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BY FACSIMILE

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

Dear Mr. Thompson:

This letter follows up on my letter faxed to you prior to 9:00 a.m. on February 26, 1997, exactly four weeks ago, in which I requested the opportunity to review the originals of Government Exhibits 20, 21, 22, 25, and 33 in the referenced case, which I understand to be public documents. I stated that I would like to review the documents that week, indicating that the review should take no more than an hour and that I was very flexible with regard to timing. I received no telephone call indicating that I could or could not review the documents that week, and I have not yet received any call or letter concerning the matter.

More than a year ago, I advised you that the Independent Counsel introduced certain of those documents into evidence representing them to be things they were not. There is reason to believe that, in addition to constituting a fraud upon the court, actions of Independent Counsel attorneys in originally introducing the documents into evidence violated federal laws including 18 U.S.C. § 1001.[1] There is reason to believe that your own actions and those of the attorneys subordinate to you since I first brought this matter to your attention also constitute federal crimes. My letter should have made clear to

[1] As discussed in my letter of February 11, 1997, I agree with the argument you advanced in the court of appeals that the court had properly held that a government official who conceals or covers up a material fact concerning a matter within the jurisdiction of the official's department or agency violates 18 U.S.C. § 1001, regardless of whether the official makes statements to an entity that is also a department or agency of the United States. Moreover, it is a sound ruling, particularly with regard to efforts of government lawyers to deceive courts. A government lawyer is never authorized to deceive a court and when one undertakes to do so, he or she not only acts outside the scope of his or her legitimate authority but obstructs the lawful functioning of the government the lawyer purports to represent.

you that my interest in reviewing the documents was related to establishing my contention that Independent Counsel attorneys engaged in criminal conduct regarding those documents.

As you know, since December 1994 I have been attempting through a variety of actions to have the Office of Independent Counsel investigated for prosecutorial abuses in this case, including abuses that appear to involve federal crimes. I have also sought the removal of former Independent Counsel attorneys from positions in the Department of Justice, including Assistant Attorney General for the Criminal Division and Special Assistant to the Assistant Attorney General for the Criminal Division, maintaining that their actions in the prosecution of this case indicated that they were unfit to serve as attorneys representing the United States. I have also made statements to you indicating that I believe that, even apart from matters relating to the above-mentioned documents, actions by attorneys in your office subsequent to my bringing certain matters to your attention in late 1995 constitute federal crimes. And I assume that it is evident that I am preparing to take further actions to publicize the nature of the conduct undertaken by your predecessors and condoned and perpetuated by affirmative actions on your part.

Nevertheless, a government official in your position should understand that you have the same obligation to respond to an inquiry by someone with an interest adverse to the interests of you and the attorneys in your office (or adverse to the interests of the Office of Independent Counsel itself[2]) that you have to respond to inquiries by members of the public who have no such adverse interest. Moreover, assume that it is a crime for a federal official to conceal or cover up a material fact concerning a matter within the jurisdiction of the official's department or agency, as the court of appeals in this case seems clearly to have held and as you in fact argued that the court had held. Assume also that the Independent Counsel did attempt to deceive the court and jury concerning the documents mentioned above and discussed below, a matter about which I cannot imagine that you entertain the slightest doubt. It would seem then to

[2] While irrelevant to your obligation to respond to my inquiry in the same manner you would respond to an inquiry by any member of the public, the distinction between the interests of you and your subordinate attorneys concerning this matter and the interest of the Office of Independent Counsel itself is an important one. If Independent Counsel attorneys misrepresented the nature of exhibits introduced into evidence or otherwise sought to deceive the courts or jury in this case, my efforts to reveal these matters are in no manner adverse to the interests of the Office of Independent Counsel. The only relevant institutional interest of that office is ensuring that its attorneys carry out the responsibilities of their mandate in the manner contemplated by Congress. By revealing that those attorneys acted in a manner not contemplated by congress, or in violation of federal laws, I am furthering the interests of the Office of Independent Counsel.

follow that any delay on your part in responding to my request in order to prevent or delay the revelation of Independent Counsel attorneys' actions regarding those documents is itself a violation of 18 U.S.C. § 1001. Yet I would expect that ordinarily you would have responded by now to a member of the public who had requested an opportunity to review the documents, advising the requestor that the documents will be made available, that the documents will not be made available, or that it will require a certain amount of time for the Office of Independent Counsel to determine whether or not to make the documents available. Indeed, the failure to respond in any manner over the last month is extraordinary, particularly when there does not appear to be a conceivable basis for failing to make the documents available.[3]

In any case, in light of your failure to promptly advise me of your intentions concerning my request, I thought it would useful to set out my reasons for wanting to review the exhibits and to encourage you to ensure that the documents are not in any way altered or disturbed prior to my review and any subsequent review by an appropriate authority.

As I explained to you in my letter of February 26, 1997, and as I had repeatedly explained to you since September 18, 1995, the Independent Counsel introduced Government Exhibits 20, 22, and 25 into evidence representing them to be things they were not. The most important of these are Government Exhibits 20 and 25. The Independent Counsel represented Government Exhibit 20 to be the Arama consultant agreement in the form in which it existed on January 25, 1984, including that it then contained a handwritten annotation by Louie B. Nunn that John Mitchell was to receive half the Arama consultant fee. The Independent Counsel also represented that the consultant agreement admitted into evidence as an attachment to the April 3, 1984 letter from Arama developer Aristides Martinez to Louie B. Nunn in Government Exhibit 25 was in the form in which it existed at the time Martinez sent the letter to Nunn, including that the agreement contained Nunn's annotation concerning Mitchell at the time Martinez mailed it to Nunn.

Had Government Exhibit 25 been what the Independent Counsel represented it to be, it would have conclusively established that Martinez knew about the annotation and therefore knew that

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[3] The failure to respond in this instance contrasts markedly with your actions concerning my letter of February 11, 1997, in which I asked, among other things, whether you agreed that under the court of appeals' holding in this case, any material false statement by a federal official in prosecuting a civil or criminal matter--whether made to the defense or to the court--would violate 18 U.S.C. § 1001. In that instance, you promptly informed me, by letter of February 18, 1997, that you were then unable to comment on that or other matters raised in my letter.

Mitchell was to receive half the Arama consultant fee. For Martinez could mail Nunn a copy of the consultant agreement bearing Nunn's annotation concerning Mitchell only if Martinez possessed a copy of the agreement bearing the annotation.

The evident purpose of creating this impression was to increase the chance that the court would allow the Independent Counsel to elicit (and to enhance the impact of) testimony from Martinez that in early 1984 he had been told that John Mitchell was related to Deborah Gore Dean and that she held an important position at HUD. Martinez had interpreted that statement to mean that Mitchell and Nunn had connections at high levels within HUD. Martinez's contemplated testimony concerning this matter had formed the basis for statements in the Superseding Indictment that the alleged co-conspirators in Count One would tell their developer clients of their association with Mitchell and that Mitchell was Dean's stepfather.

Independent Counsel attorneys apparently believed this testimony to be quite important. As you know, when Associate Independent Counsel Robert E. O'Neill argued to be allowed to elicit Martinez's testimony concerning this matter--and in doing so attempted orally to lead the court to believe that Nunn made the annotation in Martinez's presence--he indicated to the court that the Independent Counsel thought that the testimony could be crucial to the Independent Counsel's establishing a conspiracy involving Dean and Mitchell.

As you also know, however, the various representations the Independent Counsel made in an attempt to lead the court and jury to believe that Martinez knew about the annotation and knew that Mitchell was to receive half the fee were false. As discussed in my February 26, 1997 letter to you and in other materials provided to you more than a year earlier, contrary to specific representations by the Independent Counsel, Nunn did not make the annotation on January 25, 1984. Rather, he made the annotation sometime after the Arama consultant agreement and attorney agreement were modified in several respects between January 25, 1984, and April 3, 1984.

In early February, a one-page addendum was added to each agreement providing for a reduction in the fee if fewer than 300 units were secured, and a handwritten reference to the addendum was added above the signatures on each agreement. Then, between March 23, 1984, and April 3, 1984, the Arama General Partners added a guarantee to each agreement and to each addendum. Only after Martinez mailed a copy of the guaranteed consultant agreement to Nunn by letter of April 3, 1984, did Nunn make the annotation concerning Mitchell.

As discussed in my letter to you, it is evident that Martinez neither saw nor knew about the annotation. It also appears that, in all likelihood, Martinez specifically so

informed Independent Counsel attorneys, but they excluded such information from the report of Martinez's interview provided to the defense. As also discussed in my letter, despite my repeatedly informing you of this matter and of your obligation to reveal the truth to the court and the defense, you did not do so. In fact, as I pointed out in my letter, you recently again represented to the court that the annotation was made on January 25, 1984.

I set out below my beliefs as to the precise nature of the principal documents. If I am correct concerning these matters, the Independent Counsel would appear to have been somewhat more calculating in its efforts to deceive the court and the jury on this matter than it might otherwise appear, though the calculated nature of scores of efforts by Independent Counsel attorneys to deceive the court and jury on these and other matters can hardly be denied. But anything about which I might be incorrect concerning these documents will have little bearing on the issues of whether Independent Counsel attorneys represented those documents to be things they are not and whether those attorneys committed federal crimes with regard to these documents. In any event, I am sure that, as a prosecutor, you understand my desire to know all the facts. Moreover, in order for you to fulfill your obligation to ensure that these documents are not altered or disturbed prior to their examination, it is important that you personally know as much about them as possible.

In giving this matter the attention I have, I recognize that some might question the significance of when the annotation was made, and whether Martinez was aware of it, to Deborah Gore Dean's guilt or innocence concerning Count One, since it is absolutely clear both from Martinez's interview and Nunn's grand jury testimony that Martinez knew that Mitchell was helping Nunn secure funding for the Arama project. Further, as you know, after the court refused to allow the Independent Counsel to elicit testimony concerning the conversation about Mitchell and Dean, the Independent Counsel completely changed its theory. The Independent Counsel thereafter sought to lead the courts to believe--contrary to the theory in the Superseding Indictment that Mitchell's involvement had been touted to the developers in Count One and contrary to the facts known to Independent Counsel attorneys--that Mitchell's involvement was concealed from Martinez.[4]

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[4] Assuming that it is a violation of 18 U.S.C. § 1001 for government attorneys to deceive a court concerning a material fact in a case they are presenting, it would be difficult to contrive a rationale by which the repeated efforts by Independent Counsel attorneys to lead the courts to believe that Nunn concealed Mitchell's involvement from Martinez would not constitute a violation of that statute. As you have known since receipt of the materials and correspondence that I provided you in late 1995, if you did not know earlier, Independent Counsel attorneys knew with absolute certainty that the claim that Nunn concealed Mitchell's involvement with Arama from

It is clear, however, that prior to the change of theory, Independent Counsel attorneys believed that establishing that Martinez knew about the annotation was important enough to the Independent Counsel's case that those attorneys were willing to create a false record. And it is noteworthy that, as I pointed out above, when unsuccessfully arguing to the court that a sufficient connection had been established between Martinez and Mitchell to justify eliciting Martinez's testimony about the conversation concerning Dean and Mitchell, Associate Independent Counsel O'Neill plainly chose words that would lead the court to believe that the annotation was made in Martinez's presence. So whether or not the timing of the annotation is of any significance concerning Dean's guilt or innocence under the original or revised theory, the timing of the annotation is of great significance to an appraisal of the conduct of your predecessors in creating the false record and in your own failure for more than a year to correct that record. And in that regard, whether or not efforts of Independent Counsel attorneys to deceive the court and jury concerning these documents during the original prosecution of the case constituted federal crimes, there is little room for doubt that any effort now to conceal or cover up the nature of the prior actions of Independent Counsel attorneys concerning these documents would constitute federal crimes.

Martinez was false. Plainly, however, this is not the only instance in this case where Independent Counsel attorneys sought to lead the courts to believe things those attorneys knew with absolute certainty to be false. Some of these instances have occurred subsequent to your assuming responsibility for the case.

A. The Consultant Agreement Bearing Nunn's Annotation Concerning Mitchell

In Nunn's files there existed either one or two copies of the consultant agreement bearing Nunn's annotation stating that Mitchell was entitled to half the Arama consultant fee. One copy that is known to have existed was the original (with signatures on the guarantee in ink as opposed to being photocopied). This is the document that Martinez sent to Nunn by letter of April 3, 1984, and the document on which Nunn thereafter made the annotation concerning Mitchell (which also would be in ink rather than photocopied). When placed on microfiche by the Independent Counsel, the document was given the microfiche no. BA155 0321. I believe a copy of this document would first be provided to the defense in the form of a reproduction of the microfiche version as part of the preliminary exhibit production in December 1992, with stamping machine no. 000144 on it as well as the aforementioned microfiche number.[5] The original of the addendum that was maintained immediately following the agreement, and which presumably bore microfiche no. BA155 0322, would never be provided to the defense at all, either prior to trial or during trial.[6]

There may also have existed in Nunn's files a second copies of the consultant agreement bearing the annotation concerning Mitchell and the addendum to that agreement, which were photocopies. These copies, which would likely have borne microfiche nos. BA155 0305-06, would have been Nunn's file copies of the enclosures his secretary had sent to Mitchell on July 1, 1985, with the check for $75,000 that constituted Mitchell's fee on Arama. These copies were never provided to the defense in discovery, though the file copy of the July 1, 1985 letter and the attached listing of out-of-pocket expenses were produced during discovery and made part of the preliminary exhibit production, where they bore stamping machine nos. 000137-38 and microfiche nos. BA155 0302 and 0304.[7]

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[5] A copy of that document is attached as Attachment 1.

[6] As discussed infra, that version of the addendum, which is in fact the original of the document Martinez mailed to Nunn, would not be used by the Independent Counsel in any manner.

[7] Attachment 2 contains the two pages produced as part of the preliminary exhibit production. It is possible that during discovery a copy of the check was also produced, presumably bearing microfiche no. BA155 0303.

It is possible that the photocopied versions of the consultant agreement and addendum were stapled together in Nunn's files. At any rate, it is clear that in Mitchell's files, the copies of the consultant agreement and addendum that Mitchell had received with the letter from Nunn's secretary of July 1, 1985, were stapled together. This is evident both from the microfiche copy of the consultant agreement that was produced as part of the preliminary exhibit

In any event, in addition to the copy of the consultant agreement in Mitchell's file that would be introduced into evidence as part of Government Exhibit 33, the Independent Counsel used two copies of the consultant agreement as an exhibit or a part of an exhibit. One copy would serve as Government Exhibit 20, which is the document that the Independent Counsel would falsely represent to be the consultant agreement in the form in which it existed on January 25, 1984. The other would serve as the part of Government Exhibit 25 that the Independent Counsel would falsely represent to be the consultant agreement in the form in which it existed at the time that Martinez sent it to Nunn by letter of April 3, 1984.

It appears that for Government Exhibit 20, the Independent Counsel used the original of Nunn's copy of the consultant agreement bearing his annotation concerning Mitchell (i.e., the original copy, with the Arama General Partners' signatures on the guarantee and Nunn's annotation both in ink, that was given number BA155 0322 when placed on microfiche). In its list of exhibits and summary charts, the Independent Counsel specifically represented this to be the document created on January 25, 1984. Though the consultant agreement the Independent Counsel used as Government Exhibit 20 contained the reference to the addendum that was written above the signatures in early February and the guarantee that was added between March 23, 1984, and April 3, 1984, as well as Nunn's annotation that was added after April 3, 1984, the Independent Counsel excluded from the exhibit the addendum that was added in early February.

For the April 3, 1984 letter in Government Exhibit 25, it appears that the Independent Counsel used the original found in Nunn's files, which contained Martinez's original signature (in ink) and some underlinings (in pencil or ink), presumably by Nunn. Attachment 3. For the consultant agreement in Government 25, however, the Independent Counsel used a photocopy (i.e., a copy with no handwriting in ink but only photocopied reproductions of handwriting). Possibly this photocopy was Nunn's file copy of the copy of the agreement he sent to Mitchell, as suggested by the staple marks; the document might also been a copy of the copy from Mitchell's files; or the Independent Counsel may simply have made another copy of the original.

But the use of a photocopy, in particular a copy where Nunn's annotation concerning Mitchell was photocopied rather than in ink, confirmed to any observer that the annotation was on the document when it was sent. Even apart from the fact that a

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production, which bore stamping machine no. 002216 and microfiche no. CA159 2060 (with addendum detached), and from the copies of the consultant agreement and addendum introduced into evidence as part of Government Exhibit 33.

document introduced into evidence as a letter of a certain date containing enclosures is presumed to contain the enclosures as they then existed, that an enclosure to an original letter is a photocopy necessarily means that everything written on the enclosure had been on it when it was sent with the letter.

Notice also that the Independent Counsel included a copy of the addendum with the consultant agreement enclosed with the April 3, 1984 letter in Government Exhibit 25, but included it with no supposedly earlier version of the agreement. Thus, the observer would be led to conclude that the mention in the letter to the enclosed "amended agreement" was a reference to the addition of the addendum. In conjunction with Government Exhibit 20, this created the false impression that, while the annotation concerning Mitchell was placed on the agreement on January 25, 1984, the addendum was added in April. This explained away entirely an addendum that was in fact added in February 1984, subsequent to the creation of the original agreement and prior to Nunn's making his annotation.[8]

In the Nunn Appendix I provided you on September 18, 1995, I had noted that the Independent Counsel excluded all copies of the addendums from the preliminary exhibit production. I suggested that the Independent Counsel may have felt a need to disguise the meaning of the addendums out of concern that the fact that an addendum was added to the consultant agreement in February 1984 would make it evident that the Independent Counsel's exhibits were not what they were represented to be--most obviously by highlighting the fact that the consultant agreement evolved into the form that Nunn ultimately annotated. Nunn Appendix at 30, 42. And, perhaps as much as anything, one document that conclusively establishes that Nunn did not make his annotation in January is Attachment B to my letter to you of February 26, 1984. That copy of the consultant agreement is the base document from which Nunn would make further copies, which would then become each party's copy of the guaranteed consultant agreement. Thus, the fact that this version of the consultant agreement contained a reference to the addendum that was added in February, but did not contain the annotation, conclusively established that Nunn had not made his annotation in January.

In previously raising this matter I did not know certain additional relevant facts. I did not know that when the consultant agreement and the consultant agreement were made exhibits before the grand jury, the addendums were attached. I

[8] For the addendum to the consultant agreement in Government 25, the Independent Counsel also used a photocopy rather than the original, even though it was not using the original for any other purpose. Possibly the Independent Counsel avoided using the original in order not to raise issues as to why the signatures in the addendum transmitted by Martinez were originals while signatures on the consultant agreement were photocopied.

did not know that the Independent Counsel attorney examining Nunn before the grand jury had made a specific point of the fact that the addendums called for a reduction in fees in the event not all 300 units were secured. The attorney did so to emphasize that "your job was to get the subsidies." Nunn Grand Jury Tr. 33 (Attachment 61 to Dean's most recent motion).

The Independent Counsel nevertheless excluded from Nunn's files produced during discovery or made part of the preliminary exhibit production every copy of the addendums. At trial, the Independent Counsel was then willing to forego making the point that the addendums showed that Nunn's "job was to get the subsidies." The Independent Counsel apparently was willing to do so because making the point would have interfered with its effort to lead the jury and the court to believe, contrary to fact, that Nunn had written his annotation concerning Mitchell on the consultant agreement in Martinez's presence on January 25, 1984.

The facts presented in the Nunn Appendix left little room for doubt that Independent Counsel attorneys acted deliberately in representing certain documents to be things they were not. The fact that when examining Nunn before the grand jury the Independent Counsel attached the addendums to the consultant agreement and attorney agreement and specifically questioned Nunn about the addendums, but then detached the addendums from the copies of the agreements produced in discovery and the primary exhibits used in court, however, does provided additional evidence of the calculated nature of the actions of Independent Counsel attorneys in originally introducing and relying on the exhibits.

It nevertheless warrants noting here that, even if in originally introducing the documents into evidence Independent Counsel attorneys did not understand the true nature of the documents and hence did not intentionally mislead the court, you and your attorneys have no excuse whatever for failing to understand the true nature of the documents. Nor do you have an excuse for failing to advise the court that documents in the record are not what the Independent Counsel has represented them to be.

Since the true nature of those documents and the actions of Independent Counsel attorneys in representing them to be things were not are relevant to whether Independent Counsel attorneys engaged in prosecutorial abuses in this case, your obligation in this matter is heightened at a time when you are attempting to persuade the court not to consider whether the cumulative effect of prosecutorial abuses warrants a new trial.

B. The Attorney Agreement Bearing the April 11, 1984 Annotation Increasing the Fee

It was with regard to the consultant agreement that the Independent Counsel's deceiving of the court and jury was most crucial to its establishing material facts that its attorneys knew to be false, that is, that Martinez knew about the annotation on that agreement and knew that Mitchell was to receive half the consultant fee. In order to accomplish this deception, however, it was necessary that the Independent Counsel also deceive the court and jury with regard to the attorney agreement that did not involve Mitchell.

The attorney agreement was also modified by the addition of an addendum in early February 1984 and a guarantee of the Arama General Partners between March 23, 1984, and April 3, 1984. After Martinez mailed the guaranteed copy of the attorney agreement to Nunn by letter of April 3, 1984, the agreement was again amended through a handwritten annotation dated April 11, 1984, initialled by Nunn and signed by Martinez and Mario Jiminez, increasing the attorney fee by $50,000.[9] Thus, as with the only version of the consultant agreement in final form in Nunn's files, the only version of the attorney agreement in final form in Nunn's files contained handwriting placed on it after Martinez mailed the document to Nunn in on April 3, 1984. And a person understanding the evolution of the attorney agreement into the form in which it was introduced into evidence as Government Exhibit 22 and as part of Government Exhibit 25 would have reason to wonder whether Nunn actually made the annotation on the consultant agreement on January 25, 1984, and whether that annotation was in fact on the copy of the consultant agreement in Martinez's April 3, 1984 letter to Nunn.

In the Nunn Appendix, I detailed certain actions the Independent Counsel took to deceive the Court about the attorney agreement. Here, however, I will limit the discussion to the document itself.

There existed in Nunn's files one copy of the attorney agreement bearing the April 11, 1984 annotation increasing the fee. When the Independent Counsel placed this document on microfiche, it was given microfiche nos. BA155 0323-24. The document was first provided to the defense in the form of a photocopied version of the microfiche as part of the preliminary exhibit production in December 1992, where it bore stamping

[9] This probably occurred at an April 11, 1984 meeting among Nunn, Martinez, and Jiminez at an airport in Washington, D.C., prior to their attending the meeting in Mitchell's office where Martinez was told about Mitchell's relationship to Dean. See Tr. 244-45. Mitchell apparently knew nothing about the original $225,000 attorney agreement or its later increase to $275,000.

machine nos. 000145-46. Notice that the document (Attachment 4) contains, between the first and second paragraphs, the underscored word "WITNESSETH," followed by a colon. The format whereby the word "WITNESSETH" is followed by a colon is the format for every copy of the attorney agreement and consultant agreement provided in discovery or in the preliminary exhibit production. It is believed that the signatures on the guarantee by the Arama General Partners are original signatures and that the annotation is also in ink rather than photocopied.

The Independent Counsel would use this document with its original signatures and original annotation as Government Exhibit 22, representing it to be the attorney agreement as amended by the fee increase, though, as with the consultant agreement, excluding the addendum that was added prior to the amendment that increased the fee. And, as with the consultant agreement, the Independent Counsel included a photocopy of this document (with photocopy of its addendum) in Government 25. It thus created the false impression that the annotation increasing the fee was on the document when it was transmitted.[10]

On the copy of the attorney agreement in Government Exhibit 25, however, the word "WITNESSETH," was not followed by a colon. Rather, as shown in Attachment 5, which is a copy of the agreement introduced into evidence as part of Government Exhibit 25, the word "WITNESSETH" has arrowheads on either side. It thus would seem that someone from the Independent Counsel's office, after securing the document from Nunn's files, altered it slightly before making it part of Government Exhibit 25.

Such, in any case, are my surmises concerning these documents, and I wish to examine the originals of the documents in order to develop information that would verify or contradict those surmises. While you have had more than a year to determine the truth of these matters, I suspect that, as with certain other matters as to which there is reason to believe that a good faith investigation on your part would conclusively establish that Independent Counsel attorneys deceived the courts in ways that violated federal laws, you may have adopted a policy of willful ignorance in the discharge of your responsibilities to ensure the integrity of the process you oversee. Thus, the information set out above may assist you in ensuring that the documents I wish to examine remain undisturbed until you make them available.

The suggestion that Independent Counsel attorneys would alter or rearrange originals of exhibits in order to conceal or

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[10] Indeed, the Independent Counsel made an explicit statement to that effect in its Arama summary chart. The statement was contrary to the allegation in the Superseding Indictment and to facts known by Independent Counsel attorneys.

cover up prosecutorial abuses might seem extraordinary. But rearranging documents in order to deceive the court and the jury is precisely what the Independent Counsel did in presenting the documents in the first instance. Moreover, from a moral and ethical perspective, such actions are hardly distinguishable from, say, attempting to lead the court to believe that the February 1, 1985 memorandum from Dean to Wiseman indicated that Dean had to approve all Barksdale's mod rehab selections even in July 1984, even though your attorneys knew from Barksdale's statements (never provided in a Brady disclosure) that the assertion was false, or what must be scores of other documented instances where Independent Counsel attorneys attempted to lead the court or the jury to believe things that its attorneys knew to be false. The effort to deceive the court regarding the February 1, 1985 memorandum is something recently done over your own name, where the Independent Counsel not only failed to advise the court that Dean's memorandum to Wiseman was dated more than six months after the Arama funding, but in fact falsely stated that the memorandum was created in 1984. See Government's Opposition to Defendant Dean's Motion for New Trial 22 (Jan. 15, 1997).[11]

Nor is tampering with documents morally or ethically distinguishable from such actions as the failure to confront Maurice Barksdale and Eli Feinberg with information contrary to their anticipated sworn testimony. As I have repeatedly pointed out to you, any intelligent observer would conclude the such failure was prompted by a fear that confronting Barksdale and Feinberg would lead them to give truthful testimony that differed from their expected testimony, and that Independent Counsel attorneys went forward preferring to elicit false testimony that would support their case than truthful testimony that would not. I suggest that you yourself do not have the slightest doubt that this interpretation is a correct one.

Further, I am inclined to believe that subsequent to receiving the materials I provided you in late 1995, you did not make a good faith effort to learn whether Supervisory Special Agent Alvin R. Cain, Jr. falsely testified that he did not remember a call from Dean concerning John Mitchell in April 1989

[11] In repeatedly arguing to the courts that the memorandum to Wiseman showed that Dean had to approve all Barksdale's decisions even in July 1984, your predecessors conspicuously failed to note the date of the memorandum. It is not impossible that the Independent Counsel's recent statement that the memorandum in fact was created in 1984 reflected a typographical error or an ill-informed assumption that your predecessors' statements could only have been based on a 1984 memorandum. On the other hand, there has been a remarkable boldness in the Independent Counsel's efforts to deceive the courts, and the Independent Counsel's effort to mislead the courts regarding the memorandum to Wiseman is not a matter previously addressed even in the voluminous materials I provided you in late 1995.

or, more important, whether Independent Counsel attorneys attempted to deceive the court in resisting discovery on that matter. As you know, in closing argument, the Independent Counsel placed great weight on Cain's testimony in repeatedly asserting the Dean lied on the stand about her actions concerning John Mitchell. In light of the fact that Cain was an African-American and Dean was being tried before an entirely African-American jury, there is reason to believe that his testimony would have particular impact, which presumably is why the prosecutor gave it such emphasis.

Assuming that in fact Independent Counsel attorneys at some point prior to the hearing on February 22, 1994, came to believe that Dean did call Cain in April 1989 to ask about whether a check existed showing Nunn's payment to Mitchell, most observers would regard the actions of those attorneys to be far more unconscionable than the mere alteration of documents. If I have correctly concluded that you did not vigorously attempt to learn the truth concerning this matter, your own actions stand on much the same footing.

Further, I question whether the alteration or destruction of these documents profoundly differs from the continuing abrogation of your duty to advise the court that Independent Counsel attorneys misrepresented those documents in an effort to deceive the court and the jury about a matter those attorneys regarded to be crucial to their case, even as you are attempting to persuade the court not to permit inquiry into the abuses committed by your predecessors and in doing so explicitly represent to the court that your predecessors made no misleading arguments in previously responding to allegations of prosecutorial abuse.[12] Thus, while

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[12] The representation that the Independent Counsel made no misleading arguments in defending against earlier charges of prosecutorial abuse is made 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). While every action you have taken to date constitutes an implied representation that the Independent Counsel did not mislead the courts in responding to Dean's original allegations of prosecutorial abuse, the explicit affirmative representation to that effect in your recent filing is nevertheless remarkable.

In order for you to fully comprehend just how false that representation is, I suggest that you review the materials I provided you, as well as Dean's recent pleadings, regarding the Independent Counsel's efforts to lead the courts to believe that neither Thomas T. Demery nor trial counsel recognized that Demery's repeated and unequivocal statements that he had never lied to Congress were false; and I ask you to reflect upon whether you in fact have ever seen a balder effort to deceive a court, not in document filed by the government, but in a document filed by any litigant, represented or unrepresented by counsel. In this instance, moreover, the effort to mislead the court concerns the perjury of a government witness, a matter as to which

a suggestion that Independent Counsel attorneys would tamper with documents they hold in trust for the court may be extraordinary, I do not think that my urging you to ensure that this does not occur here is unjustified.

In any case, I hope to hear from you soon concerning whether you will or will not make the original exhibits available for my review, in order that, assuming you refuse voluntarily to make the exhibits available, I can explore options for compelling you to make them available.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

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the government's attorneys have an absolute obligation to reveal the truth to the court.

I suggest also that you consider the Independent Counsel's assertions to the court that it was permissible to attempt to lead the jury to believe that Dean was Shelby's "contact at HUD," despite Shelby's statements that Silvio DeBartolomeis was the contact, on the basis that there existed no documents showing Shelby's contacts with DeBartolomeis. As you know, when making these assertions Independent Counsel attorneys knew that there did exist documents reflecting Shelby's contacts with DeBartolomeis, but they had contrived to elicit testimony from Shelby to lead the jury and the court falsely to believe that no such documents existed. And I ask you to consider under what casuistic interpretation the Independent Counsel's assertions to the court in this regard were not an effort to mislead.

I also suggest that you review Deputy Independent Counsel Bruce C. Swartz's explicit representations to Judge Laurence Silberman in oral argument in the court of appeals that there were no intentional Brady violations, and consider the fact that Swartz was himself a participant in interviews where Richard Shelby repeatedly made statements that contradicted the Independent Counsel's proof, but which were never made part of a Brady disclosure because doing so would have hampered the Independent Counsel's efforts to lead the court and jury to believe things that Independent Counsel attorneys had reason to know were false. As you know, comparable examples abound.

Yet the statement that the Independent Counsel made no misleading arguments in responding to Dean's allegations of prosecutorial abuse is not merely some preposterous argument by a private attorney. In a context where the government has an obligation to reveal the truth, this statement reflects your word of honor that you have investigated these matters and have concluded that in fact Independent Counsel did not attempt to mislead the court in responding to Dean's allegations, just as your failure to advise the court to the contrary reflects your word of honor that Government Exhibits 20, 22, and 25 are exactly what Independent Counsel attorneys have represented them to be.

Attachments

cc: Dianne J. Smith, Esq.
Deputy Independent Counsel

Michael A. Sullivan, Esq.
Associate Independent Counsel