

*This is a PDF of the separately accessible version of [Section B.6](#) of the main [Prosecutorial Misconduct](#) page (PMP) of [jpscanlan.com](#). The endnotes have been changed to footnotes. This version reflects the section as it appeared when a link to it was provided in a January 2010 letter to Judith B. Wish, Deputy Director of the Office of Professional Responsibility (which may be found on the [Letters \(Misconduct\)](#) sub-page of PMP).*

## **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 [Nariyah Item 1](#), [Nariyah Item 2](#), 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 ultimately indicted Demery for perjury with respect to certain of his statements before two congressional subcommittees. In the course of reaching a plea agreement that did 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](#)." 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." [Independent Counsel App. Br.](#) 51, n.23

The comment section of the [Demery appendix](#) (Section H) points out that very likely Independent Counsel attorneys would make no mention of Demery's perjury in the Dean case when the time came to advise 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 it was difficult to imagine what that rationale could have been. 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 15, 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. (By [letter of January 30, 1996](#), Shaheen would later state that the Department of Justice did not consider responding to 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 in February 1996 – once again in circumstances where the government’s representatives were obligated to tell the courts the truth about whether the government’s attorneys knew whether a witness committed perjury as well as to fairly characterize the record below. The opposition was authored by Independent Counsel Larry D. Thompson and Deputy Independent Counsel Dianne J. Smith (with Charles Rothfeld and Michael E. Lackey, Jr., listed as Of Counsel).

After first stating that the prosecutor had elicited testimony that Demery had pleaded guilty to obstructing a grand jury investigation, the [Opposition](#) states (at 13):

Thus, had petitioner actually believed that Demery perjured himself at trial, she had the material to impeach him readily at hand. That she did not do so reinforces what is already apparent from the record: the question as to which petitioner now claims that Demery perjured himself was ambiguous.

Thus, notwithstanding that Dean’s counsel had in fact attempted at length to demonstrate that Demery had lied to Congress and that when he did so Demery repeatedly and unequivocally denied ever having lied to Congress, the drafters of this document sought to cause the Supreme Court to believe that Dean’s counsel did not even try to demonstrate that Demery had lied to Congress, that there was only one question on the matter, and that the single question was ambiguous.

Let us for a moment put aside the issues 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.<sup>1</sup>

\* \* \*

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 Robert E. O'Neill and Bruce C. Swartz apparently did for Agent Cain's testimony (*see* [Section B.1](#)), 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](#)), 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

---

<sup>1</sup> Other instances of efforts to mislead the Supreme Court in the opposition to the motion for certiorari are found in [Section B.7](#) and in May 31, 2008 document 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 opposition warrants separate treatment at some point. For virtually every characterization of the evidence or issue with regard to claims of prosecutorial misconduct is misleading.

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?<sup>[2]</sup>

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?

---

<sup>2</sup> 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.