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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:

This letter addresses a number of issues concerning our recent correspondence and a related matter.

First, it is now more than seven weeks since you sent me your April 3, 1997 letter stating that you were taking under advisement my letter of March 31, 1997, in which I asked you to state whether the document you had represented to me to be a true copy of the original of Government Exhibit 25 was in fact a true copy of that exhibit. As I noted in my letter faxed to you on May 14, 1997, 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 the question before I posed it. Whether these prior representations were true or not, however, you must by now know the answer to the question. You must also know that I want the answer in connection with my interest in bringing to the attention of various forums that the Independent Counsel repeatedly deceived the court concerning the Arama consultant agreement in Government Exhibit 25 and related matters. I will once again state that any delay in your responding in order to delay or interfere with my efforts to reveal that the Independent Counsel deceived the court and the defense on this matter would itself violate 18 U.S.C. § 1001.

For clarification, let me note that, as you have now known for at least twenty months, I maintain that the Independent Counsel attempted to lead the court falsely to believe that Arama developer Aristides Martinez was aware that former Attorney General John N. Mitchell was to receive half the Arama consultant fee in order to increase the chance that the court would allow

the Independent Counsel to elicit from Martinez that he had been told that Mitchell was related to Deborah Gore Dean and that she was an important person at HUD. In arguing to be allowed to elicit this testimony, Associate Independent Counsel Robert E. O'Neill informed the court that the testimony might be crucial to the Independent Counsel's establishing a conspiracy involving Dean and Mitchell. In furtherance of this deception, the Independent Counsel introduced several documents into evidence representing them to be things they were not and made a number of written and oral false statements concerning the documents. One of these documents was Government Exhibit 25, which is an April 3, 1984 letter from Martinez to Louie B. Nunn enclosing, among other things, the Arama consultant agreement bearing a handwritten annotation by Nunn indicating that John Mitchell was to receive half the Arama consultant fee. Since Martinez could only have mailed a copy of the agreement bearing the annotation to Nunn if Martinez possessed such a copy, this document, had it been what the Independent Counsel represented it to be, would have conclusively established that Martinez knew about the annotation and knew that Mitchell was to receive half the consultant fee. But, as you should have known since shortly after September 18, 1995, if you did not know earlier, Independent Counsel attorneys knew that Nunn did not make the annotation on the consultant agreement until after he received it in the April 3, 1984 letter from Martinez.

By letter dated March 25, 1997, in which you refused to grant my request to review the originals of Government Exhibit 25 and certain other government exhibits related to this matter, you purported to enclose a copy of Government Exhibit 25. But the consultant agreement was missing from the copy of Government Exhibit 25 that you sent me.

In my letter of March 31, 1997, I requested clarification on this matter. In doing so, I noted that, as I had previously repeatedly brought to your attention, after the court refused to allow the Independent Counsel to elicit the testimony from Martinez that he had been told that Mitchell was related to Dean and that she was an important person at HUD, the Independent Counsel changed its theory. Instead of attempting to lead the court falsely to believe that Martinez knew that Mitchell was to receive half the Arama fee, the Independent Counsel decided to lead the court falsely to believe that Mitchell's involvement in the Arama project was completely concealed from Martinez.[1] I suggested that after deciding to lead the court to believe that Mitchell's involvement was concealed from Martinez, the Independent Counsel, before admitting Government Exhibit 25 into

[1] As you know, even though Martinez was unaware of Nunn's fee arrangement with Mitchell, it is absolutely clear from Nunn's grand jury testimony and Martinez's interview report that Martinez did know that Mitchell was helping Nunn secure funding
for the Arama project.

evidence, may have pulled the consultant agreement that showed (though falsely) that Martinez knew that Mitchell was to receive half the Arama consultant fee.

Certainly resolving whether the consultant agreement in Government Exhibit 25 was not introduced into evidence at all, or whether it was introduced into evidence but the original is now missing from Independent Counsel files, is not a complex matter. And if you were not able to resolve it long ago, you should have alerted the court long ago.

Second, in my letter dated February 26, 1997 (at 4-5), I presented what I suggest are compelling reasons to believe that in an interview on May 15, 1992, Aristides Martinez told representatives of the Office of Independent Counsel that he was unaware that John Mitchell was to receive half the Arama consultant fee, but such information was excluded from the Martinez interview report provided to the defense. In your letter dated March 25, 1997, while stating that you disagreed with my conclusions concerning the matters addressed in my letter, you did not make clear whether you disagreed with this conclusion. If you maintain that no such information was excluded from the Martinez interview report provided to the defense, I would appreciate your specifically so informing me. If you refuse to investigate the matter, I would appreciate your informing me of that as well.

Third, now that there is reason to believe that the part of Government Exhibit 25 most relevant to my allegations concerning the Independent Counsel's false use of the Arama consultant agreement may be missing from Independent Counsel files, I intend to raise this matter again with the Department of Justice. As you know from correspondence I previously provided you, by letter to Associate Deputy Attorney General David Margolis dated December 25, 1994, I advanced as one of the reasons that the Justice Department should not forward the materials I had provided the Attorney General directly to the Office of Independent Counsel was the danger that alerting Independent Counsel attorneys that certain issues were being raised might cause documents to be destroyed or reordered in ways that would compromise a subsequent investigation. I made the same broad point in my letter to Mr. Margolis of January 17, 1995, when I provided the Department of Justice the Nunn Appendix that first raised the issue of the Independent Counsel's false use of the Arama consultant agreement. I specifically noted that the issues raised in the materials then being provided had not previously been brought to the attention of Independent Counsel attorneys and that an investigation was more likely to reveal the truth about these matters if Independent Counsel attorneys were not informed of the content of the materials. Subsequent to that date, Mr. Margolis advised me that, in light of considerations raised in my letter of December 25, 1994, the materials were being provided to the Office of Professional Responsibility rather than the Office of Independent Counsel.

Since there is reason to believe that the original of Government Exhibit 25 may have been tampered with, I wish to raise with the Department of Justice whether and when the

Department informed Independent Counsel attorneys of the allegations I made concerning that exhibit. This is a reason why it would be useful if you could respond as soon as possible to the outstanding question of whether part of the original of Government Exhibit 25 is in fact missing. Further, it would be useful if you would state whether and when officials of the Department of Justice provided the Independent Counsel the materials I had provided the Department of Justice in December 1994 and January 1995 or otherwise informed Independent Counsel attorneys of the allegations in those materials.

I also request your assistance on a related matter. As I do not think you could possibly fail to know, former Assistant Secretary for Housing-Federal Housing Commissioner Thomas T. Demery made numerous false statements when testifying three times before two Congressional subcommittees in May 1989 and May 1990. Such false statements included, among other things, denials that certain individuals had talked to him about moderate rehabilitation allocations, denials that he was aware of who contributed to the charity F.O.O.D. for Africa or the amounts of their contributions, and denials that he knew that certain individuals were involved in the moderate rehabilitation program. The Independent Counsel indicted Demery on two counts of perjury for knowingly making false statements to both subcommittees. In June 1993 in the course of and subsequent to reaching a plea agreement that did not include those counts, Mr. Demery acknowledged to Independent Counsel attorneys that the statements underlying the two perjury charges were false. He even explained why he had testified falsely. And he indicated that many of his other statements to Congress were also false, though the Independent Counsel already had reason to know with virtual certainty that more than twenty of Mr. Demery's statements to Congress were false.

Despite having acknowledged to Independent Counsel attorneys in June of 1993 that he had repeatedly lied to Congress, however, when testifying as a government witness in this case on September 30, 1993, Mr. Demery repeatedly and unequivocally denied ever having lied to Congress. The following is a transcription of part of that testimony:

Q. Okay. Now you have testified -- you testified publicly on television, as a matter of fact, regarding certain of the inspector general's allegations at HUD; isn't that right?

A. Yes.

Q. And those were on C-Span, were they not?

A. Yes, they were.

Q. And you were put under oath --

A. Yes, I was.

Q. -- during those hearings?

A. Yes, I was.

Q. And did you swear to tell the truth?

A. Yes, I did.

Q. And did you tell the truth?

A. Yes, I did.

Q. You told the utter and complete truth in front of those -- on those hearings?

A. Yes, I did.

Q. Okay. You haven't been -- you didn't plead guilty to perjury, did you?

A. No, I did not.

Q. Okay. Is that because you've never committed perjury?

A. Of course.

Q. Okay. And you told the truth in front of the Lantos committee in the same fashion as you're telling the truth today, correct?

A. Correct.

Q. I mean, you've been put under oath today, correct?

A. Yes.

Q. And you had the same obligation you have today as when you were in front of the Lantos committee? You recognize that?

A. Yes, I do. I know a lot more than I did before the Lantos committee. I've had an opportunity to look at documents and spend a lot more time on issues than I did when I testified in front of chairman Lantos.

Q. Okay. So you may have made some mistakes in front of the Lantos committee, but they certainly wouldn't have been intentional; is that what you're saying?

A. Yes.

Tr. 1915-17.

Subsequently, with the use of a videotape, defense counsel further questioned Mr. Demery as to whether he had lied when he testified before Congress concerning meetings with former HUD employees, meetings with consultants and developers, and whether the best projects were always selected. Demery insisted that all of his answers before Congress were true. Tr. 1920-35. As I assume you know, Mr. Demery's answers before Congress on each of these point were in fact false.

The Independent Counsel did not correct Mr. Demery's false testimony. Instead, the Independent Counsel proceeded to close its case-in-chief by eliciting Mr. Demery's most important testimony on redirect.[2] Thereafter, the Independent Counsel, prior to December 1, 1994, impliedly represented to the district court and the court of appeals that neither Demery nor trial counsel knew that Demery's testimony that he had never lied to Congress was false.

In my letter to you of March 26, 1997 (at 15), I suggested, with regard to the arguments advanced by the Independent Counsel in support of that representation, that you reflect upon whether you had ever seen a balder effort to deceive a court in a document filed by any litigant, represented or unrepresented by counsel. My suggestion that those arguments constituted as bald an effort to deceive the court as one ever would see had been made in all candor, but at the time I had overlooked the statement in the Independent Counsel's brief in opposition to the certiorari petition, discussed below.

In any event, when I first raised this matter with the Department of Justice, I pointed out that it was difficult to understand how Mr. Demery, who several months earlier had informed Independent Counsel attorneys that he had repeatedly lied to Congress, could testify under oath that he had never lied to Congress without having been led to believe he should do so by Independent Counsel attorneys. I also pointed out that an

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[2] This testimony, which was crucial to both Count Three and Count Four, was that Ms. Dean had brought to Mr. Demery's attention a 203-unit moderate rehabilitation request for Dade County, Florida that was funded as a result of a moderate rehabilitation selection committee in April 1987. As made evident in Ms. Dean's memorandum in support of her recent motion for a new trial (at 93-95), there is compelling reason to believe that the testimony was false. In any event, it is clear that, as with other witnesses where the Independent Counsel had reason to believe a government witness would give false testimony, the Independent Counsel never confronted the witness with the information indicating that the witness's proposed testimony was false.

obvious avenue for fulfilling the government's obligations to determine the truth was to interview trial counsel and Mr. Demery concerning their conversations before he testified. And I raised the issue of what the Independent Counsel had or would advise the court in Mr. Demery's own case, noting that very likely the Independent Counsel would make no mention of Mr. Demery's perjury in this case.

I again raised this issue in a May 25, 1995 letter to Associate Deputy Attorney General David Margolis. Believing at that time that Mr. Demery had probably already been sentenced, I stated (at 15-16):

> Almost certainly any inquiry into what the Office of Independent Counsel communicated to the U. S. Probation Officer and the sentencing court about Demery's fulfilling his agreement to testify truthfully will reveal that the Office of Independent Counsel failed to indicate that Demery had committed perjury when testifying in court.

I added, however, that Demery must cooperate with any governmental investigation into these matters and thus was available to be required to disclose the nature of his pre-testimonial discussions with the Independent Counsel attorneys. I inquired whether the Department of Justice had yet contacted Mr. Demery and, if it had not, why it had not.

In my letter to Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, dated August 14, 1995, I raised the same matter once again in requesting the Department of Justice to reconsider its decision not to investigate the Office of Independent Counsel. I noted that I assumed that the Department of Justice had failed to contact Mr. Demery and specifically requested a letter from Mr. Shaheen indicating whether the Office of Professional Responsibility had interviewed Mr. Demery.

Let me note at this point that Mr. Demery was by no means an obscure figure in this matter. The original HUD Inspector General's Report had named Mr. Demery on its cover and had focused on his contacts with contributors to F.O.O.D. for Africa who were also involved in the moderate rehabilitation program. In protesting the fact that he had been singled out in the report, Mr. Demery may have made more than thirty false statements. This should have been well known to officials of the Department of Justice. George Ellard, who had signed Mr. Demery's plea agreement for the Office of Independent Counsel, was in fact an attorney in the Office of Professional Responsibility at the time that office was reviewing this issue. Presumably, when at the time of reaching his plea agreement Mr. Demery acknowledged to Independent Counsel attorneys that he had

made at least a dozen false statements to Congress, Mr. Ellard was one of the persons to whom Mr. Demery spoke.[3]

I next raised the matter of Mr. Demery's false testimony in my letter to you of September 18, 1995, noting to you, as I had to the Department of Justice, that Mr. Demery must cooperate in an investigation concerning the pretestimonial discussions with Independent Counsel attorneys that led him to deny ever having lied to Congress.

I brought the matter to the attention of the Department of Justice once more in a letter dated November 30, 1995, to John C. Keeney, Acting Assistant Attorney General for the Criminal Division, in which I suggested to Mr. Keeney that the conduct of Bruce C. Swartz and Robert E. O'Neill as Deputy Independent Counsel and Associate Independent Counsel in this case indicated that they were unfit to continue to serve in the positions they then held with the Department of Justice. Though I gave only limited attention to Mr. Demery in the letter to Mr. Keeney, I attached the correspondence previously provided. The materials I provided Mr. Keeney apparently were then referred again to Mr. Shaheen of the Office of Professional Responsibility, who had not yet responded to my specific question of whether the Department of Justice had interviewed Mr. Demery.

I raised the matter once more in my letter to you dated December 5, 1995, noting that you had had ample time to contact Mr. Demery in fulfilling your obligation to learn whether he had committed perjury at the instigation of Independent Counsel attorneys.

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[3] At this time, former Deputy Independent Counsel Bruce C. Swartz, who was intimately involved with this matter, was also in the Department of Justice as a Senior Special Assistant in the Criminal Division. I have lately come to understand that former Associate Independent Counsel Claudia J. Flynn is now the Chief of Staff for the Criminal Division. My only knowledge of Ms. Flynn's role with the Office of Independent Counsel involves her participation at the hearing on February 22, 1994, where Mr. Swartz sought to persuade the court not to allow discovery concerning whether Supervisory Special Agent Alvin R. Cain, Jr. committed perjury with the knowledge of Independent Counsel attorneys. In the course of doing so, Mr. Swartz attempted to lead the court to believe that Deborah Gore Dean had surmised that the check showing a $75,000 payment to John Mitchell on the Arama project was maintained in HUD's Atlanta Regional Office from a statement in the HUD Inspector General's Report. Ms. Flynn, who addressed sentencing issues during the remainder of that hearing, apparently stood ready to make the same argument in support an effort to have Ms. Dean's sentencing level increased because her testimony was contradicted by Agent Cain. Thus, Ms. Flynn apparently had some knowledge about matters addressed in the materials reviewed by the Office of Professional Responsibility. I do not, however, know how long Ms. Flynn has been at the Department of Justice but will be addressing that with her shortly.

By letter dated January 30, 1996, Mr. Shaheen responded to my November 30, 1995, letter to Mr. Keeney, stating that he viewed my correspondence to Mr. Keeney to be an effort to cause the Department of Justice to reconsider its decision not to investigate the Office of Independent Counsel, and indicating that the Department of Justice declined to reconsider that decision. Mr. Shaheen, who had not responded to the request in my letter of August 14, 1995, that he specifically state whether the Department of Justice had interviewed Thomas T. Demery, also stated that he was refusing to respond to that and other questions posed to him in my letter of August 14, 1995.

Over the next month, you would be responsible for two efforts to deceive the courts concerning the testimony of Thomas T. Demery. In the Independent Counsel's brief in opposition to the petition for certiorari, the Independent Counsel would tell the Supreme Court that Ms. Dean contended that Mr. Demery had testified falsely with regard to only one question and that the question was ambiguous.[4] In terms of being a bald effort to deceive a court, this statement was certainly comparable to the arguments the Independent Counsel had advanced in the district court.

Then, on February 27, 1996, nine days after you represent to me in writing that you would review the materials I had provided you, in a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines, the Independent Counsel represented to the Honorable Stanley S. Harris in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), not that trial counsel had failed to recognize that Mr. Demery had testified falsely, but that in fact Mr. Demery's testimony was entirely truthful. You did not reveal to Judge Harris that allegations had been made in this case that Demery had testified falsely in repeatedly denying that he had ever lied to Congress or that the district court in this case had essentially agreed with those allegations. Relying on the Independent Counsel's representations in its motion, Judge Harris granted Mr. Demery a downward departure from the guidelines range for the crimes to which he pled guilty, which allowed Mr. Demery to be sentenced to probation.

As you know, I maintain that statements of Independent Counsel attorneys regarding Mr. Demery's testimony, particularly those made subsequent to receipt of my materials and correspondence in late 1995, violated 18 U.S.C. § 1001 and probably other federal laws. The representation to Judge Harris

[4] Specifically, the Independent Counsel stated to the Supreme Court that it was "apparent from the record" that "the question as to which petitioner now claims that Demery perjured himself was ambiguous." Brief in Opposition 13.

may be the clearest example. If you maintain, however, that the representation you made to Judge Harris was true, that you made no representation to Judge Harris concerning the truthfulness of Mr. Demery's testimony and did not otherwise attempt to conceal that Mr. Demery had testified falsely in this case, or that, as you apparently maintain with regard to the Independent Counsel's false use of the Arama consultant agreement, the matter was not material, I would be pleased if you would so advise me in writing. If there exists some other theory by which your representation to Judge Harris would not violate 18 U.S.C. § 1001, I would be pleased if you would inform me of that as well.

As you know, I have repeatedly advised you of your obligation to fully advise the court in this case of the nature of Independent Counsel conduct in this matter. That obligation holds whether or not the conduct actually violated federal law. Let me add here that if your representation to Judge Harris concerning Mr. Demery was not completely truthful, you have at least as great an obligation to inform Judge Harris as you have to inform the court in this case. You may wish to do that before I do that.

In any event, assuming that Independent Counsel attorneys in fact violated 18 U.S.C. §1001 or some other federal law by leading Judge Harris falsely to believe that Mr. Demery gave completely truthful testimony in this case, given my repeatedly bringing this matter to the attention of the Department of Justice before the crime ever occurred, it is difficult not to conclude that officials of the Department of Justice are somehow implicated in this matter. At a minimum, given the Attorney General's statutory responsibility for overseeing the conduct of Independent Counsels, there would seem to be serious malfeasance on the part of Department of Justice officials. If Department of Justice officials consulted with you concerning this matter prior to your filing the § 5K1.1 motion in Mr. Demery's, actions of those officials may raise more serious issues.

Accordingly, I request that you state whether you filed the § 5K1.1 motion with the knowledge of officials of the Department of Justice and whether officials of the Department of Justice discussed the allegations in the materials I provided it with you prior to your filing the § 5K1.1 motion.

Finally, I realize that I am in this letter once again repeatedly accusing you of violating federal law and that some might regard such accusations against a person in your position as somehow indecent. I am firmly of the belief, however, that when there exists clear evidence that a high government official has committed crimes, it is the failure to make the accusations that is indecent. This particularly so when the official exercises essentially unfettered authority. I am sure that in the abstract you completely agree with me. Indeed, the need to ensure that high government officials do not violate crimes with

impunity is precisely why there exists an Independent Counsel law and why it essential that Independent Counsel are persons of courage and integrity.

It should be noted, moreover, that I did not make these accusations until allowing you a quite substantial period of time to act after explaining to you in some detail the facts surrounding the repeated efforts of your predecessors to deceive the courts and otherwise to abuse their authority, and after explaining to you as well that your failure to act to correct those abuses would implicate you in any criminal conduct involved therein. I resumed my correspondence with you only after I observed your actions in seeking to uphold the verdict on Count One.

I suggest that any group of moderately intelligent law students fully apprised of the Independent Counsel's cumulative abuses on Count One would conclude with virtual unanimity that the Independent Counsel had framed the defendant on that count, regardless of what they believed about Agent Cain. And what do you think the verdict of such students would be if they concluded that Agent Cain in fact had lied or that you refused to investigate the matter because you feared the results of an investigation? Eventually, there may be an opportunity to learn exactly what law students would say on these matters. In any event, you not only endeavored to uphold the verdict on that Count One, but you repeatedly sought to deceive the court as you did so.[5]

It should go without saying, however, that if you are only now coming to understand the truth regarding these matters, and

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[5] You may recall that as long ago as September 18, 1995, I pointed out to you that Lance Wilson had been granted immunity and interviewed by Independent Counsel attorneys, but that presumably they had failed to question him about his involvement in the Arama funding. I suggested that the only reason for that failure was the fear that Mr. Wilson would acknowledge that he had caused Maurice L. Barksdale to authorize the Arama funding, as suggested by the Mitchell message slips, just as the only reason for the failure of Independent Counsel attorneys to confront Mr. Barksdale with those message slips in May of 1992 was the fear that Mr. Barksdale would acknowledge that Mr. Wilson had caused him to make the funding. On December 5, 1995, I questioned why you had failed yet to interview Mr. Wilson, noting that you had had been eleven weeks to do so. Apparently you never did question Mr. Wilson notwithstanding that he was required to provide truthful answers to your questions. And when Mr. Wilson recently filed an affidavit for the defense verifying that, as every Independent Counsel attorney at all familiar with the matter presumably had assumed since May 1992, Mr. Wilson rather than Ms. Dean had caused Mr. Barksdale to make the Arama funding, you led the court to believe that you did not believe Mr. Wilson. As you know, however, your actions regarding Mr. Wilson were by no means your sole effort to deceive the court on this matter even in your recent filings.

your failure to do so earlier did not entail willful ignorance of that truth, you are guilty of no crime. The same holds for your subordinates. But if non-wilful ignorance up to this point might excuse your conduct to date, it would not excuse your failure immediately to fully inform the court of the actions Independent Counsel attorneys have taken to deceive it. As I have suggested before, however, revealing to the court some part of Independent Counsel misconduct in the case without revealing the totality would be but a further effort to deceive the court.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

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

Michael A. Sullivan, Esq.
Associate Independent Counsel