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**To:** deanfitts@law.upenn.edu, sgordon@law.upenn.edu

**Cc:**

**Date:** Wednesday, July 16, 2008 03:03 pm

**Subject:** Web page on Prosec Misconduct/A Adams

Dear Dean Fitts and Professor Gordon:

I write to you as the Dean of the University of Pennsylvania Law School and the Arlin M Adams Professor of Constitutional Law.

This is to call your attention to a web page concerning prosecutorial abuses under Independent Counsel Arlin M. Adams in the prosecution of *United States of America v. Deborah Gore Dean*, Criminal. No. 92-181-TFH (D.D.C.):  
<http://www.jpscanlan.com/homepage/prosecutorialmisconduct.html>

I created this page very recently and have been and will be taking various steps to call attention to it. As reflected on other parts of the home page, I write about various legal, public policy, or scientific issues, and may attempt to publish a book on this matter. But regardless of what I do with respect to further publication of the matter, I intend to keep these materials available to the public for at least several decades.

Assuming there is eventually widespread awareness of the information made available through this page, I think that the public perception will be that the conduct of attorneys under Judge Adams in the Dean case was heinous and that Judge Adams was much involved with the most egregious conduct. At least some may also believe that Judge Adams's conduct was in part motivated by resentment against former Attorney General John N. Mitchell, because, among other reasons, Judge Adams believed Mitchell kept Judge Adams from the Supreme Court.

At such time, some may find it incongruous that a professorship at a distinguished law school should be honoring or memorializing Judge Adams. The professorship is mentioned briefly in Section B.12.e of the reference web page.

Thus, while Judge Adams is still alive, it might be sensible to secure from him his side of the matter. In that regard, I note that I think that the record will show that all the varied responses of Judge Adams and his attorneys to these matters have been evasive and misleading. But if they are forced to specifically address certain issues, I do not think that Judge Adams or his attorneys can plausibly cause their actions to be seen in a light materially different from that in which I have portrayed those actions.

The matter addressed in Section B.1 of the introductory materials on the page provides an obvious initial focus. Did Independent Counsel attorneys know that the defendant had made the subject telephone call when Independent Counsel attorneys, including Judge Adams, sought to lead the jury and the courts to believe that she did not? If not, what is the explanation for what occurred in that instance? If so, does Judge Adams believe it is permissible for attorneys to put on a witness to provide literally true

testimony in order to mislead a jury to believe a defendant lied about a matter when the attorneys know the defendant had told the truth? Assuming that is what the attorneys did, is it permissible to attempt to cover up that fact by then attempting to persuade the court that the defendant had lied regarding the matter?.

There are varied other obvious areas of specific inquiry. An obvious area of broad inquiry is whether Independent Counsel attorneys in any manner attempted to mislead the court in responding to allegations of prosecutorial misconduct? If the answer is that they did, one can go on to identifying such instances. If the answer is that they did not, one can, on the basis of the record, evaluate the plausibility of such answer.

As I often made clear, including in a recent letter to Judge Adams, I will readily correct anything I have stated that is inaccurate or unfair.

Sincerely,  
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