



U. S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

JAN 30 1996

James P. Scanlan
2638 39th Street, N.W.
Washington, D.C. 20007

Re: Allegations of Misconduct by the Office of Independent Counsel in the Matter of United States v. Deborah Gore Dean, Case No. 92-181-TFH (D.D.C.).

Dear Mr. Scanlan:

Your recent letters to Acting Assistant Attorney General John C. Keeney and United States Attorney Charles Wilson have been forwarded to us for review and response. We are also in receipt of your August 15, 1995 letter to this Office, as well as your letter to White House Counsel Abner Mikva, dated July 14, 1995.

We decline your specific request that this Office reconsider its position, previously expressed to you by letter dated June 28, 1995, that there exists an inadequate basis for the Department of Justice to conduct an inquiry into the manner in which the HUD Independent Counsel exercised its investigative and prosecutive functions in the matter involving Deborah Gore Dean. Despite your strongly expressed views to the contrary, we continue to believe that the record at trial fails to reflect evidence of unaddressed criminal conduct or other outrageous government misconduct warranting a Department of Justice probe into the activities of the Independent Counsel.

We note that by your recent letters to Messrs. Keeney and Wilson you seek to obtain such an investigation of the HUD Independent Counsel by calling upon the Department to examine these allegations in the context of determining the fitness for federal service of two former members of the HUD Independent Counsel prosecutive team who have since joined the Department of Justice. In your materials you suggest that these two individuals, Robert O'Neill and Bruce Swartz, knowingly advanced false positions before the jury and the court, and, specifically, that they relied on and advanced the testimony of witnesses whom they "had compelling reason to believe" were testifying falsely.

Your submissions both to this Office and to Messrs. Keeney and Wilson make clear that you believe strongly that not one, but several important government witnesses committed perjury at trial. Indeed, many of the detailed and lengthy arguments you have made to this Office (exceeding 400 pages of narrative text) are premised on the notion that various witnesses were, for a number of reasons, not credible and that the Independent Counsel could not reasonably have relied upon them to tell the truth at trial. Having closely reviewed the arguments you have made, however, we do not share your assessment that the record demonstrates that the government's witnesses were patently untrustworthy or that the Independent Counsel knowingly procured false testimony.

Significantly, we note as well that the credibility of these witnesses appears to have been put directly at issue during the trial of Ms. Dean and most of the arguments you have made are based on facts known to the parties and developed (and argued) during trial. Each of the witnesses you suspect of lying were cross-examined under oath by able counsel, and the jury was specifically instructed on how to assess the credibility of the witnesses who appeared at trial. The fact remains that the jury apparently chose to believe these government witnesses and to disbelieve as not credible the testimony of Ms. Dean.

Obviously, the Department of Justice will not hesitate to investigate facts suggesting that one of its prosecutors knowingly presented false evidence to a court or jury. Yet, the lengthy arguments you have made to this Office and to Messrs. Keeney and Wilson seek largely to relitigate credibility issues which appear to have been resolved at trial. As we expressed before, institutional concerns arising out of the involvement in this case of the HUD Independent Counsel argues against Department intervention without an adequate basis to conclude that some fundamental injustice occurred at trial, or that the court and the parties were presented with an inadequate opportunity to address the misconduct you believe occurred.

We have taken note of the specific allegations of misconduct you have lodged against Messrs. O'Neill and Swartz, as reflected initially at pages 2 to 3 of the letter you have written to Mr. Keeney. We simply do not concur that the materials you have supplied present indisputable evidence of "prosecutorial abuses of exceptional dimensions," or that the record at trial demonstrates a conspiracy among prosecutors at the HUD Independent Counsel to fabricate a case against Ms. Dean.

Consequently, absent some independent or newly discovered evidence unavailable to the litigants at trial suggesting the knowing use of perjured testimony, or some other due process violation, we do not believe there exists an appropriate basis for this Office to commence an investigation of either Mr. O'Neill or Mr. Swartz for their activities while employed by the HUD Independent Counsel.

Unfortunately, we also do not view as productive the exercise you have proposed in your letter of August 15, 1995, that this Office correct any erroneous assumptions you have made about the Department's handling of this matter or any misunderstandings you may have about the facts at issue. Consequently, we consider the matter closed at this time.

Sincerely,



Michael E. Shaheen Jr.
Counsel

cc: The Honorable Abner J. Mikva

David Margolis
Associate Deputy Attorney General

John C. Keeney
Acting Assistant Attorney General
Criminal Division

Charles Wilson
United States Attorney
Middle District of Florida