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December 26, 1999

The Honorable Janet Reno
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Lee J. Radek
Chief, Public Integrity Section
Criminal Division
United States Department of Justice
Bond Building
1400 New York Avenue, N.W.
Washington, D.C. 20005

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

Dear Officials:

By now you should have received a copy of my letter to Robert J. Meyer, Attorney, Public Integrity Section, which is dated December 17, 1999, though the copy to you was not posted until December 20, 1999. In the letter, I explained that I intended to confront each of you directly with information (which was

summarized in the letter to Mr. Meyer) indicating that Mr. Meyer was involved in a conspiracy to deceive a court and a probation officer in resisting an inquiry into whether Independent Counsel attorneys caused Supervisory Special Agent Alvin R. Cain, Jr. to commit perjury while testifying as a government witness in the referenced case. The case is now being prosecuted under your supervision by the Department of Justice. In the letter to Mr. Meyer, I explained that I intended to present to each of you reasons why you must either take appropriate corrective action or become party to the underlying conduct, including aspects of the conduct that constitute federal crimes.

I hope to realize those intentions in the near future, though only after allowing Mr. Meyer a period of time to correct me as to any matter where my interpretation of the facts is inaccurate or unfair. When I do confront you, I intend to discuss the implications--with regard to your personal interests, the interests of justice generally, and institutional interests of the Department of Justice--of any failure on your part to forthrightly address the issues raised in the letter to Mr. Meyer.

It had been my intention in the interim to provide each of you with two items of correspondence that bear on the institutional interest of the Department of Justice in being regarded by the public as an entity committed both to ensuring the integrity of federal prosecutions and to vigorously pursuing the truth. The first of these items is a letter to Congressmen Joseph M. McDade and John P. Murtha dated August 5, 1998, in which I suggested that the Department of Justice's handling of the matters I brought to its attention in 1994 and 1995, and again in 1997 and 1998, provided additional support for legislation removing from the Department of Justice the responsibility for oversight of federal prosecutions. In that letter I gave particular attention to the conduct concerning Supervisory Special Agent Alvin R. Cain, Jr. that also is the principal subject of my recent letter to Mr. Meyer. In doing so, I suggested that the very posing of the question by Associate Deputy Attorney General David Margolis, to me in December 1994, of whether it was possible that Agent Cain's testimony was literally true--with the implication both that it would be permissible for the government to elicit testimony from a government witness in order to deceive a jury so long as the witness's testimony was literally true and that it would be permissible for government attorneys to deceive a court in resisting discovery into whether the witness committed perjury--suggested a seriously flawed understanding of the obligations of a government lawyer with regard to the truth. I suggested that a similarly flawed understanding of a government lawyer's obligations regarding the truth may be widespread among federal prosecutors, if for no other reason than that the Department of Justice has done little to instruct those attorneys otherwise.

The second item is a November 9, 1998 letter to H. Marshall Jarrett, Counsel for the Office of Professional Responsibility. By letter dated August 20, 1998, Lee J. Radek, Chief of the Public Integrity Section, had advised me that she had referred my allegations concerning Mr. Meyer and other Independent Counsel attorneys (communicated to her in the August 3, 1998 letter referenced and enclosed in my recent letter to Mr. Meyer) to the Office of Professional Responsibility. In the November 9, 1998 letter to Mr. Jarrett, I explained how I had recently requested that the Attorney General again investigate the Office of Independent Counsel, both because Department officials did not previously consider the matter in good faith and because developments subsequent to the Department's last communication to me on the matter provided independent justification for reconsideration of the Department's earlier determination that no action by the Department was warranted.

In the letter to Mr. Jarrett, I noted that the materials I had recently provided the Attorney General had summarized two areas where there was reason to believe that Independent Counsel attorneys violated federal law. The first concerned Independent Counsel actions regarding Agent Cain, which, as noted, is the matter on which the letter to Mr. Meyer is principally focused. The second involved my claim that Jo Ann Harris, Bruce C. Swartz, and other Independent Counsel attorneys conspired to violate 18 U.S.C. § 1001 by making a false entry in the Superseding Indictment and introducing a false document into evidence to support that entry.

I also specifically addressed with Mr. Jarrett the efforts of Robert J. Meyer and Bruce C. Swartz to deceive the court concerning whether Thomas T. Demery had committed perjury. I noted that (as had been discussed in my letter to Inspector General Michael R. Bromwich dated December 23, 1997) subsequent to the Department of Justice's earlier refusal to take action, Independent Counsel attorneys in February 1997 falsely represented to the Honorable Stanley S. Harris in Demery's own case that Demery had given completely truthful testimony in the Dean case and that, by making those false representations, Independent Counsel attorneys violated 18 U.S.C. § 1001. I also noted that, assuming that Michael E. Shaheen, Jr. in fact carefully reviewed my earlier allegations concerning Mr. Demery, Mr. Shaheen could not plausibly deny either that he expected that Independent Counsel attorneys would eventually deceive the court in Demery's own case or that he (Mr. Shaheen) attempted to mislead me with regard to the Department's conclusions concerning Independent Counsel conduct related to Demery.

After explaining to Mr. Jarrett in some detail my reasons for believing that the Department had not previously addressed my allegations in good faith, I concluded by focusing Mr. Jarrett on three discrete issues, stating:

Your immediate tasks, however, are relatively simple. You must determine whether, as I have maintained, the consultant agreement in Government Exhibit 25 is not what the Independent Counsel represented it to be. [Footnote 7 went here.¹] You must determine whether, in resisting discovery into whether Supervisory Special Agent Alvin R. Cain, Jr. committed perjury in the Dean case, Bruce C. Swartz, Robert E. O'Neill [sic], and Claudia J. Flynn attempted to deceive the court. And you must determine whether Bruce C. Swartz and Robert J. Meyer attempted to deceive the court with regard to whether Thomas T. Demery gave false testimony in the Dean case. I suggest that none of these issues is one about which reasonable people might differ.

After you have made those determinations, you must attempt to sort out how the Department came to previously handle my allegations in the manner it did and to determine whether there was any effort on the part of Department officials to deceive me when the Department responded to me on the matter, and, if so, whether by doing so those officials violated federal laws. Unless you are willing to pursue each of these inquiries vigorously and without regard for

¹ Footnote 7 read:

You might also attempt to find out why the original of the document seems now to be missing from Independent Counsel files. See my letter to Mr. Bromwich at 74-75. Whether it is missing or not, however, you will have to conclude that it is not what Independent Counsel attorneys represented it to be.

who might be shown to be at fault, I suggest that your continued service as Counsel for the Office of Professional Responsibility ultimately will be neither to your own benefit nor to that of the Department of Justice.

While Mr. Jarrett was considering these matters, the Dean case was transferred to the Department of Justice, which then had the responsibility to address, among other things, Dean's pending motion for a new trial on a variety of grounds, including that Independent Counsel attorneys deceived the court in responding to her prior motion for a new trial. This change undermined one of the rationale's underlying Mr. Shaheen's response to me of June 28, 1995, i.e., that institutional concerns limited Department interference in the activities of an Independent Counsel. Indeed, with respect to whether criminal conduct by government attorneys is involved, the issue is no longer whether Independent Counsel conduct constituted crimes in the past, but whether Department of Justice conduct constitutes crimes in the present. Moreover, Mr. Meyer was placed in charge of the case. This eliminated another of Mr. Shaheen's rationales--i.e., that the principal Independent Counsel attorneys about whom I complained had left the Office of Independent Counsel. The person now in charge of defending claims that Independent Counsel attorneys deceived the court is one of the principal actors in that deception.

In addition, the records most pertinent to my allegations, such as the originals of Government Exhibits 20 and 25, now became readily available to Mr. Jarrett. Further, Mr. Meyer, unless he chose to exercise his right against self-incrimination, would be required to truthfully respond to any question put to him by Mr. Jarrett. Thus, Mr. Jarrett need only to pick up the telephone to request of Mr. Meyer whether there could be any truth to allegations that Mr. Meyer became part of a scheme whereby:

1. Independent Counsel attorneys pressured Supervisory Special Agent Alvin R. Cain, Jr. into giving certain answers in order to lead a jury to believe something those attorneys knew to be false;
2. In seeking to uphold the verdict, to conceal the nature of Independent Counsel conduct and preclude an inquiry into whether Independent Counsel attorneys had suborned perjury, and to cause the court to increase Dean's sentence for lying about the call to Agent Cain, Independent Counsel attorneys attempted orally and in writing to cause the probation officer and the court to believe things those attorneys knew to be false.

Mr. Jarrett also had the opportunity to pose to Mr. Meyer the question of whether it had occurred to Mr. Meyer at the time that he became involved in this scheme that such conduct could constitute a conspiracy to obstruct justice. I might add here that the opportunity to pose such questions to Mr. Meyer is something that each of you as well has, and I suggest it is an opportunity that you cannot forgo while maintaining that are conscientiously executing the duties of your offices.

In addition, Mr. Jarrett had considerable information beyond that which had been available to Mr. Shaheen at the time Mr. Shaheen originally reviewed my allegations. This included the statements of a former Independent Counsel employee that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz had destroyed interview reports that did not support the Independent Counsel's case and had edited interview reports for content. It also included evidence that despite Mr. Shaheen's admonition to the Office of Independent Counsel that it determine whether any prosecutions were tainted by misconduct, the Independent Counsel had failed to investigate the claims of the former employee that Mr. Swartz and Judge Adams had altered interview reports. See my letter to the Attorney General dated March 2, 1998, at 2-3, 4-10. And Mr. Jarrett now knew for a fact that, as I had predicted in my earlier correspondence to the Department, the Independent Counsel did falsely represent to the Honorable Stanley S. Harris that Thomas T. Demery had given completely truthful testimony in the Dean case.

In any case, with regard to the three issues focused upon in my letter to Mr. Jarrett, as a result of the transfer of the case, Mr. Jarrett now not only had a greater obligation to investigate those issues, but was in an excellent position to resolve them. If such were the facts, Mr. Jarrett could have advised me that, in his view, Government Exhibit 25 is what the Independent Counsel represented it to be and, moreover, that Bruce C. Swartz and Jo Ann Harris had not conspired to make a false entry in the Superseding Indictment or to use false evidence to support that false entry. Mr. Jarrett could also have advised me that, in his view, Independent Counsel attorneys did not exclude from the report of the interview of Aristides Martinez information that would have interfered with the intended false use of Government Exhibit 25. See my letter to Mr. Bromwich at 71-73. Mr. Jarrett could also have advised me that, in his view, Arlin M. Adams, Bruce C. Swartz, Robert J. Meyer, and Claudia J. Flynn did not conspire to deceive the court and probation officer in resisting an inquiry into whether Supervisory Special Agent Alvin R. Cain, Jr. committed perjury in the Dean case. And he could have advised me that, in his view, Bruce C. Swartz and Robert J. Meyer did not

attempt to deceive the court with regard to whether Thomas T. Demery gave false testimony in the Dean case, and that, in his view, the representation made by Dianne J. Smith and Larry D. Thompson in Demery's own case that Demery had given completely truthful testimony in the Dean case was not patently false. Such answers would, if not entirely obviate, at least reduce the need for addressing my claims that Department officials had previously mishandled the matter or were involved in an effort to conceal conduct of then high-ranking Department of Justice officials that was arguably criminal. For Mr. Jarrett to say any of these things if they were not true, however, would be a violation of 18 U.S.C. § 1001, whether or not it would also be obstruction of justice.

Mr. Jarrett had not responded to me as of my writing my December 17, 1999 letter to Mr. Meyer or as of my posting it to you on December 20, 1999. As it happened, however, on the same day on which I mailed copies of that letter to each of you, Mr. Jarrett mailed me a letter that read as follows:

In your November 9, 1998 letter to this Office, and in the materials you provided to Lee J. Radek, Chief, Public Integrity Section, and former Inspector General Michael Bromwich, you alleged that the Office of Professional Responsibility did not conduct a good faith review of your allegations concerning the conduct of certain Office of Independent Counsel (OIC) attorneys during the prosecution of *United States of America v. Deborah Gore Dean*, Crim. No. 92-181-TFH (D.D.C.). According to your letter, this office misled you about the results of its investigation in order to protect former OIC attorneys who were employed by the Department when we reviewed your allegations in 1995.

After reviewing the above referenced correspondence, and our file regarding your initial allegations concerning the OIC attorneys, we have concluded that our review of your allegations was thorough and impartial. We have also determined that our conclusion that there was insufficient evidence of misconduct to compel further action by the Department was, and remains, accurate. As former Counsel Michael E. Shaheen explained in his letter to you, the Department has institutional concerns about investigating the activities on an OIC absent evidence that its staff has engaged in conduct warranting a staff members's termination. Based on our review of your initial allegations, we determined that the OIC attorneys had not done so. Moreover, we believe that the District Court's and the Court of

Appeals' ruling regarding the misconduct issues that Ms. Dean raised in post-trial motions support that determination.

Thank you for bringing this matter to our attention.

Let us assume that when Mr. Jarrett investigated this matter, it simply did not come to his attention that the case is now being handled by the Department of Justice and is now being handled for the Department by Robert J. Meyer, or that he (Mr. Jarrett) overlooked the implications of those facts. Let us also simply assume that during the 16 months since my request that the Department consider the fitness of Mr. Meyer to represent the United States in light of his conduct with regard to Agent Cain and other matters was brought to Mr. Jarrett's attention, the fact that he (Mr. Jarrett) had been requested to determine Mr. Meyer's suitability to represent the United States had escaped Mr. Jarrett's notice; in any event, Mr. Jarrett failed to address that matter and in doing so made abundantly clear that he did not avail himself of the opportunity to ask Mr. Meyer if he had done any of the things that I alleged that he had done. And let us also assume that Mr. Jarrett simply overlooked that I had asserted that there had occurred events since the Department's last communication to me that provided independent justification for the Department to reconsider its earlier decision that no action was warranted; in any event, Mr. Jarrett failed to acknowledge such assertions.

Excusing these failures on Mr. Jarrett's part, there remain certain incongruities in his letter. In defending against charges that Independent Counsel attorneys deceived the courts with regard to the testimony of Supervisory Special Agent Alvin R. Cain, Jr. and Thomas T. Demery, like Mr. Shaheen, Mr. Jarrett relies on the rulings of the very courts the Independent Counsel attorneys are alleged to have attempted to deceive. Moreover, those decisions do not address claims that Independent Counsel attorneys knowingly attempted to deceive the courts--although such a claim is now before the district court and being handled by Mr. Meyer. To the extent that such rulings reflect on the merit of the allegations that Independent Counsel attorneys elicited testimony that either was false or calculated to mislead a jury, the district court's opinion supports such claims. For the court found that Independent Counsel attorneys must have believed that Thomas T. Demery had lied to Congress since the Independent Counsel had indicted him for doing so. The court also indicated that it believed that Dean had called Agent Cain. See Cain Appendix at 28.

With regard to my quite specific allegations that Independent Counsel attorneys violated 18 U.S.C. § 1001 by falsely representing to the court in Demery's case, in February 1997, that Demery had given completely truthful

testimony in the Dean case, and had done so with the actual or imputed knowledge of the Office of Professional Responsibility, the referenced rulings, which were rendered in 1994 and 1995, hardly undermine the allegation. Indeed, Independent Counsel attorneys represented to the Honorable Stanley S. Harris that Demery had given completely truthful testimony in the Dean case after the Honorable Thomas F. Hogan had essentially found that Demery had lied in the Dean case and that Independent Counsel attorneys knew that he had lied.

With regard to my claims that Jo Ann Harris, Bruce C. Swartz and others conspired to violate 18 U.S.C. § 1001 by making a false entry in the Superseding Indictment and introducing a false document into evidence in support of that entry--which is now a claim that Department attorneys are involved in that same conspiracy--the courts' ruling have no bearing whatever. The matter has never been addressed by a court.

More generally, the statements from the bench of the Honorable Thomas F. Hogan on February 14, 1994, indicate that the court believed that Independent Counsel attorneys had been deceitful at every turn and had presented evidence without caring whether it was true or while believing it was false. Thus, those statements render more plausible my allegations that federal prosecutors did things that most citizens would not imagine that federal prosecutors would do, much less be condoned by the Department of Justice's Office of Professional Responsibility and then be perpetuated under the supervision of the Department's highest-ranking officials.

Mr. Jarrett's response is nevertheless informative in the following respects. The failure of the response to directly address any of the three issues I specifically identified, like a similar failure in Mr. Shaheen's responses of June 1995 and January 1996, makes it clear that the Office of Professional Responsibility has no basis for disputing my interpretation of the facts concerning these issues in any material respect.

Thus, as each of you in the ensuing months considers the implications of your now having responsibility for the case, I suggest that you can reasonably infer that, in the opinion of H. Marshall Jarrett, Counsel for the Office of Professional Responsibility, the following interpretation of the facts is essentially accurate:

1. Associate Independent Counsel Jo Ann Harris, Deputy Independent Counsel Bruce C. Swartz, and other Independent Counsel attorneys conspired to make a false entry in the

Superseding Indictment and to thereafter introduce false documents into evidence to support that false entry.

2. Independent Counsel attorneys pressured or persuaded Supervisory Special Agent Alvin R. Cain, Jr. to provide certain answers to questions posed to him under oath for the purpose of leading the jury to believe things those attorneys knew to be false.

3. In order to conceal the nature of Independent Counsel conduct and preclude inquiry into whether Independent Counsel attorneys suborned the perjury of Agent Cain, Independent Counsel Arlin M. Adams, Deputy Independent Counsel Bruce C. Swartz, and Associate Independent Counsel Robert J. Meyer and Claudia J. Flynn conspired to lead the court and the probation officer to believe things those counsel knew to be false.

4. In order to conceal the nature of Independent Counsel conduct and preclude inquiry into whether Independent Counsel attorneys suborned the perjury of Thomas T. Demery, Independent Counsel Arlin M. Adams, Deputy Independent Counsel Bruce C. Swartz, and Associate Independent Counsel Robert J. Meyer conspired to attempt to lead the court to believe things those counsel knew to be false.

5. Independent Counsel Larry D. Thompson and Deputy Independent Counsel Dianne J. Smith conspired to represent to the Honorable Stanley S. Harris that Thomas T. Demery had given completely truthful testimony in the Dean case when those counsel knew that such representation was false.

Mr. Jarrett, of course, is in a position to inform you of any way in which he disagrees with that interpretation of the facts. He may wish to point out, for example, that he specifically stated in his letter to me that no Independent Counsel attorney had engaged in conduct warranting the attorney's termination. Thus, Mr. Jarrett could maintain that he thereby indicated a view that no Independent Counsel attorneys had conspired to deceive a court and probation officer in resisting discovery into whether a government witness committed perjury, since it is inconceivable that the Office of Professional Responsibility would maintain that such conduct does not constitute grounds for termination. At any rate, Mr. Jarrett can advise you whether the cited representation was intended to lead me to believe that the Office of Professional Responsibility had

concluded that Independent Counsel attorneys had not pressured Agent Cain to give answers calculated to deceive a jury and that those attorneys had not then conspired to deceive a court and probation officer in order to preclude inquiry into what they had done. And, if Mr. Jarrett's representation had been intended to lead me to believe such things, he can advise you whether such things are true.

I shall be directly requesting that Mr. Jarrett inform me whether he disagrees with the interpretation of his views set out above, asking him specifically whether he believes that the things that I maintain occurred did not occur or that he believes that they did occur but do not constitute (a) crimes, (b) serious prosecutorial abuses, or (3) matters that the counsel continuing the prosecution have an obligation to bring to the court's attention. And I shall suggest again to Mr. Jarrett that he consider that unless he is willing to genuinely examine my allegations, determine what the facts are, acknowledge those facts, and then straightforwardly address the implications of those facts, his continued tenure as Counsel for the Office of Professional Responsibility is not in the interest of the Department of Justice.

In any event, in light of Mr. Jarrett's choosing now to address the matters that were brought to his attention 16 months ago, I am providing each of you with materials in addition to the two items I mentioned at the outset. Thus, in addition to those items, I am providing you on diskette my December 23, 1997 letter to Inspector General Michael R. Bromwich; my January 12, 1998, March 2, 1998, and June 17, 1998 letters to the Attorney General; my August 15, 1995 and March 10, 1996 letter to Michael E. Shaheen, Jr.; and my August 3, 1998 letter to Lee J. Radek. I am also providing you in hard copy the letters to me from the Office of Professional Responsibility dated June 28, 1995, January 30, 1996, and December 20, 1999.

I suggest that you review these materials with special concern for the institutional interests of the Department of Justice. In particular, I suggest that you consider whether these materials give the impression of an agency committed to the discovery and disclosure of the truth. I suggest also that you consider your own vision of the type of institution you had hoped to make the Department of Justice while you served it and to leave it when you were gone. And I request that with that vision in mind, you consider your obligations to determine whether the things I maintain happened did happen, and, if so, the implications of such facts.

In the event that you do not have ready access to any material I reference in the enclosed correspondence, I would be happy to immediately provide it.

The Honorable Janet Reno et al.
December 26, 1999
Page 12

Further, if you believe that any statement I have made herein or in the enclosed correspondence is inaccurate or unfair, please so advise me. I will carefully review the basis for your belief and correct any statement where correction is warranted. After the first of the year, I can be reached during the day at (202) 887-4453.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

c: David Margolis
Associate Deputy Attorney General

H. Jarrett Marshall, Counsel
Office of Professional Responsibility

Robert J. Meyer, Attorney
Public Integrity Section

Louis J. Freeh, Director
Federal Bureau of Investigation

Enclosures