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

(June 5, 2008; rev. July 26, 2008)

Note: The materials made accessible through this page are quite voluminous. Even the narrative material on the page itself is substantial. Thus, although the narrative is organized in the way that I believe will be the most informative, I suggest the following to those readers who might not get too far into the narrative material in the normal course. Simply read the first four paragraphs of the Introduction. These provide a general background to the matter and should also at least suggest that something amiss occurred in the prosecution of *United States of America v. Deborah Gore Dean*. Then read Section B.1. At that point, put aside for the moment any feelings you might have that a group of federal prosecutors would never act in the described manner, much less under the direction of a distinguished jurist, and consider how you would regard the conduct of the involved Independent Counsel attorneys if the account is accurate and if the attorney ethics and morality reflected in this particular matter infused the entire prosecution. Then, in light of your view as to the nature of such conduct and the likelihood that the account is accurate, as well as your view of implications of the fact that persons involved with the prosecution would eventually hold high positions in the United States Department of Justice, consider whether you deem it worthwhile to read further. If so, return to the Introduction to put the matters addressed in Section B in context.

A version of the introductory material on this page as pdf, which may be easier to read and download, may be found at Introductory Material as pdf.

Introduction

The materials discussed on this page pertain to conduct of attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in the prosecution of *United States of America v. Deborah Gore Dean*, Criminal. No. 92-181-TFH (D.D.C.). The case, which was based on twelve felony counts in a Superseding Indictment issued July 7, 1992, was tried before a jury between September 13, 1993, and October 25, 1993, and resulted in a verdict against the defendant Deborah Gore Dean on all counts.

On November 30, 1993, Dean moved for acquittal on grounds of insufficiency of evidence and for dismissal of the indictment or a new trial on grounds that prosecutorial abuses denied her a fair trial (Rule 33 Motion). At a hearing on February 14, 1994, the Honorable Thomas F. Hogan specifically agreed with much of what Dean asserted concerning prosecutorial abuses, including that Independent Counsel attorneys failed to disclose exculpatory material while representing that no such material existed; that those attorneys put on witnesses without attempting to determine whether their testimony was true; and that those attorneys had reason to know that the testimony of two its witnesses was false. The court noted with regard to a particular matter that lead trial counsel

Robert E. O'Neill had acted in a manner the court would not have expected from any Assistant United States Attorney who had ever appeared before it. More generally, the court found that Independent Counsel attorneys had acted in a manner reflecting "at least a zealousness that is not worthy of prosecutors in the federal government or Justice Department standards of conduct." The court repeatedly noted its concerns about the "cumulative effect" of the prosecutorial abuses it identified, observing that it was "almost impossible to quantify the total impact" of such abuses on the defendant's ability to defend herself. But the court concluded that it did not believe "there was any overwhelming failure by the government in its zealous efforts in this case that resulted in such prejudice to the defendant as would require a new trial."

Dean moved for reconsideration, requesting discovery into certain matters. These included whether Supervisory Special Agent Alvin R. Cain, Jr.– a government witness on whose specific contradiction of Dean's testimony prosecutor O'Neill had placed great weight in provocatively attacking Dean's credibility in closing argument – had lied with knowledge of Independent Counsel attorneys (see Section B.1 infra). On February 23, 1994, the court denied the motion and the request for discovery, observing that, while the matter "could be argued either way," the evidence put forward "doesn't mean of necessity the government is putting on information they knew was false before the jury."

On February 25, 1994, the court sentenced Dean to be confined in a federal prison for a period of 21 months, but allowed bond pending appeal. In an opinion issued May 26, 1995, the United States Court of Appeals for the District of Columbia Circuit, while sharply criticizing the conduct of Independent Counsel attorneys, rejected Dean's appeal of the district court's denial of her Rule 33 Motion. But the court of appeals ruled that there was insufficient evidence to sustain all or part of the verdicts on seven counts in the indictment and, in light of that ruling and a ruling on a sentencing issue, vacated the judgment and remanded the case for resentencing of the defendant. Following denial of a petition for certiorari in 1996, in February 1997, Dean again moved for dismissal of the indictment or a new trial on the basis of (1) the cumulative effect of the previously identified prosecutorial abuses and additional abuses that had not been identified when she filed her original Rule 33 Motion, (2) Independent Counsel efforts to mislead the courts in responding to Dean's earlier motions, and (3) the diminished evidence of guilt in the light of the rulings of the court of appeals. The Independent Counsel moved to strike the February 1997 motion and never responded to any allegations in the motion save to deny that there had been any efforts to mislead the court in responding to Dean's earlier motions. Dean's motion remained pending until November 2001. At that time, a Joint Motion was filed by Dean and the Department of Justice (which, in 1999, had replaced the Office of Independent Counsel in the prosecution of the case) whereby Dean agreed to withdraw all pending motions and make no further direct or collateral attacks on her conviction, and the Department of Justice recommended that Dean be sentenced to a term of probation that included six months of home detention, agreeing also to take no position as to the terms of the home detention. Dean was then sentenced to three years of probation including six months of home detention under terms that allowed her to work during the period of home detention.

Most of the materials posted or to be posted on this site concerning this matter were submitted to various officials or agencies of the United States government between December 1, 1994, and January 22, 2000, in an effort (1) to cause an investigation of the conduct of Independent Counsel attorneys in the Dean case; (2) to cause the removal of certain of those attorneys from positions they subsequently held in the Department of Justice (including (a) Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division, (b) Bruce C. Swartz from the position of Counsel to the Assistant Attorney General for the Criminal Division, (c) Robert E. O'Neill from the position of Assistant United States Attorney for the Middle District of Florida, and (d) Robert J. Meyer from the position of Trial Attorney in the Public Integrity Section of the Criminal Division) on the grounds that their conduct in the Dean case indicated they were unfit to represent the United States; and (3) to cause the successors to Independent Counsel Arlin M. Adams in the continued prosecution of the case (initially, from July 1995, Independent Counsel Larry D. Thompson and later, from approximately July 1999, the Public Integrity Section of the Criminal Division of the Department of Justice) to acknowledge to the court certain actions Independent Counsel attorneys had previously taken to deceive the jury and the courts both in the prosecution of the case itself and in subsequently responding to allegations of prosecutorial misconduct.

Section A below briefly describes the nature of the materials posted on this site or otherwise available. Section B describes certain events occurring during or subsequent to the period from December 1994 to January 2000 that may bear on the interpretation of the materials, particularly the initial group of materials that was delivered to the Department of Justice on December 1, 1994. Section C describes certain recently created materials. The following page provides links to the various posted documents: Links Page.

A. Description of the Materials Posted

The most detailed discussion of the prosecutorial misconduct issues addressed on this page is found in a group of materials comprised of approximately 400, single-spaced pages of narrative material that I delivered, along with supporting exhibits, to the Department of Justice on December 1, 1994. The materials are organized as follows: The first item, styled "Introduction and Summary" (IS), is a document of 57 pages (as currently paginated, see discussion of formatting issues on the links page just referenced) broadly summarizing matters that are addressed in greater detail in ten supporting documents, which were called "narrative appendixes." The narrative appendixes, as originally paginated, ranged from eight to 83 single-spaced pages. Each narrative appendix begins with a summary of the issue or issues it addresses. The summaries range from one paragraph to six pages. The ten individual summaries were also collected together behind the Introduction and Summary (CNAS), and nine abbreviated summaries running a total of six pages, are collected at the end of the narrative appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr." (AbbrevNAS). As presented here, the collections of individual summaries in some cases may contain (in brackets following the material in its original form) a short discussion of developments

subsequent to the original creation of the summary. Some of these developments are also addressed in Section B *infra*.

These materials were originally provided to the Department of Justice with a short transmittal letter to Attorney General Janet Reno. Among other things, the transmittal letter advised the Attorney General, that, for purposes of routing the materials for review within the Department of Justice, the Department should be aware that, while serving as an Associate Independent Counsel just prior to appointment to her current position as Assistant Attorney General for the Criminal Division, Jo Ann Harris was involved in certain of the matter addressed in the materials. Within the Department of Justice, the materials were apparently routed to Associate Deputy Attorney General David Margolis with whom I then met during the week of December 12, 1994. The materials were supplemented by an eleventh narrative appendix, which I delivered to Margolis on January 17, 1995. The summary of that item is included in the collection of summaries of narrative appendixes posted here following the Introduction and Summary, though it was not part of that group of summaries when originally provided the Department of Justice.

Other materials posted on this site include a substantial part of a lengthy subsequent correspondence with the Department of Justice. Such correspondence commences with my letter of December 25, 1994, to Associate Deputy Attorney General Margolis, responding to his request that I clarify whether I represented Deborah Gore Dean and responding to his suggestion that the materials be first referred to Independent Counsel Arlin M. Adams. That letter clarified that I did not represent Deborah Gore Dean (something, as a federal government attorney, I was prohibited by law from doing) and provided reasons why the materials should not be first referred to Independent Counsel Adams. The correspondence concludes with my letter of January 22, 2000, to Counsel for the Office of Professional Responsibility of the Department of Justice H. Marshall Jarrett, which is discussed in Section B.8 *infra*.

In order that an item of correspondence might provide the recipient or other readers with an understanding of the general scope and nature of the issues without reference to other materials, it was my practice to include in many of the items of correspondence summaries of certain of the misconduct issues, as well as summaries of prior communications with the Department of Justice or other entities. For example, my letter of December 23, 1997, to Department of Justice Inspector General Michael R. Bromwich (MB1) (74 pages as currently paginated) provides substantial summaries both of the misconduct issues and of the exchanges with the Department of Justice or the Office of Independent Counsel up to that date. Many shorter documents contain similar summaries. Almost every document gives some attention to the testimony of Supervisory Special Agent Alvin R. Cain, Jr. (the subject of Section B.1 *infra*). Thus, while there is considerable repetition of the same points in many items of correspondence, a number of the items may alone give a fair picture of the issues and the handling of the issues by the Department of Justice.

Apart from the aforementioned materials initially provided the Department of Justice and subsequent correspondence with the Department, posted on this site are all or parts of correspondence (1) with White House Counsel Abner J. Mikva between February and July 1995 and (2) with Independent Counsel Larry D. Thompson (who succeeded Arlin M. Adams as Independent Counsel in July 1995) or employees or retained counsel of the Office of Independent Counsel between September 1995 and July 1997. The former correspondence related to my effort to cause the President to remove Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division. (In March 1995 Harris informed Attorney General Reno or her (Harris's) intention to leave the Department of Justice at the end of summer and in May 1995 formally resigned. *See* Section B.12.a.) The latter correspondence related to my urging of Independent Counsel Larry D. Thompson to determine the nature of the conduct of Independent Counsel attorneys under Independent Counsel Arlin M. Adams and to bring to the attention of the courts all instances where those attorneys had endeavored to deceive the court and the jury in the Dean case. As with the Department of Justice correspondence, various items of the correspondence with Judge Mikva and Independent Counsel Thompson provide fair summaries of the issues involved.

There exist other groups of correspondence with various entities involving these issues, including a substantial body of Freedom of Information Act correspondence with the Department of Justice and the Office of Independent Counsel. Parts of such material may be eventually posted. As noted above, recently created materials are described in Section C below. These include some descriptive documents and some correspondence relating to this web page with persons or entities mentioned in Section B.

The references to summaries of issues in various places including many items of correspondence may invite readers to rely mainly on those summaries. The attention given to several issues in Section B below also may incline readers to limit their examination of these materials to certain issues. Possibly the more summary treatments of the principal issues generally, or of those given particular attention in Section B, will persuade most or all readers of the fundamentally dishonest nature of the actions of Independent Counsel attorneys in the Dean prosecution and the Department of Justice's deficient handling of, or involvement with, the matter.

Regardless of how persuaded they may be by the limited treatments of these issues, however, persons with serious interests in prosecutorial abuses generally, the issue of whether it may ever be permissible for government attorneys to lead juries or courts to believe things those attorneys know or believe to be false, the manner in which independent counsels have tended to conduct themselves, or the institutional ethics of the United States Department of Justice should review all the materials posted or described on this page, including the documents related to Dean's Rule 33 Motion of November 1993 and her motions of January 1996 and February 1997.

In reviewing the November 1993 materials, the reader should give special attention to the discussion of Robert E. O'Neill's closing argument, with thought to the extent to which O'Neill's 50 or so claims that Dean had lied involved situations where O'Neill knew she

had not lied and the extent to which the argument was intended to incite racial prejudice. More generally, the reader should consider, in light of the narrative appendixes, how often O'Neill sought to lead the jury to believe things he knew to be false.

(A document styled "Part V: Independent Counsel Efforts to Prejudice the Jury Against Dean" (Part V), which was delivered to on August 4, 1997, to Mark J. Hulkower, retained counsel for the Office of Independent Counsel, and later provided to Department of Justice Inspector General Michael R. Bromwich on December 23, 1997, may provide the most comprehensive portrayal of these actions, and do so in a document that is both cleaner and easier to download than the scanned version of Dean's Rule 33 memorandum.)

The memorandum supporting the February 1997 motion addresses many issues that were addressed in the December 1, 1994 materials that had not been raised in connection with Dean's November 1993 Rule 33 Motion, as well as a number of important additional issues. Although the memorandum does not address the issue of the testimony of Supervisory Special Agent Alvin R. Cain, Jr., the subject of Section B.1, *infra*, a complete understanding of the issues addressed in that memorandum is important both generally to an appraisal of actions of all parties involved with the Dean prosecution and the subsequent defending of Independent Counsel actions regarding that prosecution, and specifically to an appraisal of the affirmative steps the Department of Justice itself took to cause the issue raised in the memorandum to go unaddressed.

If one were to write about or teach a course on any of the issues listed several paragraphs above, I suggest that it would be a mistake to do so without a thorough knowledge of the materials discussed on this page. The same holds for anyone with an interest in the fitness of the Independent Counsel attorneys identified above to hold public office or whether those attorneys deserve the esteem of their peers or the public. I also suggest that any person (or counsel for such person) who has been prosecuted by Robert E. O'Neill or attorneys under his supervision, and who is inclined to question the conduct of such prosecution – and anyone who expects to be prosecuted by or under the direction of O'Neill in his current position of United States Attorney for the Middle District of Florida – may find these materials of some value. While the Department of Justice had ample opportunity more than a decade ago to obviate any issues arising from Robert E. O'Neill's prosecutions in the years that followed, the Department may also find it useful to review these materials to appraise the scope of potential challenges both to prosecutions that have already taken place and that may take place in the future.

The astute reader will recognize that to the extent the materials show that Robert E. O'Neill in fact engaged in repeated efforts to deceive the jury and the court in the Dean case, knowledge of such conduct imposes on the Department of Justice an obligation also to review other prosecutions conducted or supervised by O'Neill to determine whether similar actions occurred in such prosecutions and, on discovering such acts, to bring them to the attention of the courts and defense counsel. In doing so, moreover, the Department's obligation is not solely to raise issues that it deems material or possibly affecting an outcome, but to alert defense counsel as to any matter such counsel would

wish to know about in order that they might consider raising the matter with the court. In evaluating the importance of an act of deception by a prosecuting attorney, the Department, like the courts, should proceed under the assumption that if the prosecutor engaged in some act of deception, he or she did so in the belief that it could affect the outcome and thus accord some deference to that belief.

These materials may also be of interest to many as a sort of oblique psychological study. For readers who are themselves decent, upstanding people, including the substantial universe of principled government attorneys, will constantly ponder what could cause so many individual attorneys – all or most of whom presumably also thought of themselves as decent, upstanding people – to act in the manner they did in this case and perhaps to do so, at least to a point, without believing they were doing anything wrong.

Eventually, I hope to include in the narrative introductory material on this page abbreviated links to all referenced documents, as is now done with regard only to certain items. In the absence of such links, however, I suggest that the reader will find it useful also to open the links page to allow ready access to the referenced documents while reviewing this page. Any item for which I date is provided ought eventually to be found on the links page by means of that date.

This page is concerned with the conduct of attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in the prosecution of the Dean case, not with the underlying congressional investigation that led to the appointment of an Independent Counsel. There does, however, exist a considerable body of material on the underlying hearings and the matters underlying them that are not directly related to any charges brought against Deborah Gore Dean by Independent Counsel Arlin M. Adams Such material, however, might be deemed at least peripherally related to the subject of the narrative appendix styled "Testimony of Thomas T. Demery" and the subsequent correspondence relating to Demery's testimony (a matter treated in Section B.6 *infra*) and the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." But, irrespective of any relationship to the subject matter of this page, the materials relating to the congressional hearings themselves involve issues of considerable public importance. Thus, certain materials relating to those hearings are posted elsewhere on this site and discussed under the tab "Lantos Hearings."

This page and the page just referenced are still under construction. They may eventually be moved to other places on this site or to a site or sites of their own. The addresses of these pages may thus change. But they will remain easy enough to locate. Though I may or may not post records of changes (see my July 11, 2008 letter to Alvin R. Cain, Jr.), I will retain copies of prior versions

In the event that a reader is interested in reviewing any document not posted that he or she deems pertinent to an appraisal of the issues raised here, please contact James P. Scanlan by e-mail (jps@jpscanlan.com) or telephone (202-338-9224). If I have the material, and unless some issue of particular sensitivity is involved (something I expect

rarely to be the case), I will then either post the requested material on this site or provide it on CD or DVD or by e-mail. I encourage readers to contact me with any information they may have that they believe it would be useful for me to have and with respect to pointing out to me any way in which my interpretation of the matters addressed here may be inaccurate or unfair. That applies as both to the materials on the Dean prosecution and to the materials on the congressional investigations.

B. Development Since the Original Creation of the Main Body of Materials Posted on this Page

A number of developments subsequent to December 1, 1994, bear on the interpretation of the materials provided to the Department of Justice on that date, as well as on certain issue raised in the subsequent correspondence. These developments are described under the headings below. To facilitate the reader's review of these sections, the heading for each section is listed immediately below. The bracketed material following each item on the list is intended to provide a means of quickly locating a section by search term, with having to scroll down the page.

1. Implications of the Literal Truth of the Testimony of Supervisory Special Agent Alvin R. Cain, Jr. [b1]

2. Dean's 1991 or 1992 Account of the Call to Agent Cain Recounted in James Rosen's 2008 book on John Mitchell, The Strong Man [b2]

3. The Court of Appeals' Finding that There Was Insufficient Evidence to Sustain a Conviction of Deborah Gore Dean as to Three of the Four Projects Involving Former Attorney General John N. Mitchell and the Proof that She was Innocent of the Fourth [b3]

4. The Parks Towers Narrative Appendix [b4]

5. Dean's February 1997 Motion for Acquittal/New Trial on Grounds of Prosecutorial Abuse and the Role in Such Motion of Efforts of Prosecutors to Deceive the Court in Responding to her Original Rule 23 Motion [b5]

6. Developments Concerning Testimony of Thomas T. Demery [b6]

7. The Independent Counsel's Response in the Supreme Court Concerning the Andrew Sankin Receipts [b7]

8. The Department of Justice's Role in Perpetuating All Actions of the Independent Counsel [b8]

9. Complaints of the Former Independent Counsel Document Manager [b9]

10. Larry D. Thompson's Fitness to Hold Public Office [b10]

11. Additional Evidence of Ill Feelings Independent Counsel Arlin M. Adams Bore toward John N. Mitchell [b11]

11a. Complaint to the District of Columbia Office of Bar Counsel [b11a]

12. Developments Regarding the Involved Independent Counsel Attorneys [b12]

1. Implications of the Literal Truth of the Testimony of Supervisory Special Agent Alvin R. Cain, Jr. [b1]

Mentioned throughout the materials discussed on this page is the testimony of Supervisory Special Agent Alvin R. Cain Jr., the author of the April 17, 1989 HUD Inspector General's Report that led initially to congressional hearings on abuses of HUD's moderate rehabilitation program and ultimately to the appointment of Independent Counsel Arlin M. Adams to investigate that and related matters. Agent Cain's testimony as an Independent Counsel rebuttal witness on October 18, 1993, played a quite important role in the trial, and the actions of Independent Counsel attorneys with respect to Agent Cain are among the actions of those attorneys that I have suggested are most likely to constitute violations of federal laws.

The focal point of the Independent Counsel's case against Deborah Gore Dean involved allegations that Dean had caused HUD to take actions on four matters in order to benefit former Attorney General John N. Mitchell, a person Dean considered to be a stepfather. Mitchell had died in 1987. A critical issue in the case concerned whether Dean was aware that Mitchell earned HUD consulting fees. One immunized witness who retained Mitchell on a HUD matter testified that he deliberately concealed Mitchell's role from Dean. Mitchell's partner, also immunized, testified that Dean was shocked when he told her about Mitchell's HUD consulting. No one testified that he or she knew or thought that Dean was aware of Mitchell's HUD consulting.

Dean denied knowing that Mitchell earned HUD consulting fees until she read the HUD Inspector General's Report in April 1989 and saw an entry stating that Mitchell had received a fee of $75,000 for assistance in securing the 1984 funding of a Dade County, Florida moderate rehabilitation project called Arama.

In her direct examination, on October 12, 1993, Dean described how she had secured a copy of the report from Agent Cain on "the day the report came out" in April 1989, and how she had then read in the report that Mitchell had earned a HUD consulting fee. Tr. 2616-17. Dean then provided the following testimony about what she did when she saw the discussion of Mitchell's fee in the report:

> Q. Did you place any telephone calls after you heard that in the report -- after you discovered that information?
> A. Yes.

> Q. Who did you call?
> A. I called Al Cain.
> Q. What did you say to Mr. Cain?
> A. I told him that I considered him to be a friend and I couldn't believe that he wouldn't have told me about this before now and that I knew it wasn't true, that John would never have done that, and that he better be prepared, because I was really mad, and I wanted to see the check, and if there had been a check written to John Mitchell, Al better have a copy of it, and I was coming down there, and if I found out that he was, in any way had misinterpreted or had misrepresented John's actions, I was going to have a press conference and I was going to scream and yell and carry on.
>
> And Al said, Al told me that he –

Tr. 2616-18.

At this point, prosecutor Robert E. O'Neill rose to object. Before he actually said anything, the court stated: "I'll sustain the objection. Don't get into what he said." Tr. 2618. Thus, Dean was not permitted to testify as to what Agent Cain might have told her in response to her specific questions regarding the existence of a check showing the payment to Mitchell. She instead went on to testify about a subsequent call to Mitchell's partner. Dean's entire testimony on the matter may be found at Dean Testimony.

It warrants note at this point that the Dean's having called Agent Cain was hardly probative that Dean was unaware of that Mitchell earned HUD consulting fees, since Dean could have called Cain merely to divert suspicion. And that would hold regardless of what Cain might have told Dean about a check. (In the trial there was no dispute that Mitchell had received a $75,000 fee on the Arama project, and the check reflecting that payment had been introduced into evidence as an Independent Counsel exhibit.) Further, Dean knew that Agent Cain was then assigned to the Office of the Independent Counsel and hence was readily available to contradict any part of her testimony about the call that was not true. And, given that Cain was an African-American federal agent, and Dean was being tried before an entirely African-American jury, any contradiction of substance might have been expected to have a substantial impact on the jury. In these circumstances, Dean would have had to be mentally unbalanced to fabricate the story about calling Agent Cain, leave aside fabricating a story about what Cain told her about the check.

Dean remained on the stand for all or part of five more trial days, including three during which she was extensively cross-examined by Independent Counsel attorney Robert E. O'Neill. During that cross-examination, O'Neill asked no questions about the call to Agent Cain.

Shortly after Dean concluded her testimony on October 18, 1993, Agent Cain appeared as an Independent Counsel rebuttal witness. Questioned by Independent Counsel attorney O'Neill, Cain first responded to a question as to when the report was "published," stating

that it "was published April 17, 1989." Cain then described a call he received from Dean "at or about that time," and provided details of his then providing Dean a copy of the report, which details closely conformed to those Dean had previously provided. O'Neill then conducted the following questioning of Agent Cain:

> Q. At or about that date, do you recall any conversation with the defendant Deborah Gore Dean in which she was quite upset with you about the contents of the report?
> A. No, I do not.
> Q. Do you recall her mentioning John Mitchell to you and the fact that he made money as a consultant being information within the report?
> A. No, I do not.
> Q. Do you recall her telling you that she was going to hold a press conference to denounce what was in the report?
> A. Absolutely not.

Tr. 3198-99. (Agent Cain's complete direct testimony may be found at Cain Testimony.)

Agent Cain's firm denial of any recollection of the call from Dean then played an important role in prosecutor Robert E. O'Neill's closing argument. Asserting that Dean's defense rested entirely on her credibility, O'Neill repeatedly and provocatively stated that Dean had lied on the stand. Three quarters of the way through the first day of O'Neill's closing, he pressed the attack on Dean's credibility with particular acerbity, stating:

> Based on her lies, you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you.

Tr. 3418.

Moments later, O'Neill derisively turned to Dean's denial that she knew Mitchell had earned HUD consulting fees until she read about it in the HUD Inspector General's Report:

> Shocked that John Mitchell made any money. Remember she went into great length about that. That she was absolutely shocked. And the day the I.G. Report came out she called Special Agent Alvin Cain, who was at HUD at the time, and said I'm shocked. I can't believe it. I thought you were my friend. You should have told me John Mitchell was making money. You'd better be able to defend what you said and if you can't I'm going to hold a press conference and I'm going to do something, I'm going to rant and rave. That's exactly what she told you.
>
> So we had to call in Special Agent Alvin Cain for two minutes' of testimony. And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. They asked him a bunch of questions about the Wilshire Hotel,

> and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that.

Tr. 3419-20.

During rebuttal the following day, O'Neill continued to assert that Dean had repeatedly lied on the stand, pursuing that approach with virulence at least equal to that of the day before. In listing a number of statements by Dean that he asserted were lies, O'Neill again noted the contradiction by Agent Cain:

> Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

Tr. 3506.

The Introduction and Summary and the narrative appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr." (Cain App) that I provided to the Department of Justice on December 1, 1994, address the matter of Agent Cain's testimony in great detail, including the events immediately following the trial. Such events include Dean's filing a post-trial motion asserting, among other things, that Agent Cain's denial of recollection of the call was false and that Independent Counsel attorneys had reason to know it was false. Dean supported her motion with her affidavit stating that when she called Agent Cain, he told her that a check existed but he could not show her a copy because it was then maintained in the Regional Inspector General's Office. Dean also submitted an affidavit from me stating that, after calling Cain, Dean had called me and told me what Cain had told her about the check. Dean argued that information on the whereabouts of the check in April 1989 would corroborate her testimony about the call to Cain. After the Independent Counsel failed even to mention the check in its response, Dean sought discovery on the whereabouts of the check in April 1989, which the Independent Counsel opposed and which the court denied (as discussed in the third paragraph of the Introduction).

These matters are discussed in the December 1, 1994 materials in the context of an argument that Agent Cain provided false testimony. The materials further argued that, if Independent Counsel attorneys did not know that the testimony was false at the time Cain testified, they certainly had reason to know it when they evasively responded to Dean's motions.

Then, in a meeting during the week of December 12, 1994, Associate Deputy Attorney General David Margolis raised with me the issue of whether, even though Dean called Cain just as she said, Cain's testimony might nevertheless be literally true. Referencing the content of Cain's denials of recollection (especially with respect to the words "mentioning John Mitchell"), I stated that I did not know how such content could be reconciled with Dean's description of the call. Margolis did not suggest any other way Cain's testimony might be literally true, assuming Dean did call Cain, or otherwise discuss the matter further.

At least partly as a result of Associate Deputy Attorney General Margolis's suggestion concerning the possible literal truth of Agent Cain's testimony, I would eventually come to believe that Cain in fact provided the testimony because he was persuaded that it was literally true. The apparent rationale lay in the notion that Cain's testimony that he remembered no call from Dean concerning the discussion of Mitchell in the HUD IG Report would literally pertain only to "at or about" April 17, 1989, the date the report was published within HUD, not the day the report was released to the public and Cain provided a copy to Dean. That occurred at the end of April 1989, about ten days after the date Cain stated as the date the report was published.

As reflected by the testimony itself, and as suggested by the discussion set out along with the testimony (Cain Testimony), many would question whether the testimony was literally true. Indeed, some would likely say that the testimony was not even close to being literally true and the securing of the testimony was the suborning of perjury – pure and simple. But such issues do not detract from my confidence that the notion that the testimony was literally true underlay Agent Cain's providing the testimony.

I would later be informed by a former Independent Counsel employee (the former document manager discussed in Section B.9) that Agent Cain, who considered himself to be a highly principled person, had been pressured into giving the testimony in the course of several meetings with Associate Independent Counsel Robert E. O'Neill and Deputy Independent Counsel Bruce C. Swartz. As the former employee put it, Cain had been taken into a room on several consecutive days to be persuaded to provide testimony he was very reluctant to give. The former Independent Counsel employee also stated that there was considerable cheer or relief in the offices of the Independent Counsel attorneys when the fact that Cain had been coached to give these answers he gave was not brought out in court.

But, as reflected in the Cain narrative appendix, in defending against charges that Cain's testimony was false and in resisting Dean's request for discovery to prove that she had called Cain, Independent Counsel attorneys never advanced the argument that, though Dean had called Cain, Cain's testimony was literally true. Rather, they maintained that Cain had testified truthfully and Dean had lied. Further, in a letter he signed personally, Independent Counsel Arlin M. Adams then persuaded the probation office to recommend an increase in Dean's sentencing level for lying about the call, which increase would have resulted in an additional six months confinement. In doing so, notwithstanding that the rationale that had evidently underlain Cain's testimony was than Dean merely had not called Cain on or about the date the report was published, Judge Adams specifically represented to the probation officer that "Agent Cain testified on rebuttal that to his recollection this conversation never occurred." The varied action Independent Counsel attorneys in responding to Dean's charges, apart from being intended to falsely show that Dean had lied about the call, were also specifically intended to conceal actions of Independent Counsel attorneys that many, very likely including Judge Hogan, would regard as the suborning of perjury. It is for that reason that I have maintained the actions

to conceal the circumstances of Cain's testimony constituted obstruction of justice if not other federal crimes.

A relatively succinct treatment of this matter that takes into account implications of Cain's giving the testimony he did because he was persuaded that it was literally true, even though he remembered the call from Dean, may be found in my letter of December 17, 1999, to Robert J. Meyer (RM), which references many other places where the matter is discussed at greater length. A further useful reference is Section B.1 of my letter of May 25, 1995, to Associate Deputy Attorney General David Margolis, which first addressed with Margolis the implication of his December 1994 suggestion that Cain's testimony might be literally true (though the letter does not address the potentially criminal nature of the actions of Independent Counsel attorneys in responding to Dean's claim that Cain's testimony was false). Also useful is my letter of March 11, 1996, to Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, which addresses implications of the Department of Justice's relying on the literal truth of Agent Cain's testimony in reaching certain conclusions regarding this matter, as well as implications of the Department's refusal to inform me of the basis for its conclusions. Implications of the continued concealment of Independent Counsel actions regarding Agent Cain while the matter was being handled by the Public Integrity Section of the Criminal Division of the Department of Justice are addressed in my letter of December 26, 1999 to Attorney General Reno, Public Integrity Section Chief Lee J. Radek and other Department of Justice Officials, and my letter of January 22, 2000 to H. Marshall Jarrett, Michael Shaheen's successor as Counsel for the Office of Professional Responsibility

Regardless of whether readers are entirely persuaded by the referenced documents, I encourage them to review the Cain narrative appendix, especially Sections F and M. The former section discusses the Independent Counsel's opposition to Dean's Rule 33 Motion (authored by Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert J. Meyer). The latter section discusses Deputy Independent Counsel Swartz's argument to the court on February 23, 1994, in resisting discovery into where the check showing payment to Mitchell was maintained in April 1989. As noted above, that narrative appendix was written without recognizing that, while knowing that Dean had called Cain just as she said, Independent Counsel attorneys had contrived a rationale by which Cain could be made to believe he was giving testimony that was literally true. Thus, I suggest that the reader may well want to ponder at length, in light of such circumstance, the character of the representative of the United States making the arguments discussed in those sections. The same, of course, holds for Arlin M. Adams' letter to the probation officer seeking to have Dean's sentence increased for lying about the call to Cain.

I would also urge reading of the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge" (Barrett). Note 5 of that document may offer some insight to the thinking of Robert E. O'Neill when he elicited Cain's testimony. And, while the document may not do so definitively, it suggests how Independent Counsel attorneys may have caused the trial

court to allow them to use Cain's testimony in the manner they did even thought the court evidently believed Dean had in fact called Cain.

Letters of July 8, 2008, and July 9, 2008, bringing the above treatment to the attention of, respectively, former Supervisory Special Agent Alvin R. Cain, Jr. and the Honorable Thomas F. Hogan are also posted.

Note to B1: The reader might note that Robert E. O'Neill's first characterization of Dean's testimony may have attempted to conform somewhat to the literal truth rationale, with its reference to "the day the I.G. Report came out" and its characterization of Cain's testimony as: "It didn't happen. It didn't happen like that." Possibly the latter sentence was intended to qualify the former. In any event, after considering the matter overnight, O'Neill abandoned such nicety in the characterization during rebuttal the following day: "That conversation never, ever happened."

From that point forward it seems that Independent Counsel attorneys always characterized Agent Cain's testimony as being that the call never occurred or at least that, to Cain's recollection, it never occurred, as first reflected in the Independent Counsel's October 29, 1993 supplemental opposition to Dean's motion for acquittal, signed by Independent Counsel attorney Paula A. Sweeney, which stated (at 14):

> In this regard, the jury was entitled to consider defendant's testimony that she was shocked upon learning of the payments to Mitchell when she received the HUD-IG Report, and that she expressed her anger to HUD IG agent Al Cain, Tr. 2617; and the jury was further entitled to consider Agent Cain's testimony that this conversation never occurred. Tr. 3199.

This characterization, it might be noted, also ties the alleged conversation to the day Dean received a copy of the report rather than the date it came out.

2. Dean's 1991 or 1992 Account of the Call to Agent Cain Recounted in James Rosen's 2008 book on John Mitchell, *The Strong Man* [b2]

Few or no readers of the documents referenced under the prior heading will doubt for a moment that Dean in fact called Cain or that Independent Counsel attorneys knew she had called Cain at each point in which they maintained that Dean's testimony was false. My affidavit in the case, if true, would alone seem to make it virtually impossible (albeit not logically impossible) that Dean had fabricated her testimony about the call. But rather than the affidavit, it is the evasiveness of the responses of the Independent Counsel attorneys to the statements in Dean's and my affidavits concerning Cain's telling Dean where the check showing the Arama payment to Mitchell was maintained in April 1989 that will leave few or no readers unconvinced on this matter. It nevertheless warrants note that, according to the recently published book on John N. Mitchell, *The Strong Man*, sometime in late 1991 or early 1992, Dean apparently also told its author, John Rosen, about the call to Cain. I note that matter, however, almost as irony, for, again, few or no

readers will doubt that Dean made the call or that Independent Counsel attorneys knew that she made the call.

3. The Court of Appeals' Finding that There Was Insufficient Evidence to Sustain a Conviction of Deborah Gore Dean as to Three of the Four Projects Involving Former Attorney General John N. Mitchell and the Proof that She was Innocent of the Fourth [b3]

As noted, the focal point of the Independent Counsel's case involved a claim that Deborah Gore Dean conspired with former Attorney General John N. Mitchell to cause HUD to take certain actions regarding four projects, which matter was the subject of Count One of the Superseding Indictment. The court of appeals, however, found that there was insufficient evidence to sustain a conviction as to three of those projects, effectively finding Dean not guilty as to those charges.

The fourth was a project called Arama, which was funded pursuant to documents signed by Assistant Secretary for Housing Maurice C. Barksdale in July 1984. The Arama project is the subject of many allegations of prosecutorial abuse, particularly with regard to actions of Independent Counsel attorneys concerning two message slips found in John Mitchell's files. The message slips indicated that in January 1984, immediately after the execution of a contract to secure the Arama funding, Mitchell had spoken about the funding to Dean's predecessor as Executive Assistant, Lance H. Wilson, and that Wilson had told Mitchell that he (Wilson) was talking to Barksdale about the matter. Wilson was a friend of Mitchell's and had helped him on other HUD matters. The materials in various places make what I suggest is a compelling case that the Independent Counsel attorneys went forward with the Arama claim while being virtually certain it was false. In any case, I suggest that every reader of the December 1, 1994 narrative appendix styled "Arama: The John Mitchell Telephone Messages and Maurice Barksdale" (Arama) will believe that Independent Counsel attorneys failed to confront Barksdale with the information on the telephone message slips because they believed that such information would cause Barksdale to state, truthfully, that he had authorized the funding pursuant to the request of Wilson and that Dean was not involved, and that those attorneys preferred to go forward in the hope and expectation of eliciting false testimony from Barksdale that would support their claim. Readers of pages 27-46 of Dean's February 1997 Memorandum will conclude that Robert E. O'Neill knew with virtual certainty not only that the testimony that he was eliciting from Barksdale on the substantive issues was false but that the testimony that he elicited to bolster Barksdale's credibility was false as well.

Many other instances of the eliciting testimony that Independent Counsel attorneys were virtually certain was false are documented in the Introduction and Summary and its other appendixes. The simplicity of the matter of the Independent Counsel's use of the Barksdale testimony without addressing with him the information on the Mitchell message slips, however, makes it a useful starting point for an appraisal of Independent Counsel conduct. For the undisputed actions of Independent Counsel attorneys with regard to Barksdale pointedly inform the reader of the character of the attorneys whose

conduct as to other matters may be more difficult to interpret and make it easy to believe things about such conduct that otherwise might be hard to believe.

In any case, following the court of appeals' ruling that there was insufficient evidence to support a conviction as to three of the four projects in the count involving John Mitchell, Dean, in December 1996, sought to have the remaining part of the count dismissed by the district court. In support of the motion submitted an affidavit by Lance Wilson stating that he had caused the Arama funding through communications with Barksdale. With the motion, Dean also filed other materials bringing to the attention of Independent Counsel Larry D. Thompson further information that Independent Counsel attorneys prosecuting the case under Independent Counsel Arlin M. Adams knew the Arama charge was false when they brought it and used false evidence to prove it.

Independent Counsel Larry D. Thompson nevertheless opposed Dean's motion, and did so successfully, on the grounds that the Wilson affidavit was not newly-discovered evidence. Dean's motion to have the matter reconsidered was eventually withdrawn as part of the November 2001 agreement with the Department of Justice. So Dean continues to stand convicted of the Arama charge. Nevertheless, the record establishes that Dean was found not guilty on three of the charges involving Mitchell and was certainly innocent of the fourth. Thus, the fair reading of the undisputed record is that Dean was not guilty of conspiring with John Mitchell as to anything. Similarly, the fair reading of the undisputed record is that John Mitchell was not guilty of these charges as well.

See Section B.8 regarding the expressed perception of Arlin M. Adams that Attorney General John N. Mitchell had kept him (Judge Adams) from the Supreme Court and why, regardless of any actual animus Adams may have borne toward Mitchell, Adams should have recused himself from any matter involving the prosecution of a person Mitchell regarded as his stepdaughter.

4. The Parks Towers Narrative Appendix [b4]

Park Towers is a project involving John Mitchell as to which the court of appeals would find insufficient evidence to sustain a conviction. Nevertheless, and despite its length, the Park Towers narrative appendix (PT), including its two addendums (as discussed in my December 5, 1995 letter to Larry D. Thompson) warrant careful attention from anyone with a serious interest in prosecutorial abuses generally or the conduct of Associate Independent Counsel Robert E. O'Neill and Deputy Independent Counsel Bruce C. Swartz in particular. For virtually every element of the government's proof involved Independent Counsel attorneys' leading of the jury and the courts to believe things those attorneys knew to be false, as well as the employment of deceitful tactics in order to enable them to do so. This matter is also summarized in many items of correspondence and addressed at page 47-64 of Dean's February 1997 Memorandum. The material should also be examined with regard to the truthfulness of statements made by Associate Independent Counsel Paula A. Sweeney as to why the Independent Counsel failed to make any Brady disclosures until the even of trial.

5. Dean's February 1997 Motion for Acquittal/New Trial on Grounds of Prosecutorial Abuse and the Role in Such Motion of Efforts of Prosecutors to Deceive the Court in Responding to her Original Rule 23 Motion [b5]

A point that runs throughout materials referenced on this page is that Independent Counsel attorneys sought to mislead the courts in responding to the claims of prosecutorial abuse Dean raised in late 1993 and early 1994, and that, in context, the efforts to mislead the courts constituted not simply weak or absurd arguments, but false representations as to what Independent Counsel attorneys had actually done and what their motivations had been – false representations made in circumstances where government attorneys were obligated to tell the truth. As noted above, in February 1997, Dean filed a renewed motion for acquittal or a new trial raising issues that had not been identified in her original Rule 33 Motion of November 1993 and also arguing that the Independent Counsel had endeavored to mislead the courts in responding to her original motion. Independent Counsel Thompson refused to respond to the allegations in this motion, instead filing a motion to strike Dean's motion. In such motion to strike, however, the Independent Counsel denied that Independent Counsel attorneys had endeavored to mislead the court in responding to Dean's earlier motion. This, too, was not merely a weak argument, but was a false representation made in circumstances where government representatives are required to tell the truth.

As observed in my letter to Thompson of March 26, 1997 (at 14 n.12 on 15), "[i]n a context where the government has an obligation to reveal the truth, this statement reflects your word of honor that you have investigated these matters and have concluded that in fact Independent Counsel did not attempt to mislead the court …" I would allude to the quoted material in my letter to Thompson of August 13, 1997 (at 43) , there noting that such statement was "manifestly false." I present these quotations of my prior statements not to suggest that the prior stating of these points adds validity to them. Rather, I note them for purposes of the reader's appraisal or Thompson's observations (addressed in Section B.10) suggesting that no one had ever questioned his integrity.

As discussed in Section B.8, the Department of Justice would later impliedly adopt this representation in seeking to cause the issues raised in the motion to go unaddressed.

6. Developments Concerning Testimony of Thomas T. Demery [b6]

Thomas T. Demery is the former the HUD Assistant Secretary for Housing/Federal Housing Commissioner who was named in the title of the HUD Inspector General's Report on HUD's moderate rehabilitation program that was issued April 17, 1989. But, with the assistance of the public relations firm of Hill & Knowlton, Demery managed to cause far more of the attention within and without the congressional hearings to be turned toward HUD Secretary Samuel R. Pierce, Jr., and his Executive Assistant Deborah Gore Dean. Assuming the truthfulness of Demery's initial testimony before two congressional subcommittees – testimony given in high dudgeon and adorned with terms like "beyond a shadow of a doubt" – it would seem that Demery personally was not involved in any

wrongdoing. But, to the extent that it was not evident at the time of Demery's initial testimony, it would eventually be clear that almost every exculpatory statement Demery made was false.

Some of the reasons that any reasonably intelligent person following the hearings would conclude during the course of the hearings that Demery repeatedly committed perjury are set out at length in the 1991 document styled "The Inquiry of Congressman Tom Lantos into Abuses of the HUD Section 8 Moderate Rehabilitation Program," which may be accessed on the page on this site currently styled "Lantos Hearings." Anyone with an interest in the ability of congressional committees to competently or evenhandedly investigate government abuses or anything else, or the role of public relations firms in influencing such investigations, should review such document carefully. And, in doing so, they should give attention as well to the matters initially uncovered by John R. McArthur regarding the October 1990 hearing of the Congressional Human Rights Caucus where a witness named Nariyah represented that she had observed certain atrocities following the Iraqi invasion of Kuwait (such as is discussed, say, at http://www.democraticunderground.com/discuss/duboard.php?az=show_mesg&forum=103&topic_id=313962&mesg_id=313962, http://en.wikipedia.org/wiki/Nurse_Nayirah, and many other places). Some discussion of such matter, which also briefly addresses the issue of Hill & Knowlton's possible involvement in the concealment of Demery's false testimony, already exists on the referenced page of this site

In any case, the Independent Counsel would ultimately indict Demery for perjury with respect to certain of his statements before two congressional subcommittees. In the course of reaching a plea agreement that would not include a perjury charge, Demery acknowledged that the statements underlying his perjury charges were false and even stated why he had made the false statements. He also acknowledged things that showed that many other of his statements were false. The most comprehensive list of false statements is likely found in the Appendix to my August 13, 1997 letter to Larry D. Thompson, which identifies 36 sworn statements by Demery that materials in the possession of the Independent Counsel indicated were false.

Demery's testimony would differ from Dean's on a crucial point relating to two counts of Dean's Superseding Indictment. Thus, Dean's attorney sought to undermine Demery's credibility by forcing him to acknowledge that he had committed perjury before Congress. The following is the initial questioning:

> Q. Okay. Now you have testified -- you testified publicly on television, as a matter of fact, regarding certain of the inspector general's allegations at HUD; isn't that right?
> A. Yes.
> Q. And those were on C-Span, were they not?
> A. Yes, they were.
> Q. And you were put under oath --
> A. Yes, I was.
> Q. -- during those hearings?

A. Yes, I was.
Q. And did you swear to tell the truth?
A. Yes, I did.
Q. And did you tell the truth?
A. Yes, I did.
Q. You told the utter and complete truth in front of those -- on those hearings?
A. Yes, I did.
Q. Okay. You haven't been -- you didn't plead guilty to perjury, did you?
A. No, I did not.
Q. Okay. Is that because you've never committed perjury?
A. Of course.
Q. Okay. And you told the truth in front of the Lantos committee in the same fashion as you're telling the truth today, correct?
A. Correct.
Q. I mean, you've been put under oath today, correct?
A. Yes.
Q. And you had the same obligation you have today as when you were in front of the Lantos committee? You recognize that?
A. Yes, I do. I know a lot more than I did before the Lantos committee. I've had an opportunity to look at documents and spend a lot of time on issues than I did when I testified in front of chairman Lantos.
Q. Okay. So you may have made some mistakes in front of the Lantos committee, but they certainly wouldn't have been intentional; is that what you're saying?
A. Yes.

Tr. 1915-17. There followed an effort to illustrate that Demery had committed perjury through the use of a video recording of the hearings, which seemed, from my perspective, too complicated to be very effective.

The point, however, is that Demery's repeated and unequivocal denials that he had lied in the Lantos hearings were false and the fact that they were false had to have been obvious to Independent Counsel attorneys. Thus, those attorneys had an obligation to correct such testimony. Instead of doing so, Independent Counsel attorney Robert E. O'Neill simply proceeded to elicit Demery's most crucial testimony in redirect.

This matter, including the Independent Counsel's response to Dean's raising this matter in her Rule 33 Motion is covered at length in the December 1, 1994 narrative appendix styled "Testimony of Thomas T. Demery" (Demery). And I suggest that the reader will find the Independent Counsel's response – which does not deny the obligation to correct the testimony if it were perjurious, but maintains that neither Demery nor trial counsel recognized that the testimony was perjurious – to be something quite remarkable. But, as suggested in a number of places, it is not simply an absurdly weak argument. Such response constituted a false representation to the court with regard to a matter where Independent Counsel attorneys had an obligation to tell the court the truth.

In any case, the response was dismissed out of hand by the district court. As discussed in the Introduction and Summary (Section IV.E), in the court of appeals the Independent Counsel would address this matter by merely stating with respect to the allegation that Independent Counsel attorneys had reason to know that Demery's denial that he had lied to Congress were false: "But the charge is not true, as the government demonstrated at length below."

The comment section of the Demery narrative appendix (Section H) points out that very likely the Independent Counsel would make no mention of Demery's perjury in the Dean case when it advised the court in Demery's own case concerning Demery's fulfillment of his plea agreement. And it raised the issue of how Demery, whose plea agreement required that he give completely truthful testimony, could possibly have denied having lied to the Lantos subcommittee unless he had been in some manner advised to do so by Independent Counsel attorneys. In doing so, I suggested that possibly Independent Counsel attorneys had provided Demery a rationale by which he could state that he had never lied before Congress while feeling that he was testifying truthfully, though noting that is was difficult to imagine what that rationale could have be. Such suggestion, it warrants note, was made before my December 1994 conversation with Associate Deputy Attorney General David Margolis and before it had occurred to me that Agent Cain might have given his testimony because he was led to believe it would be literally true. I should add, however, that the situation of Demery, who was in the position of having to do whatever Independent Counsel attorneys asked of him in order to secure his freedom, differed substantially from that of Agent Cain, who was at that point a principled government agent on whom Bruce C. Swartz and Robert E. O'Neill apparently had to exert considerable pressure to cause him to provide the answers he did. Thus, there might have been no need whatever to develop a rationale by which Demery's testimony was true. In any case, the narrative appendix noted that Demery remained available as a cooperating witness to inform the Department of Justice of the nature of his conversations with counsel that led to his denying he had ever lied to Congress.

In Section B.2 of a May 25, 1995 letter to David Margolis, I raised the issue again, specifically asking "whether Demery has yet been contacted, and if not, why he has not been contacted." And in my August 18, 1995 letter to Michael Shaheen, I again posed the question of whether in its review of the matter the Department of Justice had interviewed Demery. (Shaheen would later state that the Department of Justice did not consider responding so such question to be productive. See Section B.8.)

Such was the situation when I initially raised the same matter with Independent Counsel Larry D. Thompson in a letter of September 18, 1995 (Section D). By letter of December 12, 1995 (Item 7), I then pointed out that Thompson had had ample time to interview Demery to determine whether he had denied having lied to Congress because he had been instructed to do so by Independent Counsel attorneys.

Thereafter, the first known instance in which the Independent Counsel addressed the issue of Demery's denials that he had ever lied to Congress occurred when the Independent Counsel's responded to Dean's certiorari petition in the Supreme Court.

There – and once again in circumstances where the government was obligated to tell the courts the truth about whether its attorneys knew whether a witness committed perjury as well as to fairly characterize the record below – in a February 1996 opposition (authored by Independent Counsel Larry D. Thompson and Deputy Independent Counsel Dianne J. Smith with Charles Rothfield and Michael E. Lackey, Jr. listed as of counsel), the Independent Counsel addressed the matter by simply stating that "the question as to which petitioner now claims Demery perjured himself was ambiguous." Independent Counsel Opp. Cert. 13 (available at http://www.appellate.net/briefs/Gore_Dean.pdf).

Let us for a moment put aside the issue of whether the Independent Counsel's statements involve arguments or representations, whether Demery provided the responses he did because he was told by Independent Counsel attorneys to adamantly deny that he had lied to Congress, and whether Independent Counsel responses should be regarded as attempting to cause the concealment of the suborning of perjury. Irrespective of such issues, one must regard the attorneys who wrote the quoted language with respect to the testimony set out ten or so paragraphs above (like those who responded in the district court and the court of appeals) as attorneys who will write anything in a brief that they think they can get away with writing, or, at any rate, attorneys who recognize no obligation of representatives of the United States to attempt to fairly characterize a matter, or who, recognizing such obligation, ignored it.

There remained throughout this period the issue of what the Independent Counsel would inform the court in Demery's own case with respect to his fulfilling his obligation to provide completely truthful testimony as a government witness. The Independent Counsel addressed that matter on February 27, 1996. In a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines, the Independent Counsel represented to the Honorable Stanley S. Harris in the case of *United States of America v. Thomas T. Demery*, Crim. No. 92-227-SSH (D.D.C), that Demery had fulfilled his agreement to provide completely truthful testimony. The Independent Counsel did not inform Judge Harris either that a question had been raised before Judge Hogan as to whether Demery had committed perjury in the Dean case or that Judge Hogan had essentially found that Demery had committed perjury in that case.

Assuming Thompson gave his obligations in this matter any serious thought, it is understandable that he would find himself in a difficult position with regard to Demery. It is indeed virtually impossible to believe that Demery would have given the answers he did about previously lying to Congress unless instructed to do by Independent Counsel attorneys. As noted, it is possible that Independent Counsel attorneys contrived a rationale, as they apparently did for Agent Cain's testimony, whereby the answers might be deemed to be literally true, though, as with Cain, they did not have the temerity to advance such rationale to the court. But, if Demery had been so instructed, it would hardly seem fair then to deny him the freedom Independent Counsel attorneys had promised him for providing that and other testimony.

I assume, however, that at no point did Thompson consider taking to any action to learn of Independent Counsel actions regarding Demery, just as he never considered taking any

action to learn of Independent Counsel actions regarding Cain or any of the matters I brought to his attention – or that were brought to his attention by others (see discussion of the complaint by a former Independent Counsel document manager in Section B.9). And, of course, Thompson, who had been chosen by Adams to succeed him (as Adams explained in a 1999 interview (1999AI)), may have been fully aware of all of these matters prior to assuming the position of Independent Counsel. In any event, he never responded to the following questions regarding Demery (posed in my letter dated July 3, 1997, and pursued again in my letter dated August 13, 1997):

> 9. Do you deny that in a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), you represented to the Honorable Stanley S. Harris that Thomas T. Demery had given completely truthful testimony in this case? Do you deny that that representation was known by you to be patently false when made? Do you maintain that if the representation was false, you did not violate 18 U.S.C. § 1001 or other federal laws by making it?
>
> 10. Do you deny that either you have refused to attempt to learn whether Thomas T. Demery was instructed by Independent Counsel attorneys to deny that he had ever lied to Congress or you have known or assumed for some time that Thomas T. Demery was instructed by Independent Counsel attorneys to deny that he had ever lied to Congress?

Note to B.6: 18 U.S.C. § 1001, which prohibits the making of false statements or concealment of material facts concerning matters "within the jurisdiction of any department or agency of the United States," has usually been applied to statements made to executive agencies (and has been held not apply to statements made to congress or the courts). In the Dean case, the court of appeals also applied the statute to statements made by an executive branch employee concerning matters within the jurisdiction of the employee's department or agency. See CA Ruling, note 10. The suggestions that actions of Independent Counsel attorneys violated 18 U.S.C. § 1001 in the July 3, 1997 and August 13, 1997 letters to Thompson and elsewhere thus did not involve the fact that the statements were made to courts but the fact that such statements concerned matters within the jurisdiction of the Office of Independent Counsel.

7. The Independent Counsel's Response in the Supreme Court Concerning the Andrew Sankin Receipts [b7]

In opening argument Associate Independent Counsel Robert E. O'Neill described alleged co-conspirator Andrew Sankin as someone who was "wining and dining" Dean and "buying her gifts." Later he would seek to introduce a number of receipts of Sankin into evidence to substantiate this allegation. Ultimately the district court would excoriate O'Neill for failing to disclose Sankin's off-the-stand statement that certain receipts, which were being introduced into evidence as if they reflected meals or gifts Sankin purchased for Dean, may not have applied to her. But the court's criticism missed the

point. As discussed in the December 1, 1994 narrative appendix styled "The Andrew Sankin Receipts" (AS) and many other places, O'Neill knew with virtual certainty that a number of the receipts he sought to lead the jury to believe applied to Dean in fact did not apply to her. Thus, O'Neill did not regard Sankin's statement as telling him anything he (O'Neill) did not already know.

In defending his actions, and while expressing considerable annoyance that his ethics were being questioned, O'Neill made clear that he believed it was permissible to introduce the receipts that did not apply to Dean into evidence in a manner to lead the jury to believe they did apply to Dean so long as the "Government did not say" they applied to Dean. Tr. 1203. In the same place he made clear that he believed it was for the defense to show that the receipts did not apply to Dean. The Sankin narrative appendix also shows that, in defending itself against the use of the Sankin receipts, the Independent Counsel sought to lead the court falsely to believe that Independent Counsel attorneys believed that all the receipts in fact applied to Dean.

To the extent that such matter was not already clear to Thompson from his files in the case, this was made clear to him in materials I brought to his attention in September 1995. Nevertheless, Independent Counsel attorneys then went on to address the Sankin matter in the Supreme Court as follows:

> That Sankin denied knowledge of a link between some of the charge slips and petitioner does not mean, of course, that there was no nexus. Sankin acknowledged entertaining and giving gifts to petitioner. Tr. 2701-2704. Moreover, virtually all the receipts referenced petitioner by name or by her HUD title. See, e.g., GX 11f, 11j, 11k, 11l, 11m, 11n, 11o, 11p, llu, l1w, l1q, l1v. Finally, Sankin's alleged inability to link the slips to petitioner may well have been affected by other factors. As the trial court observed, many of the witnesses the government was required to call were adverse, as they were either unindicted coconspirators or individuals who had been given immunity and required to testify. Pet. App. A-1 55.

Independent Counsel Opp. Cert. 14 (http://www.appellate.net/briefs/Gore_Dean.pdf).

Certainly the authors of this opposition had reason to know, and presumably did know, the Independent Counsel had in fact intended to lead the jury to believe that the receipts applied to Dean even when the Independent Counsel knew for a fact that they did not. Nevertheless, each element of the response is crafted to suggest, not only that Independent Counsel attorneys believed that all receipts applied to Dean (something the drafters of the opposition knew to be false), but that the receipts in fact all applied to Dean but Sankin had been unwilling to relate them to her (something those drafters also knew to be false). The response actually goes a step beyond the efforts undertaken by Independent Counsel attorneys under Arlin M. Adams to deceive the district court and the court of appeals regarding the Independent Counsel's use of the Sankin receipts. The observations in Section B.6 regarding the drafters of the certiorari opposition seem to apply just as well here.

Note to B7: The reader is also urged to give careful attention to the treatment of issues related to Sankin at pages 67-89 of Dean's February 1997 memorandum, especially with regard to the matter of Sankin's Harvard Business School Application where Sankin made statements directly contrary to key elements of the Independent Counsel's case (at 83-89). This document, which clearly received individual attention from Independent Counsel attorneys (having been individually faxed to them five days before Sankin testified before the grand jury), was obvious *Brady* material. It was not, however, made part of a *Brady* disclosure. And, rather than simply burying this document among hundreds of thousands of pages of discovery, Independent Counsel attorneys, it seems clear enough, calculatedly hid it in a place where it was very unlikely to be found (and in fact would not be found until long after the trial).

8. The Department of Justice's Role in Perpetuating All Actions of the Independent Counsel [b8]

In 1999, while Dean's February 1997 motion and her request for reconsideration of the ruling on her December 1996 motion were still pending, the case was transferred to the Public Integrity Section of the Department of Justice. The case was there assigned to Robert J. Meyer, the former Independent Counsel attorney who had signed the opposition to Dean's November 30, 1993 Rule 33 Motion. *See* Section B.12.d. In addition to the December 17, 1999 letter to Robert J. Meyer (RM), the implications of the Department of Justice's assumption of responsibility for continuing the Dean prosecution are discussed in my letter of December 26, 1999, to Attorney General Janet Reno and other officials of the Department of Justice (JR4) and my letter of January 22, 2000 to H. Marshall Jarrett, Counsel for the Office of Professional Responsibility (HJ2).

Robert J. Meyer left the Department of Justice some time in 2000 and in July 2000, responsibility for the case was assumed by Public Integrity Section attorney Raymond N. Hulser. In March 2001, Hulser moved for a hearing to resolve the case. When Dean argued that the government had not yet responded to her pending motions, in a document dated March 28, 2001, Hulser maintained that the Independent Counsel had provided detailed pleadings stating why Dean's request for reconsideration of the ruling on her motion to overturn Count One should be denied and her motion for a new trial should be stricken. Thus, while presumably knowing that the Independent Counsel had repeatedly attempted to deceive the courts, and that the Independent Counsel's representation in the motion to strike that there had been no efforts to deceive the court previously in the case was false, the Department of Justice took an affirmative step toward continuing the concealment of Independent Counsel actions with regarding to such matter. But, even without such affirmative action on the part of the Department of Justice, assuming that it was aware that Independent Counsel attorneys had used false evidence or attempted to deceive the court previously in the prosecution of the case, it could fairly be said that the failure of the Department of Justice to bring such matters to the attention of the court involved a perpetuation of that deception.

Such points, however, pertain to the role of the Department of Justice in the prosecution of the case after it had replaced the Independent Counsel as the prosecutor and the actions of the Independent Counsel became Department of Justice actions. Also deserving of examination are the actions of the Department of Justice when the case was still being handled by the Office of Independent Counsel and the Department's role was limited to determining whether to investigate the Office of Independent Counsel and whether actions of Department of Justice attorneys while serving in the Office of Independent Counsel warranted their removal from positions in the Department of Justice In that regard, I suggest the reader examine the letters to me from Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr. dated June 28, 1995 (FMS1), and January 30, 1996 (FMS2), and my responses dated August 15, 1995 (MS1), and March 11, 1996 (MS2), and, in light of those responses, consider whether the Shaheen letters either accurately characterize the matters at issue or reflect an appropriate concept of the role an overseer or prosecutorial conduct.

Particular attention should be given to the apparent view in the Shaheen letters that, if the extent of misconduct of government attorneys is not revealed in the court proceedings, the authority overseeing the conduct of those attorneys is absolved of responsibility in the matter, and that such view holds even when the government attorneys' misleading of the courts was the reason that the misconduct was not revealed. Further, implicit in Associate Deputy Attorney General David Margolis's raising of the issue of whether Agent Cain's testimony might be literally true – which was apparently suggested as a rationale by which the Independent Counsel actions would not have been as egregious as I was portraying them – is the view both that it is permissible for government attorneys to lead the court and jury to believe things those attorneys know be false so long as the testimony offered for that purpose is literally true and that it is permissible for government attorneys to mislead the court in effort to conceal the nature of the government attorneys' conduct. Thus, one must consider the possibility that actions by federal prosecutors, such as those Independent Counsel apparently undertook with regard to Agent Cain and varied other matters, may not in fact be unusual among federal prosecutors.

One should consider also the fact that, apart from Arlin M. Adams himself, most of the offending attorneys had been Department of Justice attorneys before they joined the Office of Independent Counsel, as some would also be after they left the Office of Independent Counsel. Jo Ann Harris was lead counsel in the Dean case at the time that the Independent Counsel decided to draft a superseding indictment containing statements or inferences Independent Counsel attorneys knew or believed to be false, and with the apparent intention of failing to make *Brady* disclosures in a timely manner, or at all, of statements or documents that would interfere with the Independent Counsel's efforts to lead the jury and the courts to believe those things Independent Counsel attorneys knew or believed to be false, and, equally important, with the intention of failing to confront government witnesses with information that would cause them to acknowledge that the testimony the Independent Counsel planned to elicit was false. See my May 17, 1995 letter to Abner J. Mikva (AM2).

Prior to serving as an Associate Independent Counsel, Harris had held the position of chief of the fraud section of the Criminal Division and had twice been an Assistant United States Attorney. After her service with the Independent Counsel, Harris would hold the position of Assistant Attorney General for the Criminal Division. While there she would be noted in the press for imposing very modest discipline upon a prosecutor who had withheld important evidence from the defense, apparently asserting as the basis for the modest discipline that the prosecutor had failed to recognize the significance of the material withheld. In 1994, she would be appointed, along with, among others, Deputy Assistant Attorney General Margolis and Office of Professional Responsibility Shaheen, to a newly-created Advisory Board on Professional Responsibility. While the other Independent Counsel attorneys had not the amount of federal prosecutor experience of Harris, they all could be deemed experienced federal prosecutors, at least to the point that the Independent Counsel appellate brief signed by Bruce C. Swartz could so describe them in asserting with regard to Dean's allegations that Independent Counsel attorneys had wrongfully failed to produce exculpatory material: "The Independent Counsel also strongly denies her allegations that the experienced federal prosecutors involved in this case acted in bad faith."

Swartz, whose efforts to deceive the district court and the court of appeals are discussed in some detail in the Cain and Park Towers appendixes, including (with regard to Park Towers) the way *Brady* violations assisted in those efforts, would be called upon orally to defend the Independent Counsel conduct with regard to its *Brady* obligations in court of appeals in response to concerned questioning from Judge Laurence Silberman. In doing so, Swartz suggested that any *Brady* violations that may have occurred did so because some attorneys have merely have read their *Brady* obligations too narrowly. Nothing in the response suggested that he was among the persons making those judgments. But Swartz did seek to further justify the approach taken toward *Brady* material by noting that the approach to turning over exculpatory material was determined by a trial counsel who was now the Assistant Attorney General for the Criminal Division. Judge Silberman seemed to take little comfort in such fact.

At any rate, both those who may be skeptical of my allegations as to the nature of Independent Counsel conduct and those who may be skeptical of the ethics of federal prosecutors generally (or of the role of the Office of Professional Responsibility of the Department of Justice in overseeing such conduct) should be aware that the Office of Professional Responsibility is on record that the conduct identified in the December 1, 1994 materials did not call into question the fitness of the involved prosecutors to continue to represent the United States.

Note to B.8: The December 23, 1997 letter to Department of Justice Inspector General Michael R. Bromwich referenced in the Introduction (MB1) requested an investigation of the handling by Department of Justice officials of the allegations of misconduct in the Dean case. In the letter, among other things, I maintained that the Department failed to investigate the allegations in good faith out of a concern that an investigation would establish that high-ranking officials of the Department had violated federal laws while

serving as attorneys for the Office of Independent Counsel. By letter dated April 8, 1998, Inspector General Bromwich advised that he could not review the allegations because his office did not have jurisdiction to investigate matters concerning Department of Justice attorneys' exercise of their authority to investigate, litigate, or provide legal advice.

Meanwhile, by letters dated January 14, 1998, and March 2, 1998, I requested Attorney General Jane Reno to consider the removal of Larry D. Thompson from the position of Office of Independent Counsel, maintaining both that the Department of Justice did not previously consider the allegations of Independent Counsel misconduct in good faith and that developments subsequent to the Department's last communication to me on the matter provide independent justification for reconsideration of the earlier determination. The March 2, 1998 letter addressed the Independent Counsel's actions regarding the complaint by the document manager (see Section B.9) and Independent Counsel actions regarding my effort to review an interview report I had reason to believe had been altered (as the document manager's complaint suggested in fact occurred in some instances).

By letter dated May 4, 1998, Inspector General Bromwich advised that my March 2, 1998 letter to Attorney General Reno had been forwarded to his office for response. Referencing his April 8, 1998 letter me, Inspector General Bromwich advised that the Office of Inspector General did not have jurisdiction to address the matters raised in my March 2, 1998 letter to the Attorney General. By June 17, 1998 letter to Attorney General Reno, I noted that it is an unusual thing for the head of an agency of the United States, who has the authority to address a matter, to refer the matter to a division of her agency that does not have such authority. I requested clarification of whether the Attorney General intended that Inspector General. Bromwich should respond on her behalf by advising me of the lack of jurisdiction of his office. I suggested that, if such had been her intention, it would not discharge her responsibilities over the matter. I therefore requested that the Attorney General either address the matter herself or refer it to a division of the Department of Justice that does have jurisdiction. Attorney General Reno did not respond to that letter.

9. Complaints of the Former Independent Counsel Document Manager [b9]

In November 1991 the Office of Independent Counsel hired a document manager. Since I have not been able to contact such person recently, for the moment I shall refer to him simply as the document manager or former document manager. There is probably little purpose in my not disclosing his name since the Independent Counsel attorneys who are the subject of this page certainly know his identity and copies of the Shaheen transmittal (discussed below) I secured from the Department of Justice and the Office of Independent Counsel also disclosed his name. Nevertheless, at present, I remain disinclined to include his name in this document.

Soon after joining the Office of Independent Counsel, the document manager grew concerned about some of its practices. Initially, the concerns involved problems with

document handling procedures. After a time, however, the document manager also grew concerned about a variety of issues involving leave practices, the hiring of friends, the steering of a lucrative contract to a friend, the use of government vehicles and travel, and what he perceived to be the general misuse of government resources. In the view of the document manager, personnel in the Office of Independent Counsel were engaging in the same sort of conduct for which the Independent Counsel was prosecuting people. Other concerns involved the use of government resources to compile chronologies of the putative sexual partners of a subject of the investigation (as it happens, Deborah Gore Dean), as well as certain practices involving the questionable editing of witness interview reports. After exploring various avenues to bring his concern to the attention of appropriate governmental entities, the document manager decided to broach certain concerns directly with Independent Counsel Arlin M. Adams.

The document manager met with Judge Adams on November 8, 1993, raising with Adams several issues concerning what the document manager perceived to be improper conduct. These included Deputy Independent Counsel Swartz's use of his former law firm for Office of Independent Counsel business and Jo Ann Harris's steering of a contract for the analysis of the handwriting of Deborah Gore Dean to a friend of Harris's, when in other cases the Office of Independent Counsel had relied on the FBI (which, in the view of the document manager, was recognized to be the best in the world). A week later, Adams advised the document manager that he (Adams) believed most issues could be addressed with a memorandum to the file though he might have more trouble with certain items like the handwriting contract. Adams also informed the document manager that due to the need to make staffing cuts, the document manager was being terminated, effective 60 days from November 15, 1993.

Over the next few years the document manager filed a number of complaints with government agencies raising issues of improper conduct by the Office of Independent Counsel. After learning of the first of these complaints, at the end of December 1993 the Independent Counsel terminated the document manager immediately for allegedly disclosing grand jury information and thereafter caused the Department of Justice to investigate the document manager for such disclosures. Though the Department of Justice apparently led the document manager to believe it might very well prosecute him, ultimately, by letter dated by letter dated September 9, 1996, the Public Integrity Section informed the document manager that it would not prosecute.

On November 15, 1996, the document manager then filed a complaint with the Department of Justice's Office of Professional Responsibility (DMCOPR). By letter dated February 25, 1997 (MSLT), Michael E. Shaheen forwarded the letter to Independent Counsel Larry D. Thompson, "for investigation and appropriate action." The transmittal added: "Of course, if your investigation should determine that any criminal prosecutions were tainted by misconduct, we expect you will take appropriate steps to inform the affected courts."

The document manager's November 15, 1996 letter is short enough to speak for itself. But I list below just four of the nine items identified by the document manager:

(1) The Independent Counsel Arlin Adams and his Deputy, Bruce Swartz destroyed dozens of FBI 302s. The reason offered for the collection (and shredding) of all copies (and the originals) was that the interview did not further the case.

(2) The Independent Counsel Arlin Adams, Deputy Bruce Swartz and the Office Administrator, Terry Dugan, edited hundreds of FBI 302s. Special Agent Matthew Kelleher expressed to me his uneasiness with 302s (the final version of an interview) being edited at all, much less edited by personnel who were not present at the actual interview.

(3) Deputy Independent Counsel Bruce Swartz knowingly and willfully suppressed evidence, and violated discovery rules, including Brady and Jencks.

(4) Federal Prosecutor Paula Sweeney directed Office of Independent Counsel employees [names redacted in my copy] to create a chronology of bed partners whom Deborah Gore Dean (Office of Independent Counsel Target) allegedly slept with while employed at HUD. The FBI agents used their reports of interview (302s) and Federal Prosecutors [name redacted on my copy] to solicit information about Dean's romantic trysts. The chart that was created was known as the "The Dean Sex Chronology". The chart (created at the taxpayer's expense) had no relevance to the charges the government brought against Dean or to the Office of Independent Counsel's Mandate.

I set out the first three items because they raise issues closely related to the issues discussed in the December 1, 1994 materials and other materials referenced here. I set out the fourth item because it suggests an attitude toward Deborah Gore Dean within the Office of Independent Counsel, and certainly of Paula Sweeney, one of the trial counsel in the case, that may have had some role in causing the seemingly exceptional actions catalogued in the December 1, 1994 materials and elsewhere.

The document manager is the former Independent Counsel employee mentioned in Section B.1 who informed me of the circumstances observed in the offices of the Independent Counsel regarding the securing of Agent Cain's testimony and the reaction to the fact that the coaching of Agent Cain had not been revealed in cross-examination. Allegations of the document manager may receive further attention, possibly along with attention to indications that interview reports or other materials were altered or destroyed by the Office of Independent Counsel (such as is discussed in my letter to Larry D. Thompson dated January 3, 1996, Dean's memoranda of December 1996 and January 1997 (with regard to two matters), my letters to Larry D. Thompson, of February 26, 1997, March 26, 1997, March 31, 1997, May 14, 1997, May 26, 1997 (with regard to fabrication of Government Exhibit 25); and the FOIA correspondence regarding my efforts to examine a copy of the Martinez interview, summarized in Section B of my March 2, 1998 letter to Attorney General Janet Reno (which related to the exclusion of certain information from that report)).

At this point, however, I address only two issue related to the document manager's complaint. First, the Department of Justice's handling of the document manager's complaint must be evaluated in light of the Department's also having the materials I submitted to it concerning like issues. Similarly, an evaluation of the Department of Justice's handling of my complaints, as well as the Department's actions in the continued prosecution of the Dean case while aware of the matters I brought to its attention, must also take into account the Department's awareness of the document manager's complaint.

Second, my January 5, 1998 letter to Deputy Independent Counsel Dianne J. Smith summarizes the situation to that point regarding my efforts to secure by way of the Freedom of Information Act all documents not filed in court alleging prosecutorial misconduct by the Office of Independent Counsel. The letter discusses the representations by the Office of Independent Counsel that no documents meeting the description of the document manager's complaint existed. In the letter I also advised the Office of Independent Counsel for the first time that I was aware of the Office of Professional Responsibility's February 25, 1997 transmittal of the document manager's complaint, attaching a copy of said transmittal.

By letter of February 2, 1998, Deputy Independent Counsel Smith provided a copy of the Shaheen transmittal. Somehow reading my request to be solely for a copy of the same document I had sent to her, Smith did not provide the underlying, more detailed complaint or say anything about it. In explanation for the previous representations that no document of the description of the document manager's complaint existed, Smith stated that my letter of January 5, 1998 had caused the Independent Counsel to search again for the letter and that the "Office of Independent Counsel found a copy of the letter in a location not ordinarily containing correspondence of the nature you requested." Deputy Independent Counsel Smith did not state whether the underlying complaint had been found there as well.

If Deputy Independent Counsel Smith had originally misrepresented her knowledge of the document manager's complaint, there exists the possibility that complaints of other persons were never revealed. If Smith's responses were truthful, the fact that Smith, who ran the office on a day-to-day basis and had signed the Independent Counsel's motion to strike Dean's February 1997 motion, was not even aware of the document managers complaint is itself revealing of the of the manner in which the Independent Counsel complied with Michael E. Shaheen's instruction to investigate the allegations and take appropriate action.

10. Larry D. Thompson's Fitness to Hold Public Office [b10]

Larry D. Thompson replaced Arlin M. Adams as Independent Counsel on July 3, 1995, and served in that position until sometime in 1999. Thompson, a former United States Attorney, had been with the Office of Independent Counsel from October 1990, though he apparently worked there only part time while maintaining a law practice with the Atlanta firm of King & Spaulding. I do not know what matters Thompson was involved

with in his work for the Independent Counsel. As noted earlier, however, it is certainly possible that even before he succeeded Arlin M. Adams as Independent Counsel in July 1995, he was aware of, if not involved with, many of the things I brought to his attention commencing in September 1995. As noted earlier, Thompson was apparently specifically chosen by Adams.

After leaving the Office of Independent Counsel in 1999, Thompson served as Deputy Attorney General from 2001 to 2003. In that position, among other things, Thompson headed the federal task force on corporate fraud. He was thereafter a Senior Fellow at the Brookings Institution and is now Senior Vice President, Government Affairs, General Counsel and Secretary of PepsiCo. He has been mentioned as a possible appointee both to the Supreme Court and to the position of Attorney General of the United States.

Profiles of Thompson may be found at http://www.answers.com/topic/larry-thompson and http://en.wikipedia.org/wiki/Larry_Thompson

In any future Republican administrations, Thompson likely will be again considered for high government positions. Thus, his role as an Independent Counsel, particularly with regard to the continued concealment of any ways in which Independent Counsel attorneys deceived the courts concerning the various matters addressed on this page, is a matter warranting substantial attention. It may eventually receive further attention here. A few points warrant mention at this time.

In 2002 an issue arose concerning Thompson's making between $1 million and $5 million on the July 2001 sale of a stock of Providian Financial Corporation, a company of which he had been a director and chairman of the auditing committee. The sale occurred very shortly before concerns about the company's prospects, and then a company announcement of problems, caused the stock's price to drop dramatically. Thompson's transactions apparently involved the sale of 27,151 shares already owned and the exercising of stock options on another 62,500 shares to be simultaneously sold. According to an August 15, 2002 *Washington Post* account of the matter (WP81502), a spokesperson for Thompson (who was apparently the Public Affairs Director of the Department of Justice) stated that Thompson's understanding was that he had to sell the stock. But, according to the *Post* article, in fact Thompson's ethics agreement merely required that he recuse himself from matters involving Providian.

Many readers of the article might well conclude that Thompson used the Deputy Attorney General appointment as an excuse to divest himself of a stock that he knew was soon going to drop substantially in price, and they might well also conclude that the statement that he understood that he had divest himself of the stock was intended to mislead. A troubling aspect of the statement is that it was made by a representative of the Department of Justice. Neither the representative nor the Department in fact knew what Thompson's thinking was on the matter. Thus, the Department ought not to have been making statements on behalf of one of its officials regarding a personal matter, when the Department was not a position to judge the true nature of the official's conduct.

A crucial question for Thompson, of course, was whether at the time he made the decision to sell the stock he, as head of the audit committee or otherwise, was aware of the impending problems. Thompson avoided addressing that or other questions. Instead he refused to comment directly, and in a press conference simply stated with respect to his fitness for the position of Deputy Attorney General:

> Well, this is Washington, isn't it? And I believe all those who have worked with me and against me will attest of [sic] my integrity. I think my integrity and record of public service speaks for itself.

As with Thompson's representation in support of the motion to strike Dean's February 1997 motion that his predecessors in the prosecution of the Dean case had not attempted to mislead the courts, the approach Thompson took to this matter illustrates how much easier it is respond broadly to a matter than to directly address specific issues.
In any case, there seem to be two parts to Thompson's statement. The first part is that all those who had worked with or against him would attest to his integrity. As suggested by the discussion in certain other parts of this section, and many other statements in my letters to Thompson (including the ten questions posed in my letter of July 3, 1997), regardless of whether there was merit to my assertions, Thompson's suggestion that no one has questioned his integrity was plainly inaccurate.

The second part involves Thompson's assertion that his record of integrity and record of public service speak for themselves, which presumably implies that, in so speaking, they show Thompson to be a person of integrity and one whose record of public services is unblemished. This part of the statement raises issues that are more complicated, though, I suggest, not all that complicated. In any event, until I give the matter further attention the reader is encouraged to review the materials posted here regarding Thompson's action in the Dean case following my bringing certain issues to his attention and following the filing of Dean's motions of December 1996 and February 1997.

11. Additional Evidence of Ill Feelings Independent Counsel Arlin M. Adams Bore toward John N. Mitchell [b11]

Various materials referenced on this page mention a statement by Arlin M. Adams, made shortly after he was appointed Independent Counsel in 1990, that he might have been on the Supreme Court had he not offended Attorney General John Mitchell. I suggest that intelligent readers of these materials will conclude that Arlin M. Adams sought to involve John Mitchell, posthumously, in a conspiracy claim that Independent Counsel attorneys believed was, in whole or in part, false, and that in the course of attempting to prove such claim those attorneys led the jury and the courts to believe many things those attorneys knew or believed to be false. Such readers will also conclude that with regard to most of the other claims against Dean, Independent Counsel attorneys engaged in egregious misconduct that also included leading the courts and the jury to believe things those attorneys knew or believed to be false. Putting such issues entirely aside, however, thoughtful observers would question the appropriateness of the involvement of Adams in the Dean prosecution in light of the expressed belief that Mitchell had kept Adams from

the Supreme Court. That would hold even if in fact Adams bore no animus toward Mitchell, since it was Adams' obligation to avoid any appearance of bias. And it would hold with respect to the prosecution of Deborah Gore Dean, a person regarded as John N. Mitchell's stepdaughter, regardless of whether the claims also involved Mitchell.

In any case, the recent book on John N. Mitchell, *The Strong Man* (at 484), by James Rosen, suggests that Adams may have harbored ill feelings toward Mitchell for reasons beyond those based on the perception that Mitchell had kept Adams from the Supreme Court.

As to Adams' direct involvement with prosecutorial abuses, I suggest that the reader review my letter to Associate Deputy Attorney General David Margolis of December 25, 1994, as well as the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." See also Section B.9 concerning the document manager's complaint that alleged that Adams himself had been involved in the improper editing of reports of witness interviews at which he was not present.

11a. Complaint to the District of Columbia Office of Bar Counsel [b11a]

In late 1995, I filed a formal complaint with the Office of Bar Counsel of the District of Columbia Court of Appeals against certain Independent Counsel attorneys involved in the Dean prosecution, including Robert E. O'Neill, Bruce C. Swartz, and Paula A. Sweeney. The complaint included the various allegations I made in materials provided to the Department of Justice on December 1, 1995.

Whether or not the subjects of such a complaint are representatives of the government, they are obligated to tell the truth in representations they make in a Bar Counsel proceeding. Materials made available on this page will show that Independent Counsel attorneys' responses in the courts to Dean's allegations of misconduct were almost always misleading, and, that in cases where the responses included express or implied representations, such representations were almost always false. A Bar Counsel proceeding would put Independent Counsel attorneys in a position where they could either again make misleading arguments and false representations or make straightforward arguments and true representations, but it would do so in circumstances where the issues should be somewhat different. That is, an ethical proceeding is, or should be, more concerned with the true intent of the attorneys whose conduct is called into question than in whether the actions of those attorneys affected the outcome of the trial.

It also warrants note that the allegations I brought to the attention of Bar Counsel raised many issue that had not been raised in Dean's Rule 33 Motion or in the courts and pointed out many things not noted in the court proceedings. Some of these matters included efforts of Independent Counsel attorneys to deceive the court in responding to Dean's Rule 33 Motion. For example, as discussed in the Park Towers appendix, in oral argument on February 14, 1994, Deputy Independent Counsel Bruce C. Swartz defended

the effort to lead the jury to believe that a reference in a document to "the contact at HUD" concerning the Park Towers project was a reference to Dean, even though an immunized witness had stated otherwise, on the grounds that there were no documents showing the contacts with the other person and that Dean had been responsible for a post-allocation waiver on the project. In fact, documents of which Swartz could not possibly have been unaware – and which should have been part of a *Brady* disclosure to the defense – did show contacts with the other person and also showed that the other person, not Dean, had been responsible for the waiver.

Unfortunately, at the time I filed the Bar Counsel complaint I had not yet come fully to realize that Agent Cain had testified that he did not remember the April 1989 call from the defendant Deborah Gore Dean, even though he did remember the call, based on a rationale that his testimony was nevertheless literally true (*see* Section B.1). So I was not in a position to attempt to force a response to that allegation. Nevertheless, the matter of Agent Cain's testimony provides one useful means of adding context to the situation in which my complaint placed Independent Counsel attorneys O'Neill, Swartz, and Sweeney. For they could tell Bar Counsel the truth about the circumstances in which they secured Cain's testimony. Or, as Independent Counsel attorneys including Swartz (though not including O'Neill and Sweeney) had done in responding to Dean's motion in court (and had done in the letter to the probation officer), they could attempt to deceive Bar Counsel in the matter. If they were to do the latter, and I am correct that the earlier actions to conceal the circumstances of Agent Cain's testimony constituted a conspiracy to obstruct justice, the effort to deceive Bar Counsel would be an additional act in furtherance of that conspiracy. And if O'Neill and Sweeney were to be involved in such effort to deceive Bar Counsel, they, too, would now be parties to the conspiracy regardless of whether they previously had been.

The rules of the District of Columbia Court of Appeals require that Bar Counsel proceedings be kept confidential (though, I am confident, such rules neither intend to nor could deny me the right to state publicly that I filed a complaint). Thus, I cannot now state what occurred in the matter. But I have taken steps to secure the agreement of the named subjects to waive any objections to disclosure. And whether or not I secure such agreement, I will seek permission of the Office of Bar Counsel to publicly disclose all materials filed in connection with my complaint or any other complaints of prosecutorial misconduct in the Dean case on the grounds that important public interests will be served by such disclosure.

12. Developments Regarding the Independent Counsel Attorneys Involved with the Original Prosecution [b12]

a. Jo Ann Harris

In February 1995, I provided the same materials I had provided the Department of Justice to White House Counsel Abner J. Mikva, asserting that the information in the materials indicated that former Independent Counsel attorney Jo Ann Harris was not fit to serve as Assistant Attorney General for the Criminal Division. Judge Mikva forwarded those materials to the Department of Justice in early March 1995. Later that month, Harris informed the Attorney General that, for personal reasons, she (Harris) was resigning at the end of the summer. Unaware of the March 1995 conversation, on May 17, 1995, I delivered a letter to Judge Mikva (AM2) complaining of Harris's continued service as Assistant Attorney General for the Criminal Division. The letter detailed matters in which Harris was involved and presented some additional considerations for as to why she should not be allowed to serve in her current position.

By letter dated May 18, 1995, referencing the March 1995 conversation and noting that when appointed she had intended to serve only two years, Harris formally advised the Attorney General of her resignation "effective around the end of summer." The Department of Justice issued a press release the following day attaching a copy of the resignation letter. The resignation letter is ambiguous as to when Harris might have informed Reno that she (Harris) had intended to serve only two years. But in a *Legal Times* story of September 12, 1994, which highlights Harris's appointment to newly-created Department of Justice Advisory Board on Professional Responsibility (see Klaidman D, "Prosecutorial Abuse Target of Reno Plan," *Legal Times* September 12, 1994, 1, 23-24), there is no suggestion that Harris intended to leave within a year and the appointment would seem to make little sense if such intention were known..

The timing of Harris's March 1995 informing of the Attorney General of Harris's intention to leave the Department of Justice suggests at least a fair possibility that knowledge of the forwarding of the materials by Judge Mikva influenced that decision. It is not inconceivable that the May 17, 1995 letter to Judge Mikva had some role in causing Harris to formalize her resignation on May 18, 1995, and the Department of Justice to publicize it on May 19, 1995. But one generally would not expect a letter like mine of May 17, 1995, even if read immediately, to prompt action so soon thereafter.

Harris is currently a Scholar in Residence at Pace Law School. A profile of Harris may be found at http://www.pace.edu/page.cfm?doc_id=23172.

b. Bruce C. Swartz

Before leaving the Department, Harris hired Bruce C. Swartz as a special assistant. Swartz had resigned from his position as Deputy Independent Counsel effective June 25, 1995, thanking Arlin M. Adams for all he had done "for me, for the Office, and for our country," and noting: "There has never been a finer Independent Counsel." Swartz then joined the Department of Justice as a special assistant to Harris effective June 26, 1995. In an undated memorandum presumably drafted some time thereafter, Harris

recommended Swartz for a $3,500 monetary award for "exceptional performance while serving as my Acting Special Assistance since May of this year." Swartz then received such award on September 17, 1995. He then remained in the Justice Department after Harris's departure. I first sought Swartz's removal from the Justice Department by letter of November 30, 1995 to Acting Assistant Attorney General John C. Keeney. By letter from Michael E. Shaheen dated January 30, 1996, the department declined to investigate Swartz's conduct as Deputy Independent Counsel. Swartz resigned from the Department of Justice effective January 5, 1998.

But Swartz rejoined the Department as some time thereafter. He is currently a Deputy Assistant Attorney General in the Criminal Division in charge of international issues. He occasionally testifies before Congress and has some role in the approval or wiretaps.

c. Robert E. O'Neill

Robert E. O'Neill, who was lead counsel in the Dean case, left the Office of Independent Counsel immediately following the trial to become an Assistant United States Attorney in the Middle District of Florida. While I suggest that the reader will regard O'Neill's conduct during the trial to reflect an astonishing lack of regard for truth, it warrants note that O'Neill had no known role in responding to Dean's motion for a new trial and hence possibly no role in any efforts to deceive the court in such response. Further, the discussion in note 5 of the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge" suggests that O'Neill might have argued within the Office of Independent Counsel that the proper response to Dean's allegations regarding Cain would have been to point out that Cain's denial of recollection of the call pertained only to "at or about" April 17, 1989.

I sought O'Neill's removal in the same November 30, 1995 letter to Acting Assistant Attorney General John C. Keeney mentioned with regard to Swartz as well as in a letter of the same date to Charles R. Wilson, the United States Attorney for the Middle District of Florida. The Department of Justice took the same position as to O'Neill that it took with regard to Swartz, as discussed above. O'Neill remains with Office of the United States Attorney for the Middle District of Florida to this date. In October 2007, he was appointed on an interim basis to the position of United States Attorney for the Middle District of Florida. He was recently in the news in connection with the prosecution of the actor Wesley Snipes for failing to pay income taxes.

Profiles of O'Neill may be found at http://www.thesnipestrial.com/oneill.htm and http://www.sptimes.com/2007/10/27/State/US_attorney_post_gets.shtml.

d. Robert J. Meyer

Robert J. Meyer, the attorney who signed the Independent Counsel's opposition to Dean's motion for a new trial, left the Office of Independent Counsel in July 1994. On July 18, 1994, he joined the Public Integrity Section of the Criminal Division of the

Department of Justice, though his name would still appear on the Independent Counsel's appellate brief in the Dean case filed on September 16, 1994. I first raised a question of Meyer's fitness to represent the United States by letter or August 3, 1998, to Lee J. Radek, Chief of the Public Integrity Section. While such matter was pending, in July 1999, after the Dean case was transferred from the Office of Independent Counsel to the Justice Department, Meyer was placed in charge of the case. The Department of Justice never specifically responded with respect to my concerns about Meyer, save as might be implied by the letter from H. Marshall Jarrett dated December 20, 1999. See my January 22, 2000 response to the Jarrett letter.

My letter to Meyer dated December 17, 1999 (RM) has been referenced above as providing a relatively a succinct summary of the Cain matter that includes discussion of the implications of the Cain testimony's being put forward on the basis that it was literally true notwithstanding that Dean had called Cain, and, in light of such fact, the Independent Counsel's response to Dean's allegations. Meyer never responded to the question posed in that letter, to wit: "Did you seek to lead the court to believe that Deborah Gore Dean had not called Agent Cain to ask about a check in April 1989 even though you knew not only that she had called Agent Cain but that he remembered the call?" At some point in the year 2000, Meyer resigned from the Department of Justice. He is currently in private practice with the firm of Willkie Farr & Gallagher, LLP, in Washington, DC.

A profile of Meyer may be found at: http://www.willkie.com/RobertMeyer

e. Arlin M. Adams

Arlin M. Adams resigned as Independent Counsel by letter dated May 15, 1995, having the same day met with the three judges comprising the Division for the Purpose of Appointing Independent Counsels (usually referred to as the "Special Division"). Apparently during the meeting there occurred no discussion of the suitability of the appointment of David M. Barrett to investigate HUD Secretary Henry Cisneros (which appointment would then take place on May 24, 1995), or, at least, in 1999, Adams could not recall being asked about such matter. See note 4 of the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge" (Barrett). On May 17, the judges of the Special Division wrote Adams to convey their "unmeasured appreciation for a job well done," stating also: "No one has better carried out the role of independent counsel than you."

Arlin M. Adams remains a highly respected former jurist. In 2007, the new College of Law of Drexel University created an Arlin M. Adams Professorship of Legal Writing, naming Judge Adams an honorary member of its inaugural class. In 2005 the Annenberg Foundation established the Arlin M. Adams Professorship in Constitutional Law at the University of Pennsylvania Law School. In an address on the professorship, Michael A. Fitts, the dean of the law school observed:

> Arlin Adams' unquestionable integrity and prudent leadership exemplify the highest ideals of the legal profession. A professorship in his name does honor to Penn Law. Therefore, the entire Penn Law community is grateful to the Annenberg Foundation, which has been such a good friend to the University, for its generous support of the Law School and of an alumnus whom we hold in the highest regard.

There exists an Arlin M. Adams Center for Law and Society at Susquehanna University in Selinsgrove, Pennsylvania. The Center is precisely the kind of institution that would study things like prosecutorial abuse and its director writes on that and related issues. A recent example, styled "Prosecutors Rarely Penalized for Misdeeds," may be found at http://www.susquehanna.edu/lawandsociety/prosecutors%20misdeeds.doc.

A profile of Judge Adams may be found at http://www.schnader.com/newest_4_02/site%20files/attorneys/attorneyBio.asp?attyID=35.

C. Recently-Created Materials

In addition to the materials created between 1994 and 2000, certain documents have been created recently. They are listed and briefly described below. Since it is easy to do so without breaking up the narrative, links to posted documents are provided immediately after the document.

A May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge" addresses a matter not previously treated Such matter involves the Independent Counsel's bringing to Judge Thomas F. Hogan's attention an off-the-stand remark Dean had made on October 14, 1993, about David M. Barrett and the judge. Barrett, now best known for his later serving, from 1995 to 2005, as an Independent Counsel to investigate HUD Secretary Henry Cisneros, was a figure in the events that underlay the appointment of Independent Counsel Arlin M. Adams and was also a close friend of Judge Thomas F. Hogan. The document maintains that, while recognizing the innocuousness of Dean's remark, on October 18, 1993, shortly before Independent Counsel attorneys called Supervisory Special Agent Alvin R. Cain, Jr. to seemingly contradict Dean's testimony about calling him in April 1989, Independent Counsel attorneys brought the remark to Judge Hogan's attention as if it were something quite odd. They did so, the document maintains, to undermine the court's impression of Dean in a way that would both facilitate the use of the Cain testimony and generally prejudice the court against Dean. The document also suggests that the tactic may well have achieved its purpose. It also illustrates Arlin M. Adams' close involvement with the matter and presumptive involvement with the decision to use Agent Cain in the manner described above.
http://www.jpscanlan.com/images/David_Barrett_and_the_Judge.pdf

A May 31, 2008 document is styled "The Putatively Curative Instructions that Informed the Jury that the Prosecutor's Provocative Statements that the Defendant Had Lied Reflected the Prosecutor's Personal Opinion." The document discusses the way in which the court, in seeking to correct the impact of the jury's possible perception that certain statements that the defendant lied reflected the prosecutor's personal opinion, reinforced such impact by repeatedly telling the jury that the statements did reflect the prosecutor's personal opinion. It also addresses the Independent Counsel's efforts to obscure these parts of the instructions in its briefings on the matter as well as the fact that in reality, with regard to all or almost all of prosecutor Robert E. O'Neill's provocative assertions that Dean had lied – including that she lied about the call to Cain – O'Neill's personal opinion had to be have been that Dean had not lied. This matter was treated somewhat in the Introduction and Summary, at a point while the initial appeal was pending. The Independent Counsel's opposition to the certiorari position was not yet written.
http://www.jpscanlan.com/images/Personal_Opinion.pdf

A July 8, 2008 letter to former Supervisory Special Agent Alvin R. Cain, Jr. advises Cain of the creation of this page and its discussion of his testimony, as well as of the substantial body of material previously created pertaining to him. The letter requests that Cain advise me of any aspect of the discussion of him and his testimony that is inaccurate or unfair, and requests that he provide me with his account of the matter (though advising him that he should first consult with the Public Integrity Section of the Criminal Division of the Department of Justice, the arm of the federal government last in charge of United States of America v. Deborah Gore Dean).
http://www.jpscanlan.com/images/Cain_s_07-08-08.pdf

A July 9, 2008 letter advises the Honorable Thomas F, Hogan of the creation of this page, suggesting that he give special attention to Section B.1 and the document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge."
http://www.jpscanlan.com/images/Hogan_07-09-08.pdf

A July 9, 2008 letter to former Independent Counsels Adams and Thompson, as well as the other persons listed in Section B.12, advises the recipients of the creation of this page. It also requests that they advise me as to any matter with respect to which they believe the treatment is inaccurate or unfair – with regard either to the nature of the described conduct generally or to their particular roles in any matter. As with the letter to Cain, the letter advises that the recipients consult with the Public Integrity Section before contacting me.
http://www.jpscanlan.com/images/Adams_et_al_s_07-09-08.pdf

A July 11, 2008 letter advises former Supervisory Special Agent Alvin R. Cain, Jr. of a correction to a sentence involving him.
http://www.jpscanlan.com/images/Cain_s_07-11-08.pdf

A July 14, 2008 e-mail to various officials of the Department of Justice advises them of the creation of this page and addresses issues concerning the appropriateness of the

continued service of Deputy Assistant Attorney General Bruce C. Swartz and interim United States Attorney Robert E. O'Neill.
http://www.jpscanlan.com/images/DOJ_e-mail_07-14-08.pdf

A July 17, 2008 e-mail to various officials of the Department of Justice further discusses the appropriateness of the continued employment of Swartz and O'Neill. It gives particular attention to whether the conduct of Swartz and O'Neill in the Dean case should be considered as having occurred a long time ago when the defendant and the public continue to suffer from such conduct and when, if only by their silence, those attorneys continue to conceal the nature of the conduct.
http://www.jpscanlan.com/images/DOJ_email_07-17-08.pdf

A July 27, 2008 document styled "The Responsibility of Independent Counsel Arlin M. Adams for the Appointment of Independent Counsel David M. Barrett" addresses some issues related to the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge," especially with regard to Independent Counsel Arlin M. Adams failure to raise an issue about the appropriateness of the appointment of David M. Barrett as Independent Counsel to investigate HUD Secretary Henry Cisneros.
http://www.jpscanlan.com/images/Adams_Barrett.pdf