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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 concerns three matters which are addressed under the headings belows.

1. The Continuing Failure to State Whether the Document You Represented To Be a True Copy of Government Exhibit 25 Is in Fact a True Copy of That Exhibit

It is now more than two months 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. It is also two weeks since I faxed you my letter dated May 26, 1997, questioning your failure to further respond to my letter and once again pointing out 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.

Let me point out that we have a relationship concerning this matter that ordinarily would impose a responsibility on your part to promptly respond to my question. In addition to your writing me on February 18, 1996, stating that you would review the materials I provided you concerning this and other matters where I maintained Independent Counsel attorneys deceived the court, in recently refusing my request to review certain exhibits that I maintained the Independent Counsel had introduced into evidence representing them to be things they were not, you undertook to represent to me that you had reviewed the materials I had provided you and were unconvinced of my conclusions. More important, you undertook to provide me with documents that you

represented to be true copies of the documents that I had asked to examine. When a government official has responded in this manner to an inquiry of a citizen, the government official has no excuse whatever for failing to immediately provide a clarification of the sort I requested. I think you recognized that obligation by responding to my letter of March 31, 1997, with your letter of April 3, 1997, stating that you were taking my March 31 letter under advisement. As I have pointed out, however, if representations you made to me were true, you should have known the answer to the question in my March 31 letter before I posed it, and even if the representations were not true, you should have been able to immediately determine the answer to the question. In these circumstances, it is not possible to believe that your failure yet to respond is a result of anything but your desire to postpone as long as possible revelation of the Independent Counsel's misrepresentations concerning these exhibits.

2. The Continuing Failure to Advise the Court That Independent Counsel Attorneys Repeatedly Misled the Courts Concerning Aristides Martinez's Knowledge That John Mitchell Was Involved With the Arama Project

In the Nunn Appendix I provided to you on September 18, 1995, I explained how, after the court refused to allow the Independent Counsel to elicit testimony that Aristides Martinez had been told that John Mitchell was related to Deborah Gore Dean and that she was an important person at HUD, the Independent Counsel decided not to argue that Mitchell's involvement with the Arama project was emphasized to Martinez, and instead to argue that Mitchell's involvement with the Arama project was concealed from Martinez. Based on Martinez's interview of May 15, 1992, as well as Nunn's testimony before the grand jury (including the part of that testimony that the Independent Counsel used to examine Nunn during trial), Independent Counsel attorneys knew with absolute certainty that this claim was false. I also addressed that issue at page 22 of my transmittal letter of September 18, 1995.

In my letter to you dated December 5, 1995 (at 7), I raised the issue again noting that you had the obligation to reveal to the court that Independent Counsel attorneys had intentionally sought to mislead it.

During the year that followed, you failed to bring to the court's attention that or other matters where you must have known Independent Counsel attorneys had deceived the court. Though the supposed concealment of Mitchell's involvement with the Arama project from the Arama developer Martinez was one of the principal points the Independent Counsel had made to the district court and the court of appeals in previously seeking to uphold the verdict on Count One, when recently arguing to uphold the verdict on that count (which now concerned solely the Arama project), the Independent Counsel's brief made no reference to

that supposed concealment. Possibly this failure reflected the fact that the materials I had provided to you and the Department of Justice made clear not only that the claim was false, but that others knew that you knew that the claim was false. In any event, however, the contentions remained before the court as part of what the Independent Counsel had maintained to the district court and the court of appeals to be justifications for a jury verdict that you continued to seek to uphold.

That the Independent Counsel had made this false claim to the courts was recently raised as an issue in the defendant's motion for a new trial. I also again mentioned it to you in my letter of February 26, 1997 (at 4). I raised the matter again in my letter to you dated March 26, 1997 (at 6), there pointing out to you that, 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, the Independent Counsel's actions concerning this matter certainly would violate that statute.

I raised the matter again in my letter to you dated March 31, 1997 (at 5-6), suggesting the possibility that, upon deciding to falsely claim that Mitchell's involvement with Arama was concealed from Martinez, Independent Counsel attorneys pulled from Government Exhibit 25 the consultant agreement that, had it actually been what the Independent Counsel represented it to be, would have conclusively shown that the Martinez knew that Mitchell was to receive half the Arama consultant fee.

In my letter to you dated May 14, 1997 (at 3-5), I pointed out with regard to the Independent Counsel's misrepresentations concerning the copies of the Arama consultant agreement introduced into evidence that, even if the Independent Counsel attorneys conducting the trial did not know that they were misleading the court or did not consider the matter about which they were knowingly misleading the court to be material, that would not affect whether your continuing concealment of the fact that certain exhibits are not what the Independent Counsel represented them to be violates 18 U.S.C. § 1001. That may have been an overstatement. The case that your continuing concealment of the matter violates 18 U.S.C. § 1001 is probably stronger assuming that the attorneys originally handling the case also violated the statute, though I suggest that the case is strong enough regardless of the culpability of those attorneys.

In any event, the same considerations largely apply here as well. Thus, assume that the attorney originally handling the case somehow were not aware that they were deceiving the court in making the argument that Mitchell's involvement was concealed from Martinez or were not aware that they were violating 18 U.S.C. § 1001 in doing so. You have for quite some time known that the claim concerning the concealment of Mitchell's involvement with Arama from Martinez was false, and it has been

repeatedly brought to your attention that under your own interpretation of the court of appeals ruling in this case, that effort to deceive the court violated 18 U.S.C. § 1001. Further, it is reasonable to assume that your continuing failure to inform the court that your office deceived it concerning this matter is motivated not solely by an interest in causing the court to believe something that would cause it to more readily uphold the verdict on Count One (as in the case of your predecessors); rather, your actions are also motivated by an interest in forestalling a close examination of the conduct of your office concerning matters that you must by now know, if somehow you did not know long ago, very likely involve violations of federal law. Hence, your culpability for the perpetuation of this attempt to deceive the court is more certain and more serious than that of your predecessors.

3. The Continuing Failure to Advise the Court That the Independent Counsel Misled the Court in Its Recent Filings

There are also instances in the Independent Counsel's recent filings of statements intended to deceive the court. In my letter to you of May 14, 1997, I suggested that you review those filings for instances where you are misleading 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. I noted 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, 1993, 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. In that letter, which was only two pages long, 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 defense counsel that you had failed previously to provide it. And when the failure to provide this document at the time of trial was raised in the defendant's motion for the dismissal of Count One, after stating that the defendant'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 March 22, 1993 interview report] was produced or not." In my letter of May 14, 1997, I suggested 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 your attention for the first time.

In addition, I believe it is evident from the memorandum in support of the defendant's recent motion, but in any event it is clear from my letter to you dated March 26, 1997 (at 13-14), that the effort to claim that the February 1, 1985 memorandum from Deborah Gore Dean to Acting Assistant Secretary for Housing Shirley Wiseman showed that Ms. Dean had to approve Maurice Barksdale's moderate rehabilitation decisions even in July 1984 was an effort to mislead the court, and that the Independent Counsel's description of the memorandum as a 1984 memorandum was manifestly false.

Finally, in my letter of March 26, 1997 (at 15-16), I pointed out that the statement 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) that the Independent Counsel had made no misleading arguments in opposing the defendants's original motion for a new trial constituted your word of honor that you have investigated the matter and have concluded that in fact Independent Counsel attorneys did not mislead the court in responding to Dean's motion. As I also pointed out in my letter, that representation is impossible to believe. Hence, whether or not you consider the representation to be your word of honor, it is another matter concerning which you have a continuing obligation to alert the court that Independent Counsel attorneys attempted to deceive it.

Each of the matters discussed under this heading involves issues that are still before the court. As you know, however, neither the matters addressed under this and the previous heading, nor other matters to which I have given particular attention in recent correspondence, comprise the totality of matters where Independent Counsel attorneys have undertaken to deceive the courts. With regard to all such matters, including those that I may know nothing about, let me note I have taken for granted that you understand that a government lawyer has an obligation never to mislead a court and must advise the court whenever he discovers that attorneys in a case under his control attempted to deceive it. I have refrained from observing that this is something that someone with your experience in government should know, because it is something that a government attorney should know the day he walks on the job or he ought not to be government attorney.

But if such is not your view of a government attorney's obligations, it would be useful if you advise me of that. It would also be useful if you would express that view in the final report on your investigation, describing as well the instances in this or other prosecutions where the Independent Counsel believed

that the public's interest in securing certain convictions justified deceiving courts or juries in order to secure those convictions.

I am uncertain, however, whether many government lawyers actually appreciate that attempting to deceive a court violates 18 U.S.C. § 1001. What matters here is that, whether or not I first brought that fact to your attention, you and your attorneys certainly have known for some time that every action you take to conceal or cover up a material fact within the jurisdiction of the Office of Independent Counsel violates that statute. Again, however, if there exist some rationale that I have overlooked whereby such actions would not violate that statute, I would appreciate your explaining that rationale to me.

Until I am dissuaded from my from my current view about the applicability of 18 U.S.C. § 1001 to so many Independent Counsel actions in this case, I shall continue to point out instances where I believe actions of Independent Counsel attorneys violated that statute. I believe there is some value in my doing so regardless of whether I thereby cause you or other Independent Counsel attorneys to fulfill their obligations as representatives of the United States Government.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

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

Michael A. Sullivan, Esq.
Associate Independent Counsel