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March 31, 1997

BY FACSIMILE

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Independent Counsel
Office of Independent Counsel
444 North Capitol Street
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Washington, D.C. 20001

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

Dear Mr. Thompson:

On March 29, 1997, I received your letter dated March 25, 1997, responding to my letter of February 26, 1997, in which I had requested the opportunity to examine the originals of Government Exhibits 20, 21, 22, 25, and 33. In my letter I stated, as I had in earlier correspondence to you, that the Independent Counsel had introduced certain of those exhibits into evidence representing them to be things they were not in an effort to deceive the court and the jury concerning whether Arama developer Aristides Martinez knew that John Mitchell was to receive half the Arama consultant fee.

In particular, in order to increase the chance that the court would allow the Independent Counsel to elicit, and to enhance the impact of, testimony from Martinez that he had been told that John Mitchell was related to Deborah Gore Dean and that she held an important position at HUD, the Independent Counsel attempted to lead the court and jury falsely to believe that Martinez was aware that Louie Nunn had written on the Arama consultant agreement that Mitchell was to receive one half the consultant fee.¹ In the letter of February 26, 1997, I expressed

¹ The Superseding Indictment had specifically alleged that the co-conspirators involved with Count One would tell their developer clients of their association with John Mitchell and that Deborah Gore Dean was John Mitchell's stepdaughter. In arguing to be allowed to elicit Martinez's testimony about the conversation concerning Mitchell and Dean, Associate Independent Counsel Robert E. O'Neill indicated that he believed that the testimony might be crucial to the Independent Counsel's establishing a conspiracy concerning Mitchell and Dean.

the view that actions of Independent Counsel attorneys in deceiving the court on this matter constituted a violation of 18 U.S.C. § 1001.

In your letter dated March 25, 1997, while not expressing disagreement with my understanding that the originals of the trial exhibits were public documents, you declined to make them available for my review. You did, however, enclose certain documents that you represented to be copies of the exhibits.

As you by now know, I faxed to you before 9:00 a.m. on March 26, 1997, a letter expressing my concern over your failure to respond to my letter of a month earlier. In the recent letter I explained to you in considerable detail my reasons for wishing to review the originals of the documents. In particular, I indicated that I believed that for the April 3, 1984 letter from Aristides Martinez to Louie B. Nunn in Government Exhibit 25, the Independent Counsel had used an original version (i.e., a version of the letter with Martinez's signature in ink as opposed to being photocopied), but for the consultant agreement that was also part of Government Exhibit 25 the Independent Counsel had used a version in which all the signatures, as well as Nunn's annotation concerning, Mitchell were photocopied. I pointed out that this contributed to the false impression that the annotation was on the copy of the consultant agreement when Martinez mailed it to Nunn and that Martinez therefore must have been aware of the annotation and the fact that Mitchell was to receive one half the consultant fee. As you know, Nunn did not make his annotation until after receiving the copy of the consultant agreement bearing a guarantee by the Arama General partners that Martinez mailed to him in the letter of April 3, 1984.

In my letter of March 26, 1997, I urged you to ensure that these original exhibits were not altered, rearranged, or otherwise tampered with prior to my examination of them and any examination by another appropriate authority.

In due course, I shall be addressing your refusal to allow me to review the originals of the exhibits, as well as your expressed uncertainty as to what your obligations are when information is brought to your attention indicating that Independent Counsel attorneys have deceived the court and your statement that the materials I had provided you in September 1995,² which you stated that you and your attorneys reviewed in

² Your letter refers to the materials I "sent in January 1995 relating to Nunn's consultant agreement with Arama." I did send the materials concerning the Arama consultant agreement to the Department of Justice in January 1995 to supplement materials I had provided the Attorney General in December 1994 when requesting an investigation of the Office of Independent Counsel. However, in January 1995, Deputy Assistant Attorney David Margolis represented to me that, in light of points made to him in my letter of December 25, 1994, the materials would not be forwarded to the Office of Independent Counsel until that matters had been reviewed by the Office of

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conjunction with the trial exhibits noted above, "utterly failed to convince us that the conclusions you have drawn therein are correct, or even if your conclusions were correct, that these matters were relevant, material, or unknown to the defense at the time or trial, or indeed, relevant or material to any possible issue that could be raised at this late juncture." I will also address your failure to respond to my questions of whether you maintain that Nunn in fact signed over half the consultant fee to Mitchell in January 1984, as the Independent Counsel explicitly represented to be the case, and whether you maintain that Nunn's annotation concerning Mitchell was on the copy of the consultant agreement made part of Government Exhibit 25 when Martinez sent the April 3, 1984 letter to Nunn.

My immediate concern, however, involves the group of documents that you represented to be a copy of Government Exhibit 25. As you know from materials I provided you in September 1995, Government Exhibit 25 in the form provided to the defense consisted of Martinez's April 3, 1984 letter to Nunn and certain documents that the Independent Counsel represented to have been enclosures to that letter, which were arranged as follows: (1) the guaranteed copy of the Arama consultant agreement bearing Nunn's annotation concerning Mitchell, along with the addendum to the consultant agreement; (2) the guaranteed copy of the Arama attorney agreement bearing the annotation increasing the attorney fee, along with the addendum to the attorney agreement; and (3) a copy of a letter dated March 29, 1984, from Melvin J. Adams, director of the Metropolitan Dade Department of Housing and Urban Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Area Office. Copies of these documents were included in Attachments 5 through 5e to the Nunn Appendix I provided you in September 1995.³

The crucial part of this exhibit, of course, is the consultant agreement, which, had it been what the Independent Counsel falsely represented it to be--that is, a document that bore Nunn's annotation at the time Martinez sent it to Nunn--would have conclusively established that Martinez knew about the annotation and therefore knew that Mitchell was to receive half the Arama consultant fee. In addition to emphasizing this point in the Nunn Appendix, I restated it in my letter to you of

Professional Responsibility. It was my understanding that the Department of Justice never provided those materials to the Office of Independent Counsel but, in any case, did not do so until subsequent to the Office of Professional Responsibility's informing me, by letter from Michael E. Shaheen, Jr. of June 28, 1995, that the Department of Justice had decided not to investigate the Office of Independent Counsel. I therefore assume that your reference to January 1995 is in error. Please correct me if I am mistaken on that matter.

³ A copy of Government Exhibit 25 in the form it was provided to the defense is also enclosed with this letter.

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September 18, 1995 (at 21). I also pointed out to you in my letter of December 5, 1995 (at 7), that you had an obligation to advise the court that Nunn did not make the annotation on the copy of the consultant agreement until after he received the guaranteed version of that agreement enclosed in Martinez's letter of April 3, 1984. This matter also received considerable attention in my letter to you of February 26, 1984, in which, as noted above, I specifically asked you whether you maintained that Nunn's annotation concerning Mitchell was on the copy of the consultant agreement made part of Government Exhibit 25 when Martinez sent the April 3, 1984 letter to Nunn.

Yet the consultant agreement is missing entirely from the copy of Government Exhibit 25 that you sent to me.

It is a matter of some urgency that you determine whether and when the consultant agreement was removed from the originals of the materials comprising Government Exhibit 25.⁴ If the agreement was removed after the exhibit was introduced into evidence, I think that you would agree that this is a matter that you must immediately bring to the court's attention. Moreover, if this occurred after you assumed possession of the original exhibits in trust for the court, I suggest that there is a serious obstruction of justice question that you are obligated to investigate.

It may be, however, that the consultant agreement was removed from Government Exhibit 25 prior to the introduction of the exhibit into evidence. As I have repeatedly brought to your attention, after the court refused to allow the Independent Counsel to elicit Martinez's testimony that he had been told that John Mitchell was related to Deborah Gore Dean and that she held an important position at HUD, the Independent Counsel completely changed its theory. The Independent Counsel thereafter sought to lead the district court and the court of appeals to believe--contrary to the theory in the Superseding Indictment and contrary to the facts known to Independent Counsel attorneys--that Mitchell's involvement was concealed from Martinez. That Independent Counsel attorneys sought to lead the court to believe that Mitchell's involvement with Arama was concealed from Martinez while knowing with absolute certainty that this was false is an issue raised in Dean's recent motion.

At the time I drafted the Nunn Appendix, I was acting under the assumption that Government Exhibit 25 was introduced into

⁴ The copy of Government Exhibit 25 that you provided me is ordered as follows: (1) the April 3, 1984 letter from Martinez to Nunn; (2) the Adams-Sharrott letter; and (3) the attorney agreement with addendum. At least at first sight, the reordering of the documents would seem inconsequential compared with the removal of a document. If the consultant agreement was removed, however, the reordering may have occurred at the same time.

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evidence in the same form in which it had been provided to the defense. Thus, I noted that even after Associate Independent Counsel O'Neill elicited the cryptic testimony from Martinez that he (Martinez) did not know either that he was hiring anyone other than Nunn or that Nunn was hiring anyone else, which testimony the Independent Counsel would later rely upon to falsely assert that Mitchell's involvement was concealed from Martinez, O'Neill nevertheless proceeded several minutes later to introduce Government Exhibit 25 into evidence. I noted that consistent with the original theory but contrary to the revised theory, that exhibit, had it been what the Independent Counsel represented it to be, would have conclusively established that Martinez possessed a copy of the consultant agreement bearing Nunn's annotation concerning Mitchell.⁵ I later noted that in making the false claim that Mitchell's involvement with Arama was concealed from Nunn, the Independent Counsel avoided citing Government Exhibit 25, suggesting that the Independent Counsel had done so because that exhibit showed (though falsely) that Martinez was aware that Mitchell was to receive one-half the Arama consultant fee. Nunn Appendix at 35.

Now, however, assuming that the material you provided me as a copy of Government Exhibit 25 in fact constitutes the exhibit introduced into evidence, certain events must be interpreted in a somewhat different light. It appears that after the court refused to allow O'Neill to elicit Martinez's testimony about the conversation concerning Mitchell and Dean, and after O'Neill elicited Martinez's testimony that the Independent Counsel would later rely upon to support the false theory that Mitchell's role was concealed from Nunn, O'Neill may have excluded the consultant agreement from Government Exhibit 25. I notice that in introducing the exhibit through Martinez, O'Neill referred to two attachments rather than three. Tr. 257-58.

If in fact the Independent Counsel did pull the consultant agreement from Government Exhibit 25 before admitting it into evidence, it would mean that a number of the points I have made to you were based on a false premise. I do not think, however,

⁵ Specifically, after setting out the testimony O'Neill elicited from Martinez, I observed:

Though it would be upon this testimony that the OIC ultimately would rely as evidence that Nunn had concealed Mitchell's involvement from Martinez, it is not clear whether that had been O'Neill's intention at the time he elicited the testimony. Several minutes later, consistent with the original theme that Martinez was aware of Mitchell's role, O'Neill would introduce Government Exhibit 25 through Martinez. Tr. 257-58. As already noted, Government Exhibit 25 would seem to conclusively show that Martinez possessed a copy of the consultant agreement that bore Nunn's notation regarding Mitchell.

Nunn Appendix at 34.

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that the Independent Counsel's ultimate failure to use the consultant agreement as part of Government Exhibit 25 would alter the conclusion that Independent Counsel attorneys in a variety of ways represented exhibits introduced into evidence to be things that they were not or affect whether the actions of Independent Counsel attorneys in this regard violated federal criminal statutes. And that the Independent Counsel pulled the consultant agreement from Government Exhibit 25 when it decided to falsely maintain that Mitchell's involvement with Arama was concealed from Martinez shows the actions regarding the latter false claim to be even more calculated than they initially appeared. But I will not belabor these issues here.

My immediate interest is simply in learning the truth about Government Exhibit 25, in particular whether the consultant agreement that was part of that exhibit when a copy of the exhibit was provided to the defense was made part of that exhibit when it was introduced into evidence. Since I assume that you have no objection whatever to clarifying for me whether the document that you have represented to be a copy of Government Exhibit 25 is in fact the document that was admitted into evidence, I would appreciate your faxing me a response by the end of the day at the telephone number indicated on the letterhead. In the event that you believe that some investigation is necessary to determine whether the consultant agreement was made part of Government Exhibit 25, I would also appreciate your faxing me by the end of the day that you cannot immediately advise me as to whether the consultant agreement was made part of Government Exhibit 25.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

Enclosures

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

Michael A. Sullivan, Esq.
Associate Independent Counsel