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Larry D. Thompson, Esq.
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444 North Capitol Street
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CONFIDENTIAL

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

Dear Mr. Thompson:

The purpose of this letter is to bring two matters to your attention.

First, one of the issues of prosecutorial abuse given considerable attention in the materials I provided you on September 18, 1995, as well as in my letters to you dated September 18, 1995, December 5, 1995, and December 21, 1995, involves the Office of Independent Counsel's (OIC's) eliciting of, and reliance upon, the testimony of Eli M. Feinberg that he was unaware of John Mitchell's involvement with the Park Towers project. I have pointed out that the OIC elicited that testimony despite having compelling reason to believe that it was false and without confronting Feinberg with information that could have been expected to cause him to tell the truth, as well as without making a Brady disclosure of the three instances where the OIC's immunized witness Richard Shelby told OIC attorneys that Feinberg was aware of Mitchell's involvement with Park Towers. An additional matter germane to that issue recently came to my attention.

On page 2 of the Interview Report for the interview of Richard Shelby conducted by Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill on May 19, 1992 (Attachment 5b to the Park Towers Appendix), the interview in which Shelby for the third time stated that Feinberg was aware of Mitchell's involvement with Park Towers, the following sentence appears: "Also, Shelby did not remember asking Feinberg to call someone as a reference for Mitchell." This sentence seems to suggest that Swartz or O'Neill asked Shelby whether he had asked Feinberg to call someone as a

reference for Mitchell. That would seem an odd question unless Swartz or O'Neill had been in some manner led to believe either that Shelby had asked Feinberg to call someone as a reference for Mitchell or that Feinberg had in fact called someone as a reference for Mitchell. In either case, whatever information led Swartz or O'Neill to have such a belief would seem significant further evidence that Feinberg was in fact aware of Mitchell's involvement with Park Towers.

If there does exist information that led Swartz or O'Neill to have such a belief, I do not know what it is or whether it was provided to the defense. I suggest that you determine whether there did exist information of that nature and whether the OIC provided it to the defense. Even if it was provided to the defense as part of the OIC's Jencks production, however, you still would have the obligation to specifically call it to the attention of the defense. In this regard, I note that for some time you been under the obligation to alert the defense, among other things, that Shelby three times advised OIC attorneys that Feinberg was aware of Mitchell's involvement with Park Towers.

Second, in a letter from Associate Independent Counsel Robert E. O'Neill and Paula A. Sweeney to Steven V. Wehner dated August 29, 1993 (Attachment 4 to the Park Towers Appendix), the OIC informed the defense of the dates on which the statements described in the OIC's letter of August 20, 1993, had been provided to the OIC. For the statements attributed to Maurice C. Barksdale in the earlier letter, the August 29 letter (at page 1) provided the following dates: October 24, 1991, June 28, 1992, June 29, 1992, and March 22, 1993. The Jencks materials the OIC provided for Maurice Barksdale, however, included no item dated March 22, 1993. See Attachment 5 to the Park Towers Appendix. If in fact there exists an interview report or notes for an interview of Maurice Barksdale on March 22, 1993, as the August 29, 1993 letter seems to establish, I suggest that you provide such interview report or notes promptly to the defense. I suggest that you also determine the reasons such material was not included with the Jencks materials provided prior to Barksdale's testimony.

Sincerely,

/s/ James P. Scanlan

James P. Scanlan

cc: Dianne J. Smith
Deputy Independent Counsel