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July 23, 1997

PERSONAL AND CONFIDENTIAL

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Associate Independent Counsel
BONDURANT, MIXSON & ELMORE, L.L.P.
1201 W. Peachtree Street
Suite 3900
Atlanta, Georgia 30309

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

Dear Mr. Sullivan:

Some months ago, I mailed to you at the Office of Independent Counsel in Washington, D.C. a copy of a letter dated February 26, 1997, that I had faxed and mailed to Independent Counsel Larry D. Thompson. In the letter to Mr. Thompson, I requested to review the originals of Government Exhibits 20, 21, 22, 25, and 33, which the Independent Counsel had introduced into evidence in the referenced case. In the letter I stated that I wished to review those exhibits in connection with the contention, which I had brought to Mr. Thompson's attention more than a year earlier, that the Independent Counsel had introduced certain of those exhibits into evidence representing them to be things they were not and had made a number of written and oral false representations concerning those exhibits 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

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

The most important of the exhibits by which the Independent Counsel sought to deceive the court and jury on this matter were Government Exhibits 20 and 25. Government Exhibit 20 is a copy of the Arama consultant agreement bearing the following annotation by Louie B. Nunn: "1/25/84. In event of death or disability, 1/2 of above amount belongs to John Mitchell. Louie B. Nunn." The Independent Counsel introduced this document into evidence in a manner to lead the court and the jury to believe that the annotation had in fact been made on January 25, 1984, and also made a number of explicit representations to that effect. Independent Counsel attorneys knew, however, that the annotation was not made until after April 3, 1984.

Government Exhibit 25 is an April 3, 1984 letter from Arama developer Aristides Martinez, enclosing, inter alia, a copy of the Arama consultant agreement bearing Nunn's annotation concerning Mitchell's right to have the consultant fee. The Independent Counsel introduced this document into evidence in a manner to lead the court and the jury to believe that the annotation was on the copy of the consultant agreement in Government Exhibit 25 when Martinez mailed it to Nunn. If that had been the case, it would conclusively establish that Martinez had to have been aware of the annotation and at some point have possessed a copy of the agreement bearing the annotation. As Independent Counsel attorneys knew, however, the annotation was not made until after Nunn received the letter from Martinez.

In the letter of February 26, 1997, I expressed the view that actions of Independent Counsel attorneys in deceiving the court on this matter violated 18 U.S.C. § 1001. I also pointed out to Mr. Thompson (at 4-5) something that I had not previously brought to his attention concerning this matter. I noted that there was reason 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.

At the close of the letter, I noted that at the hearing on February 18, 1997, you had argued for the Independent Counsel with regard to the motion to set aside Count One. Pointing out that, as I previously observed in a letter to Mr. Thompson dated December 5, 1995, each attorney of record on the case has the

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.

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same responsibilities as Mr. Thompson with regard to a number of ethical issues, I stated that I would henceforth provide you copies of my correspondence to Mr. Thompson.

Presumably, the envelope addressed to you containing a copy of my February 26, 1997 letter was forwarded to you, and you may well have been among the members of Mr. Thompson's staff whom he consulted in deciding to refuse to allow me to review the originals of the exhibits identified in my letter.

In the months that followed my initial February 26, 1997 letter to Mr. Thompson, there has been a considerable amount of correspondence concerning this matter. First (at least in order or receipt by the addressee), before 9:00 a.m. on March 26, 1997, I faxed a letter to Mr. Thompson inquiring as to why he had not yet responded to my request to review the documents. In the letter I suggested that any delay in responding in order to interfere with my exposing the Independent Counsel's actions concerning this matter would itself violate 18 U.S.C. § 1001. I also explained in greater detail my interest in reviewing the originals of the exhibits, particularly the consultant agreement introduced into evidence as part of Government Exhibit 25, and urged Mr. Thompson to ensure that the documents were not tampered with.

Second, on Saturday, March 29, 1997, I received from Mr. Thompson a letter dated March 25, 1997, apologizing for the delay in responding to my letter of February 26, 1997, but refusing to allow me to review the originals of the exhibits. Mr. Thompson stated that he had reviewed my letter and related materials with his staff, but that the "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."

I do not know whether Mr. Thompson in fact mailed his letter dated March 25, 1997, before receiving my letter faxed to him before 9:00 a.m. on March 26, 1997. But if you were involved with this matter, or otherwise know whether Mr. Thompson was in Washington, D.C. on March 25, 1997, you may well know when he actually mailed the letter bearing that date.

In any event, Mr. Thompson did enclose with his letter dated March 25, 1997, what he represented to be true copies of the exhibits I had requested to see, including Government Exhibit 25. Missing from Government Exhibit 25, however, was the consultant agreement that I had repeatedly discussed in the many places where I had raised this issue with Mr. Thompson.

Third, on March 31, 1997, I faxed a letter to Mr. Thompson, pointing out that the consultant agreement was missing from Government Exhibit 25. I requested that he immediately inform me whether the consultant agreement that was included with that exhibit when it was provided to the defense was introduced into evidence but the original is now missing, or whether the consultant agreement was pulled from the exhibit before it was admitted into evidence.²

Fourth, by letter dated April 3, 1997, Mr. Thompson stated that he was taking my letter dated March 31, 1997, under advisement.

Fifth, on May 14, 1997, I faxed Mr. Thompson a letter questioning why he had not yet responded to my letter of March 31, 1997, observing that if representations he had previously made to me were true, he should have known the answer to my question before I posed it. In the letter of May 14, 1997, I pointed out that any delay in responding to my inquiries in order to prevent or delay the disclosure of Independent Counsel attorneys' false use of those documents would itself violate 18 U.S.C. § 1001. I also pointed out (as I had as early as December 5, 1995, when I questioned Mr. Thompson's 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 had provided him on September 18, 1995) that any delay in bringing this matter to the attention of the court in order to gain some advantage in this case would implicate attorneys now handling the case in the underlying misconduct including any aspect of that misconduct that is of a criminal nature. In closing that letter (at 10), I suggested to

² After the court refused to allow the Independent Counsel to elicit the testimony from Martinez that he had been told the Mitchell was related to Dean and that she held an important position at HUD, the Independent Counsel completely changed its theory. Instead of attempting to lead the court falsely to believe that Martinez was aware that Mitchell was to receive half the consultant agreement, the Independent Counsel attempted to lead the court falsely to believe that Mitchell's involvement with the Arama project was concealed from Martinez. In my March 31, 1997 letter to Mr. Thompson (at 5-6), I suggested the possibility that after deciding to lead the court falsely to believe that Mitchell's involvement with the Arama project was concealed from Martinez, the Independent Counsel may have pulled from Government Exhibit 25 the consultant agreement that, had it in fact been what the Independent Counsel represented it to be, would have conclusively established that Martinez knew that Mitchell was to receive half the consultant fee.

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Mr. Thompson that it was time that he, as well as Deputy Independent Counsel Dianne J. Smith and you, consider retaining separate counsel.

Sixth, on May 26, 1997, I faxed to Mr. Thompson a letter again questioning the delay in responding to my letter of March 31, 1997, and again stating that any delay in 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. I also again raised with Mr. Thompson the issue of whether the Independent Counsel excluded from the report of the May 15, 1992 interview of Aristides Martinez statements indicating that Martinez did not know that John Mitchell was to receive half the Arama consultant fee, and requested that Mr. Thompson inform me if he disagreed with my conclusion that material had been withheld from that interview report or if he refused to investigate the matter. I also raised with Mr. Thompson certain issues relating to prior correspondence with the Department of Justice about matters that I intended to again raise with the Department of Justice. These matters include the possible disappearance from Independent Counsel files of part of the original of Government Exhibit 25 and the Independent Counsel's falsely representing to the Honorable Stanley S. Harris, apparently with knowledge of the Office of Professional Responsibility, that Thomas T. Demery had given completely truthful testimony in this case.

Seventh, on June 9, 1997, I faxed Mr. Thompson a letter raising three matters, including (1) the continuing failure to respond to my letter of March 31, 1997; (2) the continuing failure to advise the court that the Independent Counsel had misled the courts concerning the claim that Aristides Martinez was unaware of John Mitchell's involvement with the Arama project; and (3) the continuing failure to advise the court that the Independent Counsel misled the court in the Independent Counsel's recent filings.

Eighth, on July 3, 1997, I faxed to Mr. Thompson a letter questioning again his failure to respond concerning the questions I posed to him by letter faxed to him on March 31, 1997. In the letter I once again pointed out to Mr. Thompson, as I had in my letters dated May 14, 1997, May 26, 1997, and June 9, 1997, that any delay in his responding to my question 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. I also directly posed to Mr. Thompson a number of questions that I had explicitly or impliedly posed in recent correspondence to him involving matters where I maintained that Independent Counsel attorneys had deceived the courts in ways that violated 18 U.S.C. § 1001.

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In the case of all my letters to Mr. Thompson subsequent to February 26, 1997, for my own convenience, I merely faxed them to Mr. Thompson, listing you at the close of the letter as a person receiving a copy, and identifying you on the fax cover sheet. Thus, I recognize that there is a possibility that you may not in fact have been forwarded copies of this correspondence and may yet have limited knowledge of the subject matter of the recent correspondence.

You are, however, a counsel of record in the case and played a substantial role in seeking to uphold the verdict on Count One. And as I indicated in my letter to Mr. Thompson dated December 5, 1995, each attorney of record on a case has many of the same responsibilities as the Independent Counsel with regard to advising the court of instances where Independent Counsel attorneys have attempted to deceive it. Further, each attorney of record having knowledge of prosecutorial conduct that violated federal laws becomes implicated in such violations by failing to bring the violations to the attention of the court or another appropriate authority. For reasons detailed in the extensive materials I have provide to Mr. Thompson, it is likely that Independent Counsel attorneys, including those handling the case since the appointment of Mr. Thompson, have committed a number of federal crimes in the prosecution of this case, particularly with regard to Count One.

My purpose in detailing various actions of the Office of Independent Counsel to various officials of the United States Government has been, in addition to seeking to cause those officials to act in accordance with their oaths, to ensure that no person having responsibility concerning this matter is able to claim at some later date that he or she was not fully informed of the facts. Thus, I am enclosing with this letter, in addition to copies of the recent letters to Mr. Thompson that I had requested be provided to you, copies of all of my other correspondence with Mr. Thompson, the White House and the Department of Justice, including letters back to me. I am also enclosing copies of recent correspondence to the Chief of Staff of the Criminal Division of the Department of Justice, Claudia J. Flynn, in her private capacity, in which I bring to Ms. Flynn's attention a matter where the record suggests that she is involved in a continuing conspiracy to obstruct justice relating to the Independent Counsel's efforts to prove Count One. As a consequence of your involvement with Count One, you may be a party to that conspiracy as well.

The correspondence from me is provided on the enclosed diskette and the correspondence to me is provided in hard

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copies.³ Upon reviewing this correspondence, you will have to know, if you do not already know, that Independent Counsel attorneys introduced certain documents into evidence representing them to be things they were not and that those attorneys attempted to deceive the court in numerous other ways, including in documents bearing your own name. Whatever you may believe about whether these actions violated federal laws--though I suggest that a lawyer of your experience will have some difficulty concluding that no laws have been violated--at a minimum you have the responsibility to ensure that the court is fully informed that these documents are not what they have been represented to be and fully informed of everything you know of Independent Counsel actions intended to deceive the court.

As in the case of Ms. Flynn, I am providing this material to you in your private capacity in order that, should you choose to do so, you may share the material with your own counsel without wrongfully appropriating the property of the Department of Justice or the Office of Independent Counsel.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Larry D. Thompson, Esq.
Independent Counsel

Dianne J. Smith, Esq.
Associate Independent Counsel

Enclosures

³ The correspondence is provided on two directories. Directory DOJ contains my letters to the Department of Justice, White House Counsel Abner J. Mikva, and Ms. Flynn. Directory OIC contains my letters to Independent Counsel Larry D. Thompson. The material is formatted in WordPerfect 5.1. The enclosed index identifies each item. Some confidential material is excised from item 15 of the first group of materials and item 2 of the second group. Because they require some corrections, I have not included the underlying materials enclosed with correspondence to the Department of Justice in December 1994 and January 1995, to the White House Counsel on February 9, 1997, and to Independent Counsel Larry D. Thompson on September 18, 1995. In the event that you have any immediate need for this material, I would be happy to provide it.

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23. Materials Provided to the Department of Justice on December 1, 1994, and January 17, 1995, to White House Counsel Abner J. Mikva on February 9, 1995, and to Independent Counsel Larry D. Thompson on September 18, 1995, with Subsequently Provided Addendums (on diskette with index in hard copy)