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November 2, 2009

The Honorable Eric Holder.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Deputy Assistant Attorney General Bruce C. Swartz

Dear Attorney General Holder:

Please consider this a follow-up to emails sent to the Department of Justice on [July 14, 2008](#), [July 17, 2008](#), and [April 19, 2009](#), each of which is available by means of the indicated links in an online copy of this letter and an online copy of the enclosure.¹ These emails raised questions about the continued employment of Bruce C. Swartz as Deputy Assistant Attorney General for the Criminal Division.

Enclosed is a document styled “Bruce C. Swartz – Prosecutorial Misconduct in *United States of America v. Deborah Gore Dean*.” Online copies of the document, either as [html](#) or [PDF](#), with active links to materials the document references, can be located on the first page of results from a search for “Bruce C. Swartz” using any of the most popular search engines. The document is part of one of two sets of materials maintained on jpscanlan.com relating to prosecutorial misconduct in the referenced case and my efforts to cause an investigation of that conduct and the removal of certain involved attorneys from positions they later held in the Department of Justice, as well as to the Department of Justice’s own actions in the case when it was transferred to the Public Integrity Section of the Department’s Criminal Division.

One group of materials is comprised of, or made accessible by, a main [Prosecutorial Misconduct](#) page (PMP), which bears the heading “Materials Relating to Conduct of Attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in the Prosecution of Deborah Gore Dean.” This page,

¹ Underlinings of references in this letter indicate that active links to the items are available in an electronic copy of this letter that may be found on the Letters subpage of the Prosecutorial Misconduct page of jpscanlan.com.

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which was initially created in June 2008 and which has since been periodically revised or updated, summarizes the referenced matters and developments subsequent to my initially raising such matters with the Department of Justice. It also provides links to most of the materials that it references. Most parts of the page can be directly accessed by means of separate subpages.

The second group of materials is comprised of a [Misconduct Profiles](#) page and its six subpages. These materials, which were originally created commencing in April 2009, provide, in addition to the enclosed document addressing the conduct of [Bruce C. Swartz](#) in the *Dean* case, similar documents regarding [Arlin M. Adams](#), [Jo Ann Harris](#), [Robert E. O'Neill](#), [Paula A. Sweeney](#), and [Robert J. Meyer](#).

The conduct of Mr. Swartz in the *Dean* case, as portrayed in the enclosed item, calls into question the fitness of Mr. Swartz to represent the United States. Even if one were to regard the described actions of Mr. Swartz not to constitute outrageous government misconduct – which Department of Justice officials previously asserted was their view though without disputing my account as to any particular aspect of Mr. Swartz's conduct – the materials would persuade most observers that Mr. Swartz repeatedly endeavored to deceive courts while representing the United States. It is my understanding that Mr. Swartz's current position involves representing the Department of Justice, not only to Congress, but to officials of foreign nations. Should the persons before whom Mr. Swartz represents the Department of Justice, and thereby the United States, become familiar with these materials, it will bring discredit upon both the Department of Justice and the United States.

Thus, unless the Department can determine that the portrayal of Mr. Swartz's conduct in the enclosure is without foundation, the Department cannot responsibly permit him to serve any longer in his current role. And I believe that the Department will find it impossible to refute that portrayal in material respects, if indeed it is able to refute any aspect of the portrayal at all. Certain officials in the Department already should know of the essential accuracy of the portrayal. For that matter, both because he may subject himself to sanctions for falsely denying any part of the portrayal, and because he would find great difficulty in plausibly denying the principal points of the portrayal, Mr. Swartz may acknowledge its essential accuracy.

I leave the enclosure to speak for itself, save for one matter that I often emphasize when eliciting attention to the conduct of Mr. Swartz and other Independent Counsel attorneys in the *Dean* case or to the Department of Justice's own actions concerning the case. In addition to the profile of Mr. Swartz and varied other places, the matter is discussed at some length in Sections [B.1](#) and [B.8](#) of PMP, which are styled, respectively, "Implications of the Literal Truth of the Testimony of Supervisory Special Agent Alvin R. Cain, Jr." and "The Department of Justice's Role in Perpetuating All Actions of the

Independent Counsel.”² I note that Associate Deputy Attorney General David Margolis ought to be able readily to confirm the essential accuracy of my account of the matter. For, as discussed in those two sections, it was Mr. Margolis who first suggested the interpretation that I summarize immediately below.

Mr. Swartz and lead trial counsel in the *Dean* case Robert E. O’Neill (currently Chief of the Criminal Division of the Office of the United States Attorney for the Middle District of Florida and a leading candidate for the position of United States Attorney for that district) pressured a government agent into giving testimony intended to lead the court and the jury to believe something that Mr. Swartz and Mr. O’Neill knew to be false – specifically, that the defendant Deborah Gore Dean lied when she testified that she called the agent in April 1989 to complain about the treatment of former Attorney General John N. Mitchell in a Department of Housing and Urban Development Inspector General’s Report. Though the defendant had made the call and the agent remembered it, the agent had apparently been persuaded that his sworn denial of any recollection of the call would be literally true because technically tied to a different date from that provided by the defendant (though in the event the testimony seems not even to have been literally true). In closing argument, Mr. O’Neill then placed great weight on the agent’s testimony in provocatively asserting that the defendant had lied on the witness stand.

Following her conviction, the defendant raised a number of prosecutorial misconduct issues, including a claim that the agent had lied in denying any recollection of the April 1989 call. She also presented evidence to demonstrate that she had made the call. Mr. Swartz, who was the Independent Counsel attorney principally responsible for defending against the defendant’s post-trial motion, was unwilling to advise the court that, although the defendant had indeed testified truthfully, the agent’s testimony seemingly contradicting her was also literally true because tied to a different date. Had Mr. Swartz done so, the court, which almost overturned the verdict for other identified prosecutorial abuses, might well have dismissed the indictment and recommended that Mr. Swartz and other Independent Counsel attorneys be sanctioned for the suborning of perjury. So Mr. Swartz instead endeavored to cover up his own conduct and that of Mr. O’Neill by leading the court to believe that the testimonies were irreconcilable and that the agent’s testimony was true while the defendant’s testimony was false.

By written communication to the probation office (and probably oral communications as well), Independent Counsel attorneys also sought to have the defendant’s sentencing level increased for lying about the call such that she would serve an additional six months in prison – even though Mr. Swartz and other Independent Counsel attorneys knew with

² My December 23, 1997 [letter](#) to Department of Justice Inspector General Michael R. Bromwich gives a complete account of the subject, particularly with regard to the questions raised by the treatments of the matter in letters to me from Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr. The letter to Inspector General Bromwich, however, was written before the Department of Justice itself assumed responsibility for the matter, thereby making Independent Counsel actions Department of Justice actions. Thus, the letter fails to address issues regarding the Department’s own involvements with misconduct in the *Dean* case.

absolute certainty that the defendant had not lied about the call. The effort to increase the defendant's sentencing level for lying about the call may have been partly or entirely an aspect of an aggressive strategy in covering up the conduct of Mr. Swartz and other Independent Counsel attorneys in causing the agent to provide testimony to lead the court and jury to believe things those attorneys knew to be false. In any case, there is reason to believe that in deceiving the probation officer and the court in an effort to conceal the nature of his own actions and those of other Independent Counsel attorneys, Mr. Swartz and others engaged in a conspiracy to obstruct justice or committed other federal crimes. But, whether or not those attorneys committed any crimes, their actions regarding this and other matters would be deemed unconscionable by most citizens, including the great majority of Department of Justice attorneys.

Mr. Swartz's actions concerning this matter are but one of varied effort by Mr. Swartz to deceive the district court and the probation officer, as well as the court of appeals, that are documented in the enclosure and many other places. But I nevertheless suggest it as a useful starting point in an inquiry into whether Mr. Swartz's conduct in the *Dean* case, and the fact that such conduct is likely eventually to be widely known, render it inappropriate that he continue to serve in his current position.³

There exist several related matter that may be the subject of future letters, but that I mention briefly here because I am uncertain when, or necessarily if, I shall write those letters. As indicated, Assistant United States Attorney Robert E. O'Neill was involved in the matter just discussed. Varied materials, including the [Robert E. O'Neill profile](#), document Mr. O'Neill's role in many prosecutorial abuses in the *Dean* case. According to my last understanding of the matter, the July 2009 recommendation of the Florida Federal Judicial Nominating Commission that Mr. O'Neill be one of three candidates Florida Senators should consider recommending to the President for appointment to the position of United States Attorney for the Middle District of Florida is still under consideration. In the event Mr. O'Neill advances further toward appointment to the United States Attorney position, I may raise the matter of Mr. O'Neill's unsuitability for such position with the Department of Justice or other persons or entities involved in the nomination and confirmation processes. But regardless of whether Mr. O'Neill continues to be a serious United States Attorney candidate, the same matters that call into question his suitability for the United States Attorney position call into question whether he should be permitted to serve in his current position or to represent the United States in any capacity.

³ Reasonable observers will condemn the actions of Mr. Swartz and the Independent Counsel attorneys under his supervision in repeatedly deceiving the jury and the courts regardless of how much Independent Counsel attorneys may have believed in the merits of the case. It nevertheless warrants mention that the efforts of Mr. Swartz and other Independent Counsel attorneys to lead the jury and the courts to believe things that those attorneys knew to be false occurred usually if not invariably in circumstances where they were endeavoring to prove charges of which they were virtually certain the defendant was innocent. The issue just summarized involved such a circumstance, as discussed, among other places, in Sections [B.3](#), [B.3a](#), and [B.4](#) of PMP. Mr. Swartz's representations to the court of appeals discussed in Addendum 2 to the enclosure involved the same matter.

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Two other related matters involve actions the Department took or announced on or about October 22, 2009. The first concerns the appointment of Raymond N. Hulser as Acting Chief of the Public Integrity Section. Mr. Hulser is mentioned in [Section B.8](#) of PMP as the Department of Justice Attorney who, when eventually placed in charge of the *Dean* case, sought to prevent the court from addressing pending allegations that Mr. Swartz and others sought to deceive the courts in responding to the defendant's initial allegations of prosecutorial misconduct. Assuming that Mr. Hulser was in fact aware that there had been such efforts – and it is difficult to understand how he could not have been – his actions raise an issue as to whether he recognized a government lawyer's obligation to advise the court of previous efforts to deceive the court in a case now being handled by the attorney. Those actions also raise the important issue of whether Mr. Hulser now recognizes such obligation in his position as Acting Chief of the Public Integrity Section.

The second matter involves an issue addressed in the subpage styled “Temp Confidential” on the Password Protected page of [jpscanlan.com](#). I leave that page entirely to speak for itself. The user name and password required to access it are **[redacted]**.⁴

Finally, in addenda to the profile pages on Mr. Swartz and Mr. O'Neill I provide information on the way search engines find these or related pages as an indication of the likelihood that there will eventually be widespread awareness of the matters addressed on those page or elsewhere in the prosecutorial misconduct materials on [jpscanlan.com](#). Such information does not necessarily suggest that this will occur in a few weeks or months or even within the next few years. But sufficient numbers of people visit the site to learn about Bruce C. Swartz, Robert E. O'Neill, or prosecutorial misconduct issues generally that there exists a substantial likelihood that the informed public and a large proportion of Department of Justice attorneys will one day become familiar with the behavior of Mr. Swartz and his colleagues in the *Dean* case, even if I should to take no further steps to cause that to happen. Unless the Department takes appropriate action now, the significance of the length of time it may take for these matters to become widely known – as with the length of time elapsed since these issues were raised with Attorney General Janet Reno on December 1, 1994 – lies principally in the questions that will be raised as to why persons with such little understanding of the role of a government attorney's obligations toward the truth were so long allowed to hold high positions in the Department of Justice.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

⁴ This information will be redacted from other than the original hard copy of this letter.

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Enclosure

cc:

The Honorable Lanny Breuer
Assistant Attorney General
Criminal Division
(without enclosure)

David Margolis, Esq.
Associate Deputy Attorney General
(without enclosure)

Bruce C. Swartz, Esq.
Deputy Assistant Attorney General
Criminal Division
(without enclosure)

Raymond N. Hulser, Esq.
Acting Chief, Public Integrity Section
Criminal Division
(without enclosure)