

JAMES P. SCANLAN  
2638 39th Street, N.W.  
Washington, D.C. 20007  
(202) 337-3927

July 29, 1997

HAND DELIVERED

CONFIDENTIAL

Mark J. Hulkower, Esq.  
STEPTOE & JOHNSON, L.L.P.  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Re: Steptoe & Johnson's Representation of the  
Office of Independent Counsel Concerning the  
Independent Counsel's Prosecution of United  
States of America v. Deborah Gore Dean, Crim.  
No. 92-181-TFH (D.D.C.)

Dear Mr. Hulkower:

It has come to my attention that the firm of Steptoe & Johnson, L.L.P. has been retained by the Office of Independent Counsel Larry D. Thompson for the purpose of ensuring that certain discovery materials are not used in a manner violative of a protective order issued in the referenced case.

I have been led to understand that orally and in writing you have represented to Joseph J. Aronica, counsel for the defendant Deborah Gore Dean, that I stated in a letter to Independent Counsel Larry D. Thompson that I possessed materials covered by a protective order in the referenced case and that I would not give up custody of those materials because Mr. Thompson had not raised the issue earlier. I also understand that you refused to provide Mr. Aronica with a copy of the letter in which I was supposed to have made these statements.

Enclosed is a copy of a May 14, 1997 letter from me to Mr. Thompson (Tab 14 of the enclosed binder), which presumably is the letter referred to in your statements to Mr. Aronica. I have also provided a copy to Mr. Aronica. As I trust you can see, assuming I have been correctly apprised of your representations to Mr. Aronica, the letter does not support your characterization of the statements in my letter to Mr. Thompson. Whether you inaccurately characterized a letter you had read or relied on an Independent Counsel attorney's characterization of a letter you had not seen, I hope that in the future you will attempt to ensure that anything you write about me in or out of court will

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 2

be more accurate. I think that if you carefully examine the material I am enclosing for your review, you will find that I have attempted to be as accurate as possible in everything I have so far written about the employees of your client, and I think you will find that in whatever I write or say in the future about those employees I will attempt to be just as accurate.

I also suggest that you carefully review the enclosed May 14, 1997 letter in its entirety in order to gain an understanding of my claims, first, that Mr. Thompson and other Independent Counsel attorneys have deceived the courts in this and another case in a manner that violates 18 U.S.C. § 1001 and, second, that Mr. Thompson's decision to raise the issue of access I may have or have had to documents covered by a protective order was motivated solely by the facts that I had recently confronted him with information that would lead most observers to conclude beyond a reasonable doubt that actions of Independent Counsel attorneys in this case violated federal laws and that he recognized that if I persisted in my attention to this matter those actions ultimately would be revealed and possibly prosecuted.

Also provided in the enclosed binder is a complete set of my correspondence with Mr. Thompson, including letters exchanged between September 18, 1995, and February 18, 1996 (Tabs 1 to 6), and between February 11, 1997, and July 28, 1997 (Tabs 7 to 16, 18 and 21), as well as letters to Claudia J. Flynn, Chief of Staff of the Criminal Division of the Department of Justice, dated June 10, 1997, and July 6, 1997 (Tabs 17 and 19), and to Associate Independent Counsel Michael A. Sullivan, dated July 23, 1997 (Tab 20). This correspondence gives a fuller picture of my contentions about Independent Counsel misconduct. The timing of the recent correspondence, relative to the Independent Counsel's first effort to secure the services of an outside firm regarding documents covered by the protective order, may also give you additional insight into the Independent Counsel's motivations in securing Steptoe & Johnson's assistance in the matter.

Also enclosed under Tab 21 of the binder is a set of my correspondence with the Department of Justice and White House Counsel Abner J. Mikva between December 1, 1994, and March 10, 1996, concerning my efforts to cause the Department of Justice to investigate the Office of Independent Counsel, as well as my efforts to cause the removal of the Honorable Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division and the removal of certain other former Independent

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 3

Counsel attorneys from positions in the Department of Justice because their actions in the prosecution of this case indicated that they were unfit to serve as attorneys representing the United States Government. The correspondence from me is provided on diskette (in WordPerfect 6.0), with hard copy index, and the correspondence to me is provided in hard copy.

Enclosed on a diskette under Tab 22, with hard copy index, is a complete set of the narrative materials I provided to the Department of Justice and the White House in 1994 and 1995 and to Mr. Thompson on September 18, 1995. To the extent that the correspondence provided under Tabs 1 to 21 leaves you in doubt about the essential aspects of the Independent Counsel's conduct in this case, the other materials may resolve those doubts. I am available any time to answer any question you might have about the subjects addressed in these materials or to provide you any of the attachments that were originally enclosed with the materials.<sup>1</sup>

---

<sup>1</sup> The voluminous narrative materials that were first provided to the Department of Justice in December 1994 and January 1995, while very detailed, treat a number of important issues in a manner that is quite inadequate given subsequent developments. For example, in May 1995, the court of appeals would hold that there was sufficient evidence to support a verdict that Deborah Gore Dean conspired with former Attorney General John N. Mitchell to defraud the Department of Housing and Urban Development with regard to only one of the three moderate rehabilitation projects cited in Count One of the Superseding Indictment. This was a 293-unit project in Dade County, Florida called Arama, which was funded as a result of documents signed by HUD Assistant Secretary for Housing Maurice L. Barksdale in July 1984, several weeks after Dean became Executive Assistant to HUD Secretary Samuel R. Pierce, Jr. In finding sufficient evidence to sustain a verdict on the Arama project, the court relied heavily on Barksdale's testimony that he did not know that the 293 moderate rehabilitation units he allocated to Dade County in July 1984 were intended for a specific project and that project-specific allocations were against HUD policy. It has subsequently become known that the Independent Counsel had evidence that almost all of Barksdale's allocations were project-specific. The Independent Counsel in fact indicted James Watt for covering up a scheme whereby Barksdale and other HUD officials violated HUD's regulations against project-specific moderate rehabilitation allocations in order to benefit Watt.

In addition, much of the discussion of Barksdale in the materials concerns the Independent Counsel's failure to confront him with the John Mitchell telephone message slips indicating that Dean's predecessor as Executive Assistant, Lance H. Wilson, had talked to Barksdale about the Arama funding months before Dean became

---

Executive Assistant, as well as the Independent Counsel's failure to correct Barksdale's testimony that he did not remember Wilson's talking to him about the matter and that he would remember if Wilson had. The Independent Counsel also refused to question Wilson on the matter even though he became a cooperating witness as early as June 1994. When in December 1996 Wilson provided an affidavit stating that he had discussed the matter with Barksdale, who indicated he would fund the project, the Independent Counsel sought to lead the court to believe that Independent Counsel attorneys did not believe Wilson.

The discussion of the Independent Counsel's use of the Arama consultant agreement to lead the court falsely to believe that Arama developer Aristides Martinez knew that John Mitchell was to receive half the Arama consultant fee, which is found in the Supplement I material provided to the Department of Justice in January 1995, does not address the reasons to believe that the Independent Counsel excluded from the report of the May 15, 1992 Martinez interview provided to the defense statements by Martinez that he had no knowledge of Mitchell's fee arrangement, a matter that is addressed in a number of places in my recent correspondence to Mr. Thompson. Nor does the earlier treatment of this issue address Independent Counsel Larry D. Thompson's failure to correct the record on this matter since it was first brought to his attention on September 18, 1995, or Mr. Thompson's extraordinary behavior concerning this matter since I first requested to examine the originals of certain exhibits on February 26, 1997, as documented in the recent correspondence.

Further, with regard to a variety of issues, the materials created in December 1994 and January 1995 necessarily fail to address the implications of the Independent Counsel's actions subsequent to being provided copies of those materials. For example, the materials that I maintain conclusively demonstrated that Thomas T. Demery committed perjury in this case with knowledge of Independent Counsel attorneys, and that the Independent Counsel attempted to deceive the district court and the court of appeals on this matter, were brought to Mr. Thompson's attention long before Mr. Thompson himself attempted to deceive the Supreme Court on the same matter, and long before Mr. Thompson represented to the Honorable Stanley H. Harris that Demery had given completely truthful testimony in this case.

The above developments are among the matters to be addressed in the summary being prepared as part of the materials that I will soon provide to Attorney General Janet Reno and certain other governmental entities, as discussed infra.

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 5

I believe, however, that the materials provided under Tabs 1 to 21 should lead you to believe that, unless I have seriously misstated the facts, Independent Counsel attorneys repeatedly violated federal laws through a variety of actions in their initial prosecution of this case, in their subsequent efforts to defend the actions of Independent Counsel attorneys against allegations of prosecutorial misconduct, and even in their response to my recent efforts to secure information relating to the Independent Counsel's efforts to deceive the court by introducing certain documents into evidence while representing them to be things that they are not. The violations of federal law go well beyond the violations of 18 U.S.C. § 1001 that have been the principal focus of my recent correspondence with Mr. Thompson.

In light of this material, I suggest that you consider whether in assisting the Office of Independent Counsel with regard to the subject for which Steptoe & Johnson has been retained, the firm would be joining a conspiracy to obstruct justice even had the firm been retained by Mr. Thompson acting in his private capacity. A more important consideration, however, involves the fact that Steptoe & Johnson has not been retained by Mr. Thompson in his private capacity. Rather, Steptoe & Johnson has been retained by the Office of Independent Counsel, which is to say that the firm's client is the United States Government.<sup>2</sup> The firm has a number of obligations to that client.

The most significant of these is the obligation to bring to the client's attention any information coming to the firm's

---

<sup>2</sup> In any event, notwithstanding the suggestion in my May 14, 1997 letter to Mr. Thompson (at 10) that he and other Independent Counsel attorneys consider retaining separate counsel, I assume that Steptoe & Johnson has been retained to represent the Office of Independent Counsel, rather than Mr. Thompson, with respect to the issue of the protective order. Personal counsel to Mr. Thompson could have no legitimate role in such matter.

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 6

attention indicating that agents of the client have violated federal laws or otherwise acted outside the scope of their legitimate authority. It ought to go without saying that any efforts of employees of the Office of Independent Counsel to cover up arguable federal crimes of other employees of that Office or to in any manner deceive a court with regard to a matter they are prosecuting are outside the scope of their legitimate authority. And this holds whether or not one of the employees of the Office of Independent Counsel engaging in such conduct is the Independent Counsel himself.

Steptoe & Johnson's situation here is akin to that of an outside law firm hired to represent a corporation by the General Counsel of the corporation where information is brought to the outside firm's attention that the General Counsel is defrauding the corporation. The firm's duty in such a case is to determine whether the General Counsel is in fact defrauding the corporation and, if the firm finds that to be so, to bring the matter to the attention of the corporation itself. Failure to act in this manner would implicate the outside firm in the General Counsel's fraud.

Whether or not I am correct in the contentions in my recent correspondence to Mr. Thompson that various actions of Independent Counsel attorneys violated 18 U.S.C. § 1001, I do not think there is much doubt that Independent Counsel attorneys have repeatedly violated federal laws in their past and continuing efforts to deceive the courts concerning a host of matters and that in doing so those attorneys are defrauding their employer, the United States Government. But I urge Steptoe & Johnson to review the matter carefully and reach a conclusion of its own.

I suggest that in considering this matter Steptoe & Johnson initially review with Mr. Thompson the questions I posed to him in my letters of July 3, 1997, and July 28, 1997, though the firm should bear in mind that those are but a portion of the questions to which truthful answers from Mr. Thompson would provide a basis for the immediate removal of Mr. Thompson as Independent Counsel and for the prosecution of Mr. Thompson and certain other Independent Counsel attorneys. I might also suggest reviewing with Mr. Thompson precisely why he has allowed almost four months to elapse without responding to my quite simple inquiry of whether the document he represented to me to be a true copy of Government Exhibit 25 in his letter dated March 25, 1997, is in fact a true copy of that document and whether, as I have repeatedly suggested to him over these months, the failure to

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 7

respond is motivated by a desire to delay my revealing that the Independent Counsel deceived the court concerning Government Exhibit 25 and certain related exhibits.<sup>3</sup>

Be mindful, of course, that in reviewing these questions with Mr. Thompson, the firm's obligation, just as it would be in reviewing issues with a General Counsel who there is reason to believe is defrauding a corporation, is to satisfy itself that the answers are not merely plausible but are in fact truthful. Be mindful as well that Mr. Thompson's obligation in responding to pertinent questioning by attorneys acting on behalf of the Office of Independent Counsel is to tell the complete truth and to give no answers that are at all misleading.

For example, one of the matters given considerable attention in various places, including my letter dated May 26, 1997, concerns the Independent Counsel's actions respecting Thomas T. Demery. As an Independent Counsel witness, Demery repeatedly and unequivocally denied ever having lied to Congress, even though the Independent Counsel had indicted him for perjury for two statements made to Congress and even though he had acknowledged to Independent Counsel attorneys that at least a dozen of his statements to Congress, including those forming the basis for the perjury charges, were false. The Independent Counsel subsequently would make a number of implausible claims in this case that neither Demery nor trial counsel was aware that Demery's denials that he had ever lied to Congress were false. It would later represent to the Honorable Stanley S. Harris that Demery had in fact given completely truthful testimony in this case, and it would do so without informing Judge Harris either that allegations had been made that Demery committed perjury in

---

<sup>3</sup> I suggest that in exploring these issues with Mr. Thompson, you explore as well whether there have been other complaints lodged against the attorneys who handled this case, including any complaints by former employees of the Office of Independent Counsel that Independent Counsel attorneys caused interview reports to be altered or destroyed.

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 8

this case or that the judge in this case had essentially agreed with those allegations.

If Mr. Thompson or any other Independent Counsel attorney should state merely that Demery may have made a few false statements or arguably false statements to Congress, Mr. Thompson or the other attorney would almost certainly be attempting to deceive you. For Thomas Demery committed perjury at least 20 times when testifying before congress, and the actual number is very likely closer to 50 than to 20. If Mr. Thompson or the other Independent Counsel attorneys now handling the case do not know this, it is only because they have assiduously cultivated a willful ignorance of a quite extraordinary degree.

More likely, however, Mr. Thompson and other Independent Counsel attorneys do know this. And to respond honestly to your questions, they must tell you that it is true that Demery lied at least 20 times when testifying before Congress; that it is true that he repeatedly and unequivocally denied ever having lied to Congress when he testified in this case; that it is true that both Demery and trial counsel, and very likely Independent Counsel supervising attorneys as well, knew those denials were false; and that it is true that the Independent Counsel has repeatedly attempted to deceive the courts concerning this matter. Responding to you honestly, Mr. Thompson probably also will have to say either that he believes that Demery denied ever having lied to Congress because he was told to do so by Independent Counsel attorneys, who also told him the Independent Counsel would nevertheless tell the court in Demery's own case that he had given entirely truthful testimony in this case, or that he (Mr. Thompson) has declined to learn the truth about why Demery would deny ever having lied to Congress despite having months earlier confessed to Independent Counsel attorneys that he had repeatedly lied to Congress.

At any rate, with regard to the questions posed in the July 3, 1997 letter and perhaps a score or more of other questions, Mr. Thompson will have some difficulty contriving answers that are even plausible without revealing that the essentials of my allegations against him and other employees of the Office of Independent Counsel are well-founded. And, while Mr. Thompson might lawfully refuse to answer such questions posed by you, any false statements or other efforts to mislead you would violate 18 U.S.C. § 1001 no less than a false statement to the Federal Bureau of Investigation. I suggest, however, that Steptoe &



Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 9

Johnson cannot fail to ask those questions while continuing its representation of the Office of Independent Counsel.

That is not to say that Steptoe & Johnson can avoid its obligations in this matter simply by withdrawing from representing the Office of Independent Counsel, just as a firm could not avoid its obligations to a corporate client simply by withdrawing its representation on learning that the General Counsel who had retained the firm was defrauding the corporation.

Nor would Steptoe & Johnson's obligations to its client be ended simply because the Independent Counsel attorneys who hired Steptoe & Johnson should choose to terminate Steptoe & Johnson's services.

Above all, I urge Steptoe & Johnson to carefully consider this matter from the outset. Even assuming that Independent Counsel attorneys have repeatedly violated federal laws and specifically employed Steptoe & Johnson to interfere with my efforts to reveal those violations, it seems unlikely that at this time any member of the firm has violated any federal law. Assuming that Steptoe & Johnson should reach the conclusion that my principal allegations are well-founded, however, I do not believe that the firm can long forego taking actions to prevent the continued defrauding of its client without implicating its own attorneys in such conduct.

As you consider these issues, you may find it useful to know some of my intentions with regard to pressing these issues further in the near future. Upon completing a long summary of developments to date, I shall again be raising these issues with Attorney General Janet Reno. At that time, in addition to bringing to Attorney General Reno's attention a number of developments subsequent to the Department of Justice's prior consideration of this matter (some of which I discuss in my letter to Mr. Thompson dated May 26, 1997, as well as in note 1 supra), I will suggest that the Department of Justice did not previously investigate this matter in good faith and that the failure to do so was in some part motivated by the concern that a good faith investigation would reveal that Assistant Attorney General Jo Ann Harris and at least one other high-ranking Department of Justice official had violated federal laws while acting as attorneys for the Office of Independent Counsel in the prosecution of this case. If you carefully review everything I have provided you, I think you will find that suggestion to be warranted. When I raise the matter again with Attorney General Reno, in all likelihood I will also be raising the same issues

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 10

with the Inspector General of the Department of Justice, urging him to determine whether there occurred any malfeasance on the part of Department of Justice officials in the prior handling of the matter. At some point, I will be seeking the removal of Claudia J. Flynn from the position of Chief of Staff in the Office of the Assistant Attorney General for the Criminal Division, for the reasons stated in my letter to Ms. Flynn dated June 10, 1997.

After completing the summary for Attorney General Reno, I will also be submitting the same or similar materials to the subcommittees of the House Judiciary Committee that are considering Independent Counsel issues and prosecutorial misconduct issues generally. And, in the event there is an effort to confirm a successor to Ms. Harris as Assistant Attorney General for the Criminal Division, I shall likely bring these same matters to the attention of the Senate Judiciary Committee when it considers the nomination. I have not yet decided when to bring these matters to the attention of the panel that appoints Independent Counsels. Notwithstanding Mr. Thompson's evident concerns that statements in materials covered by the protective order contain evidence of additional abuses by Independent Counsel attorneys, however, these various submissions will not rely on materials covered by the protective order other than those already made part of the public record.

In addition, I will likely continue to write to Mr. Thompson to address any number of issues, including his continuing failure to respond to my question concerning the absence of the Arama consultant agreement from the copy of Government Exhibit 25 that he provided me by letter dated March 25, 1997. Probably, I will copy Steptoe & Johnson with such correspondence. Since, in contrast to Mr. Thompson, who I regard already to have shown that he does not recognize or in any event will not fulfill his obligations to the governmental entity he represents, Steptoe & Johnson has yet given no indication that it will not fulfill all of its obligations to its client, I may from time to time provide to Steptoe & Johnson materials that I will not provide to Mr. Thompson.

The timing of the submissions to the governmental entities listed above is subject to time constraints imposed by other obligations. In that regard, I note that Steptoe & Johnson, while presumably not yet very acquainted with these somewhat complex issues, has far more resources than I to devote to this matter. And I suggest that Steptoe & Johnson's obligations to

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 11

its client require that it devote whatever resources are necessary to ensuring that the firm's actions are not part of scheme to cover up abuses by agents of its client as well as to ensuring that, if those agents are in fact defrauding that client, measures are taken to address the matter. Further, whereas I have no obligation save what I consider to be a moral one to do anything at all about this matter at any time, Steptoe & Johnson has significant legal and ethical obligations to act immediately upon coming to believe that there is merit to my allegations that agents of its client are defrauding that client. Thus, I suggest that it would be inappropriate for Steptoe & Johnson to await further actions on my part before proceeding to fulfill its own obligations in the matter.

In any event, to the extent that Steptoe & Johnson has a continuing role in this matter, I urge it to keep in mind that, whatever it ultimately concludes about the validity of my contentions, its obligation is to its client and not to the agents of that client. That client, the United States Government in this instance, has no interest in deceiving a court or any of the bodies that might investigate this matter. Any agents of the client who attempt to persuade Steptoe & Johnson to lead any entity to believe something that is not true concerning any of these issues will be attempting to persuade Steptoe & Johnson to join a conspiracy to defraud that client.

Since the matters I raise in this letter involve broader concerns of the firm of Steptoe & Johnson, I have taken the liberty of copying the managing partner.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: David L. Roll, Esq.  
Managing Partner  
Steptoe & Johnson, L.L.P.

Larry D. Thompson, Esq.  
Independent Counsel

Dianne J. Smith, Esq.  
Associate Independent Counsel

Mark J. Hulkower, Esq.  
Steptoe & Johnson, L.L.P.  
July 29, 1997  
Page 12

Michael A. Sullivan, Esq.  
Associate Independent Counsel

Enclosures