

James P. Scanlan
Attorney at Law
1529 Wisconsin Avenue, NW
Washington, D.C. 20007
(202) 338-9224
jps@jpscanlan.com

July 9, 2008

The Honorable Thomas F. Hogan
Chief Judge, U.S. District Court for the District of Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: Web page on the misconduct of Independent Counsel attorneys in the prosecution *United States of America v. Deborah Gore Dean*, Criminal No. 92-181-TFH (D.D.C.).

Dear Judge Hogan:

I followed the referenced case closely and filed an affidavit in it concerning a conversation I had with the defendant Deborah Gore Dean in April 1989 about a call she had made to Supervisory Special Agent Alvin R. Cain, Jr. to demand to see a check showing payment of a consultant fee to John N. Mitchell on a project called Arama. As a result of the personal knowledge reflected in my affidavit, as well as what I perceived to be the dishonest manner in which the Independent Counsel responded to points Ms. Dean raised in the matter, I was certain the Independent Counsel had used perjured testimony in the case and had attempted to deceive the court in responding to issues raised by Ms. Dean. In light of such certainty on that matter, as well as knowledge of other evident misconduct by Independent Counsel attorneys, between December 1994 and January 2000, I submitted a substantial volume of material to various governmental entities concerning prosecutorial abuses in the case. I did so in an effort (1) to cause an investigation of the conduct of Independent Counsel attorneys in the Dean case; (2) to cause the removal of certain of those attorneys from positions they subsequently held in the Department of Justice on the grounds that their conduct in the Dean case indicated they were unfit to represent the United States; and (3) to cause the successors to Independent Counsel Arlin M. Adams in the continued prosecution of the case (initially Independent Counsel Larry D. Thompson and later the Public Integrity Section of the Criminal Division of the Department of Justice) to acknowledge to the court certain actions Independent Counsel attorneys had previously taken to deceive the jury and the courts both in the prosecution of the case itself and in subsequently responding to allegations of prosecutorial misconduct.

Honorable Thomas F. Hogan

July 9, 2008

Page 2

I took these actions as a citizen and without consulting with Deborah Gore Dean or her attorney (save, as I recall, mentioning some document to her on one occasion during that period, and responding to her counsel on occasions of his advising me of complaints to him from the Office of Independent Counsel or counsel that office had retained). Ms. Dean's limited knowledge of this matter came almost exclusively from her attorney, whose own knowledge had come from the Independent Counsel or the Department of Justice. But sometime in 2000 or 2001, Ms. Dean requested that I cease doing whatever I was doing in this matter lest it interfere with her counsel's resolving the case through an agreement with the Department of Justice. I agreed to do so. But, believing that the publication of Independent Counsel conduct in the case to be a matter of substantial public importance, I have always intended to again give attention to this subject.

A number of events of late have prompted me to do that now. As a first step in giving renewed attention to what I regard as pervasive prosecutorial abuses in the Dean case, I have recently created a web page devoted to these issues (accessible under the "Prosecutorial Misconduct" tab on jpscanlan.com) and have started to make accessible on that page an assortment of documents concerning this matter, including the bulk of the materials I created between 1994 and 2000, various responses from governmental entities, various materials that were filed in the case, as well as a number of other documents I acquired mainly through the Freedom of Information Act. I have also created a substantial introduction to the materials and created some other additional narrative documents.

The purpose of this letter is to alert your honor as to the existence of this page and to encourage your honor to review the materials it discusses for purposes of learning many things that occurred in the case that I doubt that your honor now knows or even now imagines. As discussed in Section A of the introductory narrative on the web page, I believe that anyone with a serious interest in prosecutorial misconduct, or certain related issues, should review the materials in their entirety, and that would hold as well for the judge in charge of the proceeding in which the described events took place. In light of the volume of the material, however, I would encourage your honor to at least give specific attention to two parts of the material.

The first is Section B.1 of the introductory materials on the web page. That section deals with the following matter. Virtually all of the materials addressed on the web page discuss the testimony of Supervisory Special Agent Alvin R. Cain, Jr. As discussed above, my firm conviction that Agent Cain's denial of any recollection of a call from Ms. Dean in April 1989 was false was an important factor underlying my decision to take the actions described above. But, as discussed in Section B.1, I would eventually come to believe that Agent Cain provided the testimony he did because he had been pressured into doing so by Deputy Independent Counsel Bruce C. Swartz and Associate Independent Counsel Robert E. O'Neill, aided by an argument that the testimony Agent Cain was to provide would be literally true notwithstanding that Ms. Dean had called him just as she said. The rationale whereby the testimony would be deemed literally true evidently involved a notion that Agent Cain's testimony that he remembered no call "at or about

Honorable Thomas F. Hogan

July 9, 2008

Page 3

that date” applied to April 17, 1989, the date the HUD Inspector General’s report was issued internally at HUD (and the only “date” Agent Cain provided in his testimony), not the day that the report was released to the public and Ms. Dean secured a copy of it. That occurred about ten days later.

But when Ms. Dean challenged Agent Cain’s testimony in her motion for a new trial, Independent Counsel attorneys did not have the temerity to advance the literal truth rationale to the court. Instead, they sought to lead the court to believe that Agent Cain’s testimony and Ms. Dean’s testimony were not reconcilable and that Agent Cain had testified truthfully and Ms. Dean had lied. It is these actions of Independent Counsel attorneys that I have maintained are among those most likely to constitute federal crimes.

The second part of the material warranting your honor’s special attention is a March 31, 2008 document styled “The Independent Counsel’s Use of Dean’s Off-the-Stand Remark about David Barrett and the Judge,” which treats a matter unaddressed in any of the other materials. The matter involves Independent Counsel attorneys’ bringing to the court’s attention on October 18, 1993 (the same day on which Agent Cain would later be called to deny any recollection of the April 1989 call from Ms. Dean) an off-the-stand remark that Ms. Dean had made on October 14, 1993. The document maintains that, while recognizing the innocuousness of the remark, Independent Counsel attorneys brought it to the court’s attention as if the remark were something quite odd, and that they did so both to facilitate the use of Agent Cain’s facially improbable testimony and to generally prejudice the court against Ms. Dean. The document also suggests that the tactic may well have achieved its purposes.

The referenced web page on these issues can be accessed directly at the following address: <http://jpscanlan.com/homepage/prosecutorialmisconduct.html>.

The March 31, 2008 document can be accessed directly at the following addresses: http://jpscanlan.com/images/David_Barrett_and_the_Judge.pdf.

As noted in Section A.2 of the introductory material, there is a considerable body of material not yet posted (or that may not ultimately be posted). If your honor has an interest in any such item, I would be happy to post it or otherwise provide it.

While I am proceeding under the assumption that rules of judicial ethics preclude your honor’s discussing these matters, to the extent that such is not the case, and your honor regards my treatment of any matter to be inaccurate or unfair, I would much appreciate your honor’s calling it to my attention. Contact information is shown on the letterhead. As I am frequently away from the office for extended periods, e-mail is the most reliable means of reaching me.

Finally, as with the extensive correspondence with the Department of Justice and other entities between 1994 and 2000, it is likely that I will eventually post on the web site

Honorable Thomas F. Hogan

July 9, 2008

Page 4

significant parts of current correspondence on this matter. Such postings may include this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Scanlan". The signature is fluid and cursive, with the first name "James" being the most prominent.

James P. Scanlan