Dear Mr. Thompson:

As you know, I have been following this case very closely. Currently I am writing an article concerning the implications of the apparent ruling of the Court of Appeals that a false statement by an official or agent of an Executive Branch department or agency concerning a matter within the jurisdiction of the department or agency violates 18 U.S.C. § 1001. I have several questions concerning that matter that I hope you can answer.

An issue addressed both in the Court of Appeals and the Supreme Court in this case concerned whether the Superseding Indictment had intended to identify the Department of Housing and Urban Development (HUD) or the Senate Banking Committee as the department or agency of the United States whose jurisdiction formed the basis for the § 1001 objects of the three conspiracy charges. I am of the view that, just as the Independent Counsel maintained in the Court of Appeals and the Supreme Court, the Independent Counsel did intend the Superseding Indictment to identify HUD as the relevant department or agency. I base that view principally on the fact that the Superseding Indictment invariably used the words "department and agency of the United States" with regard to the § 1001 objects of the conspiracy charges and invariably used the words "department of the United States" with regard to the substantive § 1001 counts. This is consistent with the fact that HUD is both a department and an agency of the United States and that Bramblett v. United States, 348 U.S. 503 (1955), had found the legislative branch to be a "department," though not an "agency," of the United States.

Further, I noted that in each of the four indictments (or criminal informations) I could find where the Independent Counsel alleged violations of § 1001, all references to Executive Branch agencies--whether HUD, the Office of Independent Counsel, or the Federal Bureau of Investigation--used the words "department and agency of the United States," and all references to Congress used the words "department of the United States."<sup>1</sup>

I have several question about this and related matters. First, am I in fact correct that in all indictments (and criminal informations) issued by the Office of Independent Counsel alleging violations of § 1001 (including conspiracies to violate § 1001), allegations involving statements to an Executive Branch entity used the words "department and agency of the United States" and allegations involving statements to Congress used the words "department of the United States"? If I am not correct, I would appreciate your providing me copies of (or at least directing me to) indictments that departed from this pattern.

Second, am I correct that at no place in its Response to the Petition for Rehearing in the Court of Appeals or in its Brief in Opposition to the Petition for Certiorari in the Supreme Court in this case did the Independent Counsel point out the difference in wording--i.e., "department and agency of" versus "department of"--between the conspiracy counts and the substantive § 1001 counts? If so, why did the Independent Counsel fail to point out this difference in wording to the courts?

Third, am I correct that in treating this issue the Independent Counsel cited no prior cases holding that a false statement by an official of a department or agency of the United States, rather than a false statement to such department or agency, was a violation of § 1001? If you are aware of any such cases, I would appreciate your providing me citations.

Finally, do you agree that under the holding of the Court of Appeals in this case, any material 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--whether made to the defense or to the court--would violate 18 U.S.C. § 1001?

I intend to submit my article very shortly, so I would appreciate your responding to these points fairly quickly. Since I recognize that you may decide not to respond to my letter at all or may eventually inform me that you will not answer the questions posed, I will interpret not hearing from you by the end

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<sup>1</sup> See Count 1 (¶¶ I.A.1., and I.A.27.i) and Count 2 in the Second Superseding Indictment in United States of America v. Lance H. Wilson and Leonard Edward Briscoe, Sr., Crim. No. 91-0399 (D.D.C. Jan. 14, 1991); Counts 1, 2, and 3 of the Criminal Information in United States of America v. Benton Mortgage Company, Inc., Crim. No. 92-0228 (D.D.C. June 8, 1992); Counts 17, 20, 21, and 24 of the Superseding Indictment in United States of America v. Thomas T. Demery and Philip McCafferty, Crim. No. 92-0227-SSH (D.D.C. Dec. 4, 1992); and Counts 2, 12, 14, 18, and 24 of the Indictment in United States of America v. James G. Watt, Crim. No. 95-0040 (D.D.C. Feb. 22, 1995).

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of next week to mean that you will not be answering any of my questions. If you do intend to answer any of my questions, but will require additional time to do so, please just let me know by the end of next week.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Dianne J. Smith  
Deputy Independent Counsel