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**BY FACSIMILE**

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:

This letter addresses several matters relating to the subject of our recent correspondence.

First, by letter dated April 3, 1997, you stated that you had taken under advisement my letter of March 31, 1997. In that letter I had requested that you immediately inform me whether the document that you represented to be a true copy of Government Exhibit 25 in your letter dated March 25, 1997, by which you transmitted the document to me, was in fact a true copy of that exhibit. You have not further responded. I suggest that it is taking you an extraordinary amount of time to resolve this matter. If representations you made to me in letters dated February 18, 1996, and March 25, 1997, are true, you should have known the answer to my question before I posed it.

Further, the document that it appears may be missing from the original of Government Exhibit 25 that you hold in trust for the court is the Arama consultant agreement, bearing Louie B. Nunn's annotation indicating that John N. Mitchell was entitled to half the Arama consultant fee, which was part of Government Exhibit 25 when it was introduced into evidence or at least part of Government Exhibit 25 in the form in which it was provided to the defense. As explained in my letter of March 26, 1997, my principal interest in examining the original of the consultant agreement in Government Exhibit 25 is to learn whether, as I surmised, the Independent Counsel had used a photocopy for the consultant agreement in that exhibit, while using in the same exhibit an original of the April 3, 1984 letter from Aristides Martinez to Louie B. Nunn that enclosed the consultant agreement

and several other documents. That the enclosed consultant agreement with annotation was a photocopy while the letter itself was an original would enhance the false impression that the annotation was on the agreement when Martinez mailed it to Nunn.

If the document used as the consultant agreement in Government Exhibit 25 is missing from the original of that exhibit, however, that fact will not preclude proof of this point. That the Independent Counsel used the original for Government Exhibit 20 (i.e., the document bearing Nunn's annotation in ink as opposed to being photocopied) is sufficient to demonstrate that the Independent Counsel used a photocopy in Government Exhibit 25. And apparently you do still have the original version of Government Exhibit 20 and the original version of the remainder of Government Exhibit 25, including the Martinez letter. Thus, regardless of whether the consultant agreement that was part of the original of Government Exhibit 25 is missing or not, it is important that you ensure the security of these other documents.

With regard to the length of time that it is taking you to respond to this matter, let me restate here the point made in my letter of March 26, 1997 (at 3), that any delay on your part in responding to my inquiries in order to prevent or delay the revelation of Independent Counsel attorneys' false use of those documents is itself a violation of 18 U.S.C. § 1001. Similarly, as I suggested to you in my letter of December 5, 1995, when I questioned your delay in informing the court that the Independent Counsel had introduced certain documents into evidence representing them to be things they were not and had deceived the courts with regard to a number of other matters addressed in materials I provided you on September 18, 1995, any delay in bringing this matter to the attention of the court in order to gain some advantage in this case implicates you in the underlying misconduct including any aspect of that misconduct that is of a criminal nature.

It is now close to 20 months since I first brought these matters to your attention by letter of September 18, 1995. Not only have you failed to inform the court that the Independent Counsel created a false record, but you have indicated to me in your letter dated March 25, 1997,[1] that you have no intention of

[1] I will address at another time whether your letter dated March 25, 1997, and bearing the Independent Counsel's Washington, D.C. mail-meter stamp of March 25, 1997 (a Tuesday), but not received by me until Saturday, March 29, 1997, was in fact posted prior to receipt of my letter faxed to you before 9:00 a.m. on March 26, 1997, in which I questioned your delay in responding to my February 26, 1997 request to review the originals of certain government exhibits. In note, however, since your letter was personally signed by you,

doing so because, even if it is true that the documents were false, you do not consider the matter to be material. In that regard, I suggest you read the March 13, 1997 Washington Post account of certain federal prosecutors' failure to bring a matter to the attention of a court and consider the hollowness of the prosecutors' claims that they did not do so because they did not believe the matter to be important.[2] These claims, moreover, were made outside of a context where, as here, the prosecutors have been repeatedly advised of their obligation to inform the court that a false record had been created and that the failure to so inform the court may implicate them in criminal conduct. As I advised you quite some time ago, your obligation is to tell the complete truth to the court and then to make such arguments as the facts may warrant concerning the implications of that truth.

I also suggest that, if you do decide to bring any aspect of this matter or other matters where Independent Counsel attorneys have deceived the court to the court's attention, you present the entire truth to the court. The failure to include any such manner would be an affirmative perpetuation of the deception. To be sure, your silence concerning this and other matters constitutes a continuing implied representation that you have no reason to believe that Independent Counsel attorneys deceived the court in any manner whatever, and statements you made in seeking to strike Dean's recent motion constitute an explicit representation that Independent Counsel attorneys did not in any manner whatever deceive the court in responding to Dean's earlier motion for a new trial. Nevertheless, I suggest that you carefully consider how you would respond to a question by the court as to whether there are any matters as to which you have reason to believe Independent Counsel attorneys have deceived or misled the court.

Second, as made clear in materials provided to you as early as September 18, 1995, I maintain that Nunn did not make his annotation concerning Mitchell on the Arama consultant agreement on January 25, 1984, as the Independent Counsel explicitly stated in the Superseding Indictment issued in July 1992, and as the Independent Counsel has repeated in various places since then, including the statement over your name at page 9 of the Government's Opposition to Defendant Dean's Motion for New Trial (Jan. 15, 1997). I also have made clear to you that I believe various actions of Independent Counsel attorneys in deceiving the court concerning this matter--undertaken to lead the court falsely to believe that Martinez was aware that Mitchell was to

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the issue can probably be easily resolved by travel records indicating your whereabouts between March 25, 1997, and March 28, 1997.

[2] Toni Locy, "Prosecutors Grilled On Tax Audit," The Washington Post, at p. B1, col. 5.

receive half the Arama consultant fee and thereby to increase the chance the court would allow the testimony of Martinez that he had been told that Mitchell was related to Dean and that she held an important position at HUD, testimony Independent Counsel attorneys believed could be crucial to establishing a conspiracy involving Dean and Mitchell--violated 18 U.S.C. §1001.

A predicate to such a violation is that Nunn did not make his annotation on or about January 25, 1984. In my letter of February 26, 1997, I explicitly requested that if you did maintain that Nunn signed over half the Arama consultant fee to Mitchell in January 1984, you specifically so state. You did not respond to that request. Rather, you merely stated that following a review you and your attorneys had undertaken of the materials I provided you and the exhibits I asked to examine, "your materials 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 of trial, or indeed, relevant or material to any possible issue that could be raised at this late juncture."

Whatever precisely you meant by that response, I must request again that you state whether you maintain that Nunn made his annotation concerning Mitchell on or about January 25, 1984, as the Independent Counsel has repeatedly stated. And if you can document that claim by persuasively responding to the detailed explanation as to why that could not be the case in the materials provided you almost twenty months ago, I will pursue this matter no further.

As you consider how to respond to this request, let me suggest that you take into account the following points, which are related to points I made to you at pages 6-7 of my letter of March 26, 1997. Let us suppose that, contrary to any reasonable interpretation of the actions of Independent Counsel attorneys conducting the trial, those attorneys were unaware that Nunn did not make his annotation concerning Mitchell on the consultant agreement until at least several months after January 25, 1984. Let us alternatively suppose that, despite the importance they initially placed on eliciting Martinez's testimony about the conversation concerning Mitchell and Dean and despite the likelihood that they excluded from Martinez's interview report his statements that he was not aware of the annotation, the Independent Counsel attorneys conducting the trial reasonably did not consider when Nunn made the annotation or whether Martinez was aware of it to be material facts. In either event, let us suppose that Independent Counsel attorneys conducting the trial did not violate 18 U.S.C. §1001.[3]

[3] I ignore here the issue of whether a false statement must concern a material fact in order to violate 18 U.S.C. §1001.

But neither set of circumstances would affect whether actions you now take to conceal or cover up any facts concerning this matter violate 18 U.S.C. §1001 or otherwise constitute an obstruction of justice. For you now know that various Independent Counsel statements concerning this matter were indeed false. Further, you now know that a citizen, who is a member of the bar and who was himself a government attorney for more than twenty years, maintains that actions of Independent Counsel attorneys concerning this matter constituted federal crimes, that he has brought those matters to the attention of the Department of the Justice and the White House Counsel, and that he intends to bring those matters to the attention of other authorities. In these circumstances, any fact you attempt to conceal or cover up concerning these allegations would necessarily be deemed material, even if you did not believe Independent Counsel attorneys did anything improper.

In any case, I would appreciate a prompt response from you on this matter, since this is a matter to be addressed in something that I intend to publish. In light of our past correspondence on this matter, and your failure to respond to the specific questions posed in my letter of February 26, 1997, I think it would be fair of me, assuming that I fail to hear from you by May 21, 1997, to state that you declined to comment on the matter. If you believe that the statements in your letter dated March 25, 1997, that you were unconvinced of my conclusions represents a statement that you believe that Nunn in fact made his annotation on or about January 25, 1984, please so advise me.

Third, Deborah Gore Dean and her counsel, Joseph J. Aronica, have advised me that you informed Mr. Aronica that statements in my correspondence to you have indicated that I have had access to Jencks and Giglio material, including grand jury testimony. Mr. Aronica provided me a copy of an order limiting access to such material. My distinct impression, though I did not explore the issue deeply with either Ms. Dean or Mr. Aronica, was that you had referred to my recent correspondence to you.

In this regard, let me first note that all Jencks and Giglio materials cited in my recent correspondence to you, including Nunn's grand jury testimony, were attachments to Dean's recently filed motion for a new trial or other documents filed in the case. It is true, however, that the materials I provided you in September 1995, and that I had previously provided to the Department of Justice in December 1994 and January 1995, cited or included a number of items of Jencks materials not previously made part of the public record (though the materials cited no grand jury testimony that was not part of the public record).

One of these items was a report of the interview of Aristides Martinez conducted on May 15, 1992, which I had provided as Attachment 1 to the Nunn Appendix and as Attachment

5c to the Park Towers Appendix. I gave this interview considerable attention in the Nunn Appendix, though I did not there suggest that the Independent Counsel had excluded from the report of the interview statements by Martinez indicating that he was unaware that Mitchell was to receive half the Arama consultant fee. As suggested in my letter of February 26, 1997 (at 4-5), it was only upon learning that in April 1992 Nunn had told Independent Counsel attorneys that they would have to ask Martinez whether he knew that Mitchell was to receive half the Arama consultant fee that I perceived the strong reasons to believe Independent Counsel attorneys had excluded from the interview report statements by Martinez that he was unaware of Nunn's annotation indicating that Mitchell was to receive half the Arama consultant fee.

A second item was the report of the telephonic interview of Eli M. Feinberg, conducted by Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill on May 18, 1992, in which Feinberg, who apparently was not told that Richard Shelby had already twice stated that Feinberg was aware of John Mitchell's involvement with Park Towers, stated that he (Feinberg) was unaware of Mitchell's involvement with that project. This item was included as Attachment 5a to the Park Towers Appendix.

A third item was the report of the telephonic interview of Richard Shelby, conducted by Deputy Independent Counsel Swartz and Associate Independent Counsel O'Neill on May 19, 1992, in which Shelby was questioned as to why Feinberg might deny that he was aware of Mitchell's involvement, but in which he (Shelby) reaffirmed that Feinberg was aware that Mitchell was involved with the Park Towers project and gave details of Feinberg's role in setting Mitchell's fee. This item was included as Attachment 5b to the Park Towers Appendix.[4]

These latter two interview reports played an immense role in the points I made in the Introduction and Summary and the Park Towers Appendix I provided you on September 18, 1995, as well as in my letter to you of that same date (at 14-17), in the Revised Park Towers Appendix that I provided to you by letter of December 5, 1995, and in my letter to you of December 21, 1995, where I

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[4] In the places where I discussed these interviews of Feinberg and Shelby in the Park Towers Appendix or in my letter to you of December 21, 1995, I also discussed (but did not attach) the interviews conducted of Shelby's employers on May 19, 1992, apparently in an effort to determine whether Shelby had concealed Mitchell's role from these persons. These and earlier interviews of the same individuals revealed that, notwithstanding one of Shelby's employer's earlier statements that he was unaware of Mitchell's involvement with Park Towers, when confronted with evidence that he (the employer) did know about Mitchell's involvement, he acknowledged that he must have known about that involvement.

summarized most of what I then knew about the Independent Counsel's actions in eliciting Feinberg's sworn testimony that he was unaware of Mitchell's involvement with Park Towers without confronting him with Shelby's statements to the contrary. As you know, in the rebuttal portion of the closing argument, Associate Independent Counsel O'Neill, who had been present on two of the occasions where Shelby said Feinberg was aware of Mitchell's involvement with Park Towers, would provocatively assert to the jury that the secrecy reflected in the supposed concealment of Mitchell's role from Feinberg and Martin Fine was the "hallmark of conspiracy." O'Neill also repeatedly emphasized that Feinberg's and Fine's testimonies supporting that contention were absolutely unimpeached, stating that "[n]obody ever contended that they did know." In presenting this issue, I repeatedly noted, in allusion to Shelby's interview of May 19, 1992, where he had described Feinberg's role in setting Mitchell's fee, that Associate Independent Counsel O'Neill had changed the subject when Shelby started to testify about Feinberg's role in setting that fee.

These three items had been included with materials that I provided first to the Department of Justice and later to you precisely because they were not available in the court record, and I included no interview reports in these materials that had been made part of the court record. In the Introduction and Summary (at 48) and that Park Towers Appendix (at 64), I specifically noted that only two of Shelby's statements that Feinberg was aware of Mitchell's involvement were made part of the record, since Dean had not raised the Feinberg issue at all.

Nevertheless, at no time during the nearly twenty months since I first provided the materials to you or the nearly fifteen months since you represented to me that the materials would be reviewed did you suggest to my that you considered my access to interview reports to be in violation of a court order or that you objected to my providing this material to the Department of Justice or to the D.C. Bar, which you also knew I had done. Indeed, as of February 18, 1996, you had already had five months to review the materials and could not have failed to have been aware that I was relying on Jencks materials not in the public record. In your letter of that date, however, not only did you fail to question my access to or use of such materials, but thanked me for my interest in the Office of Independent Counsel.

I thus suggest that your decision to raise this issue at this time is motivated solely by the facts that I have recently confronted you with information that would lead most observers to conclude beyond a reasonable doubt that actions of Independent Counsel attorneys in this case violated federal law and that you recognize that if I persist in my efforts in this regard, those actions ultimately will be revealed and possibly prosecuted. I suggest also that you have recognized that while my recent

correspondence has focused on a narrow issue, once it is recognized that the Independent Counsel's actions with regard to the Nunn annotation violated 18 U.S.C. §1001, it may be recognized that dozens or scores of other actions taken by Independent Counsel attorneys to deceive the courts violated that statute or other federal laws and that many such actions would be deemed far more egregious than the actions concerning the Nunn annotation. In any case, whatever you do to raise this issue with Mr. Aronica or with the court, I suggest that you do not lead either of them falsely to believe that it was only recently that you came to understand that I had access to Jencks material not in the public record.[5]

I also suggest that you review carefully all of your recent filings with the court and determine whether you are not misleading the court by suggesting that the Independent Counsel is compromised in responding to certain issues that are only now being brought to its attention for the first time.[6] In particular, I note that by letter dated January 3, 1996, I advised you that the Independent Counsel had failed to provide the defense with a copy of the interview report of the Maurice Barksdale interview of March 22, 1992, citing to the Independent Counsel's own records, which I had previously provided to you as Attachment 5e to the Park Towers Appendix, indicating that the interview report had not been provided to the defense. I also advised you of your obligation to immediately provide a copy of the interview report to the defense and to determine why it was not previously provided.

You declined then to provide the interview report to the defense or to advise it that you had failed previously to provide it. And when the failure to provide this document at the time of

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[5] I recognize that it is possible that, contrary to your representation to me in writing by letter dated February 18, 1996, you did not review the materials at all. Your wholly incomprehensible recent actions in providing me a copy of Government Exhibit 25 without including the part of that exhibit in which I had expressed the greatest interest suggest that, notwithstanding the representation in your letter dated March 25, 1997, you may not even have reviewed my recent correspondence. It does not seem possible, however, that you could have been unaware of the nature of the materials I had provided.

[6] I will address in another place whether in your recent expression of uncertainty as to whether, even if my conclusions are correct, any issue could be raised "at this late juncture," you are referring to the present; to September 18, 1995, when I first brought the issue to your attention; to December 5, 1995, when I questioned your failure yet to advise the court that certain documents introduced into evidence were false and that any delay in bringing this and other matters to the attention of the court for the purpose of gaining some advantage implicated you in the original misconduct; or to February 18, 1996, when you represented to me that the materials I provided you would be reviewed.

trial was raised in Dean's motion for the dismissal of Count 1, after stating the Dean's delay in raising the issues in the motion had complicated the review of Independent Counsel files, you represented to the court that you have "been unable to determine whether [the Barksdale interview report] was produced or not."[7] I suggest that you consider whether this statement was true and whether, in any event, you were not intending to lead the court falsely to believe that the Independent Counsel was impaired in its ability to respond to the matter because the failure to provide the document was only now being brought to its attention for the first time.

Finally, I do not mean to casually accuse government attorneys of criminal conduct. But I am unable to contrive a rationale whereby, under the ruling that you yourself have attributed to the court of appeals in this case (with which attribution, as indicated in my letter of February 11, 1997, I entirely agree), the actions of Independent Counsel attorneys concerning the Nunn annotation and a host of other matters do not violate 18 U.S.C. § 1001.[8] Nor do I think that contriving rationales by which federal prosecutors' efforts to deceive courts are not federal crimes to be a particularly estimable pursuit. That the attorneys who engage in such conduct do so while arrogantly believing they will not be prosecuted because they are the government, even as they violate the government they purport to represent, but makes their conduct the more venal.

At all events, I suggest that it is time that you as well as Deputy Independent Counsel Dianne J. Smith and Associate Independent Counsel Michael A. Sullivan consider retaining separate counsel (not at the expense of the United States Government). I further suggest that under no circumstances do

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[7] Government's Opposition to Defendant Dean's Motion for New Trial at 14 n.4 (Jan. 15, 1997). In the same note, the Opposition goes on to state that the report's "possibly exculpatory contents, as Dean acknowledges, id., were summarized in the government's letter to counsel of August 20, 1993, and therefore available to be used in cross-examination of Barksdale at trial." As you well know, Dean did not in the place cited or anywhere else acknowledge that the exculpatory contents of the document had been disclosed, since the Independent Counsel had still failed to produce the document. Whether the Independent Counsel's representation that everything exculpatory in the document was described in the August 20, 1993 letter is true can only be determined when and if the Independent Counsel makes the document available to the defense.

[8] For a few examples, see my letter of March 26, 1997 at 14-17. I think that you recognize that my statement at note 12 of that letter that other examples abound is an accurate one. There is no reason, however, to think that I have identified anything approaching the universe of Independent Counsel abuses even in this case, much less in all the cases the Independent Counsel has prosecuted.

you employ any additional attorneys to represent the Office of Independent Counsel in this case without fully informing them of the issues I have raised and intend to continue to raise for as long as it takes to ensure that if Independent Counsel conduct in this case somehow goes unremedied, it will not go unexposed.

Please do keep in mind, however, that I have no interest in presenting in any forum any version of events that is not true. Thus, as I stated in my letter to you of December 5, 1995, if in this letter or any other of the materials or correspondence I have provided to you I have misstated or misinterpreted any of the actions I have described, or if there exist facts that would cause the actions of Independent Counsel attorneys to be perceived in a less malevolent light than I have portrayed them, I would welcome your so advising me.

Sincerely,

**/s/ James P. Scanlan**

James P. Scanlan

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

Michael A. Sullivan, Esq.
Associate Independent Counsel