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August 3, 1998

**CONFIDENTIAL**

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: Robert J. Meyer's Role in Prosecutorial Misconduct  
By the Office of Independent Counsel in United  
States of America v. Deborah Gore Dean, Crim. No.  
92-181-TFH (D.D.C.)

Dear Ms. Radek:

This letter is to call to your attention information suggesting that Robert J. Meyer, whom I understand to be an attorney in the Public Integrity Section, is unfit to represent the United States, and that he may be party to a continuing conspiracy to obstruct justice as a result of his role in deceiving the courts concerning whether certain government witnesses had committed perjury in the referenced case. This letter is also to request that the Public Integrity Section both investigate the Department of Justice's prior handling of allegations regarding the conduct of Mr. Meyer and other Independent Counsel attorneys who later assumed positions at the Department of Justice and investigate whether those and other Independent Counsel attorneys violated federal laws in the prosecution of the referenced case.

I have previously brought this and related matters to the attention of the Department of Justice and the White House Counsel in connection with a request for an investigation of the Office of Independent Counsel Arlin M. Adams and requests for the removal of Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division, the removal of Bruce C. Swartz from the positions of Special Assistant or Counsel to the Assistant Attorney General for the Criminal Division, the removal of Robert E. O'Neill from the position of Assistant United States Attorney, and the removal of Claudia J. Flynn from the position

of Chief of Staff to the Assistant Attorney General for the Criminal Division.

A description of my actions in that regard, and of the responses of the White House and the Department of Justice, may be found in the enclosed December 23, 1997 letter to Inspector General Michael R. Bromwich (Attachment 1). That letter also describes in some detail the matters forming the basis for my suggestion to you that Mr. Meyer is not fit to represent the United States and may be involved in a continuing conspiracy to obstruct justice.

These matters include statements made in a brief signed by Mr. Meyer on December 23, 1993, in which the Independent Counsel attempted to deceive the court in responding to allegations that two government witnesses had committed perjury in the Dean case.

The witnesses are Supervisory Special Agent Alvin R. Cain, Jr. and former Assistant Secretary for Housing Thomas T. Demery. With regard to Agent Cain, the facts presented throughout the letter to Mr. Bromwich suggest that Mr. Meyer became party to a conspiracy to obstruct justice, if not as a result of the initial effort to deceive the court in the brief signed by Mr. Meyer on December 23, 1993, then at least in the efforts, through oral statements by Bruce C. Swartz on February 22, 1994, to further that deception in resisting discovery into whether Agent Cain had committed perjury. The matter concerning Thomas T. Demery is discussed at pages 58 to 62 of my letter to Mr. Bromwich. I suggest that the materials cited in those pages make it clear beyond any possibility of doubt that in the brief signed by Mr. Meyer on December 23, 1993, Mr. Meyer attempted to lead the court to believe that Mr. Demery had not committed perjury while Mr. Meyer knew with absolute certainty that Mr. Demery had committed perjury.

At the time of my writing to Mr. Bromwich, I had only recently learned that Mr. Meyer held a position in the Criminal Division of the Department of Justice. On July 10, 1998, I received the first response to portions of a November 24, 1997 Freedom of Information Act request seeking information concerning Mr. Meyer's position in the Criminal Division. The response, dated July 9, 1998, included a June 3, 1994 letter from you to Robert K. Bratt seeking permission to hire Mr. Meyer in the Public Integrity Section. Your letter suggests that, rather than merely having signed certain briefs in the Dean case, Mr. Meyer had represented himself as being co-lead counsel in the case.<sup>1</sup>

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<sup>1</sup> The Department's response dated July 9, 1998, which was from the Criminal Division, provided at least one other item of information pertinent to my allegations concerning the Department of Justice's prior handling of allegations of misconduct in the

Lee J. Radek, Esq.  
August 3, 1998  
Page 3

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Dean case. My previous statements to the Department had been based on a belief that Bruce C. Swartz joined the Department of Justice near the time of my originally making allegations to the Department at the end of 1994. Materials provided with the Freedom of Information Act response dated July 9, 1998, indicate that Mr. Swartz did not join the Department of Justice until June 26, 1995, after Ms. Harris had resigned from the Department and just two days before Michael E. Shaheen, Jr. wrote to me to advise me that the Department had completed a close review of the allegations I had made seven months earlier. Thus, assuming that Mr. Shaheen's representations concerning the Department's close review of my allegations was accurate, the Department knew the nature of Mr. Swartz's conduct in the Dean case at the time it hired him. I had made additional allegations to the Department concerning Mr. Swartz before the Department converted his appointment to an excepted appointment in August 1996.

Lee J. Radek, Esq.  
August 3, 1998  
Page 4

The materials provided by the Justice Department also indicated that Mr. Meyer joined the Department of Justice on July 18, 1994. Yet, Mr. Meyer's name appeared on the Independent Counsel's appellate brief in the Dean case, which is dated September 16, 1994, suggesting that he may have continued to participate in the briefing of the case after he joined the Department of Justice. In that brief, the Independent Counsel made statements related both to the Cain testimony and to the Demery testimony that were intended to deceive the court of appeals concerning each matter.<sup>2</sup> Assuming that it constituted

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<sup>2</sup> In the court of appeals (at 25), the Independent Counsel stated with regard to Agent Cain:

[Deborah Gore Dean] also testified that she first learned of the payments Mitchell had received when she read a HUD Inspector General's report in 1989, and that she had expressed her disbelief and anger to HUD agent Al Cain. Tr. 2617. But Agent Cain testified that to his recollection this conversation never occurred. Tr. 3198-99.

As discussed in the letter to Mr. Bromwich, there is reason to believe that Mr. Meyer knew with absolute certainty that Dean had in fact called Agent Cain, among other reasons, because Agent Cain had told Independent Counsel attorneys about the call.

With regard to Thomas T. Demery, the brief in the court of appeals stated (at 51 n.23) that Dean's claim "that the government had reason to believe that Thomas Demery ... had testified falsely" "is not true, as the government demonstrated at length below." As reflected in the Demery Appendix and various letters to the Department, there are probably few arguments as insulting to the intelligence of a court as Mr. Meyer's arguments made to the district court that neither trial counsel nor Demery knew that his repeated denials that he had ever lied to Congress were false. The arguments had already been rejected out of hand by the district court, when the quoted statement was made to the court of appeals.

That a government attorney should make insulting or preposterous arguments to a court is not of particular moment. What is of consequence is that a government lawyer may not attempt to deceive a court about the perjury of a government witness even when there exist strong arguments by which to do so. The implausibility of the arguments in the brief signed by Mr. Meyer in the district court is further evidence that he knowingly

Lee J. Radek, Esq.  
August 3, 1998  
Page 5

obstruction of justice to deceive the courts on these matters, Mr. Meyer apparently continued to be affirmatively involved in such obstruction even after he joined the Department of Justice.

The letter to Mr. Bromwich provides sufficient information for you to determine whether my allegations concerning Mr. Meyer are true, taking into account of course any plausible representations Mr. Meyer may wish to make on the matter. I suggest, however, that unless they have cultivated a willful ignorance of this matter that most citizens would say is inconsistent with the conscientious performance of their offices, Associate Deputy Attorney General David Margolis, Deputy Assistant Attorney General John C. Keeney, and the Attorney General can affirm that Mr. Swartz and Mr. Meyer did engage in the conduct described in my letter to Mr. Bromwich.

If Mr. Meyer did engage in the conduct I have alleged, you should recognize that he cannot be permitted to serve as an attorney representing the United States, particularly with regard to matters involving the integrity of public officials. This would be no less the case if Mr. Meyer's conduct resulted from an unsophisticated understanding of the obligations of a government attorney with regard to deceiving a court. I suggest, moreover, that unless you conclude that Mr. Meyer did not attempt to deceive the court concerning whether the government witnesses committed perjury, you must conclude that he joined a conspiracy to obstruct justice that likely continues to this day in consequence of the continuing concealment of the matter.

In any event, I suggest that you cannot fulfill the responsibilities of your position without familiarizing yourself with the facts underlying the allegations I have made here and questioning Mr. Meyer as to whether he in fact intended to deceive the courts concerning the matters addressed in this letter. As you do so, please be mindful that you must subject any denials by Mr. Meyer of an intention to deceive the courts to the same scrutiny that you would apply to denials of criminal conduct by someone who is not a member of the Public Integrity Section. Be mindful as well that any effort by Mr. Meyer to mislead you or other Department of Justice officials concerning

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attempted to deceive the court about Mr. Demery's perjury.

Lee J. Radek, Esq.  
August 3, 1998  
Page 6

his conduct, apart from constituting a violation of 18 U.S.C. § 1001, would be an additional overt act in furtherance of that conspiracy.

Finally, I formally request that the Public Integrity Section commence an investigation of the Department of Justice's prior handling of my complaints of prosecutorial misconduct in the referenced case, including whether the fact that the offending parties held high positions in the Department of Justice at the time the allegations were being considered influenced the Department's handling of those allegations, and that you bring to the attention of an appropriate any criminal conduct you discover. I also request that the Public Integrity Section investigate whether Independent Counsel attorneys violated federal laws in the prosecution of the referenced case.

The Public Integrity Section has previously investigated whether a former employee of the Office of Independent Counsel violated federal laws. The individual investigated was William F. O'Brien, who had been terminated from his position as a document manager for the Office of Independent Counsel on or about November 16, 1993. It is my understanding that the investigation by the Public Integrity Section commenced in late 1993 and continued for some time thereafter, and that the Department of Justice ultimately decided not to prosecute Mr. O'Brien.

Mr. O'Brien's allegations of prosecutorial misconduct by Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz are discussed at some length in my letter to Mr. Bromwich, as is the fact that Deputy Assistant Attorney John C. Keeney attempted to delay investigation of those allegation by the Office of Special Counsel because of the pending investigation by the Public Integrity Section.

As I explain in the letter to Mr. Bromwich (at 25), there is some reason to believe that the effort to cause the Office of Special Counsel to delay its investigation may have been prompted by an interest in simplifying the Office of Independent Counsel's task of responding to the allegations of widespread prosecutorial abuse made in a motion filed in the Dean case on November 30, 1993. Among those allegations were that certain government witnesses had committed perjury, which are the matters referred to above on which Mr. Meyer and others would conspire to deceive the court in attempting to uphold the verdict, in attempting to cause the defendant's sentence to be increased because of contradiction of her testimony by a government agent, and in

Lee J. Radek, Esq.  
August 3, 1998  
Page 7

resisting discovery into whether the agent had committed perjury.

Thus, there exists the possibility that the Public Integrity Section was caused to become involved in the matter principally to facilitate the Office of Independent Counsel's efforts to conceal the misconduct of its attorneys, including conduct that violated federal laws. In any event, I suggest that you carefully consider whether such representations as Bruce C. Swartz and other then current or former Independent Counsel attorneys, including then Assistant Attorney General Jo Ann Harris, may have made to the Public Integrity Section regarding the purpose of investigating Mr. O'Brien and the merit of Mr. O'Brien's own allegations were truthful representations.

As I understand it, neither the Department's prior handling of my allegations nor possible violations of federal law by Independent Counsel attorneys is currently being investigated by any other division of the Department of Justice. By letter of January 14, 1998 (Attachment 2), I provided the Attorney General a copy of my December 23, 1997 letter to Mr. Bromwich, requesting that the Department of Justice again examine the conduct of the Office of Independent Counsel in the prosecution of the referenced case. I requested that the Attorney General do so 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 was warranted. By letter dated March 2, 1998 (Attachment 3), I provided the Attorney General additional information concerning that request.

By letter dated April 8, 1998 (Attachment 4), Inspector General Bromwich advised me that he could not address the issues raised in my December 23, 1997 letter to him because, by Attorney General order, the Office of Inspector General did not have jurisdiction to investigate matters concerning Department of Justice attorneys' exercise of their authority to investigate, litigate, or provide legal advice. Apparently, sometime subsequent to April 8, 1998, the Attorney General forwarded my letters of January 14, 1998, and March 2, 1998, to Mr. Bromwich.

In a letter dated May 4, 1998 (Attachment 5), Mr. Bromwich advised me that my correspondence to the Attorney General had been forwarded to him for response. Referencing his letter to me dated April 8, 1998, Mr. Bromwich advised me that the Inspector General did not have jurisdiction to address the matters raised in my correspondence to the Attorney General.

Lee J. Radek, Esq.  
August 3, 1998  
Page 8

By letter to the Attorney General and to Mr. Bromwich dated June 17, 1998 (Attachment 6), I requested clarification of whether the Attorney General had in fact intended to refer the matter addressed in my earlier letters to a division of the Department of Justice that did not have jurisdiction over the matter. I suggested that, if such had been the Attorney General's intention, she reconsider the appropriateness of such course and instead refer the matter to a division of the department that does have jurisdiction.

I do not think that the head of an agency of the federal government can adhere to a decision to refer a matter to a division of the agency that does not have jurisdiction over the matter. Hence, I expect eventually for the Attorney General to address this matter in some manner differently. My experience with the Department, however, suggests that it will take some time for the Attorney General to inform me of the chosen course of conduct. Thus, I suggest that you do not defer taking such action as you might otherwise consider within the scope of your authority on the basis that action from some other part of the Department of Justice may be imminent.

There should be within the Department ample copies of the materials I previously provided the Department. Nevertheless, I enclose on diskette (in WordPerfect 6.0), copies of the materials I provided the Department in December 1994 and January 1995 (Attachment 7) and copies of my correspondence with the Department between December 1994 and March 1996 (Attachment 8). The materials are provided without their own attachments. Should have any need of the attachments, however, I will promptly provide them to you. If you have questions concerning any aspect of this matter, I can be reached during the day at (202) 887-4453.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

Enclosures

cc: The Honorable Orrin G. Hatch  
Chairman  
Senate Judiciary Committee

The Honorable Henry J. Hyde



Lee J. Radek, Esq.  
August 3, 1998  
Page 9

Chairman  
House Judiciary Committee

The Honorable Janet Reno  
Attorney General

James K. Robinson  
Assistant Attorney General for the Criminal Division