Exhibit A
CR 92-181-GA

OFFICE OF INDEPENDENT COUNSEL

444 NORTH CAPITOL STREET SUITE 519
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May 11, 1992

BY FAX - 202-463-0969

Stephen V. Wehner, Esq.
Santarelli, Smith & Carroccio
1155 Connecticut Avenue, NW
Washington, DC 20036-4806

Re: United States v. Deborah Gore Dean,
Criminal Docket No. 92-0181 (GAG)

Dear Mr. Wehner:

In light of our conversation on May 9, 1992, relating to, among other matters, discovery in this case, I asked you if it would be a waste of time to respond to your letter dated May 4, 1992, and I believe we both concluded that I should provide an answer.

Arrangements for Discovery

Commencing at 11:30 a.m., May 6, 1992, the Government began making discovery to the defense, by providing a special room where you and your staff, with your client, can inspect and copy materials produced by the Government pursuant to our obligations.

We have agreed to permit you access to this room, with full privacy, and we have agreed that you may bring into this room a portable copier so that you may copy documents yourselves, avoiding the necessity of identifying for us what it is you want copied. We are also agreeable to any request for duplicates of our microfilm, to the extent it does not require extensive Government resources to prepare the microfilm for copying. We have also agreed, on request, to send any documents out for copying by a private company, proving that you agree to pay the copying company directly for its services.

We have said that the discovery room will be available to you throughout the discovery phase of this case from 9 a.m.-5 p.m., every week day. We have requested 24 hour notice when the defense wishes to avail itself of this offer.

Your office has been quite good about letting us know when your people intend to arrive, and when they are going to be late, although we can not help but notice that, to date, the defense is not making full use of the hours available.

I called your office today to talk about this matter because today I learned the terms under which we have a room for your discovery, and you have returned my call moments ago. As I said on the phone, it turns out that we are renting the room from the building in which our offices are located, and must give the building 48 hours notice of our schedule. Although the rates are not exhorbitant, it doesn't make sense for us to rent it for more than the hours you intend to make use of it. Thus, I need to change our discovery procedure. We will need 48 hours notice of the hours you intend to use a room, so that we may reserve it for those specific hours.

Questions and Agreements

We have also offered to make available to the defense, within a reasonable period of time, a set of exhibits the Government intends to offer in its direct case, marked for identification, so that the trial will not be delayed while you attempt to locate the exhibit in question. As I said in our phone conversation, I do not want to make this production piecemeal, for reasons of order. I make this offer because I believe it is the right thing to do, not because we believe the Government has an obligation to segregate and identify the "documents intended for use ... as evidence in chief at the trial required to be produced pursuant to Fed. R. Cr. 16 (a)(1)(C)".

You have asked me if I will provide a "Brady package" separate from the other discovery. As we talked this through, it seems that you are asking about traditional "Brady/Giglio" material, such as immunity orders and criminal records and other impeaching material as it relates to witnesses. You asked if I intended to turn this type of material over as part of the 3500 material. It is the practice, in my experience, for this type of material to be produced with 3500 material relating to the witness in question. Indeed, as you know, most prosecutors go so far as to designate a 3500 number for this type of material.

We intend to follow this practice, although as I said on the phone, if there is material which in our judgment would cause a delay in the trial if turned over with the 3500 material, we will turn the material over earlier. I believe that this is all the law requires with respect to the timing of Brady material.

Response to Defense Discovery
Letter dated May 4, 1992

1. We will disclose and make available for inspection, copying, or photographing: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the Government.

2. We will disclose, as above, the substance of any relevant oral statement made by the defendant whether before or after arrest [indictment] in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial. [1]

3. Some of the material produced may provide some of this information, but we will not provide the identity of all agents present.

4. We believe our discovery obligation with respect to statements of the defendant are covered by points 1 and 2, above. We specifically will not provide Rule 16 discovery of statements to witnesses who were not Government agents.

5. We will disclose, as above, books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, as above, which were obtained from or belong to the defendant.

Although it is the Government's position that documents obtained from HUD that are said to have come from the defendant's files are, in fact, Government documents and do not "belong" to her, we will permit discovery of such documents.

To the extent that your request can be read to seek all documents obtained from HUD, I have offered to make these files available should this discovery phase turn into discovery for the broader indictment contemplated this Summer. We decline to make all documents obtained from HUD available if we continue to deal with the present indictment alone. Indeed, as I believe I said

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[1] We read your request to seek, in addition, "... that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent," language we believe was added to the Rule, effective Dec. 1. 1991.

at the courthouse last Wednesday, our estimate is that it would take three weeks for the microfilm flow of these "other" HUD documents to be complete.

6. We will disclose, as above, exhibits intended for use by the Government as evidence in chief at the trial. I have discussed this request with you in detail and my position is set forth on the first page of this letter.

7. This request as it is presently framed is so vague and broad as to make it impossible for us to identify those documents you seek.

(a) We will disclose all charts and underlying documents intended by the Government for use in its case in chief as soon as they are available, but we do not intend to identify or disclose any grand jury material as you have requested.

(b) If such documents and information existed and were relevant to a case, this request is specific enough as to materiality to some defense or other in some case to give rise to an obligation to provide discovery. If it becomes applicable here, we will respond accordingly.

8. The Government is aware of its obligations under Brady and its progeny, and will respond accordingly, to the extent that your lettered requests are specific enough to give rise to an concomitant obligation of specificity.

As noted during our telephone conversation, I do not intend to provide a "Brady/Giglio" impeachment package immediately, and intend to follow what I understand to be the practice of most federal prosecutors, as set forth above, insofar as we are talking about materials going to a witness' credibility.

This said, if we come upon information that appears to be affirmative Brady material such that the defense could need reasonable time to investigate, we intend to make discovery of such material in time for a reasonable investigation without delaying the trial.

9. We will disclose:

(a) Evidence, if any, the Government intends to use in our case in chief seized through search warrants, to the extent that the defense would have standing to move to suppress.

(b) Evidence, if any, the Government intends to use in our case in chief obtained through Title III wiretaps, or other form of court ordered surveillance, to the extent the defense would have standing to move to suppress.

(c) See (b).

(d) See (b).

(e) See (b). What does the defense request mean by "media cover agents employed by or located at HUD"?

(f) We will not disclose matters occurring before the grand jury.

10. As noted above, we will provide discovery of charts and summaries, and the underlying documents.

11. I will respond to this request for a disclosure of Fed. R. Evid. 801(d)(2) [2] information at a later date. If you have any authority in support of the proposition that this material is discoverable, it would expedite my decision.

12. We will provide pretrial notice if we plan to adduce any similar acts in our direct case.

13. We are aware of our obligations relating to statements of witnesses under 3500/Jencks Act/Fed. R. Cr. P. 26.2, and will respond accordingly, in sufficient time for the defense to examine and use the materials without delay of the trial.

14. We decline to disclose matters relating to the grand jury absent a showing of need.

Disclosure by the Defendant

In light of the foregoing discovery response, the Government hereby requests reciprocal discovery under Fed R. Cr. P. 16(b). Specifically, we request that inspection and copying of:

1. Any books, papers, documents, photographs, tapes, tangible objects, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely upon at trial.

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[2] I am assuming that the references in your letter to Rule 901 and Rule 810, are simply typos. Let me know if I am wrong.

2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the defendant's possession or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial or which were prepared by a witness whom the defendant intends to call at trial.

3. The Government also requests that the defendant disclose prior statements of witnesses who will be called by the defendant to testify pursuant to Fed R. Cr. P. 26.2. We request that such material be provided on the same basis upon which we agree to supply the defendant with 3500 material relating to Government witnesses.

4. Pursuant to Fed. R. Cr. P. 12.2 (a), the Government hereby demands written notice, if the defendant intends to rely on the defense of insanity at the time of the alleged crime.

5. Pursuant to Fed. R. Cr. P. 12.2 (b), the Government hereby demands written notice, if the defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether she had the mental state required for the offenses charged.

6. Finally, please take notice that based upon your representation in open court that the defendant will most likely testify during any trial of this matter, we intend to serve upon your client a trial subpoena duces tecum returnable when she takes the stand, seeking all documents, including those she has withheld to date claiming a fifth amendment privilege.

* * *

If you believe that it would be useful to sit down and talk about our responses or our requests, or if you care to be more specific about some of your requests that we consider too vague to answer at this time, please let me know. As you know, your push for a trial date in June is impacting severely on the time I have to service your discovery demands.

Very truly yours,

Jo Ann Harris
Associate Independent Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 1992, I caused a true and correct copy of the foregoing Motion of Government for Reconsideration of Order Denying Discovery, and Memorandum in support thereof, to be hand-delivered to the following:

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Paula A. Sweeney
Associate Independent Counsel