

**The Independent Counsel’s Use of Dean’s Off-the-Stand Remark about  
David  
Barrett and the Judge  
(May 31, 2008, rev. Aug. 13, 2011)**

Set out below is a discussion the way Independent Counsel prosecutors brought an off-the-stand remark of Deborah Gore Dean to the attention of Judge Thomas F. Hogan on October 18, 1993. The apparent purpose of their doing so was both to generally prejudice the court against Dean and to facilitate the prosecution’s use on the same day of testimony that would appear to directly contradict Dean’s sworn testimony and then be used in dramatic fashion in an attack on Dean’s credibility in closing argument.

This material assumes the readers understanding of the Independent Counsel’s use of the testimony of Supervisory Special Agent Alvin R. Cain, Jr., which is discussed in many places both as an egregious prosecutorial abuse and as an instance where the Independent Counsel’s response to Dean’s post-trial raising of the issue may have constituted obstruction of justice (e.g., [Section B.1](#) of the main [Prosecutorial Misconduct](#) of [jpscanlan.com](#), Sections A and E and [Addendum 3](#) of the [Bruce C. Swartz profile](#), Section A of the [Robert E. O’Neill profile](#), and a June 29, 2011 Truth in Justice item styled” [Robert E. O’Neill’s Tricks of the Trade – One \(The False or Misleading Testimony of Supervisory Special Agent Alvin R. Cain, Jr.\)](#).”

As discussed I Section B.1, a comprehensive discussion of the circumstances known as of December 1994, including the prosecution’s responses to allegations that the testimony was false and its later use of that testimony may be found in the December 1, 1994 document styled “[Testimony of Supervisory Special Agent Alvin R. Cain, Jr.](#)” But that document was created before it was suggested to me by Associate Deputy Attorney General David Margolis, in a meeting during the week of December 12, 1994, that, even though Dean’s testimony was true, Cain’s testimony might also be literally true. A relatively succinct treatment of the matter that addresses the implications of the fact that prosecutors used Cain’s testimony on the basis that it was literally true even though he remembered the call from Dean may found in my letter of December 19, 1999, to Robert J. Meyer, which references many other places where the matter is discussed at greater length. A further useful reference is Section B.1 of my letter of May 25, 1995, to David Margolis, which first addressed with Mr. Margolis the implication of his suggestion that Cain’s testimony might be literally true, though the letter does not address the potentially criminal nature of the actions of Independent Counsel attorneys in responding to Dean’s claim that Cain’s testimony was false. The implications of the fact that the case was eventually transferred to the Department of Justice and that the Department then became a party to the continuation of the effort to deceive the district court on the matter are discussed in my [letter](#) of December 26, 1999, to Attorney General Janet Reno and other officials of the Department of Justice and my [letter](#) of January 22, 2000 to H. Marshall Jarrett, Counsel for the Office of Professional Responsibility of the Department of Justice.

To facilitate the reader's reference to underlying transcript materials relevant to the subject of this document, following the discussion below are set out certain trial transcript materials. These include (1) the October 14, 1993 cross-examination testimony

Immediately preceding Dean's remarks to Independent Counsel attorney Robert E. O'Neill about David Barrett and the judge (including Judge Hogan's admonishment of O'Neill following the testimony); (2) the two prior colloquies in which Judge Hogan expressed his concerns about the way O'Neill was treating the defendant; (3) the bench conference of October 18, 1993, in which prosecutors brought Dean's off-the-stand remark to Judge Hogan's attention; (4) Dean's testimony of October 12, 1993 about calling Supervisory Special Agent Alvin R. Cain, Jr. to complain about the treatment of John Mitchell in the HUD inspector general's report and to demand to see a check showing that Mitchell had received a fee on the Arama project; (5) Cain's testimony of October 18, 1993 seeming to directly contradict Dean; (6) prosecutor Robert E. O'Neill's use of Cain's testimony in closing argument.

The first transcript item involves O'Neill's efforts, during the cross-examination of Dean on October 14, 1993, to suggest that the funding of a project called Durham Hosiery Mill involved a conspiracy arising out of connections among Dean, Richard Giegengack (Dean's boyfriend at the time of the Durham Hosiery Mill funding), John Boisclair (Richard Giegengack's best friend), Linda Murphy (John Boisclair's wife and a consultant on Durham Hosiery Mill), and John Allen (a schoolmate of Richard Giegengack and a principal on the project). The following testimony concluded the matter (Tr. 2896-97):

Q You don't understand that Mr. Allen, the developer, was good friends with Richard Giegengack, your then boyfriend, Linda Murphy is the consultant on this project who is married to Jon Boisclair who you socialized with, you don't see any problem with that?

A If— if— no, I don't. I — I don't. I walk through this Courthouse and run into people I know. It doesn't mean they're parties to this case.

Q You were the Executive Assistant to the Secretary of HUD, were you not, Ma'am?

A Yes, and Secretary Pierce made the decision to fund Durham Hosiery Mill for

reasons that had nothing to do with Linda Murphy, Louis Kitchin, Richard Giegengack, my mother, you, or anything else.

Q And that's your testimony, is it, Ma'am?

A Yes, that is the truth.

Q That's for the jury to decide, right, Ma'am?<sup>1</sup>

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<sup>1</sup> The Durham Hosiery Mill funding was not involved in the charges against Dean. That, as Dean said, the project was funded because Secretary Pierce ordered it funded was not in dispute. An official who refused to fund the project stated that Pierce had called her and stated that "I want the project funded," repeating "well, I want it funded" after she objected. *See* Lantos Subcommittee Final Report, Section IV.A.4. This was but one of many instances where O'Neill would develop testimony in cross-examination to underlie his later assertions in closing argument that Dean had lied, in circumstances where he had reason to be certain that she had not lied. In

In the view of the writer (who was present in the courtroom), the cross-examination was not effective and made the prosecution look rather foolish before the jury, which seemed to agree with Dean's rather vigorous testimony to the effect that it was absurd to find conspiracies in the everyday connections one finds in Washington. In any event, O'Neill's reaction to that testimony led to the court's admonishing O'Neill for the third time for ridiculing Dean, which ridiculing the court had earlier suggested was intended to incite racial animosity toward Dean in the all-black jury.

Apparently, during a break following the testimony, Dean stated to O'Neill words to the effect that "you forgot to cross-examine about two people." Asked who such people were, Dean responded: "David Barrett and the Judge." As shown in the second group of transcript below, according to Independent Counsel attorney Paula A. Sweeney who was also present when Dean made the remark, Dean repeated the remark two or three times and "it was a little bit odd."<sup>2</sup> The meaning of Dean's remarks – obvious to the writer and I assume to Independent Counsel attorneys once they gave the matter any thought – is the following.

Consistent with Dean's observations that the everyday connections one observes in Washington hardly suggest a conspiracy, her off-the-stand remark to O'Neill was intended to identify the next two most logical persons on the skin of connections O'Neill was developing. The first is David Barrett, who was Linda Murphy's law partner in the firm of Barrett, Montgomery and Murphy. While it is hard to know how much such fact played into Dean's making the remark, it warrants note that Barrett was himself a significant figure in matters underlying the Inspector General's report on HUD's moderate rehabilitation, in consequence of Barrett's relationship with Assistant Secretary for Housing Thomas T. Demery, the principal subject of that report. Demery's actions concerning Barrett were specifically cited by HUD Inspector General Paul A. Adams in a November 4, 1988 memorandum to HUD General Counsel J. Michael Dorsey as part of Adams' effort to have Demery removed from the moderate

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that argument, he would call Dean's statements that she had acted pursuant to the instructions of Secretary Pierce as "probably the biggest lie of all." Tr. 3427. An extensive discussion of O'Neill's efforts to cause Dean dispute things O'Neill knew to be false so that he could later accuse her of lying may be found in a document styled "[Part V: Independent Counsel Efforts to Prejudice the Jury against Dean.](#)"

<sup>2</sup> According to complaints filed with various government agencies by a former Independent Counsel employee, Sweeney is the Independent Counsel attorney responsible for using government resources, including federal agent investigative resources, for purposes of compiling a chronology of Dean's putative sexual partners, which chronology was displayed in the Office of Independent Counsel for the amusement of its staff. See [Section B.9](#) of the main [Prosecutorial Misconduct](#) page. But, whatever the validity of such allegations or certain other allegations about Sweeney's feelings toward Dean, and regardless of how many times Dean might have repeated the remark or how odd her manner might have been, there is no reason to doubt that Dean made the remark (as discussed *infra*).

rehabilitation funding process.<sup>3</sup>

Barrett then received some attention during the hearings of May 23, 1990 and in the Lantos subcommittee's final report. As a result, Congressman Tom Lantos would later describe Barrett's May 1995 appointment as independent counsel to investigate HUD Secretary Henry Cisneros as "mind boggling" and later as "appointing the well fed fox to investigate missing hens at the chicken coop."<sup>4</sup> For a fuller discussion of Barrett's appointment and his controversial tenure as an Independent Counsel, see my March 8, 2011 Truth in Justice article styled "[The Remarkable Careers of Sometimes Prosecutor David M. Barrett.](#)"

Barrett was also a close friend to Judge Hogan, being a godfather to one of the judge's children. Judge Hogan had noted such fact at a hearing earlier in the case when discovery relating to Barrett was at issue.

The pattern of off-the-record discussion between Dean and the prosecutors that led to this exchange (which pattern was alluded to by O'Neill in bringing Dean's remark to the attention of the court) was at least unwise on Dean's part and was unprofessional of the part of the prosecutors. But the remark, if not the making of it, was apt enough. The next most logical characters in that skein of connections of the kind being developed by O'Neill were indeed David Barrett and the judge. In any event, its innocuous nature would be evident to anyone with

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<sup>3</sup> Demery would be indicted by the Independent Counsel for various matters including perjury before the Lantos subcommittee. After reaching a plea agreement that did not include a perjury charge, Demery acknowledged that the statements underlying his perjury charges were false. Testifying as a government witness in the Dean case, however, Demery repeatedly and unequivocally denied ever having lied to Congress. That the prosecutors did not correct Demery's statement, but instead went on to elicit his most crucial testimony in redirect, was an issue in Dean's Rule 33 Motion. It would also be an issue in her renewed motion of February 1997, which addressed as well the prosecutors actions in misleading the court in response to the initial motion and the prosecutor's ultimately advising the court in Demery's own case that Demery had given completely truthful testimony in the Dean case.

<sup>4</sup> The May 14, 1990 chronology relating to Barrett's relationship with Demery, which apparently underlay Lantos's questioning concerning Barrett on May 23, 1990, and which would be quoted in the Lantos subcommittee's final report, may provide a better picture of Lantos's understanding than the hearings themselves. Extensive discussion of Barrett's connections with Demery may also be found in the 1991 document styled "The Inquiry of Congressman Tom Lantos Into Abuses of the HUD Section 8 Moderate Rehabilitation Program," which, as that document is currently paginated, discusses Barrett at 1,18-19, 23- 25, 28, 30-32, 36-37, 41-42, 47. Both documents may be accessed at this the [Lantos Hearings](#) page of [jpscanlan.com](#). Whatever Arlin M. Adams or attorneys in his office may have known about Barrett's involvements in the mod rehab program, they apparently did not bring such information to the attention of the committee that appointed Barrett as Independent Counsel. Adams later indicated that he had not been asked. See Morgan D, "Cisneros Prosecutor's HUD Connections: Independent Counsel Has Unusual Past," *Washington Post* August 30, 1999. The article does not address why, assuming he was not asked, Adams would not have deemed it his duty nevertheless to inform the appointing panel of the facts concerning Barrett's involvements the abuses of HUD programs that Adams had been appointed to investigate. See Document styled "[The Responsibility of Independent Counsel Arlin M. Adams for the Appointment of Independent Counsel David M. Barrett.](#)"

substantial familiarity the broader issues underlying the appointment of the Independent Counsel.

If O'Neill and Sweeney did not recognize the nature of the remark at the time Dean made it, one would certainly expect them to recognize it after giving the matter some thought and after discussion of the matter with Independent Counsel Arlin Adams, which apparently took place on October 17, 1993. Such discussion may have had substantial consequences on October 18, 1993, and the ultimate resolution of the Dean case.

On October 18, 1993, Dean concluded her testimony. This was also the day on which Independent Counsel attorneys would call Supervisory Special Agent Alvin R. Cain to seem to directly contradict Dean's sworn testimony about calling Cain to complain about the treatment of John Mitchell in the HUD Inspector General's report. As discussed in many places, that testimony would play a substantial role in O'Neill's provocative, and seemingly devastating, attack on Dean's credibility in closing argument.

At least partly as a result of a suggestion to me by Associate Deputy Attorney General David Margolis during the week of the December 12, 1994, I would eventually come to believe that Cain in fact provided the testimony because he was persuaded that it was literally true.<sup>5</sup> The apparent reconciliation (though an

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<sup>5</sup> The court would later excoriate Independent Counsel attorney Robert O'Neill court for failing to disclose an off-the-stand statement of a witness that certain receipts, which were being introduced into evidence as if they reflected meals or gifts purchased for Dean, likely did not apply to her. But the court's criticism missed the point. As discussed in Section A of the Robert E. O'Neill profile, the December 1, 1994 document styled "[The Andrew Sankin Receipts](#)," and many other places, O'Neill knew with virtual certainty that certain of the receipts he sought to lead the jury to believe applied to Dean in fact did not apply to her. Thus, he did not regard the witness's statement as telling him anything he (O'Neill) did not already know. In defending his actions, and while expressing considerable annoyance that his ethics were being questioned, O'Neill made clear that he believed it was permissible to introduce the documents into evidence in a manner to lead the jury to believe they applied to Dean so long as the "Government did not say" they applied to Dean. Tr. 1203. In the same place he made clear that he believed it was for the defense to show that the receipts did not apply to Dean. A literalistic ethic of this nature may have underlain certain other statements of O'Neill during the course of many documented efforts to cause the jury to believe things O'Neill knew or believed to be false. Such ethic may underlie his phrasing when he sought to lead the jury to believe that Shelby's contacts with Dean were concealed from Feinberg and that such concealment was "the hallmark of conspiracy," when he (O'Neill) knew with virtual certainty that the contacts had not been concealed. See discussion in Section II.D of the December 1, 1994 Introduction and Summary (available at: [http://jpscanlan.com/images/Introduction\\_and\\_Summar.pdf](http://jpscanlan.com/images/Introduction_and_Summar.pdf)). But if O'Neill occasionally adhered to this curious ethic, he did not invariably do so. Such adherence might be reflected in the discussion of Agent Cain's testimony in the first day of closing argument, after stating that Dean testified she called Cain "the day the I.G. Report came out," he characterized Cain's testimony as being "It didn't happen. It didn't happen like that." Possibly the second statement reflected a qualification of the first, in recognition of the notion that Cain's testimony was only about Dean's calling him on a particular day. In any case, such nicety were ignored the following day when O'Neill characterized the matter as follows (Tr. 3506):

imperfect one, as discussed with respect to the testimony set out in transcript item 5 below) lay in the notion that Cain's testimony would literally mean only that Dean had not called him on the date the Inspector General's report was "published," April 17, 1989, which of course she had not. She had called him shortly after the report was released to the public and she secured a copy. This occurred about 10 days later. I would later be told by a former employee of the Office of Independent Counsel that Cain, who, in the former employee's view, considered himself to be a highly principled person,<sup>6</sup> had been taken into a room on several occasions by Robert O'Neill and Deputy Independent Counsel Bruce Swartz to be persuaded to give certain testimony that Cain was very reluctant to give. The former employee also said that there was considerable cheer or relief in the offices of the Independent Counsel attorneys when the fact that Cain had been coached to give these answers was not brought out in court.<sup>7</sup>

But when evidence was later presented to substantiate that Dean had in fact called Cain and that he had told her the check was maintained in HUD's Atlanta office,<sup>8</sup> Independent Counsel attorneys did not reveal to the court the apparent

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Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

But, apart from relying on actual evidence in the case to lead the jury to believe things that he knew were false, in closing argument O'Neill often mischaracterized the evidence as well, a matter that was the subject of Dean's Rule 33 motion and that is the subject of a number of issues in the December 1, 1994 materials. So I may be entirely mistaken as to there being some ethical concept, curious or otherwise, underlying O'Neill's actions.

In any event, Robert E. O'Neill is now the United States Attorney for the Middle District of Florida, and his ethical views with regard to leading juries to believe things prosecutors know or believe to be false, whatever precisely such views may be, presumably guide federal prosecutions in that office.

<sup>6</sup> Readers of an earlier version who note a change of language here should see my July 11, 2008 [letter](#) to Alvin R. Cain, Jr.

<sup>7</sup> That "Cain had been coached" was the way the matter was described to me by the former Independent Counsel employee who filed the November 15, 1996 complaint with the Office of Professional Responsibility that was then forwarded to Independent Counsel Larry D. Thompson by letter of February 25, 1997. From my understanding of the matter, I see the concern being one less related to a perception of "coaching" than the simple revelation that the impression created by the direct testimony – that Dean did not call Cain at all to complain about the treatment of Mitchell in the HUD IG report – was not true, and that Cain remembered Dean's calling him, but "at or about" the day she got the report, not "at or about" the "date" the report was issued within HUD.

<sup>8</sup> Such evidence included an affidavit by me, stating that after Dean called Cain, she called me (whom she was dating at the time) and told me about the call and about what Cain had told her about the check. According to the recently published book, *The Strong Man* (at 482-83), sometime in late 1991 or early 1992, Dean apparently also told its author, John Rosen, about the call to Cain.



rationale underlying Cain's testimony. Had they done so, it is difficult to know what precisely the court would have done. But it presumably would have regarded the Independent Counsel actions as outrageous and possibly have regarded the actions as the suborning of perjury, literal truth rationale notwithstanding. Instead, Independent Counsel attorneys sought to lead the court to believe that Dean's and Cain's testimonies were irreconcilable and that Cain had told the truth and Dean had lied. Eventually Arlin M. Adams himself signed a letter that persuaded the probation officer to recommend an increase in sentencing guidelines points that would have increased Dean's sentence by six months on the grounds that she had lied about the call to Cain. It is that course of action that I have maintained in various places constituted obstruction of justice. But it is discussed at length in many places.

The material below goes instead to Independent Counsel attorneys' thinking that they could elicit the testimony without Judge Hogan's raising an issue. Judge Hogan had made clear that he was already very displeased with O'Neill's treatment of Dean, including actions that Hogan perceived to be intended to incite racial prejudice. Thus presenting the testimony of a black agent that, if believed, would be devastating to the defendant's credibility before an all-black jury – but which testimony was in fact contrived to cause the jury to believe something the prosecutors knew to be false – would be taking a considerable risk.

And, leaving aside what might be revealed in cross examination,<sup>9</sup> the reasonably astute observer would have to think that Cain's testimony, as Independent Counsel attorneys intended it to be interpreted, had to be false unless Dean was irrational or, indeed, unbalanced. For no sane person in her position would have fabricated the story about calling Cain – which was self-serving testimony that was not actually probative as to whether she knew of Mitchell's HUD activities – while knowing, as she did, that Cain was available in the Independent Counsel offices to contradict her. And, of course, but for a hearsay objection, Dean would have testified as to what Cain had said to her when she asked about the check. That makes Cain's testimony, on its face, virtually impossible to believe. There are judges who might raise questions with prosecutors who present testimony, especially testimony with substantial implications, that seems false on its face.<sup>10</sup>

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<sup>9</sup> Dean's counsel did not cross-examine Cain at all regarding what would certainly have been an unexpected denial of any recollection of the call. Unless one grasped on the basis of listening to the testimony that Cain's denial of recollection of a call related solely to April 17, 1989 – something the testimony itself was crafted to conceal – it is not clear what might be gained by asking Cain further about it. The reasonable expectation is that Cain simply would reaffirm what seemed to be a categorical statement made with clear recollection of the circumstances. Such reaffirmations would only heighten the impact of the original testimony on the jury.

<sup>10</sup> I have not observed the behavior of enough district court judges to be anything of an authority

Thus, on the morning of October 18, 1993, before taking the chance of presenting Cain's testimony – and they were still taking quite a chance – the prosecutors sought to undermine Dean's credibility with the court by bringing up her remark about David Barrett and the judge, and doing so in the terms whereby "it was a little bit odd and we didn't know what to make of it." Tr. 3051. Whether or not the impression Hogan then formed of Dean had any role in causing him not initially to raise any question regarding the Cain testimony, it may have had a role in generally changing his attitude toward Dean. In any case, ultimately Hogan would uphold the verdict notwithstanding that he found that "it was almost impossible to quantify the total impact" of prosecutorial abuses he recognized and notwithstanding that he ultimately made clear that he believed Dean had made the call to Cain.<sup>11</sup> Implicit in the latter belief, assuming Hogan gave the matter any thought, would seem a recognition that in the use of the testimony and the Independent Counsel's response to Dean's post-trial allegations concerning the testimony, Independent Counsel attorneys had engaged in conduct that was not egregious, but heinous. At any rate, Hogan ultimately (at a February 22, 1994 [hearing](#)) refused Dean's request for discovery concerning whether Cain's testimony was false and whether the prosecutors knew it was false, observing (at 21) that that the evidence "doesn't mean of necessity the government is putting on information they knew was false before the jury."

Assuming the appraisal of what the record failed to show "of necessity" was correct, the fact remains that the record showed at least a substantial likelihood that the government's attorneys had put on information they knew was false or had done something of comparable gravity and had attempted to mislead the court as to what they had done. And in a case where Hogan had seemed almost ready to overturn the verdict for what he had recognized to be other instances of prosecutorial misconduct – which, whatever precise words Hogan used to describe it, clearly involved a finding that Independent Counsel attorneys at

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on this matter. But among judges that I suspect might well have raised concerns in such circumstances are the Honorable Gerhard A. Gesell and the Honorable Charles F. Ritchie, judges, as it happens, who were previously assigned to the Dean case. Judge Ritchie recused himself because of connections to Dean's family and Judge Gesell died during the course of the pretrial proceedings, though not before insisting that the prosecutors turn over all exculpatory material immediately upon discovering any. It was the flouting of this ruling after Judge Gesell's death that enabled Independent Counsel attorneys to lead the jury to believe many things that those attorneys knew were probably or certainly false.

<sup>11</sup> The court merely said it believed Dean may have called Cain when it refused to accept a recommendation to increase her sentence for six months for lying about the call. Later, however, it relied on the testimony as to the evidence of Dean's connection to Mitchell when accepting a recommendation to increase her sentence by six months for testifying she was not that close to Mitchell until after she left HUD. The latter ruling would make no sense unless the court believed Dean had made the call. The court subsequently reversed that ruling. The Independent Counsel's use of that testimony is discussed in the December 1, 1994 document styled "[Dean's Statement that She Had not Been that Close to Mitchell until after She Left HUD.](#)"



least put on evidence they believed was probably false – Hogan’s manner of denying further inquiry into the Cain allegations suggests an unusual lack of concern about what occurred in his courtroom. The same might be said about his reasoning in originally denying the Rule 33 motion. At any rate, nothing that happened subsequent to October 18, 1993, reflected the same solicitousness of the defendant’s rights that had been evident prior to that date.

Whether or not the bringing of Dean’s remark to Judge Hogan’s attention in some manner influenced his subsequent treatment of Dean, there is less reason to question whether prejudicing Hogan against Dean was the reason Independent Counsel attorneys raised the matter. It does warrant note that, as reflected in the October 18, 1993 bench conference, Dean’s attorney did not know what Dean might have meant. Thus, one must consider the possibility that Independent Counsel attorneys also did not grasp Dean’s meaning and thus the innocuousness of the remark. But Dean’s counsel, who was in any event not an expert on the various connections involved in the abuses of HUD’s moderate rehabilitation program that led to the appointment of an Independent Counsel, had only a moment to think before stating he did not know that the remark could mean. In the subsequent discussions among Independent Counsel attorneys described by O’Neill, which included Arlin Adams, it is hard to believe that no one recognized the true nature of the remark – a jibe at prosecutors that may have been out of place, but nothing warranting mention to the court in the terms with which it was recounted. One must also consider the possibility that, just as O’Neill stated in the bench conference, this was a matter of Arlin Adams’ insisting that the Independent Counsel office make every effort to ensure propriety in the proceeding. That possibility, of course, must be evaluated in light of the nature of actions of Independent Counsel attorneys documented elsewhere, including the fact that shortly after bringing this matter to Judge Hogan’s attention, those attorneys intended to call a witness to lead the jury to believe, as in many other instances in the case, things those attorneys knew to be false.

Relevant Transcript:<sup>12</sup>

The transcript materials below appear in different formats because some parts are clipped from a scanned copy of the transcript and others are clipped from documents in which they had previously been typed.

**1. Testimony and Bench Conference of October 14,**

**1993. 2893**

9 Q Do you also recall testifying on direct examination  
10 that you don't remember any consultants involved in  
11 Durham Hosiery Mill?

12 A I never talked to any consultants involved in  
13 Durham Hosiery Mill. After reading all of your  
14 information I know that before I had any involvement  
15 with them they had consultants and I think they paid  
16 consultants when they closed the project. I since read  
17 the complete file. I now know just about everything  
18 there is to know about Durham Hosiery Mill, but at the  
19 time that Mr. Allen, and I don't know who accompanied  
20 him, I remember the fellow, a former Denver  
Bronco, and 2 he was from Denver and I don't know  
what his name was, 2 they came to see me. I spoke  
to Phil Abrams. Phil

2 Abrams had been dealing with it for a while.

Al Moran 2 had been dealing with it for a while.

2 Secretary Pierce and I had many conversations

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1 about it but at no time did I ever speak to a consultant  
2 or was I ever aware that a consultant was involved and I  
3 mean I now know that Linda Murphy was one of their  
4 attorneys but I never knew that at the time, and I know  
5 that Lou Kitchin was paid from the Durham Hosiery Mill.  
6 I didn't know that at the time. And it was certainly  
7 never mentioned to me until I met Mr. Kitchin, and when  
8 I met Mr. Kitchin he told me that he had worked on  
9 Durham Hosiery Mill. But at that point I had never met  
10 him before, and it had already been funded.

11 Q Are you finished. Ma'am?

12 MR. WEHNER: Objection to the comment.

13 THE COURT: All right, let's go ahead.

14 MR. O'NEILL: Your Honor, I move to strike the  
15 entire answer as unresponsive to the question.

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<sup>12</sup> The entire trial transcript may be found [here](#).

16 THE COURT: All right. Overruled. It was  
17 responsive to your question that was asked.

18 BY MR. O'NEILL:

19Q Now, isn't it true that Linda Murphy was a 20 consultant on that  
project, Miss Dean?

2 A Well, I believe that she worked on -I've  
never

2 seen anything in the files that said that she was paid,

2 but I assume she was, and I do know that she had some 2 involvement with  
it, after reading your files.

2 Q Now, is it also true as you've stated, Lou Kitchin

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1 was a consultant on that project?

2 A Yes, I've seen checks written to Mr. Kitchin that  
3 you provided during discovery.

4Q You mentioned an individual by the name of Allen.

5 Mr. John Allen was the developer of that project, is  
6 that true?

7 A He was either the developer or had an interest in  
8 it. I think the company developing was Myerson-Allen  
9 and so I'm going to assume that he was a developer. I'm  
10 going to assume that he was the principal.

11 Q I'm not asking you to assume. Do you recall  
12 testifying on direct examination that you met with  
13 Mr. Allen on Durham Hosiery Mill?

14 A Yes, I met with Mr. Allen and another individual  
15 from Denver on the Durham Hosiery Mill shortly after I  
16 became Executive Assistant.

17 Q Is it fair to say that John Allen went to school  
18 with your then boyfriend Richard Giegengack?

19 A I remember — I recall Mr. Giegengack being in my  
20 office, waiting to pick me up and Mr. Allen coming for a  
2 meeting and going back and saying oh, aren't you Richard

2 Giegengack, and he went, yes, and it turned out that  
2 Mr. Allen and Mr. Giegengack knew each other. It has 2 nothing to do with  
Durham Hosiery Mill.

2 MR. O'NEILL: Your Honor, I move to strike all

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1 unresponsive answers after the answer yes.

2 THE COURT: Overruled. It's  
3 cross-examination. Go ahead.

4 BY MR. O'NEILL:

5 Q Am I correct, Miss Dean, that you and  
6 Mr. Giegengack went out socially with Mr. Allen?  
7 A I believe that day -I know that day that  
8 Mr. Giegengack was picking me up we gave Mr. Allen a  
9 ride to the airport and we stopped off and had a  
10 cocktail at the Guards and, on the way, and that was the  
11 only time I ever saw Mr. Allen socially.  
12 Q Is it also fair to say that Richard Giegengack that  
13 we're talking about, your then boyfriend, was best  
14 friends with Jon Boisclair, is that true?  
15 A That is true and that is how I met Miss Murphy, his  
16 wife.  
17Q And Jon Boisclair is married to Linda Murphy? 18 A That is  
correct.  
19Q Now, during the direct examination you did not  
20 mention the fact of this John Allen, Richard Giegengack, 2 Jon Boisclair,  
Linda Murphy relation on Durham Hosiery 2 Mill, is that true?  
2 A Well, that is such a bizarre characterization of  
2 it. Why would I mention that? Mr. Giegengack has  
2 nothing to do with Durham Hosiery Mill. Mr. Boisclair

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1 has nothing to do with Durham Hosiery Mill. The fact  
2 that Mr. Giegengack and Mr. Allen knew each other ten  
3 years before at school has nothing to do with Durham  
4 Hosiery Mill.  
5 Q You mentioned that Mr. Giegengack and Mr. Boisclair  
6 had nothing to do with Durham Hosiery Mill, but  
7 Mr. Allen and Miss Murphy did, correct?  
8 A Mr. Allen was the principal. Mr. Allen saw me in a  
9 meeting with Mr. Myerson, I assume it was Mr. Myerson or  
10 whoever was this person from Denver. And then one time  
11 he was dropping off some papers. It was late. He was  
12 there for a meeting with other HUD people. He came into  
13 my office to say hello, ran into Mr. Giegengack, they  
14 recognized each other, and we drove him to the airport,  
15 but I don't understand what —  
16 Q You don't understand that Mr. Allen, the developer,  
17 was good friends with Richard Giegengack, your then  
18 boyfriend, Linda Murphy is the consultant on this  
19 project who is married to Jon Boisclair who you  
20 socialized with, you don't see any problem with that?  
2 A If— if— no, I don't. I — I don't. I walk  
2 through this Courthouse and run into people I know. It  
2 doesn't mean they're parties to this case.  
2 Q You were the Executive Assistant to the Secretary  
2 of HUD, were you not, Ma'am?

2897

1 A Yes, and Secretary Pierce made the decision to fund  
2 Durham Hosiery Mill for reasons that had nothing to do  
3 with Linda Murphy, Louis Kitchin, Richard Giegengack, my  
4 mother, you, or anything else.

5 Q And that's your testimony, is it, Ma'am?

6 A Yes, that is the truth.

7 Q That's for the jury to decide, right, Ma'am?

8 MR. WEHNER: Objection, Your Honor.

9 THE COURT: All right, I'll sustain the remark  
10 of the counsel again as being improper.

11 BY MR. O'NEILL: [12

12 Q Now, let's talk about Mr. Jay Stone. You mentioned  
13 him during direct examination, is that correct?

14 A Yes, I did.

15 Q And do you recall testifying you couldn't remember  
16 much about Mr. Stone?

17 A I remember that he worked for someone and I  
18 remember having trouble deciding who it was that he  
19 worked for.

20Q And you said it might have been some Congressman in  
2 Louisiana, does that refresh your recollection?

2 A It was either a Congressman, a Senator or a  
2 Governor and I think I mentioned all three and couldn't  
2 remember which one it was.

2 Q Isn't it true, Miss Dean, that at that time Mr.

2898

1 Jay Stone was working for his own business in  
2 Washington, D. C. and he was associated with Lance  
3 Wilson and Paine Webber?

4 A No, not that I know of.

5 Q Let me show you a document and see if that would  
6 refresh your recollection as to whether he was  
7 associated with Lance Wilson?

---

12 I do not consider the next two pages of testimony to be particularly relevant to the point of this document, but I include them simply to show the transition from the discussion of Giegengack/Boisclair/Murphy/Allen to the bench conference.

8 A Well, this is a document from Paine Webber to  
9 Mr. Jay Stone and it doesn't mention my name, I've never  
10 seen it before. And it has Lance Wilson's signature on  
11 it. It doesn't have Mr. Stone's signature on it and,  
12 no, I don't -I know that Jay Stone worked for a member  
13 of Congress or a Governor in a campaign and I wouldn't  
14 know Jay Stone if he was in this courtroom.

15 I do remember that that is how he came into my  
16 office and I don't know any relationship Mr. Stone has  
17 with Mr. Wilson.

18 Q Does that show you that he is not working for any  
19 Congressmen, he is not working for any Senator, or any  
20 Governor from the State of Louisiana?

2 MR. WEHNER: Your Honor, could we approach?

2 THE COURT: Sure.

2 (Bench conference)

2 THE COURT: Let me see the document.

2 MR. O'NEILL: Yes.

2899

1 MR. WEHNER: I object to the continued  
2 questioning after the witness has answered the question  
3 with regard to whether a document refreshes her  
4 recollection.

5 THE COURT: I think the witness says this  
6 doesn't refresh her recollection. That ends it. You  
7 can't keep questioning her about that document.

8 MR. O'NEILL: Judge, can I just put something  
9 on the record? I might be a little touchy from  
10 yesterday, you did not think that was meant, that  
11 comment where I said that's for the jury to decide —  
12 did you take that as an improper comment?

13 THE COURT: I did. You can't keep making  
14 remarks about —

15 MR. O'NEILL: I'm sorry, Judge.

16 THE COURT: Every time a witness answers a  
17 question that you don't like you say, well, that's for  
18 the jury to decide. That's a comment, it's not a  
19 question to a witness. It's not an objection made to  
20 the Court. What is it otherwise? It's a comment to the  
2 jury in general, which you don't do.

2 MR. O'NEILL: I apologize, Judge, but —

2 THE COURT: The thing is not to get into  
2 repartee with the witness or -on your own.

2 MR. O'NEILL: With all due respect, Your



2900

1 Honor, that's why I moved to strike her answer several  
2 times and you felt and I don't disagree —

3 THE COURT: This is cross-examination. Do you  
4 know so and so, and she gives a long explanation, but I  
5 don't think comments to the jury -it's not a question  
6 of a remark to the Court as an objection to evidence.  
7 It doesn't have any business in the courtroom. That's  
8 all.

9 MR. O'NEILL: Well, I apologize.

10 THE COURT: There's no evidentiary value. It  
11 means nothing except to influence the jury about  
12 something that's not appropriate, and that's my  
13 concern.

14 I just wanted to make it clear yesterday and I  
15 don't want to rehash this again because it's over, it's  
16 water over the dam, but I'm not sure the record  
17 reflected what my concern was adequately and I don't  
18 want to leave an unfair impression to Independent  
19 Counsel. Miss Dean had been answering a question, had  
20 raised her voice and spoken very loudly and repeated a  
2 couple of times she never meant to do something. That's  
2 the general context, that's not totally accurate, but  
2 said never, never it very loud several times. The  
2 remark of counsel for the prosecution was I'm sorry, I  
2 didn't hear you, and holding your hand to your ear which

2901

1 caused the jury to laugh and snicker. I'm not sure that  
2 would appear in the record.

3 The prosecutor did not use all its strikes in  
4 choosing jury and I have no question that that's a  
5 problem with choosing jury at all. My concern was that  
6 there was an insensitivity at least and maybe something  
7 much more. These remarks are to influence the jury.  
8 We're here to give the defendant a fair trial and that's  
9 what we're all here to do.

## **2. Transcripts of October 12, 1993 and October 13, 1993, Regarding the Court's Admonishing Prosecutor Robert E. O'Neill Regarding the Treatment of the Defendant**

October 12, 1993

2591

22 Q Would you please describe John Mitchell's  
23 relationship to your family, including your mother, from  
24 your perspective?

25 A Well, he and my mother were very good friends. I  
2592

1 remember the -I remember that I was with them the  
2 night that they met and I had -it had been a long time  
3 since I saw my mother sort of act like that. I mean she  
4 was acting more like a woman than someone who had been a  
5 widow for many many years, and she was twirling her  
6 necklace and I remember thinking to myself—

7 MR. O'NEILL: Judge, is this Mod Rehab?

8 A I'm sorry.

9 THE COURT: All right, I'll overrule the  
10 objection.

11 MR. WEHNER: Judge, I move to strike.

12 THE COURT: All right. I'll strike the  
13 comment by counsel.

14 Ladies and gentlemen of the jury, listen to  
15 the testimony and don't worry about counsel's comments.

16 MR. WEHNER: Your Honor, could we approach?

17 THE COURT: Sure.

18 (Bench conference)

19 MR. WEHNER: Your Honor, that statement by  
20 Mr. O'Neill is particularly out of line, given the  
21 testimony that this jury has heard on direct with regard  
22 to the relationship between Miss Dean and John Mitchell  
23 and her family and I would ask that you admonish the  
24 Government to restrain his impulses.

25 MR. O'NEILL: I have sat through three days of  
2593

1 hearsay upon hearsay, of leading a witness through  
2 completely irrelevant nonsense and I finally have said  
3 something. Mr. Wehner and his client throughout the  
4 Government's case would laugh and guffaw at various  
5 statements made by witnesses. I have not engaged in  
6 this. When I hear about her mother curling her hair —

7 THE COURT: She said her necklace.

8 MR. O'NEILL: — like a school kid, this is  
9 absurd, Judge, it has nothing to do with this case and  
10 if they want to get on with it, after four days the  
11 patience of the Government is wearing a bit thin.

12 THE COURT: Well, the impatience of the  
13 Government should not be exhibited by comments that

14 provoke laughter from the jury at a time when the  
15 defendant is testifying about a principal unindicted  
16 co-conspirator in the case and her relationship with him  
17 which I think is relevant, and the Government is relying  
18 on the testimony of the person closest to her mother as  
19 the tie as to why she took certain actions that you  
20 allege shows a conspiracy exists although we have no  
21 direct evidence.

22 I agree that much of the other evidence that  
23 we've been hearing is hearsay and I've given the  
24 defendant a lot of scope and latitude because of the  
25 nature of the charges in this case, which to the Court's  
2594

1 mind, as I said before, present some difficulty and I  
2 have given the defendant the benefit of my concerns but  
3 I don't think on either side it's appropriate.  
4 I didn't notice the defendant's counsel going  
5 unremonstrated against by the Court when he would make  
6 comments about particular things. So I would think on  
7 both sides the admonition stays, but I do think the kind  
8 of comment when she's testifying about a crucial  
9 allegation in the case, I think her mother's response to  
10 this man and what she believed the relationship was and  
11 what her motivation would be is very important. So  
12 restrain yourselves, and if you want to object come up  
13 and object and I'll hear it.

14 MR. O'NEILL: Your Honor, the Government will  
15 abide obviously by your rulings. I don't have too much  
16 choice even if I disagreed with you since you are the  
17 Judge.

18 However, the Government will notify the Court  
19 that I will start objecting on legal bases such as  
20 leading and non-relevant matters.

21 THE COURT: That's fine. I don't mind.

22 MR. WEHNER: Thank you, Your Honor.

23 (Bench conference concluded)

October 13, 1993

2776

Your Honor.

2 THE COURT: All right.

3 All right, Ladies and Gentlemen, we'll make it 9:30 in  
4 the morning then. We should have a regular day tomorrow. So  
5 we'll be proceeding on tomorrow with the testimony.

6 Remember the admonitions again overnight, please, about

7 not reading, watching, or listening to anything in this case in  
8 the media or talking about it with each other, with anyone else,  
9 or letting anyone talk about it in your presence whatsoever.  
10 Have a good evening, and be back tomorrow at 9:30, all  
11 right?  
12 (Jury out.)  
13 THE COURT: Let me see counsel at the bench, please.  
14 (Bench conference on the record.)  
15 THE COURT: Mr. O'Neill, let me ask you if that had  
16 been a black defendant on the stand with a white jury, would you  
17 be making the same kind of smart comments you've been making with  
18 a white defendant and a black jury?  
19 MR. O'NEILL: Do you think I'm making those racially?  
20 THE COURT: No, what I'm impugning is that you're  
21 making these comments with a white defendant and a black jury  
22 which you wouldn't be doing with a black defendant and a white  
23 jury, and I resent that. I think it may be a basis eventually  
24 for the bench to take a look at this case.  
25 MR. O'NEILL: Your Honor, if I may, I understand what  
2777  
1 your concerns are. That happened numerous times in the  
2 government's case, numerous times, and the record will reflect  
3 that. It happened one time now after the question was asked and  
4 answered, asked and answered.  
5 THE COURT: This is the third time I recall you doing  
6 this, and I've warned you before, all right?  
7 MR. O'NEILL: Second time, Judge. I don't want to –  
8 THE COURT: Second or third.  
9 MR. O'NEILL: I don't want to quibble. All right.

### **3. Bench Conferences of October 18, 1993**

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1 PROCEEDING S  
2 THE DEPUTY CLERK: Criminal number 92-181.  
3 United States of America versus Deborah Gore Dean. We  
4 have Robert O'Neill and Paula Sweeney for the  
5 Government. Stephen Wehner for Miss Dean.  
6 THE COURT: Do you want to round them up for  
7 me?  
8 THE DEPUTY CLERK: Yes, someone went to get  
9 them, Your Honor.  
10 THE COURT: All right. Good morning,  
11 counsel. I came out because I had my clerk inquire if

12 there were some preliminary matters. We're waiting for  
13 a juror, alternate number four, I guess it's alternate  
14 number two now, who is not here.

15 MR. O'NEILL: Judge, may we approach for a  
16 moment?

17 THE COURT: Sure.

18 MR. WEHNER: May Miss Dean be excused to go to  
19 the ladies room?

20 THE COURT: Sure.

2 (Bench conference)

2 MR. O'NEILL: Good morning, Judge. Probably  
2 it's not a big deal, but in talking with Judge Adams  
2 over the weekend he thought it should be on the record.  
2 After cross-examining Miss Dean on Durham Hosiery Mill

3051

1 there was a break, and there's been a lot of colloquy  
2 amongst us, and it's not like amongst everybody, there's  
3 nothing in terms of statements to be used, you know,  
4 when a defendant makes an utterance, but after the  
5 Durham Hosiery Mills she mentioned - I was sitting with  
6 Miss Sweeney and Special Agent Batts at counsel table  
7 and she said there's two people you forgot to  
8 cross-examine about that and I said, well, who is that,  
9 and she said Dave Barrett and the Judge.  
10 Frankly, I didn't think anything of it and I  
11 still don't, Judge, but in going over - Judge Adams  
12 comes down from Philadelphia on Sundays and we go over  
13 the case and we all talk about the case, and that came  
14 up and he thought you should be apprised of that. So  
15 we're letting you know and -

16 MS. SWEENEY: Actually, Your Honor, she  
17 repeated it two or three times. It was a little bit odd  
18 and we didn't know what to make of it.

19 THE COURT: Yes, it is. I don't know what  
20 she's talking about.

21 MR. WEHNER: I've got to plead ignorance,  
22 Judge, and I don't think that means — I think that's  
23 meaningless, both from my client's mouth and in terms of  
24 the issues in this trial. I just don't know.

25 THE COURT: I don't know what she's talking

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1 about except Mr. Barrett is a close friend of mine. If  
2 he was intimately involved in the case —

3 MR. WEHNER: His name was mentioned in  
4 passing, not as a subsequent player.  
5 THE COURT: At least not in this case. All  
6 right, thank you for alerting me, whatever it was worth.  
7 MR. O'NEILL: That's it, Judge. That was the  
8 whole preliminary matter.  
9 (Bench conference concluded)

**4. Dean Testimony of October 12, 1993 with Accompanying Narrative (as pulled from the document delivered to the Department of Justice on December 1, 1994 styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr.) (footnotes omitted)**

Dean testified about learning of Mitchell's HUD consulting on her fourth day on the stand. She first explained, in some detail, how she had acquired a copy of the report from Alvin Cain, the agent in HUD's Inspector General's office who had been in charge of writing the report. Among other things, Dean explained how, after talking to Cain about getting a copy of the report, she had sent Mitchell's daughter (Marti Mitchell) with a check to the Inspector General's office to secure a copy. Dean then testified that she (Dean) learned that Mitchell had earned a consulting fee when she started to read the report (which had indicated that Mitchell had earned \$75,000 in consulting fees on the Arama project). This testimony followed:

Q. Okay. After you learned -- was that the first time you knew that John Mitchell was receiving dollars based on consulting with HUD?

A. Yes.

Q. This was in May -- or, I'm sorry, April of 1989.

A. Yes, the day the report came out.

Q. Was John Mitchell alive, or had he passed away by then?

A. He had died the previous November.

Q. Did you place any telephone calls after you heard that in the report -- after you discovered that information.

A. Yes.

Q. Who did you call.

A. I called Al Cain.

Q. What did you say to Mr. Cain?

A. I told him that I considered him to be a friend and I couldn't believe that he wouldn't have told me about this before now and that I knew it wasn't true, that John would never have done that, and that he better be prepared, because I was really mad, and I wanted to see the check, and if there had been a check written to John Mitchell, Al better have a copy of it, and I was coming down there, and if I found out that he was, in any way had misinterpreted or had misrepresented John's actions, I was going to have a press conference and I was going to scream and yell and carry on.



And Al said, Al told me that he --

Tr. 2616-18.

At this point, prosecutor Robert M. O'Neill rose to object. Before he actually said anything, the court stated: "I'll sustain the objection. Don't get into what he said." Tr. 2618. Thus, Dean was not permitted to testify as to what Cain might have told her in response to her specific questions regarding the existence of a check.

### **5. Direct Testimony of Alvin R. Cain, Jr. of October 18, 1993**

The Cain direct testimony is set out completely below. The reason for the completeness is to illustrate the apparent basis on which Cain was led to believe the testimony was literally true – that is, that Dean, who called him shortly after the report was made public at the end of April 1989, did not call him “at or about” April 17, 1989, the date the report was issued internally at HUD. As I have explained in several places, the logical antecedent of “that date” seems in fact to be the day Cain provided the report to Dean, rather than April 17, 1989 (though April 17, 1989 is the only literal “date” mentioned.) For that reason, the testimony seems not even to be literally true unless one accepted an extremely literal view as to the meaning of the word “date.”.

In the same vein, one might note that after giving “April 17, 1989” as the date the report was “published,” Cain acknowledges receiving a call with Dean “at or about that time.” Thus, “at or about that time” seems to encompass both April 17 and the end of April, while “at or about that date” does not. I am nevertheless persuaded that the notion that “that date” reference to April 17 underlies the Independent Counsel’s persuading of Cain to give the testimony.

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10 MR. O'NEILL: Your Honor, the Government would

11 call Special Agent Alvin Cain.

12 THE COURT: All right.

13 (SPECIAL AGENT ALVIN CAIN, WITNESS FOR GOVERNMENT,

14 SWORN)

15 DIRECT EXAMINATION

16 BY MR. O'NEILL:

17 Q Agent Cain, I would ask you to speak in a loud and

18 clear voice so that everyone can hear you, and so that

19 there's no misunderstanding. Sir, would you please

20 state your name for the record, spelling your last name?

2 A My name is Alvin R. Cain, Jr. The last name is

2 spelled C-a-i-n.

2Q Agent Cain, by whom are you employed?

2 A I'm currently employed with the Office of the

2 Inspector General at the U.S. Department of Housing and

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1 Urban Development here in Washington.

2 Q And in what capacity are you so employed?

3 A I serve as a Supervisory Special Agent.

4 Q What exactly does a Supervisory Special Agent do?

5 A I supervise a variety of investigative efforts that

6 are focused toward protecting the integrity of the HUD

7 programs. Our primary mission is — we're concerned

8 with fraud, waste, abuse and mismanagement within those

9 programs of HUD.

10 Q Where are you currently assigned, sir?

11 A At -- I'm currently working at the Office of the

12 Independent Counsel.

13 Q And how long have you been assigned there?

14 A Since June of 1990.

15 Q Agent Cain, did you have any other previous law

16 enforcement experience prior to joining HUD as a Special

17 Agent?

18 A Yes, prior to HUD I was on active duty with the

19 United States Air Force for 22 years, 20 of which was

20 spent with the Air Force Office of Special

21 Investigations.

22 Q Agent Cain, did there come a point in time when you

23 were involved in a HUD I.G. Report?

24 A Yes.

25 Q And did there come a point in time, as you recall,

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1 that it was published?

2 A Yes.

3 Q And do you recall when approximately that was?

4 A The Section Eight Mod Rehab investigative report

5 was published April 17, 1989.

6 Q At or about the time that was published, do you

7 recall having a conversation with the defendant Deborah

8 Gore Dean?

9 A A telephone conversation.

10 Q And can you recount for the ladies and gentlemen of

11 the jury what if anything was said during that telephone

12 conversation?

13 A As I recall, Miss Dean telephoned me with an

14 inquiry relative to how she could obtain a copy of the

15 investigative report. I related to her that the report

16 was available under the provisions of the Freedom of

17 Information Act. I also explained to her the cost that  
18 was associated with obtaining a copy of the report.  
19 Basically we had two versions that were being  
20 sold under FOIA. The report itself totalled 50 some  
2 dollars and the report plus the audit report was 60 some  
2 dollars.

2 Q Did she express an interest in either report?

2 A Yes, she did. Miss Dean indicated that she would  
2 like to have a copy. I explained to her that she could

3198

1 send in a written request which we would honor and  
2 process or she could come to my office, pay for the  
3 report and sign a receipt for the same, and that would  
4 be the quickest way to obtain it.

5 Q And, Agent Cain, what if anything did she say to  
6 you?

7 A What if anything did —

8 Q Did she say to you.

9 A She told me that she would send Marty over with a  
10 check.

11 Q Did you know who Marty was at that time?

12 A I was not entirely clear. I assume Marty was a  
13 reference to Marty Mitchell.

14 Q Did there come a point in time when Marty Mitchell  
15 came to pay you for the copy of the report?

16 A As I recall, it was the same day.

17 Q What if anything happened?

18 A Marty came into the office. I had placed a copy of  
19 the report with a receipt to be signed with my secretary  
20 just in case if I was away from the office.

2 Ms. Mitchell came in, gave the check, signed the  
2 receipt, took the report and left.

2 Q At or about that date, do you recall any  
2 conversation with the defendant Deborah Gore Dean in  
2 which she was quite upset with you about the contents of

3199

1 the report?

2 A No, I do not.

3 Q Do you recall her mentioning John Mitchell to you  
4 and the fact that he made money as a consultant being

5 information within the report?

6 A No, I do not.

7 Q Do you recall her telling you that she was going to

8 hold a press conference to denounce what was in the

9 report?

10 A Absolutely not.

11 MR. O'NEILL: No further questions.

12 Thank you, sir.

**6. Transcript of Robert E. O'Neill's Use of the Cain Testimony in Initial and Rebuttal Parts of the Closing Argument (as pulled from the document delivered to the Department of Justice on December 1, 1994 styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr.")**

Three quarters of the way through the first day of the OIC's closing, O'Neill pressed the attack on Dean's credibility with particular acerbity, stating:

Based on her lies, you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you.

Tr. 3418.

Moments later, O'Neill derisively turned to Dean's denial that she knew Mitchell had earned HUD consulting fees:

Shocked that John Mitchell made any money. Remember she went into great length about that. That she was absolutely shocked. And the day the I.G. Report came out she called Special Agent Alvin Cain, who was at HUD at the time, and said I'm shocked. I can't believe it. I thought you were my friend. You should have told me John Mitchell was making money. You'd better be able to defend what you said and if you can't I'm going to hold a press conference and I'm going to do something, I'm going to rant and rave. That's exactly what she told you.

So we had to call in Special Agent Alvin Cain for two minutes' of testimony. And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. They asked him a bunch of questions about the Wilshire Hotel, and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that.

Tr. 3419-20.

During rebuttal the following day, O'Neill continued to assert that Dean had repeatedly lied on the stand, pursuing that approach with a virulence at least equal to that of the day before. In listing a number of statements by Dean that he asserted were lies, O'Neill again noted the contradiction by Cain:

Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

Tr. 3506.