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Materials Relating to Conduct of Attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in the Prosecution of Deborah Gore Dean

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Format note:

This is a PDF version of the Prosecutorial Misconduct page on jpscanlan.com with endnotes converted to footnotes.

Prefatory Notes:

1. The materials made accessible through this page are quite voluminous. Even the narrative material on the page itself is substantial. Thus, although the narrative is organized to be accessible as possible, I suggest the following to those readers who might not get too far into the narrative material in the normal course. Simply read the first four paragraphs of the Introduction. These provide a general background to the matter and should also at least suggest that something amiss occurred in the prosecution of United States of America v. Deborah Gore Dean. Then read Section B.1 (which, like other parts of Section B, can be accessed directly, and which is also available as a PDF file with endnotes converted to footnotes). In light of your view as to the nature of the conduct described there and the likelihood that the account is accurate, as well as your view of implications of the fact that persons involved with the prosecution would eventually hold high positions in the United States Department of Justice, consider whether you deem it worthwhile to read further. If so, return to the Introduction to put the matters addressed in Section B in context.

2. Commencing at the end of April 2009 pages were added providing profiles of the principal involved Independent Counsel attorneys and their conduct in the case. Profiles are available on Arlin M. Adams, Jo Ann Harris, Bruce C. Swartz, Robert E. O'Neill, Paula A. Sweeney, and Robert J. Meyer.

3. On June 9, 2010, the President nominated Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida. As discussed in the directly accessible Appendix 7 to the O'Neill profile, for a time it appeared that O'Neill would probably not be confirmed by the Senate at least because he made a false statement in an application for the United States Attorney position concerning an investigation of his conduct in the Dean case (as also discussed in my Truth in Justice editorials of June 23, 2010 ("Curious United States Attorney Nomination for One of Nation's Busiest Districts"), July 11, 2010 ("The Reason for the Bar Counsel Investigation of FL U.S. Attorney Nominee Robert O'Neill"), August 17, 2010 ("Additional Problems with Middle District of Florida U.S. Attorney Nomination"), and September 4, 2010 ("Doubtful Progress on Professional Responsibility at DOJ"), and Paul Mirengoff's Power Line posts of July 4,

2010 ("A Nomination That Should be Scrutinized Closely" and September 8, 2010 ("A Nomination That Should Be Scrutinized Closely, Part Two")). But on September 22, 2010, a unanimous Senate Judiciary Committee voted to send O'Neill's nomination forward with a favorable recommendation and on September 29, 2010, the Senate confirmed O'Neill. See my Truth in Justice editorials of September 26, 2010 ("The Honorable Robert E. O'Neill Regrets That He Is Unable to Answer Questions from the Audience"), October 3, 2010 ("Whom Can We Trust?"), February 6, 2011 ("Bruce Swartz – Our Man Abroad"), and February 19, 2011 ("Robert E. O'Neill and 18 U.S.C. § 1001").

4. A September 4, 2010 Truth in Justice editorial ("Doubtful Progress on Professional Responsibility at DOJ") highlights the conduct of Bruce C. Swartz, currently Deputy Assistant Attorney General in the Criminal Division in charge of international issues, in defending against allegations of prosecutorial abuse in the Dean case and suggests that such conduct would provide a useful case study for illustrating impermissible deceptions or evasions in prosecutor responses to misconduct allegations. Shortly after that item was published, a separately accessible Addendum 7 was added to the Swartz profile addressing the matter further. A February 6, 2011 item ("Bruce Swartz – Our Man Abroad") discusses the Department of Justice's implied representation as to Swartz's trustworthiness. A March 10, 2011 item ("Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material") discusses Swartz's representations regarding the hiding of exculpatory material in the context of actual hiding of the subject of Section B.7a infra and Switzerland's refusal to extradite Roman Polanski.

5. Truth in Justice editorial of February 22, 2011 ("Unquestionable Integrity versus Unexamined Integrity: The Case of Judge Arlin M. Adams") and March 16, 2010 ("The Arlin M. Adams Interview") address animosity Independent Counsel Arlin M. Adams may have felt toward former Attorney General John N. Mitchell for reasons including that Mitchell prevented Richard Nixon from appointing Adams to the Supreme Court (which Nixon had promised Adams he would do), as well as Adams failure to recuse himself from matters involving Mitchell. Many of the misconduct issues in the Dean case, including the matter referenced in the first prefatory note, involved a charge that Dean had caused HUD to take certain actions to benefit Mitchell, a person Dean regarded as a stepfather. As discussed in Section B.3, it is clear that Dean was innocent of those charges.

6. A March 2, 2011 Truth in Justice editorial ("The Curtailed Tenure of Criminal Division Assistant Attorney General Jo Ann Harris") discusses the role of Jo Ann Harris in initiating the scheme of deceit in the Dean case and her subsequent tenure as Assistant Attorney General for the Criminal Division.

Introduction

The materials discussed on this page pertain to conduct of attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in

the prosecution of *United States of America v. Deborah Gore Dean*, Criminal. No. 92-181-TFH (D.D.C.). The case, which was based on twelve felony counts in a Superseding Indictment issued July 7, 1992, was tried before a jury between September 13, 1993, and October 25, 1993, and resulted in a verdict against the defendant Deborah Gore Dean on all counts.

On November 30, 1993, Dean moved for acquittal on grounds of insufficiency of evidence and for dismissal of the indictment or a new trial on grounds that prosecutorial abuses denied her a fair trial (Rule 33 Motion). At a hearing on February 14, 1994, the Honorable Thomas F. Hogan specifically agreed with much of what Dean asserted concerning prosecutorial abuses, including that Independent Counsel attorneys failed to disclose exculpatory material while representing that no such material existed; that those attorneys put on witnesses without attempting to determine whether their testimony was true; and that those attorneys had reason to know that the testimony of two of its witnesses was false. Tr. 25-26. The court noted with regard to a particular matter that lead trial counsel Robert E. O'Neill had acted in a manner the court would not have expected from any Assistant United States Attorney who had ever appeared before it. *Id. 27.* More generally, the court found that Independent Counsel attorneys had acted in a manner reflecting "at least a zealousness that is not worthy of prosecutors in the federal government or Justice Department standards …." *Id.* The court repeatedly noted its concerns about the "cumulative effect" of the prosecutorial abuses it identified, observing that it was "almost impossible to quantify the total impact" of such abuses on the defendant's ability to defend herself. *Id.* 8-9, 27-29. But the court concluded that it did not believe "there was any overwhelming failure by the government in its zealous efforts in this case that resulted in such prejudice to the defendant as would require a new trial." *Id.* 29-31.

Dean moved for reconsideration, requesting discovery into certain matters. These included whether Supervisory Special Agent Alvin R. Cain, Jr.– a government witness on whose specific contradiction of Dean's testimony prosecutor O'Neill had placed great weight in provocatively attacking Dean's credibility in closing argument – had lied with knowledge of Independent Counsel attorneys (*see* Section B.1 *infra).* At a hearing on February 22, 1994, the court denied the motion and the request for discovery, observing that, while the matter "could be argued either way," the evidence put forward "doesn't mean of necessity the government is putting on information they knew was false before the jury." Tr. 20-21.

On February 25, 1994, the court sentenced Dean to be confined in a federal prison for a period of 21 months, but allowed bond pending appeal. In an opinion issued May 26, 1995, the United States Court of Appeals for the District of Columbia Circuit, while sharply criticizing the conduct of Independent Counsel attorneys, rejected Dean's appeal of the district court's denial of her Rule 33 Motion. But the court of appeals ruled that there was insufficient evidence to sustain all or part of the verdicts on seven counts in the indictment and, in light of that ruling and a ruling on a sentencing issue, vacated the judgment and remanded the case for resentencing of the defendant. Following denial of a petition for certiorari in 1996, in February 1997, Dean again moved for dismissal of the

indictment or a new trial on the basis of (1) the cumulative effect of the previously identified prosecutorial abuses and additional abuses that had not been identified when she filed her original Rule 33 Motion, (2) Independent Counsel efforts to mislead the courts in responding to Dean's earlier motions, and (3) the diminished evidence of guilt in the light of the rulings of the court of appeals. The Independent Counsel moved to strike the February 1997 motion and never responded to any allegations in the motion save to deny that there had been any efforts to mislead the court in responding to Dean's earlier motions. Dean's motion remained pending until November 2001. At that time, a Joint Motion was filed by Dean and the Department of Justice (which, in 1999, had replaced the Office of Independent Counsel in the prosecution of the case) whereby Dean agreed to withdraw all pending motions and make no further direct or collateral attacks on her conviction. In return, the Department of Justice recommended that Dean be sentenced to a term of probation that included six months of home detention, agreeing also to take no position as to the terms of the home detention. Dean was then sentenced to three years of probation including six months of home detention under terms that allowed her to go to work during the period of home detention.

Most of the materials posted or to be posted on this site concerning this matter were submitted to various officials or agencies of the United States government between December 1, 1994, and January 22, 2000, 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 (including (a) Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division, (b) Bruce C. Swartz from the position of Counsel to the Assistant Attorney General for the Criminal Division, (c) Robert E. O'Neill from the position of Assistant United States Attorney for the Middle District of Florida, and (d) Robert J. Meyer from the position of Trial Attorney in the Public Integrity Section of the Criminal Division) 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, from July 1995, Independent Counsel Larry D. Thompson and later, from approximately July 1999, 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.

Section A below briefly describes the nature of the materials posted on this site or otherwise available. Section B describes certain events occurring during or subsequent to the period from December 1994 to January 2000 that may bear on the interpretation of the posted materials, particularly the initial group of materials that was delivered to the Department of Justice on December 1, 1994. Section C describes certain materials created in conjunction with or after the initial creation of this page. The following page provides links to the various posted documents organized by date: Links Page.

A. Description of the Materials Posted

The most detailed discussion of the prosecutorial misconduct issues addressed on this page is found in a group of materials comprised of approximately 400, single-spaced pages of narrative material that I delivered, along with supporting exhibits, to the Department of Justice on December 1, 1994. The materials are organized as follows: The first item, styled "Introduction and Summary," is a document of 57 pages (as currently paginated, see discussion of formatting issues on the links page just referenced) broadly summarizing matters that are addressed in greater detail in ten supporting documents, which were called "narrative appendixes." The narrative appendixes, as originally paginated, ranged from eight to 83 single-spaced pages. Each narrative appendix begins with a summary of the issue or issues it addresses. The summaries range from one paragraph to six pages. The ten individual summaries were also collected together behind the Introduction and Summary, and nine abbreviated summaries running a total of six pages, are collected at the end of the narrative appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr." As presented here, the collections of individual summaries in some cases may contain (in brackets following the material in its original form) a short discussion of developments subsequent to the original creation of the summary. Some of these developments are also addressed in Section B *infra*.

These materials were originally provided to the Department of Justice with a short transmittal letter to Attorney General Janet Reno. Among other things, the transmittal letter advised the Attorney General, that, for purposes of routing the materials for review within the Department of Justice, the Department should be aware that, while serving as an Associate Independent Counsel just prior to appointment to her current position as Assistant Attorney General for the Criminal Division, Jo Ann Harris was involved in certain of the matter addressed in the materials. Within the Department of Justice, the materials were apparently routed to Associate Deputy Attorney General David Margolis with whom I then met during the week of December 12, 1994. The materials were supplemented by an eleventh narrative appendix, which I delivered to Margolis on January 17, 1995. The summary of that item is included in the collection of summaries of narrative appendixes posted here following the Introduction and Summary, though it was not part of that group of summaries when originally provided the Department of Justice.

Other materials posted on this site include a substantial part of a lengthy subsequent correspondence with the Department of Justice. Such correspondence commences with my letter of December 25, 1994, to Associate Deputy Attorney General Margolis, responding to his request that I clarify whether I represented Deborah Gore Dean and responding to his suggestion that the materials be first referred to Independent Counsel Arlin M. Adams. That letter clarified that I did not represent Deborah Gore Dean (something, as a federal government attorney, I was prohibited by law from doing) and provided reasons why the materials should not be first referred to Independent Counsel Adams. The correspondence concludes with my letter of January 22, 2000, to Counsel for the Office of Professional Responsibility of the Department of Justice H. Marshall Jarrett, which is discussed in Section B.8 *infra*.

In order that an item of correspondence might provide the recipient or other readers with an understanding of the general scope and nature of the issues without reference to other materials, it was my practice to include in many of the items of correspondence summaries of certain of the misconduct issues, as well as summaries of prior communications with the Department of Justice or other entities. For example, my letter of December 23, 1997, to Department of Justice Inspector General Michael R. Bromwich (74 pages as currently paginated) provides substantial summaries both of the misconduct issues and of the exchanges with the Department of Justice or the Office of Independent Counsel up to that date. Many shorter documents contain similar summaries. Almost every document gives some attention to the testimony of Supervisory Special Agent Alvin R. Cain, Jr. (the subject of Section B.1 *infra*). Thus, while there is considerable repetition of the same points in many items of correspondence, a number of the items may alone give a fair picture of the issues and the handling of the issues by the Department of Justice.

Apart from the aforementioned materials initially provided the Department of Justice and subsequent correspondence with the Department, posted on this site are all or parts of correspondence (1) with White House Counsel Abner J. Mikva between February and July 1995 and (2) with Independent Counsel Larry D. Thompson (who succeeded Arlin M. Adams as Independent Counsel in July 1995) or employees or retained counsel of the Office of Independent Counsel between September 1995 and July 1997. The former correspondence related to my effort to cause the President to remove Jo Ann Harris from the position of Assistant Attorney General for the Criminal Division. (In March 1995 Harris informed Attorney General Reno or her (Harris's) intention to leave the Department of Justice at the end of summer and in May 1995 formally resigned. *See* the Jo Ann Harris profile regarding whether the bringing of these issues to the attention of the White House led to Harris's resignation.) The latter correspondence related to my urging of Independent Counsel Larry D. Thompson to determine the nature of the conduct of Independent Counsel attorneys under Independent Counsel Arlin M. Adams and to bring to the attention of the courts all instances where those attorneys had endeavored to deceive the court and the jury in the Dean case. As with the Department of Justice correspondence, various items of the correspondence with Judge Mikva and Independent Counsel Thompson provide fair summaries of the issues involved.

There exist other groups of correspondence with various entities involving these issues, including a substantial body of Freedom of Information Act correspondence with the Department of Justice and the Office of Independent Counsel. Parts of such material may eventually be posted. As noted above, certain materials created in conjunction with or shortly after the initial creation of this page are described in Section C below. These include some descriptive documents and some correspondence relating to this web page with persons or entities mentioned in Section B.

The references to summaries of issues in various places including many items of correspondence may invite readers to rely mainly on those summaries. The attention given to several issues in Section B below also may incline readers to limit their examination of these materials to certain issues. Possibly the more summary treatments

of the principal issues generally, or of those given particular attention in Section B, will persuade most or all readers of the fundamentally dishonest nature of the actions of Independent Counsel attorneys in the Dean prosecution and the Department of Justice's deficient handling of, or involvement with, the matter.

Regardless of how persuaded they may be by the limited treatments of these issues, however, persons with serious interests in prosecutorial abuses generally, the issue of whether it may ever be permissible for government attorneys to lead juries or courts to believe things those attorneys know or believe to be false, the manner in which independent counsels have tended to conduct themselves, or the institutional ethics of the United States Department of Justice should review all the materials posted or described on this page, including the documents related to Dean's Rule 33 Motion of November 1993 and her motions of December 1996 and February 1997.

In reviewing the November 1993 materials, the reader should give special attention to the discussion of Robert E. O'Neill's closing argument, with thought to the extent to which O'Neill's 50 or so claims that Dean had lied involved situations where O'Neill knew she had not lied and the extent to which the argument was intended to incite racial prejudice. More generally, the reader should consider, in light of the narrative appendixes, how often O'Neill sought to lead the jury to believe things he knew to be false.

(A document styled "Part V: Independent Counsel Efforts to Prejudice the Jury Against Dean," which was originally provided to the District of Columbia Office of Bar Counsel in connection with the matter discussed in Section B.11a, and later provided to Department of Justice Inspector General Michael R. Bromwich on December 23, 1997, may provide the most comprehensive portrayal of these actions, and do so in a document that is both cleaner and easier to download than the scanned version of Dean's Rule 33 memorandum.)

The memorandum supporting the February 1997 motion addresses many issues that were addressed in the December 1, 1994 materials that had not been raised in connection with Dean's November 1993 Rule 33 Motion, as well as a number of important additional issues. Although the memorandum does not address the issue of the testimony of Supervisory Special Agent Alvin R. Cain, Jr., the subject of Section B.1, *infra*, a complete understanding of the issues addressed in that memorandum is important both generally to an appraisal of actions of all parties involved with the *Dean* prosecution and the subsequent defending of Independent Counsel actions regarding that prosecution, and specifically to an appraisal of the affirmative steps the Department of Justice itself took to cause the issues raised in the memorandum to go unaddressed.

If one were to write about or teach a course on any of the issues listed several paragraphs above, I suggest that it would be a mistake to do so without a thorough knowledge of the materials discussed on this page. The same holds for anyone with an interest in the fitness of the Independent Counsel attorneys identified above to hold public office or whether those attorneys deserve the esteem of their peers or the public. I also suggest that any person (or counsel for such person) who has been prosecuted by Robert E.

O'Neill or attorneys under his supervision, and who is inclined to question the conduct of such prosecution – and anyone who expects to be prosecuted by or under the direction of O'Neill in the Middle District of Florida – may find these materials of some value. While the Department of Justice had ample opportunity more than a decade ago to obviate any issues arising from Robert E. O'Neill's prosecutions in the years that followed, the Department may also find it useful to review these materials to appraise the scope of potential challenges both to prosecutions that have already taken place and that may take place in the future.

The astute reader will recognize that to the extent the materials show that Robert E. O'Neill in fact engaged in repeated efforts to deceive the jury and the court in the Dean case, knowledge of such conduct imposes on the Department of Justice an obligation also to review other prosecutions conducted or supervised by O'Neill to determine whether similar actions occurred in such prosecutions and, on discovering such acts, to bring them to the attention of the courts and defense counsel. In doing so, moreover, the Department's obligation is not solely to raise issues that it deems material or possibly affecting an outcome, but to alert defense counsel as to any matter such counsel would wish to know about in order that they might consider raising the matter with the court. In evaluating the importance of an act of deception by a prosecuting attorney, the Department, like the courts, should proceed under the assumption that if the prosecutor engaged in some act of deception, he or she did so in the belief that it could affect the outcome and thus accord some deference to that belief.

These materials may also be of interest to many as a sort of oblique psychological study. For readers who are themselves decent, upstanding people, including the substantial universe of principled government attorneys, will ponder what could cause so many individual attorneys – all or most of whom presumably also thought of themselves as decent, upstanding people – to act in the manner they did in this case and perhaps to do so, at least to a point, without believing they were doing anything wrong.

Eventually, I hope to include in the narrative introductory material on this page abbreviated links to all referenced documents (most of which had been done by the most recent revisions of these materials). In the absence of such links, however, I suggest that the reader will find it useful also to open the links page to allow ready access to the referenced documents while reviewing this page. Any item for which a date is provided ought eventually to be found on the links page by means of that date.

This page is concerned with the conduct of attorneys in the Office of Independent Counsel Arlin M. Adams and Independent Counsel Larry D. Thompson in the prosecution of the Dean case, not with the underlying congressional investigation that led to the appointment of an Independent Counsel. There does, however, exist a considerable body of material on the underlying hearings and the matters underlying them that are not directly related to any charges brought against Deborah Gore Dean by Independent Counsel Arlin M. Adams Such material, however, might be deemed at least peripherally related to the subject of the narrative appendix styled "Testimony of Thomas T. Demery" and the subsequent correspondence relating to Demery's testimony (a matter treated in

Section B.6 *infra*) and the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." But, irrespective of any relationship to the subject matter of this page, the materials relating to the congressional hearings themselves involve issues of considerable public importance. Thus, certain materials relating to those hearings are posted elsewhere on this site and discussed under the tab "Lantos Hearings."

This page and the page just referenced are still under construction. They may eventually be moved to other places on this site or to a site or sites of their own. If the URL for any page changes, the page will remain easy enough to locate. Though I may or may not post records of changes (*see* my July 11, 2008 letter to Alvin R. Cain, Jr.), I will retain copies of prior versions

In the event that a reader is interested in reviewing any document not posted that he or she deems pertinent to an appraisal of the issues raised here, please contact James P. Scanlan by e-mail (jps@jpscanlan.com) or telephone (202-338-9224). If I have the material, and unless some issue of particular sensitivity is involved (something I expect rarely to be the case), I will then either post the requested material on this site or otherwise provide it. I encourage readers to contact me with any information they may have that they believe it would be useful for me to have and with respect to pointing out to me any way in which my interpretation of the matters addressed here may be inaccurate or unfair. That applies as both to the materials on the Dean prosecution and to the materials on the congressional investigations.

B. Development Since the Original Creation of the Main Body of Materials Made Available through this and Related Pages of this Site

A number of developments subsequent to December 1, 1994, bear on the interpretation of the materials provided to the Department of Justice on that date, as well as on certain issue raised in the subsequent correspondence. These developments are described under the headings below. To facilitate the reader's review of these sections, the heading for each section is listed immediately below. The bracketed material following each item on the list is intended to provide a means of quickly locating a section by search term, without having to scroll down the page. In addition, most of these sections are made available separately and accessible by the indicated link and some are available as pdf with endnotes converted to footnotes.

1. Implications of the Literal Truth of the Testimony of Supervisory Special Agent Alvin R. Cain, Jr. [b1]

B.1a. The Beverly Wilshire Diversion [b1a]

2. Dean's 1991 or 1992 Account of the Call to Agent Cain Recounted in James Rosen's 2008 book on John Mitchell, The Strong Man [b2]

3. The Court of Appeals' Finding that there was Insufficient Evidence to Sustain a Conviction of Deborah Gore Dean as to Three of the Four Projects Involving Former Attorney General John N. Mitchell and the Proof that She was Innocent of the Fourth [b3]

3a. Independent Counsel Efforts to Cause the Defense to Fail to Discover the Mitchell Telephone Message Slips [b3a]

B.3.b. The Failure to Produce the March 22, 1993 Barksdale Interview [b3b]

4. The Parks Towers Narrative Appendix [b4]

5. Dean's February 1997 Motion for Acquittal/New Trial on Grounds of Prosecutorial Abuse and the Role in Such Motion of Efforts of Prosecutors to Deceive the Court in Responding to her Original Rule 23 Motion [b5]

6. Developments Concerning Testimony of Thomas T. Demery [b6]

7. The Independent Counsel's Response in the Supreme Court Concerning the Andrew Sankin Receipts [b7]

7a. The Failure to Disclose and Hiding of the Sankin Harvard Business School Application [b7a]

8. The Department of Justice's Role in Perpetuating All Actions of the Independent Counsel [b8]

9. Complaints of the Former Independent Counsel Document Manager [b9]

9a. Developments Regarding the Fabrication of Government Exhibit 25 and Alteration of the Martinez Interview Report [b9a]

10. Larry D. Thompson's Fitness to Hold Public Office [b10]

11. Additional Evidence of Ill Feelings Independent Counsel Arlin M. Adams Bore toward John N. Mitchell [b11]

11a. Complaint to the District of Columbia Office of Bar Counsel [b11a]

12. Developments Regarding the Involved Independent Counsel Attorneys [b12]

1. Implications of the Literal Truth of the Testimony of Supervisory Special Agent Alvin R. Cain, Jr. [b1]

A PDF version of this section with endnotes converted to footnotes may be found here.

Summary: In a case with a white defendant and an entirely African-American jury, prosecutors pressure an African-American government agent into providing carefully constructed testimony that would seem to categorically contradict emotional testimony of the defendant about an interaction with agent. The agent is persuaded that his testimony would not be perjury because it would be literally true even though intended to lead the jury to believe something the agent knew to be false. In closing argument, Prosecutor Robert E. O'Neill then relies heavily on that testimony in provocatively asserting that the defendant lied about the interaction with the agent. In post-trial proceedings, defendant argues that she can prove that she testified truthfully about the interaction. Prosecutors fear that if they tell the court about the literal truth rationale underlying the agent's testimony, the court will overturn the verdict and sanction the prosecutors. So they instead attempt to deceive the court and cover up their conduct in securing the agent's testimony. As part of an aggressive strategy in covering up their actions, prosecutors attempt to have the defendant's sentence increased for lying about the interaction with the agent.

Involved Independent Counsel Attorneys, apart from O'Neill and Independent Counsel Arlin M. Adams, included Bruce C. Swartz, (currently Deputy Assistant Attorney General the Criminal Division), Robert J. Meyer (from 1994 to 2000 a Trial Attorney in the Public Integrity Section and currently a partner in Willkie Farr & Gallagher, LLP*), and Claudia J. Flynn (holder of various Department of Justice positions between 1994 and 2006, including, from 2000 to 2006, Director of the Department's Professional Responsibility Advisory Office, and name source of the recently created Claudia J. Flynn Award for Professional Responsibility).*[1]

Inasmuch as this item may involve the first known instance of Robert E. O'Neill's tactic of calling people liars, often or perhaps most of the time when he knows they have not lied, it might be useful to read this item in conjunction with this short July 11, 2010 Truth in Justice editorial that discusses the false statement O'Neill made in his application for the US Attorney position about an investigation of his conduct in the Dean case. As discussed in Appendix 7 to the O'Neill profile, the false statement will likely cause O'Neill not to be confirmed even if no one looks at his actual conduct in the case,

[1] As discussed on the Issues Regarding Claudia J. Flynn page, which until recently had been password protected, Ms. Flynn passed away in 2006. For that and other reasons, she would probably not have been discussed here but for the decision in 2000 of (then) Deputy Attorney General Eric Holder to appoint her as the first permanent director of the Professional Responsibility Advisory Board and the decision in 2009 of Attorney General Holder to create a professional responsibility award and to name it as he did. As reflected on that page, like other persons involved in some aspect of Independent Counsel conduct regarding Agent Cain, Ms. Flynn was provided a number of opportunities to correct me if I had misinterpreted her actions in the matter.

While the efforts to raise this issue with various persons or entities are covered at the end of this item, I note at the outset that the issue is covered as the fifth summarized item of the June 16, 2010 letter to the Senate Judiciary Committee.

Mentioned throughout the materials discussed on this page is the testimony of Supervisory Special Agent Alvin R. Cain, Jr., the author of the April 17, 1989 HUD Inspector General's Report that led initially to congressional hearings on abuses of HUD's moderate rehabilitation (mod rehab) program and ultimately to the appointment of Independent Counsel Arlin M. Adams to investigate the mod rehab program and related matters. Agent Cain's testimony as an Independent Counsel rebuttal witness on October 18, 1993, played a quite important role in the trial, and the actions of Independent Counsel attorneys with respect to Agent Cain are among the actions of those attorneys that I have suggested are most likely to have violated federal laws.

The focal point of the Independent Counsel's case against Deborah Gore Dean involved allegations that Dean had caused HUD to take actions on four matters in order to benefit former Attorney General John N. Mitchell, a person Dean considered to be a stepfather. Mitchell had died in 1988.[2] A critical issue in the case concerned whether Dean was aware that Mitchell earned HUD consulting fees. One immunized witness who retained Mitchell on a HUD matter testified that he deliberately concealed Mitchell's role from Dean. Mitchell's partner, also immunized, testified that Dean was shocked when he told that Mitchell's HUD consulting was greater than that reflected in the Inspector General's Report. No one testified that he or she knew or thought that Dean was aware of Mitchell's HUD consulting.

Dean denied knowing that Mitchell earned HUD consulting fees until she read the HUD Inspector General's Report in April 1989 and saw an entry stating that Mitchell had received a fee of $75,000 for assistance in securing the 1984 funding of a Dade County, Florida moderate rehabilitation project called Arama.

In her direct examination, on October 12, 1993, Dean described how she had secured a copy of the report from Agent Cain on "the day the report came out" in April 1989, and how she had then read in the report that Mitchell had earned a HUD consulting fee. Tr. 2616-17. Dean then provided the following testimony about what she did when she saw the discussion of Mitchell's fee in the report:

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

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[2] *See* Arlin M. Adams profile regarding Independent Counsel Arlin M. Adams' telling *USA Today* that he believed he might have been appointed to the Supreme Court in 1971 had he not offended then Attorney General John Mitchell and Dean's efforts to cause Adams to recuse himself from matters involving Mitchell; Section B.11 regarding the discussion in John Rosen's *The Strong Man* of other reasons Adams may have harbored animosity toward Mitchell; and Addendum 2 to the Bruce C. Swartz profile regarding Swartz's representations to the court of appeals concerning the Independent Counsel's handling of the fact that Mitchell was a former Attorney General.

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 E. 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 Agent Cain might have told her in response to her specific questions regarding the existence of a check showing the payment to Mitchell. She instead went on to testify about a subsequent call to Mitchell's partner. Dean's entire testimony on the matter may be found at Dean Testimony.

It warrants note at this point that the Dean's having called Agent Cain was hardly probative that Dean was unaware of that Mitchell earned HUD consulting fees, since Dean could have called Cain merely to divert suspicion. And that would hold regardless of what Cain might have told Dean about a check. (In the trial there was no dispute that Mitchell had received a $75,000 fee on the Arama project, and the check reflecting that payment had been introduced into evidence as an Independent Counsel exhibit.) Further, Dean knew that Agent Cain was then assigned to the Office of Independent Counsel and hence was readily available to contradict any part of her testimony about the call that was not true. And, given that Cain was an African-American federal agent, and Dean was being tried before an entirely African-American jury, any contradiction of substance might have been expected to have a substantial impact on the jury. In these circumstances, Dean would have had to be mentally unbalanced to fabricate the story about calling Agent Cain, leave aside planning to fabricate a story about what Cain told her about the check.

Dean remained on the stand for all or part of five more trial days, including three during which she was extensively cross-examined by Independent Counsel attorney Robert E. O'Neill. During that cross-examination, O'Neill asked no questions about the call to Agent Cain.

Shortly after Dean concluded her testimony on October 18, 1993, Agent Cain appeared as an Independent Counsel rebuttal witness. Questioned by Independent Counsel attorney

O'Neill, Cain first responded to a question as to when the report was "published," stating that it "was published April 17, 1989." Cain then described a call he received from Dean "at or about that time," and provided details of his then providing Dean a copy of the report, which details closely conformed to those Dean had previously provided. O'Neill then conducted the following questioning of Agent Cain:

> Q. At or about that date, do you recall any conversation with the defendant Deborah Gore Dean in which she was quite upset with you about the contents of the report?
> A. No, I do not.
> Q. Do you recall her mentioning John Mitchell to you and the fact that he made money as a consultant being information within the report?
> A. No, I do not.
> Q. Do you recall her telling you that she was going to hold a press conference to denounce what was in the report?
> A. Absolutely not.

Tr. 3198-99. (Agent Cain's complete direct testimony may be found at Cain Testimony.)

Agent Cain's firm denial of any recollection of the call from Dean then played an important role in prosecutor Robert E. O'Neill's closing argument. Asserting that Dean's defense rested entirely on her credibility, O'Neill repeatedly and provocatively stated that Dean had lied on the stand.[3] Three quarters of the way through the first day of O'Neill's closing, he pressed the attack on Dean's credibility with particular acerbity, stating:

[3] I am not aware of any cases where the pervasiveness of statements that a defendant lied was comparable to O'Neill's repeated statements that Dean lied on the stand. A fairly comprehensive summary of the remarks is set out in Attachment 1a to the Cain Appendix: A briefer sampling follows immediately below: Tr. 3416 ("It was a lie."); Tr. 3417 ("It was a lie ... out and out"); Tr. 3418 ("it was filtered with lies"); Tr. 3419 ("Then Miss Dean lied."); Tr. 3421 ("She lies when it benefits her...she lies about that.. if she's going to lie on that will she lie on anything else"); Tr. 3422 ("it's so clear why she would lie"); Tr. 3425 ("She lied about that ... It was just another lie"); Tr. 3426 ("And probably the biggest lie of all ..."); Tr. 3429 ("Just as she's deceived you, or attempted to do so, ladies and gentlemen ..."); Tr. 3431 ("She has lied to this court, to this jury ... But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It is lies piled upon lies..."); Tr. 3432 ("listen [to defense counsel's closing] and wonder why she lied to you throughout her testimony."); Tr. 3501 ("Miss Dean lied to you very clearly and that she lied to you a series of times thereafter and, I repeat, you can take her testimony and throw it in the garbage where it belongs ..."); Tr. 3502 ("I'm saying that's where it belongs, in the garbage. Because it was a lie..... She lied to you."); Tr. 3507 ("They were lies ladies and gentlemen. Lies, blatant attempts to cover up what occurred, to sway you."); Tr. 3508 ("So you can throw her testimony in the garbage."); Tr. 3509 (... a series of misstatements, of falsehoods, of lies."); Tr. 3511 ("They unequivocally show that she lied to you, ladies and gentlemen, on the stand, under oath..."); Tr. 3518 ("... she lied about it."). *See* the May 31, document styled "The Putatively Curative Instructions that Informed the Jury that the Prosecutor's Provocative Statements that the Defendant Had Lied Reflected the Prosecutor's Personal Opinion" regarding the court's effort to address the jury's perception that these remarks reflected the prosecutor's personal opinion.

> 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 until she read about it in the HUD Inspector General's Report:

> 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 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 Agent Cain:

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

Tr. 3506.

The Introduction and Summary and the narrative appendix styled "Testimony of Supervisory Special Agent Alvin R. Cain, Jr." that I provided to the Department of Justice on December 1, 1994, address the matter of Agent Cain's testimony in great detail, including the events immediately following the trial. Such events include Dean's filing a post-trial motion asserting, among other things, that Agent Cain's denial of recollection of the call was false and that Independent Counsel attorneys had reason to know it was false. Dean supported her motion with her affidavit stating that when she called Agent Cain, he told her that a check existed but he could not show her a copy because it was then maintained in the Regional Inspector General's Office. I also

submitted an affidavit stating that, after calling Cain, Dean had called me and told me what Cain had told her about the check. Dean argued that information on the whereabouts of the check in April 1989 would corroborate her testimony about the call to Cain. After the Independent Counsel failed even to mention the check in its response, Dean sought discovery on the whereabouts of the check in April 1989, which the Independent Counsel opposed and which the court denied (as discussed in the third paragraph of the Introduction to the main Prosecutorial Misconduct page).

These matters are discussed in the materials provided the Department of Justice on December 1, 1994, in the context of an argument that Agent Cain provided false testimony. The materials further argued that, if Independent Counsel attorneys did not know that the testimony was false at the time Cain testified, they certainly had reason to know it when they evasively responded to Dean's motions.

Then, in a meeting during the week of December 12, 1994, Associate Deputy Attorney General David Margolis raised with me the issue of whether, even though Dean called Cain just as she said, Cain's testimony might nevertheless be literally true. Referencing the content of Cain's denials of recollection (especially with respect to the words "mentioning John Mitchell"), I stated that I did not know how such content could be reconciled with Dean's description of the call. Margolis did not suggest any other way Cain's testimony might be literally true, assuming Dean did call Cain, or otherwise discuss the matter further.[4]

At least partly as a result of Associate Deputy Attorney General Margolis's suggestion concerning the possible literal truth of Agent Cain's testimony, I would eventually come to believe that Cain in fact provided the testimony because he was persuaded that it was literally true. The apparent rationale lay in the notion that Cain's testimony that he remembered no call from Dean concerning the discussion of Mitchell in the HUD IG Report would literally pertain only to "at or about" April 17, 1989, the date the report was published within HUD, not the day the report was released to the public and Cain provided a copy to Dean. That occurred at the end of April 1989, about ten days after the date Cain stated as the date the report was published.[5]

As reflected by the testimony itself, and as suggested by the discussion set out along with the testimony (Cain Testimony), many would question whether the testimony was literally true. Indeed, some would likely say that the testimony was not even close to being literally true and the securing of the testimony was the suborning of perjury – pure and simple. But such issues do not detract from my confidence that the notion that the testimony was literally true underlay Agent Cain's providing the testimony.[6]

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[4] *See* Section B.8 *infra* regarding the implications of Margolis's evident belief that the literal truth of the testimony would render conduct of Independent Counsel attorneys less, rather than more, egregious than I was portraying it to be.

[5] Dean's letter to Agent Cain requesting a copy of the report is dated April 26, 1989.

[6] The reader might note that Robert E. O'Neill's first characterization of Dean's testimony may have attempted to conform somewhat to the literal truth rationale, with its reference to "the day the I.G. Report

I would later be informed by a former Independent Counsel employee (the former document manager discussed in Section B.9) that Agent Cain, who considered himself to be a highly principled person, had been pressured into giving the testimony in the course of several meetings with Associate Independent Counsel Robert E. O'Neill and Deputy Independent Counsel Bruce C. Swartz. As the former employee put it, Cain had been taken into a room on several consecutive days to be persuaded to provide testimony he was very reluctant to give. The former Independent Counsel employee also stated 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 the answers he gave was not brought out in court.

But, as reflected in the Cain narrative appendix, in defending against charges that Cain's testimony was false and in resisting Dean's request for discovery to prove that she had called Cain, Independent Counsel attorneys (at this point Arlin M. Adams, Bruce C. Swartz, and Robert J. Meyer) never advanced the argument that, though Dean had called Cain, Cain's testimony was literally true. Had they done so, the court, which almost overturned the verdicts for other identified prosecutorial abuses, might well have dismissed the indictment and ordered the sanctioning of the involved prosecutors. So Independent Counsel attorneys instead maintained that Cain had testified truthfully and Dean had lied. Further, in a January 18, 1994 letter Independent Counsel Arlin M. Adams signed personally, he then persuaded the probation office to recommend an increase in Dean's sentencing level for lying about the call, which increase would have resulted in an additional six months confinement. In doing so, notwithstanding that the rationale that had evidently underlain Cain's testimony was that Dean merely had not

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came out" and its characterization of Cain's testimony as: "It didn't happen. It didn't happen like that." Possibly the latter sentence was intended to qualify the former. In any event, after considering the matter overnight, O'Neill abandoned such nicety in the characterization during rebuttal the following day: "That conversation never, ever happened."

From that point forward it seems that Independent Counsel attorneys always characterized Agent Cain's testimony as being that the call never occurred or at least that, to Cain's recollection, it never occurred, as first reflected in the Independent Counsel's October 29, 1993 supplemental opposition to Dean's motion for acquittal, signed by Independent Counsel attorney Paula A. Sweeney, which stated (at 14):

> In this regard, the jury was entitled to consider defendant's testimony that she was shocked upon learning of the payments to Mitchell when she received the HUD-IG Report, and that she expressed her anger to HUD IG agent Al Cain, Tr. 2617; and the jury was further entitled to consider Agent Cain's testimony that this conversation never occurred. Tr. 3199.

This characterization, it might be noted, also ties the alleged conversation to the day Dean received a copy of the report rather than the date it came out, thus abandoning any deference to the notion that the Cain's denial of recollection was supposed to be tied to the day the report was released internally at HUD. Similarly, as discussed *infra*, Arlin M. Adams letter to the probation officer seeking to have Dean's sentence increased for lying about the call characterized Cain's testimony as that, to his recollection, the call never occurred. Independent Counsel attorneys characterized the testimony in the same way in the court of appeals. IC App. Brief at 25.

called Cain on or about the date the report was published, Judge Adams specifically represented to the probation officer that "Agent Cain testified on rebuttal that to his recollection this conversation never occurred." The varied actions of Independent Counsel attorneys in responding to Dean's charges, apart from being intended to falsely show that Dean had lied about the call, were also specifically intended to conceal actions of Independent Counsel attorneys that many, very likely including Judge Hogan, would regard as the suborning of perjury. It is for that reason that I have maintained the actions to conceal the circumstances of Cain's testimony constituted obstruction of justice if not other federal crimes.

Beginning in April 2009, profiles were added to this site on Independent Counsel Arlin M. Adams, Deputy Independent Counsel Bruce C. Swartz, and Associate Independent Counsel Robert E. O'Neill and Robert J. Meyer. The Robert E. O'Neill profile addresses the way the effort to present testimony that was literally true in order to lead the jury to believe things he knew to be false comports with the casuistic ethic reflected in many of O'Neill's tactics. The Bruce C. Swartz profile and the Robert J. Meyer profile provide details of their post-trial efforts to deceive the court to cover up the actions of O'Neill and Swartz in the securing of Cain's testimony. The Swartz profile and the Arlin M. Adams profile address whether, while knowing with absolute certainty that Dean had not lied about the call, Swartz and Adams would have sought to have Dean's sentence increased for lying about the call in any event, or whether their doing so was part of an aggressive strategy in covering up the underlying conduct.

See also Section B.11a *infra* and the Robert E. O'Neill profile regarding whether attorneys not necessarily involved in deceiving the court in covering up the conduct during post-trial proceedings might nevertheless be involved in covering up the conduct when I raised it in a proceeding before the District of Columbia Office of Bar Counsel.

* * *

Among materials provided to the Justice Department, a relatively succinct treatment of this matter that takes into account implications of Cain's giving the testimony he did because he was persuaded that it was literally true, even though he remembered the call from Dean, may be found in my letter of December 17, 1999, to Robert J. Meyer, which references many other places where the matter is discussed at greater length. I believe my first articulation of by beliefs as to the way the questioning of Cain was structured in an attempt to make his testimony literally true is found in my letter of June 10, 1997 to Claudia J. Flynn.

A further useful reference is Section B.1 of my letter of May 25, 1995, to Associate Deputy Attorney General David Margolis, which addressed with Margolis the implication of his December 1994 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). Also useful is my letter of March 11, 1996, to Michael E. Shaheen, Jr., Counsel for the Office of Professional Responsibility, which addresses implications of the

Department of Justice's relying on the literal truth of Agent Cain's testimony in reaching certain conclusions regarding this matter, as well as implications of the Department's refusal to inform me of the basis for its conclusions. Implications of the continued concealment of Independent Counsel actions regarding Agent Cain while the matter was being handled by the Public Integrity Section of the Criminal Division of the Department of Justice are addressed in my letter of December 26, 1999 to Attorney General Reno, Deputy Attorney General Eric Holder, Public Integrity Section Chief Lee J. Radek and other Department of Justice officials, and my letter of January 22, 2000 to H. Marshall Jarrett, successor to Michael E. Shaheen, Jr. as Counsel for the Office of Professional Responsibility. *See also* Section B.8 of PMP regarding the Department of Justice's varied actions regarding this and related matters.

I would also urge reading of the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." While the document may not do so definitively, it suggests how Independent Counsel attorneys may have caused the trial court to allow them to use Cain's testimony in the manner they did even thought the court evidently believed Dean had in fact called Cain.

* * *

Letters of July 8, 2008, and July 9, 2008, brought the above treatment to the attention of, respectively, former Supervisory Special Agent Alvin R. Cain, Jr. and the principal Independent Counsel attorneys, and requested that they advise on any matter where my account was inaccurate of unfair, are also posted.

In August 2008 the Cain matter was given a substantial treatment on powerlinblog.com. I brought this to the attention of Swartz and O'Neill in the course of seeking their permission to disclose the DC Bar materials discussed in Section B.11a, requesting again to be informed as to any way in which my interpretation regarding the Agent Cain matter or any other matter might be mistaken. I made the same request in an email of June 15, 2009 to Robert E. O'Neill and an August 14, 2009 letter to Bruce C. Swartz. There have been no responses.

* * *

On August 15, 2009, Section B.1a was added to this page. It addresses certain circumstances that greatly facilitated Independent Counsel efforts to deceive the court regarding Agent Cain's testimony and provides some further evidence as to the nature of those efforts.

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By letter of November 2, 2009, I wrote Attorney General Eric Holder principally concerning whether Deputy Assistant Attorney General Bruce C. Swartz ought to be permitted to serve in his current position in light of conduct with which he, Robert E. O'Neill, and other Independent Counsel attorneys were involved in the *Dean* case. The

letter, which gave considerable attention to Swartz's action in covering up his own and O'Neill's conduct regarding Agent Cain's testimony, also briefly addressed (at 4) issues concerning O'Neill's candidacy for the United States Attorney position as well as his fitness to serve in his current position as Chief of the Criminal Division of the Office of the United States Attorney for the Middle District of Florida. By letter dated December 28, 2009, Judith B. Wish, Deputy Counsel for the Office of Professional Responsibility, referencing my November 2, 2009 letter to the Attorney General as well as my emails to the Department of Justice dated July 14, 2008, July 17, 2008, and April 9, 2009, advised that it was the Office of Professional Responsibility's policy to refrain from investigating issues or allegations that were addressed, or could have been addressed, in the course of litigation, unless a court has made a specific finding of misconduct or there are present other extraordinary circumstances.

By letter dated January 15, 2010, I responded to Deputy Counsel Wish questioning the wisdom of the stated policy and its pertinence to the matters I had brought to the Department's attention concerning the conduct of Bruce C. Swartz, Robert E. O'Neill and others in the *Dean* case. I also raised (at 7-9) issues as to the relevance of the possibility that a matter could have been raised in litigation to the Department's actions in responding to inquiries of the President or others involved in the United States Attorney appointment process concerning O'Neill's suitability for such position. An important issue regarding the Department of Justice's handling of this matter in the present would involve how the Department responded to inquiries from the President or Senators regarding that issue, as discussed in the January 26, 2010 Addendum 5 to the O'Neill profile and the January 31, 2010 Addendum 5 to the Swartz profile. See the Truth in Justice editorials of September 4, 2010 ("Doubtful Progress on Professional Responsibility at DOJ"); September 26, 2010 ("The Honorable Robert E. O'Neill Regrets That He Is Unable to Answer Questions from the Audience"), and October 3, 2010 ("Whom Can We Trust?").

B.1a. The Beverly Wilshire Diversion [b1a]

The material below is mainly of interest with regard to the way a fortuity caused the Agent Cain matter discussed in Section B.1 not to be addressed adequately in the courts (which, as discussed in Section B.8, likely had a large role in enabling the Department of Justice to fail to address it). But it also involves a situation where the understanding that Independent Counsel attorneys knew from the outset that Dean's testimony was true casts additional light on the efforts of Independent Counsel Attorneys to deceive the court about the matter.

It is difficult to be certain that hindsight in this instance is not influenced by subsequent understandings such as are discussed in Section B.1 and the profiles of Robert E. O'Neill and Bruce C. Swartz. Nevertheless, looking back, it seems that even at the time that Robert E. O'Neill elicited testimony seeming to directly contradict the testimony of Deborah Gore Dean that she had called Supervisory Special Agent Alvin R. Cain, Jr. in April 1989 to complain about the treatment of former Attorney General John N. Mitchell

in the HUD Inspector General's Report (and to demand to see a check showing payment to Mitchell on the Arama project),[7] it should have been obvious that O'Neill then knew that Dean had called Cain. There are several reasons for this.

The first is the fact that, as discussed in Section B.1, Dean would have had to be mentally unbalanced to testify about the April 1989 call to Cain, being also ready to testify about what Cain told her about a check showing the payment to Mitchell, if she had not called Cain, given that she knew that Cain was readily available to contradict her if her testimony were not true. Cain, who was then assigned to the Office of Independent Counsel, had even been on the Independent Counsel witness list and the Independent Counsel had provided Jencks material on him at the commencement of the trial.

The second is the fact that, while O'Neill endeavored to make Dean's testimony as vivid as possible to the jury while he was having Cain seem to contradict that testimony, O'Neill said nothing about the discussion of the check that had been the salient feature of Dean's testimony. At least one obvious reason for the failure to mention that check was a concern that doing so might cause the jury (or the judge) to wonder why Dean would be ready to testify about what Cain told her about a check if the call never occurred.[8] But, in any case, had O'Neill not known that Dean had in fact called Cain and asked about a check, he would certainly have mentioned the check in trying to make Dean's testimony as vivid as possible to the jury in the course of eliciting Cain's testimony to contradict it.

Additional indication that O'Neill knew Dean had testified truthfully is found in the fact O'Neill failed to cross-examine Dean about the call. Had O'Neill believed Dean had not made the call, he would have cross-examined her in order to elicit more details of a fabricated story that Cain could then refute. But since O'Neill knew Dean had called Cain, he did not want to have her amplify her account with details that, being true, would have a greater ring of truth.

The fact that O'Neill had risen to object to Dean's attempt to testify as to what Cain told her when she asked about the check is another matter. It is unlikely that O'Neill at that point was already both contemplating the use of Cain to contradict Dean about the call

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[7] Dean's testimony is set out in Section B.1. For the reader's convenience, I present it below as well:

> 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 –

[8] It is possible that O'Neill also failed to mention the check out of concern that such mention might suggest to defense counsel an avenue for cross-examining Cain that would go beyond simply asking Cain whether his testimony was true.

and considering the implications of Dean's having testified as to what Cain told her about the check. Rather, the hearsay objection that O'Neill started to make (and which the court granted as soon as O'Neill rose to make it), whether meritorious or not (given that Dean was not offering Cain's statement to establish anything about the check), was intended simply to interfere with Dean's developing her side of the story – much as O'Neill had done by occasionally interrupting Dean's testimony to make what Judge Hogan called "smart comments" when Hogan, for the third time, suggested that O'Neill was playing to the racial differences between the defendant and the jury. Tr. 2776.[9] But the sustaining of the objection did make it far easier for Independent Counsel attorneys to use Cain in the manner they did. Had Dean testified, as she planned to, that Cain had said "Yes, Debbie there is a check and I have seen it but I don't have a copy because it is in the Regional Inspector General's office," it would have been much more difficult to cause Cain to appear to persuasively contradict her.

By the time the trial was over, O'Neill's failure to mention the check when, in closing argument, he provocatively reminded the jury of Dean's testimony about the call to Cain, and Cain's contradiction of that testimony, would be a further indication that O'Neill knew Dean had made the call.

But at the time Dean filed her Rule 33 Motion – and keeping in mind that no one would imagine that Cain's testimony was elicited on the basis that it was literally true, among other reasons, because it was not literally true – that O'Neill would knowingly have elicited false testimony from Cain was hard to believe, or, in any event, was something it seemed hard to make the court believe. At any rate, in her Rule 33 Motion (Sec. B.3), Dean chose to an argue the matter in terms that, if Independent Counsel attorneys did not know that Cain testified falsely when O'Neill initially elicited the testimony, they had reason to know it following Dean's counsel's cross-examination of Cain. That proved a disastrous course.

To put the matter in context, it is necessary to briefly address that cross-examination. Dean's counsel, Steven V. Wehner, who interpreted Agent Cain's response in the way Independent Counsel attorneys expected it be interpreted – that is, as a categorical denial that Dean ever called Cain to complain about the treatment of John Mitchell in the Inspector General's Report – did not cross-examine Cain about the call. Presumably, given the firmness of Cain's denial of any recollection of the call (attended by testimony suggesting he would have remembered the call if occurred), Wehner assumed that Cain would merely restate his categorical denial of any recollection of the call, perhaps even stating that he would have remembered the call if it occurred. Wehner did, however, examine Cain on a few unrelated matters.

[9] Hogan stated: Mr. O'Neill, let me ask you if that had been a black defendant on the stand with a white jury, would you be making the same kind of smart comments you've been making with a white defendant and a black jury?" For a fuller discussion of O'Neill efforts to play to the racial differences between Dean and the jury, see Part I of the DC Bar Counsel materials.

Wehner asked Cain if Dean had approached him to call to his attention that certain HUD subsidies were being misused in a project called Castle Square. Cain responded merely by saying that, while there had been an investigation of that project, he did not recall whether he interviewed Dean in his office or in her office. Tr. 3199-3202. Wehner also questioned examined Cain as to whether he recalled attending a party at Hernando's Hideaway at the Beverly Wilshire Hotel celebrating awards to Cain and his partner (Clarence Day), which party was paid for by Dean. Cain stated that it was possible that he had been at the Beverly Wilshire with Dean and that he may have been at the Beverly Wilshire with Secretary Pierce on one or two occasions. He said, however, that, though he and Special Agent Day had received the Secretary's Excellence Award, he believed that Day may have received it on his (Cain's) behalf, and that he did not recall a party at the Beverly Wilshire paid for by Dean in celebration of those awards. Tr. 3201-02. It is my understanding that the purpose of the questioning about both matters was to elicit from Cain an acknowledgement that he regarded Dean as an honest person and would not have accepted anything from her if he did not.

As indicated, however, Cain's testimony on the failure to remember the call from Dean went unchallenged by Wehner. As discussed in Section B.1, according to the former Independent Counsel employee who told me about the pressuring of Agent Cain by Bruce C. Swartz and Robert E. O'Neill, there was considerable joy and relief in the offices of Independent Counsel attorneys when the fact that Cain was coached to give the responses he gave was not revealed in cross-examination.

The following day, Wehner sought to recall Dean to the stand for surrebuttal in order to respond to Cain's testimony, as well as to the testimony of two of the other four Independent Counsel rebuttal witnesses. Wehner indicated that Dean would testify about the Beverly Wilshire party and about the Castle Square project. In the face of vigorous objection by Independent Counsel attorney Paula A. Sweeney, however, the court refused to allow surrebuttal. Tr. 3269-71.

As discussed in Section B.1, in Dean's Rule 33 Motion, in asserting that Cain had lied in denying a recollection of the call, Dean stated that Cain had told her that the check showing payment to Mitchell on the Arama project was then (in April 1989) maintained in a field office. Arguing that she could only have learned such fact from the call to Cain, Dean maintained that evidence as to the whereabouts of the check in April 1989 would be highly relevant to whether Cain committed perjury.

Dean also presented evidence that she had paid for a party at the Beverly Wilshire Hotel at which she maintained Cain was present and evidence concerning her contacting Cain and other HUD officials on the Castle Square matter. Dean argued that, if Independent Counsel attorneys were not aware that Cain was lying about the call when he originally testified, they should have become aware of such fact because of Cain's evasiveness in responding to questioning on these matters during cross-examination.

It would turn out, however, that Dean was mistaken as to Cain's being at the Beverly Wilshire party, as the Independent Counsel was able to show, apparently conclusively.

While presenting nothing from the HUD officials (including Cain) to whom Dean claimed she complained about the Castle Square project, they presented evidence that after leaving HUD she had been a consultant on the project. In their opposition to Dean's motion, Independent Counsel attorneys devoted their Opposition (Abbrev Opp)[10] largely to challenging Dean's testimony about the Beverly Wilshire party.

The details of the matter are addressed in Sections F, G, and O of the Cain Appendix and, in rough summary, it might be said that, while conclusively showing that Dean was wrong about Cain's presence at the Beverly Wilshire party, the materials the Independent Counsel submitted merely raised some issues about the Castle Square matter. The important point is that, given Dean's clear error with regard to the Beverly Wilshire party, Independent Counsel attorneys, while maintaining that Dean committed perjury on the matter, were able to raise an issue about her credibility, and while focusing on that matter (with a footnote devoted to Castle Square), were able to obscure the limited attention the Opposition was giving to Dean's contentions regarding the call. Crucially, while maintaining that the issue about call was simply a matter of Cain's word versus Dean's and that the jury verdict showed that Dean could not be believed,[11] the Opposition made no mention whatever of Dean's argument that evidence on the whereabouts of the check in April 1989 would corroborate her testimony.

In a Reply (at 26-29) Dean then acknowledged she was mistaken as to Cain's presence at the Beverly Wilshire party. And she acknowledged that the fact that Cain was not being evasive as to the party vitiated her point that Cain's evasiveness should have led the prosecutors to recognize that his testimony about the call might have been false. But, she argued, that did little to undermine key claim as to the fact that Cain's testimony about the call was false and that Independent Counsel must have known it was false. Further, she pointed out that the Independent Counsel said nothing concerning her crucial point concerning the April 1989 whereabouts of the check that she maintained Cain, in April 1989, told her was maintained in a field office.

Nevertheless, Dean's mistake regarding the Beverly Wilshire part caused her argument as to Cain to be completely overlooked in the hearing of February 14, 1994. There while seeming to be close to overturning the verdict for abuses unrelated to Cain, Judge Hogan mentioned the Cain matter only in passing, and as if the issue solely concerned whether Cain was present at a party, noting that Dean indicated that she was mistaken. Tr. 29. Hogan evidenced no familiarity with Dean's arguments as to the whereabouts of the check or even a recognition of Dean's crucial point that Cain had lied about the call on which O'Neill had placed such weight in attacking her credibility in closing argument.

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[10] Although the Opposition itself downloads easily enough, for the reader's convenience an abbreviated version limited to the pages (73-79) addressing this issue is also made available.

[11] In doing so, they observed that "the jury must necessarily have concluded, as evidenced by its verdict, that defendant perjured herself before this court as well." Opp. 75. That seems a correct observation. But there is much reason to believe that Cain's contradiction of Dean's testimony about the call played a large role in the jury's coming to that conclusion.

Dean then filed a Motion for Reconsideration, among other things, again noting the Independent Counsel's failure to address the whereabouts of the check in April 1989 and seeking discovery on the issue. She noted that the issue of whether Cain had lied had taken on additional significance in light of the probation officer's recommendation that Dean's sentence be increased for lying about the call to Cain. This ultimately forced the Independent Counsel to in some manner address the issue of the whereabouts issue at a hearing on February 22, 1994. *See* Addendum 3 to the Bruce C. Swartz profile.

But, even though Hogan had seemed close to overturning the verdict at the February 14, 1994 hearing, he now showed little interest in revisiting the issue. And, though evidently believing that Dean had told the truth about the call – hence, it would seem, that Cain's testimony on which O'Neill had placed such weight in attacking Dean's credibility was perjurious – Hogan denied discovery into the matter. Finding that the evidence "doesn't mean of necessity the government is putting on information they knew was false before the jury" (Tr. 21), he refused to determine whether in fact the government knowingly put false evidence before the jury. *See* the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." Further, the Cain matter had been muddled enough that Dean's appellate counsel would not pursue it on appeal.

Given only what was known at the time the Cain Appendix was submitted to the Department of Justice, it was evident that Independent Counsel attorneys were attempting to focus on what they surely recognized was a mistake on Dean's part in order to obscure issues regarding Cain's contradiction of Dean's testimony about the call. And they did so quite successfully. But as with other matters, additional light is cast on the situation once one recognizes that Independent Counsel attorneys had all along known that Dean had called Cain just as she said in April 1989. One wonders whether, had Dean not raised the Beverly Wilshire issue at all, Independent Counsel attorneys would have believed they could get away with covering up their conduct regarding the securing and use of agent's Cain testimony seeming to contradict Dean about the call.

In any case, one will note that in Addendum 3 to the Bruce C. Swartz profile, which addresses Swartz's efforts to deceive the court regarding the issue of the whereabouts of the check once he was ultimately forced to address the issue, the quoted testimony begins as follows:

> That brings us, Your Honor, to the third suggestion, that Agent Cain perjured himself, and that is the supposed conversation with regard to John Mitchell.

Swartz refers to the "third suggestion," because he first addressed the issues of Dean's contentions concerning the Beverly Wilshire Party and the Castle Square matter, especially the former. He started out by listing the Beverly Wilshire party as the first of the matters that Dean had raised in her motion, terming it "the one that defendant

particularly stressed in her motion." Tr. 4-5.[12] Noting that Dean acknowledged that her statement regarding Cain's presence was a mistake, Swartz stated that "we believe that it was more than simply a mistake, Your Honor," and asserted that Dean "never expected that we would be able to obtain HUD travel records from approximately nine years ago to rebut this claim." Adding that "at a minimum, this was reckless, particularly given the accusation against Agent Cain, a career government agent," Swartz would assert that "it also at a minimum completely undercuts her credibility on all other matter." Tr. 5-6.

Any modestly intelligent reader of this material, knowing only what was known in December 1, 1994, would recognize that while making these statements Swartz did not believe for an instant that Dean had been other than mistaken regarding the Beverly Wilshire party, but that Swartz was making these statements in order to obscure the issue of the check to which he would eventually turn. We now know, however, that these statements were made in order to assist Swartz in covering up his own conduct regarding the securing of Agent Cain's testimony, conduct that most observers would regard as the suborning of perjury.

Further, anyone who should address with Swartz whether he in fact caused Cain to give testimony that would lead the jury to believe things that he (Swartz) knew to be false should recognize that anything that Swartz states about the Beverly Wilshire matter – whether raised in terms of why Dean should not be believed about the call to Cain or in terms of why he (Swartz) did not recognize that Dean was telling the truth about the call – is stated by Swartz in order to deceive the persons to whom he makes such points.

Finally, both the Bruce C. Swartz and Robert J. Meyer profiles discuss the feigned outrage over Dean's attack on Cain's credibility. This might be a useful place also to set out the terms in which that outrage was initially presented in the Opposition (Abbrev Opp) (at 73).

> Agent Cain, a career government employee, is currently a Supervisory Special Agent for the HUD Office of Inspector General. He has been detailed to the Office of Independent Counsel. Defendant would have this Court conclude not only that Special Agent Cain deliberately perjured himself, but that he did so with the complicity of this Office.
>
> Such a charge should not be lightly made; and a false charge of this nature should not be dealt with lightly. As we show below, defendant's allegations against Agent Cain constitute at best a wholly unfounded and reckless slander against a career employee of the United States. But, as we further show, there is evidence

[12] In further seeking to lead the court to believe these were the main subjects of Dean's motion, Swartz also observed: "Indeed, these were also the two issues on which Agent Cain had been cross-examined at trial, as the Court will recall." Tr. 5. The reason that Dean's Counsel only examined Cain these matters, or rather to cross-examine him regarding the April 1989 case, has been noted *supra*.

here that defendant's allegations are not merely reckless, but perjurious and a deliberate fraud upon the Court.

It should be recognized that the persons who wrote these words knew that Cain's testimony was crafted not only in a manner to make the jury falsely believe that Dean had lied in her testimony about calling Cain in April 1989, but, of necessity, also to make Dean believe that Cain committed perjury. Further, the word "complicity" that the document uses in expressing such umbrage actually fails accurately to capture the reality, inasmuch as Robert E. O'Neill and Bruce C. Swartz actually had to pressure Cain into giving testimony that he was evidently very reluctant to give.[13] Should any of the involved attorneys have the temerity to presently deny the accuracy of this or other account on these page, and in doing so take umbrage at the suggestion that they would do such things, the auditor would be wise to keep the above circumstances in mind.

2. Dean's 1991 or 1992 Account of the Call to Agent Cain Recounted in James Rosen's 2008 book on John Mitchell, *The Strong Man* [b2]

Few or no readers of Section B.1 and the documents it references will doubt for a moment that Dean in fact called Agent Cain or that Independent Counsel attorneys knew she had called Cain at each point at which they maintained that Dean's testimony was false. My affidavit in the case, if true, would alone seem to make it virtually impossible (albeit not logically impossible) that Dean had fabricated her testimony about the call. But rather than the affidavit, it is the evasiveness of the responses of the Independent Counsel attorneys to the statements in Dean's and my affidavits concerning Cain's telling Dean where the check showing the Arama payment to Mitchell was maintained in April 1989 that will leave few or no readers unconvinced on this matter. It nevertheless warrants note that, according to the recently published book on John N. Mitchell, *The Strong Man*, sometime in late 1991 or early 1992, Dean apparently also told its author, John Rosen, about the call to Cain. Again, however, irrespective of the Rosen book, few or no readers will doubt that Dean made the call or that Independent Counsel attorneys knew that she made the call.

3. The Court of Appeals' Finding that there was Insufficient Evidence to Sustain a Conviction of Deborah Gore Dean as to Three of the Four Projects Involving Former Attorney General John N. Mitchell and the Proof that She was Innocent of the Fourth [b3]

[This section along with Sections B.3a and B.3b may be found as a pdf with notes as footnotes by means of this link.]

Prefatory note to Section B.3: Materials closely related to this item include (in addition to items B.3a, B.3b, and B.9a that follow it on the main Prosecutorial Misconduct page)

[13] Possibly one day Agent Cain will reveal the extent of this coercion.

Section D and Addendum 7 of the Bruce C. Swartz profile and Section D of the Robert E. O'Neill profile.

Prefatory notes to Section B.3:

1. Materials closely related to this item include (in addition to items B.3a, B.3b, and B.9a that follow it on the main Prosecutorial Misconduct page) Section D and Addendum 7 of the Bruce C. Swartz profile and Section D of the Robert E. O'Neill profile.

2. In a March 10, 2011 Truth in Justice editorial styled "Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material," for the first time in my many years of writing about the Dean case (if memory serves), I used the word "framed" in relation to the Arama charge, referencing this section and related materials. I have generally the term because it is too often used hyperbolically and hence invites skepticism. Readers are urged to review the materials below carefully to determine if the usage is justified.

As noted in Section B.1, the focal point of the Independent Counsel's case involved a claim that Deborah Gore Dean conspired with former Attorney General John N. Mitchell to cause HUD to take certain actions regarding four projects, which matter was the subject of Count One of the Superseding Indictment. Mitchell, who had died in October 1988, about six months before the HUD scandal broke, had been regarded as a stepfather by Dean. The Cain testimony issue discussed in Section B.1 (as well as Section B.2) principally involves that count,[14] as do many other instances of prosecutorial abuse. Among other things, these abuses involve the inclusion of statements or inferences in the Superseding Indictment known to be false, various deceitful tactics undertaken to support those statements or inferences (including, as in the case of Government Exhibit 25, the creation of a false document, see Nunn Appendix and Section B.9a *infra*), and the eliciting of testimony that Independent Counsel attorneys had reason to know was false. This count, involving as it did both Dean and Mitchell, raised the most substantial issue of bias on the part of Independent Counsel Arlin M. Adams, in light of his stating in an interview upon taking the position of Independent Counsel that he believed he might have been appointed to the Supreme Court in 1971 had he not offended then Attorney General Mitchell (or, perhaps more important, that, in point of fact, he had been promised a court appointment by Richard Nixon but Mitchell had vetoed it), as well as his having other reasons to harbor ill feelings toward Mitchell.) See the Arlin M. Adams profile and the February 22, 2011 Truth in Justice item styled "Unquestionable Integrity versus Unexamined Integrity: The Case of Judge Arlin M. Adams." As discussed in that item, a responsible attorney in Adams' position would have recused himself from any matter involving a person Mitchell regarded as a stepdaughter regardless of whether the charges against the person also involved Mitchell.

[14] It should be recognized, however, that while Cain's seeming contradiction of Dean specifically related to allegations involving John Mitchell, Robert E. O'Neill used the testimony as part of effort to generally undermine Dean's credibility in the eyes of the jury. Thus, the manner in which that testimony was elicited and used had substantial implications for the entire trial.

Independent Counsel attorneys managed to create a record that included many things they knew to be false concerning the issues in Count One, particularly with regard to the Park Towers project. *See* Section B.4 of PMP, as well as the discussions in the Section C of the Robert E. O'Neill profile and in the Paula A. Sweeney profile concerning O'Neill's and Sweeney's actions in creating a false record regarding the matter and the discussion in Section B of the Bruce C. Swartz's profile of Swartz's efforts to deceive the court in covering up what O'Neill and Sweeney had done. Nevertheless, the court of appeals still would find that there was insufficient evidence to sustain a conviction as to Park Towers and two other projects in Count One. This ruling effectively found Dean not guilty of the charges involving those three projects.

The fourth project in Count One was a Dade County project called Arama, which was funded pursuant to documents signed by Assistant Secretary for Housing Maurice C. Barksdale in July 1984. The Arama project is the only Mitchell matter mentioned in the April 1989 HUD Inspector General's report. It was that mention that prompted Dean to call Agent Cain in April 1989 to demand to see a check showing the payment to Mitchell, as discussed in Sections B.1 and B.2 of PMP. The Arama project is the subject of many allegations of prosecutorial abuse raised either in the courts or with the Department of Justice. The one receiving the greatest attention in the courts involved actions of Independent Counsel attorneys concerning two telephone message slips found in John Mitchell's files. The message slips indicated that in January 1984, while Louie B. Nunn was reaching an agreement with the Arama developers to secure 300 mod rehab units for the Arama project, Mitchell was speaking with Dean's predecessor as Executive Assistant, Lance H. Wilson, about securing those 300 units, and that Wilson had told Mitchell that he (Wilson) was talking to Barksdale about the matter.[15] Wilson was a friend of Mitchell's and had helped him on other HUD matters. Mitchell also knew HUD Secretary Samuel R. Pierce, Jr., on whose behalf Barksdale would have regarded any communications for Wilson.

There are two important aspects of this matter with regard to prosecutorial abuse. One involves the failure of Independent Counsel attorneys to make a *Brady* disclosure of the message slips and the representations of those attorneys as to why they did not do so,

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[15] The first message slip, dated January 12, indicates that several days after Arama developer Aristides Martinez contacted Nunn at Mitchell's office, Mitchell had spoken to Wilson about the funding. The notation in Mitchell's handwriting read: "300 Units. Proceed & keep advised. Talking to Barksdale." The second message slip indicates that on January 26, 1984, Wilson had returned Mitchell's call. January 26 was the day after Nunn met with the Arama partners and reached tentative agreement to secure 300 moderate rehabilitation units for the Arama project in return for $150,000 as a consultant fees and $225,000 as an attorney fee.

The Superseding Indictment and the Independent Counsel's summary charts both state that the Arama agreements were reached or executed on or about January 25, 1984, and that on or about that date Nunn wrote on the consultant agreement that Mitchell was to receive one half of the Arama consultant fee. As discussed in the Nunn Appendix and Section B.9a (as well as Section D of the O'Neill profile), both these statements were false and part of a scheme to deceive the court and the jury in a variety of ways. But such matters are not relevant to the issue of the essential contemporaneousness of the reaching of the Arama agreements and the Mitchell-Wilson contacts.

including Deputy Independent Counsel Bruce C. Swartz's oral representations to Judge Laurence Silberman, found at page 43 of the transcript of the court of appeals argument. While cast as arguments, in context, the various statements are representations as to the reasons for the failure to disclose the documents. And any reasonable observer would conclude, as the court of appeals obviously did, that the representations were false. *See* Section D and Addendum 2 of the Bruce C. Swartz profile and Section B.3a *infra*.

An even more important aspect of the matter involves the failure of Independent Counsel attorneys to confront Barksdale with the information on the message slips before calling him as a witness to tie the funding to Dean. In this instance, while Independent Counsel attorneys acknowledged that they did not confront Barksdale with the information, they never even impliedly advanced a reason for failing to do so. Rather, Independent Counsel attorneys merely asserted that the government does not have "an affirmative duty to question any potential witness before trial in order to seek out all *potentially* material evidence conceivably related to the defense." Gov. Opp. at 16-17 (original emphasis). Even if one were to assume that the point is valid as a general matter and also that it could be realistically applied to this situation, the point fails to address the crucial question of *why* Independent Counsel attorneys did not confront Barksdale with the information. And here reasonable observers can only conclude that those attorneys did not confront Barksdale with the information because they believed or feared it would cause him to state (truthfully) that Wilson had caused the funding and Dean was not involved, and that those attorneys instead went forward with the hope and expectation of eliciting false testimony that would be more supportive of their case.

Among other places, the matter is addressed in some detail in the December 1, 1994 narrative appendix styled "Arama: The John Mitchell Telephone Messages and Maurice Barksdale." Further, materials submitted with Dean's December 1996 motion discussed below (*see* December 1996 Memorandum), as well her February 1997 motion (*see* February 1997 Memorandum) show that, when Independent Counsel attorneys brought the Arama charge, they possessed a substantial volume of material making it clear that the Arama funding was in the works months before Dean became Executive Assistant. Pages 24-45 of the latter memorandum also show that, when examining Barksdale for the purpose of tying the Arama funding to Dean, Independent Counsel attorney Robert E. O'Neill knew with virtual certainty not only that the testimony that he was eliciting from Barksdale on this and other substantive issues was false, but that the testimony that he elicited to bolster Barksdale's credibility was false as well.

Other instances of Independent Counsel attorneys' eliciting testimony that they were virtually certain was false are documented in the December 1, 1994 Introduction and Summary and its other appendixes. (*See also* the profile pages on Jo Ann Harris, Paula A. Sweeney, Bruce C. Swartz, and Robert E. O'Neill.) But the simplicity of the matter of the Independent Counsel's failure to make a *Brady* disclosure of the Mitchell telephone message slips and the eliciting of Barksdale's testimony without addressing with him the information on the message slips makes the matter a useful starting point for an appraisal of Independent Counsel conduct. For the undisputed actions of Independent Counsel attorneys in this matter – regarding both the underlying abuses and the false

representations made to the courts in denying the existence of those abuses – pointedly inform the reader of the character of the attorneys whose conduct as to other matters may be more difficult to interpret and make it easy to believe things about such conduct that otherwise might be hard to believe.

In any case, following the court of appeals' ruling that there was insufficient evidence to support a conviction as to three of the four projects in the count involving John Mitchell, Dean, in December 1996, sought to have the remaining part of the count dismissed by the district court. In support of the motion, Lance H. Wilson submitted an affidavit stating that, after discussions with Mitchell, he (Wilson) had caused the Arama funding through communications with Barksdale.[16] As discussed two paragraphs above, with the motion Dean also filed other materials bringing to the attention of Independent Counsel Larry D. Thompson further information that Independent Counsel attorneys prosecuting the case under Independent Counsel Arlin M. Adams knew that the Arama charge was false when they brought it and used false evidence to prove it. *See* Dean December 1996 Memorandum.

Independent Counsel Larry D. Thompson nevertheless opposed Dean's motion, and did so successfully, on the grounds that the testimony in the Wilson affidavit was not newly-discovered evidence. Dean's motion to have the matter reconsidered was eventually withdrawn as part of the November 2001 agreement with the Department of Justice (as discussed in the Introduction to this page and Section B.8 *infra*). So Dean continues to stand convicted of the Arama charge. Nevertheless, the record establishes that Dean was found not guilty on three of the charges involving Mitchell and was certainly innocent of the fourth. Thus, the fair reading of the undisputed record is that Dean was not guilty of conspiring with John Mitchell as to anything. Similarly, the fair reading of the undisputed record is that former Attorney General John Mitchell – the person who kept Adams from the Supreme Court – was not guilty of these charges as well. Further, it will be evident to anyone who gives even a cursory review to the materials related to Count One that the fact that Dean and Mitchell were both innocent of the charges in that count was clear to Arlin M. Adams and his subordinate attorneys at the time those charges were brought. See the February 22, 2011 Truth in Justice editorial styled "Unquestionable Integrity versus Unexamined Integrity: The Case of Judge Arlin M. Adams."

In fairness to Arlin M. Adams, however, it warrants note that when one considers how central the Mitchell count was to the case against Dean, as reflected, among other places, in the emphasis Robert E. O'Neill gave to Mitchell in opening argument (as discussed in Addendum 2 to the Bruce C. Swartz profile), one must recognize an incentive to include the Mitchell count irrespective any ill feelings Adams may have harbored toward Mitchell. That does not excuse Adams for accepting the position of Independent Counsel given his acknowledged belief that Mitchell had kept him from the Supreme Court and it certainly does not excuse Adams and his subordinates from fabricating the Mitchell count. Nor does it refute the possibility or likelihood that Adams' animosity against

[16] At the time of Dean's trial, Wilson had been convicted of one count in a case brought by the Independent Counsel and that conviction was on appeal. The conviction was overturned in 1994.

Mitchell was a substantial factor in the prosecution. But Independent Counsel attorneys clearly had other motivations for fabricating the Mitchell count.[17]

B.3a. Independent Counsel Efforts to Cause the Defense to Fail to Discover the Mitchell Telephone Message Slips [b3a]

[This section along with Sections B.3 and B.3b may be found as a separate pdf with notes as footnotes by means of this link.]

The Bruce C. Swartz profile (at [4]) discusses Bruce C. Swartz's representation to Judge Laurence Silberman in the court of appeals argument that Independent Counsel attorneys regarded the Mitchell telephone message slips as incriminating rather than exculpatory, as well as the following statement, also made to Judge Silberman (Tr. 44):

> I must say that, everything in the record belies any suggestion that the government had an interest in hiding information here. The government exceeded, in almost every area, its statutory obligation in terms of turning over materials.

That in its decision the court of appeals would "deplore" the failure to segregate the Mitchell message slips indicates that it did not believe Swartz's representation that Independent Counsel attorneys did not segregate the message slips because they thought the message slips were incriminating rather than exculpatory. Section B.3 and the materials it references show why no one could believe that representation.

But a word is in order regarding Swartz's reference to the "hiding of information." Swartz was merely using the word "hiding" with regard to the failure to segregate exculpatory information rather than actually hiding. Because the Sankin Business School application discussed in Section B.7a was actually hidden (and successfully hidden for many years), the Independent Counsel's actions regarding the actual hiding of that document was not at issue. But apparently efforts were also made, if not to hide the Mitchell message slips in precisely the way that Independent Counsel attorneys hid the Sankin Business School application, at least to diminish the chances that the defense would discover the message slips.

That matter can best be explained with reference to the claim that Independent Counsel attorneys regarded the message slips as incriminating, even if doing so belabors that issue somewhat. To begin with, if the Independent Counsel attorneys in fact regarded the message slips as incriminating, they would have confronted Maurice C. Barksdale with information on the message slips rather than failing to do so. And, it would seem, they would at least consider using the items in some manner in their case. As it was, of

[17] As it would turn out, because Dean's testimony about calling Agent Cain to complain about the discussion of Mitchell in the HUD Inspector General's Report provided Independent Counsel attorney Robert E. O'Neill the opportunity to dramatically undermine Dean's credibility (as discussed in Section B.1), the inclusion of the Mitchell count had far larger implications than Independent Counsel attorneys could have imagined when they persuaded the grand jury to approve the Mitchell count. Obviously, however, that turn of events could not have been foreseen.

course, after the defense introduced the items into evidence, in closing argument Robert E. O'Neill, while knowing with absolute certainty that the message slips in fact pertained to the Arama project, would seek to lead the jury to believe that the receipts did not apply to Arama, stating in closing argument: "First of all, we don't know what project they're talking about here. Arama is not mentioned ... " Tr. 3516.[18]

In any event, the instant subject involves the Independent Counsel's preliminary trial exhibit production at the end of 1992. The production consisted of 3679 unindexed pages of materials that the Independent Counsel indicated it might be using at trial. As is common in the circumstances, the production was vastly overinclusive in order to include anything that, as trial approached, Independent Counsel attorneys might decide actually to use as an exhibit. As in the case of the Sankin Harvard Business School applications discussed in Section B.7a (and who knows what other items), Independent Counsel attorneys also used the production to fulfill production obligations as to important relevant materials that they had previously withheld from the defense.

In the case of materials from Mitchell's files, while Independent Counsel attorneys otherwise included all documents relating to the Arama project in the preliminary trial exhibit production, they excluded the Mitchell telephone message slips. The exclusion of the items from this vastly overinclusive preliminary production of materials the Independent Counsel might possibly use at trial is further, albeit superfluous, evidence that Independent Counsel did not regard the items as incriminating.

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[18] Given that one must conclude that O'Neill knew with absolute certainty that the message slips pertained to the project that would eventually be named Arama, two other points he made in opening or closing, warrant mention. In the opening, O'Neill stated regarding the Arama project (at 53):

> The evidence will show that Louie Nunn at this time went to an individual by the name of John Mitchell. Again, we've spoken about John Mitchell, an ex-attorney general of the United States, a person who the defendant considers to be her father. Nunn asks Mitchell to help him out to try to get the units, and what does Mitchell do? Mitchell goes to the defendant. Now John Mitchell died in 1988, so you might say, "Well, how are you going to prove that he went to the defendant?" We're going to prove it through documents, the documents in black and white are going to show that Mr. Mitchell spoke with the defendant about Arama and that she agreed to send 300 units to units to Arama.

When O'Neill made this statement, precisely because he had it in black and white, O'Neill knew with absolute certainty that Mitchell did not go to the defendant, but went to Executive Assistant Lance Wilson.

In the closing argument, O'Neill stated (at 3348):

> Obviously, he's paid $425,000 to hire somebody with influence, somebody with connections in Washington, somebody who knows the right people, an ex-governor and an ex-attorney general of the United States, and they know the defendant, Deborah Gore Dean.

Once again, when making this statement, O'Neill knew with absolute certainty than an ex-governor (Nunn) and an ex-attorney general (Mitchell) were sought out because of their connections with Lance Wilson, not with Dean.

More to the instant point here, however, in producing the Mitchell files regarding the Arama project, Independent Counsel attorneys (who did not yet know whether the defense had discovered the message slips) took some pains to obscure the fact that two items had been excluded from Mitchell's Arama files. The precise manner in which that was done is set out in Part II.C of the District of Columbia Bar Counsel materials, which, with slight redaction, is available by means of the indicated link.

It is probably too late to know – or so it seems at the moment – whether similar efforts were made to cause the defense to fail to find the Mitchell telephone message slips when the Independent Counsel Independent Counsel included them in its original production, not of 3700 pages of documentary materials, but of several hundred thousand pages of documentary materials. But certainly there is no reason to believe that the involved Independent Counsel attorneys would have felt ethically constrained from obstructing the defense's efforts to discover exculpatory information if they believed they could get away with it. And, as reflected throughout the misconduct materials made available on this site, those attorneys believed they could get away with a great deal.

B.3.b. The Failure to Produce the March 22, 1993 Barksdale Interview [b3b]

[This section along with Sections B.3 and B.3a may be found as a separate pdf with notes as footnotes by means of this link.]

As discussed in Section B.3, Maurice L. Barksdale was a crucial witness with regard to the Arama funding.

In the August 20, 1993 letter in which Robert E. O'Neill and Paula A. Sweeney belatedly disclosed exculpatory information from witness statements, they included four statements from Barksdale. The fourth statement read:

> Barksdale stated that, when Deborah Dean would call him, sometimes she would say that she was calling on the Secretary's behalf and sometimes she would just call herself, but that, any time she called, Barksdale assumed that she was calling on behalf of the Secretary's office because she was an Executive Assistant and reported to the Secretary. Barksdale also said that, if he was asked to consider a funding situation that his staff had recommended against or there was no way in the world that it legitimately could be put together or worked out, he would ask to speak to the Secretary and would ask the Secretary whether in fact Deborah Dean was really representing him; according to Barksdale, in many situations the Secretary would say yes.

The August 20, 1993 letter did not provide dates for any of the statements in the letter. After Dean's counsel requested the dates, by letter dated August 29, 1993, O'Neill and Sweeney provided the requested dates, including, for the quoted Barksdale statement, the date of March 22, 1993.

When the Independent Counsel made its Jencks production on Barksdale, it provided nine items, none dated subsequent to June 29, 1992, and none bearing dates of a nature whereby a transposition or other typographical error might cause the date to be erroneously recorded as March 22, 1993.

Because the March 22, 1993 interview of Barksdale was substantially more recent than the Jencks materials actually produced, there was reason to believe it could be more revealing than the other interviews. For it was likely to involve follow-up questions that Independent Counsel attorneys had in preparing the case for trial. Further, the interview took place shortly after Barksdale's Special Assistant Stuart Davis testified to the grand jury that he (Davis) maintained a notebook for Barksdale recording all the projects funded, the number of units, the consultant and developer involved, and the name of the project (see Dean February 1997 Mem., Section III A.2.d). That testimony was directly contradictory to the Barksdale testimony on which the court of appeals would specifically rely in upholding the conviction on Arama.

Thus, there is reason to believe that the interview report contained information even more exculpatory than the information Independent Counsel attorneys provided from the interview in the August 20, 1993 letter, and that, precisely for that reason, those attorneys decided not to produce it. Assuming they were aware of the reference in the August 29, 1993 letter, they took the chance that the defense that was then being swamped with Jencks and *Giglio* materials would not realize that an item mentioned in the August 29, 1993 letter was never produced, which in fact proved to be the case.

I first recognized the discrepancy between the August 29, 1993 letter and the list of Barksdale Jencks materials sometime near the end of 1995. By letter of January 3, 1996, I brought the matter to the attention of Independent Counsel Larry D. Thompson, suggesting that he promptly provide the interview report to the defense and that he determine why the interview was not provided to the defense during the trial.

Thompson never responded to me on the matter and never contacted the defense on the matter. When Dean filed her December 1996 motion to dismiss Count One, she noted (at 16 n.14) that the interview had never been produced. In the Government's Opposition to Defendant Dean's Motion for a New Trial at 14 n.4 (Jan. 15, 1997), the Independent Counsel said it could not tell whether the interview report had originally been produced. It also stated that any exculpatory information in it had been provided in the August 20, 1993 letter. Apart from the arrogance of this statement, one can safely assume the Independent Counsel attorneys making it did so without the least consideration of whether it was true or not.[19] At any rate, the Independent Counsel still failed to produce the interview report and ultimately never did.

[19] The quoted part of the interview states that when Barksdale checked with Secretary Pierce regarding whether what Dean had told him in fact reflected the Secretary's wishes, "in many situations the Secretary would say yes." As presented, the statement suggests that in some situations the Secretary said no. In any case, obviously Barksdale was asked whether there occurred any situations where the Secretary said no and, if there had been, such fact would have been used at trial. Thus, one must assume that in some manner or another Barksdale affirmed that the Secretary had said yes on every occasion. This exculpatory information that should have been produced.

One might note that, assuming that Independent Counsel attorneys simply failed to make this item available to the defense at all because it contained exculpatory materials, this conduct on the part of Independent Counsel attorneys differs from the many instances where those attorneys failed to identify exculpatory statements, failed to segregate exculpatory documents, and even hid exculpatory documents (*see* Section B.7a), but at least did make the relevant materials available to defense. Yet the fact that this is the only instance that has been discovered where an interview report was never produced at all hardly suggests that such failure to produce did not occur. Rather it merely indicates that there may be many instances where documentary materials that were exculpatory of the defendant were never produced but where Independent Counsel attorneys left no tell-tale sign of the existence of such materials such as occurred in the August 29, 1993 letter.

The same may be said regarding to the allegation of the former document manager discussed in Section B.9 that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz altered or destroyed interview reports that did not advance the government's case. The only identified instance where information surfaced providing strong reason to believe that an interview report was altered involved the Aristides Martinez interview discussed in Section B.9a. But as with the unusual circumstances that revealed that the March 22, 1993 Barksdale interview was never produced to the defense, as a rule only unusual circumstances will reveal that a document had been altered. See the March 10, 2011 Truth in Justice item styled "Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material" regarding the failure to produce an interview report discussing the Sankin Harvard Business School application that, as discussed in Section B.7a, was initially not disclosed at all and then hidden.

With regard to the altering of interview reports, some might be reluctant to believe that the Independent Counsel and Deputy Independent Counsel would do these things themselves. But it is precisely because the alteration of interview reports is something that even the most unprincipled attorneys are reluctant to do that there exist strong reasons for the persons in charge of the prosecution to do such things themselves.

4. The Parks Towers Narrative Appendix [b4]

Park Towers is a project involving John Mitchell as to which the court of appeals would find insufficient evidence to sustain a conviction. Nevertheless, and despite its length, the Park Towers narrative appendix, including its two addendums (as discussed in my December 5, 1995 letter to Larry D. Thompson) warrant careful attention from anyone with a serious interest in prosecutorial abuses generally or the conduct of Associate Independent Counsel Robert E. O'Neill and Deputy Independent Counsel Bruce C. Swartz in particular. For the materials set out what might be deemed a study in prosecutorial deviousness. The following is a very brief summary of the matter.

The Independent Counsel's case as Park Towers was a circumstantial one, based on the following inferences:

> (1) that Richard Shelby secured the services of John Mitchell because of Mitchell's relationship to Deborah Gore Dean
> (2) that a conspiratorial reference in a document to "the contact at HUD" was a reference to Dean rather than to Deputy Assistant Secretary Silvio DeBartolomeis;
> (3) that Park Towers was discussed at a September 9, 1985 lunch attended by Shelby, Mitchell, and Dean;
> (4) that Dean provided Shelby a copy of the Park Towers rapid reply;
> (5) that Dean had been responsible for the post-allocation waiver of HUD regulations that allowed the Park Towers project to go forward;
> (6) that Dean had provided Shelby a copy of that waiver;
> (7) that Shelby concealed his contacts with Dean from Feinberg and Fine;
> (8) that Shelby concealed Mitchell's involvement from Feinberg and Fine
> (9) that there existed no documents showing Shelby's contact with DeBartolomeis.

But Independent Counsel attorneys knew, with absolute certainty as to some and near certainty as to the remainder, that each of these inferences was false. In cases of inferences that Independent Counsel attorneys merely knew were almost certainly false, those attorneys forewent obvious and readily available avenues to determine whether the inference was in fact false and in one case elicited testimony that Independent Counsel attorneys knew was almost certainly false. And in the cases where documents existed specifically showing that inferences were false, Independent Counsel attorneys would fail to make *Brady* disclosures of those documents.

Robert E. O'Neill's duplicitous tactics in leading the jury to believe these inferences were true is given some attention in the Robert E. O'Neill profile (at [3]) . And Bruce C. Swartz's efforts to deceive the court in defending O'Neill's actions are given attention in the Bruce C. Swartz profile (at [2]). The fact that each inference underlying this claim involving Deborah Gore Dean and John Mitchell was false – which is to say that the claim was fabricated – is something to be borne in mind as one considers the indications, discussed in the Arlin M. Adams profile and elsewhere (including Section B.3 *supra* and B.11 *infra*), that Adams bore a grudge against Mitchell for having kept Adams from the Supreme Court.

This matter is also summarized in many items of correspondence and addressed at pages 47-64 of Dean's February 1997 Memorandum. The material should also be examined with regard to the truthfulness of statements made by Associate Independent Counsel Paula A. Sweeney as to why the Independent Counsel failed to make any *Brady* disclosures until the eve of trial. A version of the Park Towers materials that gives great attention to the Independent Counsel positions on *Brady* disclosures may also be found in Part I of the DC Bar Counsel materials (redacted as discussed in Section B.11a).

5. Dean's February 1997 Motion for Acquittal/New Trial on Grounds of Prosecutorial Abuse and the Role in Such Motion of Efforts of Prosecutors to Deceive the Court in Responding to her Original Rule 23 Motion [b5]

A point that runs throughout materials referenced on this page is that Independent Counsel attorneys sought to mislead the courts in responding to the claims of prosecutorial abuse Dean raised in late 1993 and early 1994, and that, in context, the efforts to mislead the courts constituted not simply weak or absurd arguments, but false representations as to what Independent Counsel attorneys had actually done and what their motivations had been – false representations made in circumstances where government attorneys were obligated to tell the truth. Some of these instances are addressed in the profile of Bruce C. Swartz and a number of them are discussed in Section B.6 and Section B.7 *infra*.

As noted above, in February 1997, Dean filed a renewed motion for acquittal or a new trial raising issues that had not been identified in her original Rule 33 Motion of November 1993 and also arguing that the Independent Counsel had endeavored to mislead the courts in responding to her original motion. Independent Counsel Thompson refused to respond to the allegations in this motion, instead filing a motion to strike Dean's motion. In such motion to strike, however, the Independent Counsel denied that Independent Counsel attorneys had endeavored to mislead the court in responding to Dean's earlier motion. This, too, was not merely a weak argument, but was a false representation made in circumstances where government representatives are required to tell the truth.

As observed in my letter to Thompson of March 26, 1997 (at 14 n.12 on 15), "[i]n a context where the government has an obligation to reveal the truth, this statement reflects your word of honor that you have investigated these matters and have concluded that in fact Independent Counsel did not attempt to mislead the court …" I would allude to the quoted material in my letter to Thompson of August 13, 1997 (at 43) , there noting that such statement was "manifestly false." I present these quotations of my prior statements not to suggest that the prior stating of these points adds validity to them. Rather, I note them for purposes of the reader's appraisal or Thompson's observations (addressed in Section B.10) suggesting that no one had ever questioned his integrity.

As discussed in Section B.8, the Department of Justice would later impliedly adopt this representation in seeking to cause the issues raised in Dean's February 1997 motion to go unaddressed.

6. Developments Concerning Testimony of Thomas T. Demery [b6]

Thomas T. Demery is the former the HUD Assistant Secretary for Housing/Federal Housing Commissioner who was named in the title of the HUD Inspector General's Report on HUD's moderate rehabilitation program that was issued April 17, 1989. But, with the assistance of the public relations firm of Hill & Knowlton, Demery managed to cause far more of the attention within and without the congressional hearings to be turned

toward HUD Secretary Samuel R. Pierce, Jr., and his Executive Assistant Deborah Gore Dean. Assuming the truthfulness of Demery's initial testimony before two congressional subcommittees – testimony given in high dudgeon and adorned with terms like "beyond a shadow of a doubt" – it would seem that Demery personally was not involved in any wrongdoing. But, to the extent that it was not evident at the time of Demery's initial testimony, it would eventually be clear that almost every exculpatory statement Demery made was false.

Some of the reasons that any reasonably intelligent person following the hearings would conclude during the course of the hearings that Demery repeatedly committed perjury are set out at length in the 1991 document styled "The Inquiry of Congressman Tom Lantos into Abuses of the HUD Section 8 Moderate Rehabilitation Program," which may be accessed on the page on this site currently styled "Lantos Hearings." Anyone with an interest in the ability of congressional committees to competently or evenhandedly investigate government abuses or anything else, or the role of public relations firms in influencing such investigations, should review such document carefully. And, in doing so, they should give attention as well to the matters initially uncovered by John R. McArthur regarding the October 1990 hearing of the Congressional Human Rights Caucus where a witness named Nariyah represented that she had observed certain atrocities following the Iraqi invasion of Kuwait (such as is discussed, say, at Nariyah Item 1, Nariyah Item 2, and many other places). Some discussion of such matter, which also briefly addresses the issue of Hill & Knowlton's possible involvement in the concealment of Demery's false testimony, already exists on the referenced page of this site

In any case, the Independent Counsel ultimately indicted Demery for perjury with respect to certain of his statements before two congressional subcommittees. In the course of reaching a plea agreement that did not include a perjury charge, Demery acknowledged that the statements underlying his perjury charges were false and even stated why he had made the false statements. He also acknowledged things that showed that many other of his statements were false. The most comprehensive list of false statements is likely found in the Appendix to my August 13, 1997 letter to Larry D. Thompson, which identifies 36 sworn statements by Demery that materials in the possession of the Independent Counsel indicated were false.

Demery's testimony would differ from Dean's on a crucial point relating to two counts of Dean's Superseding Indictment. Thus, Dean's attorney sought to undermine Demery's credibility by forcing him to acknowledge that he had committed perjury before Congress. The following is the initial questioning:

> Q. Okay. Now you have testified -- you testified publicly on television, as a matter of fact, regarding certain of the inspector general's allegations at HUD; isn't that right?
> A. Yes.
> Q. And those were on C-Span, were they not?
> A. Yes, they were.

Q. And you were put under oath --
A. Yes, I was.
Q. -- during those hearings?
A. Yes, I was.
Q. And did you swear to tell the truth?
A. Yes, I did.
Q. And did you tell the truth?
A. Yes, I did.
Q. You told the utter and complete truth in front of those -- on those hearings?
A. Yes, I did.
Q. Okay. You haven't been -- you didn't plead guilty to perjury, did you?
A. No, I did not.
Q. Okay. Is that because you've never committed perjury?
A. Of course.
Q. Okay. And you told the truth in front of the Lantos committee in the same fashion as you're telling the truth today, correct?
A. Correct.
Q. I mean, you've been put under oath today, correct?
A. Yes.
Q. And you had the same obligation you have today as when you were in front of the Lantos committee? You recognize that?
A. Yes, I do. I know a lot more than I did before the Lantos committee. I've had an opportunity to look at documents and spend a lot of time on issues than I did when I testified in front of chairman Lantos.
Q. Okay. So you may have made some mistakes in front of the Lantos committee, but they certainly wouldn't have been intentional; is that what you're saying?
A. Yes.

Tr. 1915-17. There followed an effort to illustrate that Demery had committed perjury through the use of a video recording of the hearings, which seemed, from my perspective, too complicated to be very effective.

The point, however, is that Demery's repeated and unequivocal denials that he had lied in the Lantos hearings were false and the fact that they were false had to have been obvious to Independent Counsel attorneys. Thus, those attorneys had an obligation to correct such testimony. Instead of doing so, Independent Counsel attorney Robert E. O'Neill simply proceeded to elicit Demery's most crucial testimony in redirect.

This matter, including the Independent Counsel's response to Dean's raising this matter in her Rule 33 Motion is covered at length in the December 1, 1994 narrative appendix styled "Testimony of Thomas T. Demery." And I suggest that the reader will find the Independent Counsel's response – which does not deny the obligation to correct the testimony if it were perjurious, but maintains that neither Demery nor trial counsel recognized that the testimony was perjurious – to be something quite remarkable. But, as suggested in a number of places, it is not simply an absurdly weak argument. Such

response constituted a false representation to the court with regard to a matter where Independent Counsel attorneys had an obligation to tell the court the truth.

In any case, the response was dismissed out of hand by the district court. As discussed in the Introduction and Summary (Section IV.E), in the court of appeals the Independent Counsel would address this matter by merely stating with respect to the allegation that Independent Counsel attorneys had reason to know that Demery's denial that he had lied to Congress were false: "But the charge is not true, as the government demonstrated at length below." Independent Counsel App. Br. 51, n.23

The comment section of the Demery appendix (Section H) points out that very likely Independent Counsel attorneys would make no mention of Demery's perjury in the Dean case when the time came to advise the court in Demery's own case concerning Demery's fulfillment of his plea agreement. And it raised the issue of how Demery, whose plea agreement required that he give completely truthful testimony, could possibly have denied having lied to the Lantos subcommittee unless he had been in some manner advised to do so by Independent Counsel attorneys. In doing so, I suggested that possibly Independent Counsel attorneys had provided Demery a rationale by which he could state that he had never lied before Congress while feeling that he was testifying truthfully, though noting that is was difficult to imagine what that rationale could have been. Such suggestion, it warrants note, was made before my December 1994 conversation with Associate Deputy Attorney General David Margolis and before it had occurred to me that Agent Cain might have given his testimony because he was led to believe it would be literally true. I should add, however, that the situation of Demery, who was in the position of having to do whatever Independent Counsel attorneys asked of him in order to secure his freedom, differed substantially from that of Agent Cain, who was at that point a principled government agent on whom Bruce C. Swartz and Robert E. O'Neill apparently had to exert considerable pressure to cause him to provide the answers he did. Thus, there might have been no need whatever to develop a rationale by which Demery's testimony was true. In any case, the narrative appendix noted that Demery remained available as a cooperating witness to inform the Department of Justice of the nature of his conversations with counsel that led to his denying he had ever lied to Congress.

In Section B.2 of a May 25, 1995 letter to David Margolis, I raised the issue again, specifically asking "whether Demery has yet been contacted, and if not, why he has not been contacted." And in my August 15, 1995 letter to Michael Shaheen, I again posed the question of whether in its review of the matter the Department of Justice had interviewed Demery. (By letter of January 30, 1996, Shaheen would later state that the Department of Justice did not consider responding to such question to be productive. *See* Section B.8.)

Such was the situation when I initially raised the same matter with Independent Counsel Larry D. Thompson in a letter of September 18, 1995 (Section D). By letter of December 12, 1995 (Item 7), I then pointed out that Thompson had had ample time to interview Demery to determine whether he had denied having lied to Congress because he had been instructed to do so by Independent Counsel attorneys.

Thereafter, the first known instance in which the Independent Counsel addressed the issue of Demery's denials that he had ever lied to Congress occurred when the Independent Counsel's responded to Dean's certiorari petition in the Supreme Court in February 1996 – once again in circumstances where the government's representatives were obligated to tell the courts the truth about whether the government's attorneys knew whether a witness committed perjury as well as to fairly characterize the record below. The opposition was authored by Independent Counsel Larry D. Thompson and Deputy Independent Counsel Dianne J. Smith (with Charles Rothfeld and Michael E. Lackey, Jr., listed as Of Counsel).

After first stating that the prosecutor had elicited testimony that Demery had pleaded guilty to obstructing a grand jury investigation, the Opposition states (at 13):

> Thus, had petitioner actually believed that Demery perjured himself at trial, she had the material to impeach him readily at hand. That she did not do so reinforces what is already apparent from the record: the question as to which petitioner now claims that Demery perjured himself was ambiguous.

Thus, notwithstanding that Dean's counsel had in fact attempted at length to demonstrate that Demery had lied to Congress and that when he did so Demery repeatedly and unequivocally denied ever having lied to Congress, the drafters of this document sought to cause the Supreme Court to believe that Dean's counsel did not even try to demonstrate that Demery had lied to Congress, that there was only one question on the matter, and that the single question was ambiguous.

Let us for a moment put aside the issues of whether the Independent Counsel's statements involve arguments or representations, whether Demery provided the responses he did because he was told by Independent Counsel attorneys to adamantly deny that he had lied to Congress, and whether Independent Counsel responses should be regarded as attempting to cause the concealment of the suborning of perjury. Irrespective of such issues, one must regard the attorneys who wrote the quoted language with respect to the testimony set out ten or so paragraphs above (like those who responded in the district court and the court of appeals) as attorneys who will write anything in a brief that they think they can get away with writing, or, at any rate, attorneys who recognize no obligation of representatives of the United States to attempt to fairly characterize a matter, or who, recognizing such obligation, ignored it.[20]

* * *

[20] Other instances of efforts to mislead the Supreme Court in the opposition to the motion for certiorari are found in Section B.7 and in May 31, 2008 document styled "The Putatively Curative Instructions that Informed the Jury that the Prosecutor's Provocative Statements that the Defendant Had Lied Reflected the Prosecutor's Personal Opinion." The opposition warrants separate treatment at some point. For virtually every characterization of the evidence or issue with regard to claims of prosecutorial misconduct is misleading.

There remained throughout this period the issue of what the Independent Counsel would inform the court in Demery's own case with respect to his fulfilling his obligation to provide completely truthful testimony as a government witness. The Independent Counsel addressed that matter on February 27, 1996. In a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines, the Independent Counsel represented to the Honorable Stanley S. Harris in the case of *United States of America v. Thomas T. Demery*, Crim. No. 92-227-SSH (D.D.C), that Demery had fulfilled his agreement to provide completely truthful testimony. The Independent Counsel did not inform Judge Harris either that a question had been raised before Judge Hogan as to whether Demery had committed perjury in the Dean case or that Judge Hogan had essentially found that Demery had committed perjury in that case.

Assuming Thompson gave his obligations in this matter any serious thought, it is understandable that he would find himself in a difficult position with regard to Demery. It is indeed virtually impossible to believe that Demery would have given the answers he did about previously lying to Congress unless instructed to do by Independent Counsel attorneys. As noted, it is possible that Independent Counsel attorneys contrived a rationale, as Robert E. O'Neill and Bruce C. Swartz apparently did for Agent Cain's testimony (*see* Section B.1), whereby the answers might be deemed to be literally true, though, as with Cain, they did not have the temerity to advance such rationale to the court. But, if Demery had been so instructed, it would hardly seem fair then to deny him the freedom Independent Counsel attorneys had promised him for providing that and other testimony.

I assume, however, that at no point did Thompson consider taking to any action to learn of Independent Counsel actions regarding Demery, just as he never considered taking any action to learn of Independent Counsel actions regarding Cain or any of the matters I brought to his attention – or that were brought to his attention by others (see discussion of the complaint by a former Independent Counsel document manager in Section B.9). And, of course, Thompson, who had been chosen by Adams to succeed him (as Adams explained in a 1999 interview), may have been fully aware of all of these matters prior to assuming the position of Independent Counsel. In any event, he never responded to the following questions regarding Demery (posed in my letter dated July 3, 1997, and pursued again in my letter dated August 13, 1997):

> 9. Do you deny that in a motion pursuant to 18 U.S.C. § 3553(e) and § 5K1.1 of the United States Sentencing Guidelines in the case of United States of America v. Thomas T. Demery, Crim. No. 92-227-SSH (D.D.C), you represented to the Honorable Stanley S. Harris that Thomas T. Demery had given completely truthful testimony in this case? Do you deny that that representation was known by you to be patently false when made? Do you maintain that if the representation was false, you did not violate 18 U.S.C. § 1001 or other federal laws by making it?[21]

[21] 18 U.S.C. § 1001, which prohibits the making of false statements or concealment of material facts concerning matters "within the jurisdiction of any department or agency of the United States," has usually been applied to statements made to executive agencies (and has been held not apply to statements made to

10. Do you deny that either you have refused to attempt to learn whether Thomas T. Demery was instructed by Independent Counsel attorneys to deny that he had ever lied to Congress or you have known or assumed for some time that Thomas T. Demery was instructed by Independent Counsel attorneys to deny that he had ever lied to Congress?

7. The Independent Counsel's Response in the Supreme Court Concerning the Andrew Sankin Receipts [b7]

In opening argument Associate Independent Counsel Robert E. O'Neill described alleged co-conspirator Andrew Sankin as someone who was "wining and dining" Dean and "buying her gifts." Later he would seek to introduce a number of receipts of Sankin into evidence to substantiate this allegation. Ultimately the district court would excoriate O'Neill for failing to disclose Sankin's off-the-stand statement that certain receipts, which were being introduced into evidence as if they reflected meals or gifts Sankin purchased for Dean, may not have applied to her. But the court's criticism missed the point. As discussed in the December 1, 1994 narrative appendix styled "The Andrew Sankin Receipts" and many other places (including Section A the O'Neill profile), O'Neill knew with virtual certainty that a number of the receipts he sought to lead the jury to believe applied to Dean in fact did not apply to her. Thus, O'Neill did not regard Sankin'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 receipts that did not apply to Dean into evidence in a manner to lead the jury to believe they did apply 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. The Sankin narrative appendix also shows that, in defending itself against the use of the Sankin receipts, the Independent Counsel sought to lead the court falsely to believe that Independent Counsel attorneys believed that all the receipts in fact applied to Dean. See also Section C of the Bruce C. Swartz profile.

To the extent that such matter was not already clear to Independent Counsel Larry D. Thompson from his files in the case, this was made clear to him in materials I brought to his attention in September 1995. Nevertheless, Independent Counsel attorneys then went on to address the Sankin matter in the Supreme Court as follows:

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congress or the courts). In the Dean case, the court of appeals also applied the statute to statements made by an executive branch employee concerning matters within the jurisdiction of the employee's department or agency. *See* CA Ruling, note 10. The suggestions that actions of Independent Counsel attorneys violated 18 U.S.C. § 1001 in the July 3, 1997 and August 13, 1997 letters to Thompson and elsewhere thus did not involve the fact that the statements were made to courts but the fact that such statements concerned matters within the jurisdiction of the Office of Independent Counsel.

> That Sankin denied knowledge of a link between some of the charge slips and petitioner does not mean, of course, that there was no nexus. Sankin acknowledged entertaining and giving gifts to petitioner. Tr. 2701-2704. Moreover, virtually all the receipts referenced petitioner by name or by her HUD title. See, e.g., GX 11f, 11j, 11k, 11l, 11m, 11n, 11o, 11p, llu, l1w, l1q, l1v. Finally, Sankin's alleged inability to link the slips to petitioner may well have been affected by other factors. As the trial court observed, many of the witnesses the government was required to call were adverse, as they were either unindicted coconspirators or individuals who had been given immunity and required to testify. Pet. App. A-1 55.

Independent Counsel Opp. Cert. 14.

Certainly the authors of this opposition had reason to know, and presumably did know, the Independent Counsel had in fact intended to lead the jury to believe that the receipts applied to Dean even when the Independent Counsel knew for a fact that they did not. Nevertheless, each element of the response is crafted to suggest, not only that Independent Counsel attorneys believed that all receipts applied to Dean (something the drafters of the opposition knew to be false), but that the receipts in fact all applied to Dean but Sankin had been unwilling to relate them to her (something those drafters also knew to be false). The response actually goes a step beyond the efforts undertaken by Independent Counsel attorneys under Arlin M. Adams to deceive the district court and the court of appeals regarding the Independent Counsel's use of the Sankin receipts. The observations in Section B.6 regarding the drafters of the certiorari opposition seem to apply just as well here.

Various documents make reference to the discussion at the end of this section of the Independent Counsel's concealment of Sankin's Harvard Business School application that contained certain exculpatory information. The matter is now separately treated in Section B.7a. This paragraph will be retained until those references are adjusted to refer to Section B.7a rather than the end of Section B.7.

7a. The Failure to Disclose and Hiding of the Sankin Harvard Business School Application [b7a]

It does not seem possible to dispute that Independent Counsel attorneys made a number of false representations with regard to their failure to disclose exculpatory information in witness statements (as discussed, *inter alia*, in Part I of the DC Bar materials or the Paula A. Sweeney profile) and with regard to the failure to make a *Brady* disclosure of documents containing exculpatory information (as discussed, *inter alia*, in Section B.3 of PMP and in Section D of the Bruce C. Swartz profile). In the case of documents, it should be kept in mind that, despite maintaining that would have made a *Brady* disclosure of exculpatory material if they found it, Independent Counsel attorneys never actually produced a single document as *Brady* material.

But the issue originally addressed in the courts merely went to the failure to segregate documents containing exculpatory information, not to any actual hiding of such materials. But Dean's February 1997 motion (see Mem., Section IV.C) presented evidence that Independent attorneys actually withheld and hid exculpatory materials. The materials related to Andrew Sankin, the persons whose receipts are the subject of Section B.7.

Sankin had been a childhood friend of Silvio DeBartolomeis. DeBartolomeis was the Deputy Assistant Secretary for Multi-Family Housing , General Deputy Assistant Secretary for Housing, or Acting Assistant Secretary for Housing during the periods relevant to the first four of the five projects involved in Count Two of the Superseding Indictment, the count as to which Dean's alleged co-conspirators included Sankin and Richard Shelby. DeBartolomeis has been elsewhere discussed with regard to Count One, both in connection with Robert E. O'Neill's efforts to lead the jury to believe that a conspiratorial reference to Richard Shelby's "contact at HUD" pertained to Deborah Dean even though immunized witness Shelby had stated that the reference pertained to DeBartolomeis (*see, inter alia*, Section C of the O'Neill profile) and in connection with Bruce C. Swartz's efforts subsequently to deceive the court about several matters, including the thinking of Independent Counsel attorneys when they attempted lead the jury to believe that the reference pertained to Dean (*see, inter alia*, Section B of the Swartz profile).

Sankin sought the assistance of DeBartolomeis on HUD matters, but became sensitive to the appearance of impropriety in his doing so. In August 1985, he wrote to Berel Altman, the developer of the Foxglenn project for which Sankin would later secure funding, apologizing for the indiscretion in his discussing with Altman his (Sankin's) earlier discussion with DeBartolomeis concerning the possible conversion of vouchers to developer contracts. Att. 45 to Dean Feb. 1997 Mem. Ultimately, DeBartolomeis authorized the Foxglenn funding that was a subject of Count Two, with the funding documents signed by a subordinate because, according to DeBartolomeis, he was out of the country. As discussed in the Dean February 1997 memorandum, there was disputed testimony regarding the extent of the contacts of Shelby and Sankin with DeBartolomeis concerning the funding.

In a 1988 application to Harvard Business Schoo1, Sankin responded to a question concerning an ethical dilemma he had dealt with by making the following statements regarding the actions he took with regard to securing the Foxglenn mod rehab units. Noting that a childhood friend (DeBartolomeis) was the HUD official who had authority over the allocation he was seeking, Sankin indicated that, because of that relationship, it was "a fait accompli that my client's request would be approved." Att. 46 to Dean Feb. 1997 Mem.

In the application, Sankin then noted that there could be an appearance of impropriety if his friend signed the documents authorizing the allocation. He went on to describe actions he took to secure Dean's support for the allocation, in order to avoid the appearance of impropriety. One might debate the exact meaning of the steps he described as they bear on the merits of the charged conspiracy or as they might be considered consistent or inconsistent with Sankin's testimony in court. In a context where there existed an issue as to whether Dean or DeBartolomeis was responsible for the funding decision, however, there can be no doubt that Sankin's initial statement – that

because of DeBartolomeis' position it was a foregone conclusion that the request would be funded – was exculpatory of Dean. As discussed in Section IV.C.2 of the Feb. 1997 Mem., the document was also exculpatory as to the other projects in Count Two where issues existed as to whether Dean or DeBartolomeis was responsible for HUD actions that benefited Sankin.

Therefore, the Independent Counsel should have provided the application form to the defense as part of a *Brady* disclosure. Sankin had evidently faxed the document to the Independent Counsel on May 29, 1992, five days before Sankin testified before the grand jury. That the document was specifically faxed to the Independent Counsel suggests that it received individual attention from Independent Counsel attorneys, in contrast to the situation where a document was included in a large mass of documents secured by investigators. However, following the July 7, 1992 issuance of the Superseding Indictment that included the allegation that Dean has caused the Foxglenn funding to benefit Sankin and Shelby, the Independent Counsel failed to provide the document in a *Brady* disclosure. Further, Independent Counsel attorneys also failed even to include the document among the Sankin materials provided to the defense as part of the discovery process in the summer of 1992.

The document would only be made available to the defense at all when, in December 1992, the Independent Counsel turned over approximately 3700 unindexed pages of material identified as the Independent Counsel's preliminary exhibit production. At that time, the two-page document was placed as the 510th and 511th items in a 562-page group of documents related to the Stanley Arms, an apartment building Sankin managed for Dean's family, something to which the document obviously was entirely unrelated. Markings on the documents indicated that the Harvard Business School application had been inserted into a group of documents secured from Sankin at another time.

The Stanley Arms documents were inconsequential materials related to the management of the property, which the defense would have little reason to review in any detail. There is little reason to doubt that the failure to include the document in the initial Sankin production was precisely because of a concern that the defense would find it. There similarly seems little room for doubt that the document was calculated hidden in the preliminary exhibit production, with the hope that the defense would not discover it (which the defense in fact did not do). That one exculpatory document was hidden means that others may also have been hidden and never discovered.[22]

[22] *See also* Section IV.B of Dean's February 1997 Memorandum regarding the *Brady* issues related to the Sankin receipts that are the subject of Section B.7. As shown there, the Independent Counsel almost certainly possessed a variety of documents indicating that certain of the Sankin receipts did not pertain to Dean, including calendar entries of the persons to whom the receipts did pertain and the calendars of Dean's boyfriend. None of this material was made available to the defense, much less made part of a *Brady* disclosure. In the case of Dean's boyfriend's receipts, the Independent Counsel subpoenaed the receipts in 1991 or 1992 and never returned them. Thus, not only did the Independent Counsel fail to produce material in its possession that would be useful to the defense, but it deprived Dean such material that would otherwise have been available to her.

8. The Department of Justice's Role in Perpetuating All Actions of the Independent Counsel [b8]

A PDF version of this section with the endnote converted to a footnote may be found here.

In approximately July of 1999, while Dean's February 1997 motion and her request for reconsideration of the ruling on her December 1996 motion were still pending, the case was transferred to the Public Integrity Section of the Department of Justice. The case was there assigned to Robert J. Meyer, the former Independent Counsel attorney who had signed the opposition to Dean's November 30, 1993 Rule 33 Motion. *See* the Robert J. Meyer profile. In addition to the December 17, 1999 letter to Robert J. Meyer, the implications of the Department of Justice's assumption of responsibility for continuing the Dean prosecution are discussed in my letter of December 26, 1999, to Attorney General Janet Reno, Deputy Attorney General Eric Holder, 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.

Robert J. Meyer left the Department of Justice some time in 2000 and by notice of August 30, 2000, responsibility for the case was assumed by Public Integrity Section attorney Raymond N. Hulser. In March 2001, Hulser moved for a hearing to resolve the case. When Dean argued that the government had not yet responded to her pending motions, in a document dated March 28, 2001, Hulser maintained that the Independent Counsel had provided detailed pleadings stating why Dean's request for reconsideration of the ruling on her motion to overturn Count One should be denied and her motion for a new trial should be stricken. Thus, while presumably knowing that the Independent Counsel had repeatedly attempted to deceive the courts, and that the Independent Counsel's representation in the motion to strike Dean's February 1997 motion that there had been no efforts to deceive the court previously in the case was false, the Department of Justice took an affirmative step toward continuing the concealment of Independent Counsel actions regarding such matter. But, even without such affirmative action on the part of the Department of Justice, assuming that it was aware that Independent Counsel attorneys had used false evidence or attempted to deceive the court previously in the prosecution of the case, it could fairly be said that the failure of Department of Justice attorneys to bring such matters to the attention of the court involved a perpetuation of that conduct.

Such points, however, pertain to the role of the Department of Justice in the prosecution of the case after it replaced the Independent Counsel as the prosecutor and the actions of the Independent Counsel became Department of Justice actions. Also deserving of examination are the actions of the Department of Justice when the case was still being handled by the Office of Independent Counsel and the Department's role was limited to determining whether to investigate the Office of Independent Counsel and whether actions of Department of Justice attorneys while serving in the Office of Independent Counsel warranted their removal from positions in the Department of Justice In that

regard, I suggest the reader examine the letters to me from Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr. dated June 28, 1995, and January 30, 1996, and my responses dated August 15, 1995, and March 11, 1996, and, in light of those responses, consider whether the Shaheen letters either accurately characterize the matters at issue or reflect an appropriate concept of the role an overseer or prosecutorial conduct.

The March 11, 1996 letter explains that the only matter as to which the Shaheen's January 30, 1996 letter even accurately characterized the issues – that is, "that the jury chose to believe these government witnesses and to disbelieve as not credible the testimony of Ms. Dean" – involved the testimony of Supervisory Special Agent Alvin R. Cain, Jr. Shaheen never responded to my request that he explain to me whether the Department's decision not to take any action – whether with regard to an investigation of the Office of Independent Counsel or the removal of Robert E. O'Neill and Bruce C. Swartz from positions in the Department of Justice – was based on the view that their conduct was permissible because Agent Cain's testimony was, or was supposed to be, literally true. *See* Section B.1 of PMP.

In any event, particular attention should be given to the apparent view in the Shaheen letters that, if the extent of misconduct of government attorneys is not revealed in the court proceedings, the authority overseeing the conduct of those attorneys is absolved of responsibility in the matter – and that such view holds even when the government attorneys' misleading of the courts was the reason that the misconduct was not revealed. Further, implicit in Associate Deputy Attorney General David Margolis's raising of the issue of whether Agent Cain's testimony might be literally true – which was apparently suggested as a rationale by which the Independent Counsel actions would not have been as egregious as I was portraying them – is the view that it is permissible both for government attorneys to lead the court and jury to believe things those attorneys know be false as long as the testimony offered for that purpose is literally true and for government attorneys to mislead the court in effort to conceal the nature of the government attorneys' conduct. Thus, one must consider the possibility that actions such as those Independent Counsel attorneys apparently undertook with regard to Agent Cain and varied other matters may not in fact be unusual among federal prosecutors.

One should consider also the fact that, apart from Arlin M. Adams himself, most of the offending attorneys had been Department of Justice attorneys before they joined the Office of Independent Counsel, as some would also be after they left the Office of Independent Counsel. In the court of appeals, both orally and in writing, Deputy Independent Counsel Bruce C. Swartz, in denying that there had been any bad faith on the part of the prosecutors, would emphasize that all involved attorneys were experienced Department of Justice prosecutors. See generally the profile pages on Jo Ann Harris, Bruce C. Swartz, Robert E. O'Neill, and Paula A. Sweeney.

Jo Ann Harris was lead counsel in the Dean case at the time that the Independent Counsel decided to draft a superseding indictment containing statements or inferences Independent Counsel attorneys knew or believed to be false, and with the evident

intention of failing to make *Brady* disclosures in a timely manner, or at all, of statements or documents that would interfere with the Independent Counsel's efforts to lead the jury and the courts to believe those things Independent Counsel attorneys knew or believed to be false, and, equally important, with the intention of failing to confront government witnesses with information that would cause them to acknowledge that the testimony the Independent Counsel planned to elicit was false. See my May 17, 1995 letter to Abner J. Mikva and the Jo Ann Harris profile.

Prior to serving as an Associate Independent Counsel, Harris had held the position of chief of the fraud section of the Criminal Division and had twice been an Assistant United States Attorney. After her service with the Independent Counsel, Harris would hold the position of Assistant Attorney General for the Criminal Division. While there she would be noted in the press for imposing very modest discipline upon a prosecutor who had withheld important evidence from the defense, apparently asserting as the basis for the modest discipline that the prosecutor had failed to recognize the significance of the material withheld. In 1994, she would be appointed, along with, among others, Deputy Assistant Attorney General Margolis and Counsel for the Office of Professional Responsibility Shaheen, to a newly-created Advisory Board on Professional Responsibility.

Swartz, whose efforts to deceive the district court and the court of appeals are discussed in some detail in the Cain and Park Towers appendixes, and more recently summarized in the Swartz profile, including (with regard to Park Towers) the way *Brady* violations assisted in those efforts (see also the profiles on Jo Ann Harris, Paula A. Sweeney, and Robert J. Meyer), would be called upon orally to defend the Independent Counsel conduct with regard to its *Brady* obligations in court of appeals in response to concerned questioning from Judge Laurence Silberman. In defending a position on disclosure of *Brady* materials that Judge Silberman termed "unconscionable" or "ridiculous," Swartz would seek deference to the position by noting that the approach was developed by a trial counsel who was now the Assistant Attorney General for the Criminal Division. Judge Silberman seemed to take little comfort in such fact. *See* Transcript 40-41, 46.

At any rate, both those who may be skeptical of my allegations as to the nature of Independent Counsel conduct and those who may be skeptical of the ethics of federal prosecutors generally (or of the role of the Office of Professional Responsibility of the Department of Justice in overseeing such conduct) should be aware that the Office of Professional Responsibility is on record that the conduct identified in the December 1, 1994 materials did not call into question the fitness of the involved prosecutors to continue to represent the United States.[23]

[23] The December 23, 1997 letter to Department of Justice Inspector General Michael R. Bromwich referenced in the Introduction requested an investigation of the handling by Department of Justice officials of the allegations of misconduct in the Dean case. In the letter, among other things, I maintained that the Department failed to investigate the allegations in good faith out of a concern that an investigation would establish that high-ranking officials of the Department had violated federal laws while serving as attorneys for the Office of Independent Counsel. By letter dated April 8, 1998, Inspector General Bromwich advised that he could not review the allegations because his office did not have jurisdiction to investigate matters

See also (1) Section B.9 *infra* regarding implications of the former Independent Counsel document manager's complaint; (2) my emails to the Department of Justice of July 14, 2008 and July 17, 2008 regarding whether Deputy Assistant Attorney General Bruce C. Swartz and (then) interim United States Attorney Robert E. O'Neill should be permitted to remain with the Department of Justice should they now (a) acknowledge their conduct in the Dean case or (b) continue to deny it; and (3) my email to the Department of Justice of April 8, 2009 regarding whether the current Attorney General's asserted commitment to correcting prosecutorial abuses can be taken seriously if Swartz and O'Neill are permitted to continue serving in their current positions.

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This section warrants some revisions to expand on the nature of the exchanges with Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr., and to address certain developments.

The first development involves certain recent exchanges with the Department of Justice. By letter of November 2, 2009, I wrote Attorney General Eric Holder principally concerning whether Deputy Assistant Attorney General Bruce C. Swartz ought to be permitted to serve in his current position in light of conduct with which he, Robert E. O'Neill, and other Independent Counsel attorneys were involved in the *Dean* case. The letter, which gave considerable attention to Swartz's action in covering up his own and O'Neill's conduct regarding Agent Cain's testimony, also briefly addressed (at 4) issues

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concerning Department of Justice attorneys' exercise of their authority to investigate, litigate, or provide legal advice.

Meanwhile, by letters dated January 14, 1998, and March 2, 1998, I requested Attorney General Jane Reno to consider the removal of Larry D. Thompson from the position of Office of Independent Counsel, maintaining both that the Department of Justice did not previously consider the allegations of Independent Counsel misconduct in good faith and that developments subsequent to the Department's last communication to me on the matter provided independent justification for reconsideration of the earlier determination. The March 2, 1998 letter addressed the Independent Counsel's actions regarding the complaint by the document manager (*see* Section B.9) and Independent Counsel actions regarding my effort to review an interview report I had reason to believe had been altered (as the document manager's complaint suggested in fact occurred in some instances). By letter dated May 4, 1998, Inspector General Bromwich advised that my March 2, 1998 letter to Attorney General Reno had been forwarded to his office for response. Referencing his April 8, 1998 letter me, Inspector General Bromwich advised that the Office of Inspector General did not have jurisdiction to address the matters raised in my March 2, 1998 letter to the Attorney General.

By June 17, 1998 letter to Attorney General Reno, I noted that it is an unusual thing for the head of an agency of the United States who has the authority to address a matter to refer the matter to a division of her agency that does not have such authority. I requested clarification of whether the Attorney General intended that Inspector General. Bromwich should respond on her behalf by advising me of the lack of jurisdiction of his office. I suggested that, if such had been her intention, it would not discharge her responsibilities over the matter. I therefore requested that the Attorney General either address the matter herself or refer it to a division of the Department of Justice that does have jurisdiction. Attorney General Reno did not respond to that letter.

concerning O'Neill's candidacy for the United States Attorney position as well as his fitness to serve in his current position as Chief of the Criminal Division of the Office of the United States Attorney for the Middle District of Florida. By letter dated December 28, 2009, Judith B. Wish, Deputy Counsel for the Office of Professional Responsibility, referencing my November 2, 2009 letter to the Attorney General as well as my emails to the Department of Justice dated July 14, 2008, July 17, 2008, and April 9, 2009, advised that it was the Office of Professional Responsibility's policy to refrain from investigating issues or allegations that were addressed, or could have been addressed, in the course of litigation, unless a court has made a specific finding of misconduct or there are present other extraordinary circumstances.

By letter dated January 15, 2010, I responded to Deputy Counsel Wish questioning the wisdom of the stated policy and its pertinence to the matters I had brought to the Department's attention concerning the conduct of Bruce C. Swartz, Robert E. O'Neill and others in the *Dean* case. I also raised (at 7-9) issues as to the relevance of the possibility that a matter could have been raised in litigation to the Department's actions in responding to inquiries by any person or entity regarding Swartz's actions in his current position and by the President or others involved in the United States Attorney appointment process concerning O'Neill's suitability for such position. An important issue regarding the Department of Justice's handling of this matter in the present will involve how the Department has or will respond to inquiries from the President or Senators regarding that issue, as discussed in a January 26, 2010 Addendum 5 to the O'Neill profile and a January 31, 2010 Addendum 5 to the Swartz profile.

The second involves events relating to the Office of Professional Responsibility Advisory Board and the recent creation of the Claudia J. Flynn Professional Responsibility Award. While as of my last effort to learn of Department of Justice actions concerning the advisory board, some time in 1999, it seemed that nothing of substance had been done to follow through with Attorney General Reno's effort to make the curbing of prosecutorial abuses a Department priority. But it seems that in or around 2000, the Department created the Professional Responsibility Advisory Office and Deputy Attorney General appointed an attorney named Claudia J. Flynn to head that office. Then, following the revelations of prosecutorial abuses in the Public Integrity Section that led to Attorney General Eric Holder's decision to seek dismissal of the case against Senator Ted Stevens, Holder himself announced that he would make the curbing of prosecutorial abuses a Department priority. As one of the early steps in this effort, Holder announced the creation of a Professional Responsibility Award, which he named after Flynn, who had passed away in the 2006. The creation of an award for professional responsibility, as if there were levels at which government attorneys ethically conduct themselves, suggests a poor understanding of the standards citizens should be able to expect from all government attorneys. But given that Flynn assisted Bruce C. Swartz in the effort to increase Dean's sentence for allegedly lying about the call to Agent Cain (the matter discussed at length in Section B.1 of PMP and section [5] of the Swartz profile though without mention of Flynn), and that this was repeatedly brought to the attention of high officials within the Department even before Flynn was appointed to head the Professional Responsibility Advisory Office, both the 2000 appointment of Flynn and the

Department's recent decision to name a professional responsibility award after her raise additional questions about the judgment of Department officials responsible for oversight of prosecutorial conduct.

9. Complaints of the Former Independent Counsel Document Manager [b9]

In November 1991 the Office of Independent Counsel hired a document manager. Since I have not been able to contact such person recently, for the moment I shall refer to him simply as the document manager or former document manager. There is probably little purpose in my not disclosing his name since the Independent Counsel attorneys who are the subject of this page certainly know his identity and copies of the Shaheen transmittal (discussed below) I secured from the Department of Justice and the Office of Independent Counsel also disclosed his name. Nevertheless, at present, I remain disinclined to include his name in this document.

Soon after joining the Office of Independent Counsel, the document manager grew concerned about some of its practices. Initially, the concerns involved problems with document handling procedures. After a time, however, the document manager also grew concerned about a variety of issues involving leave practices, the hiring of friends, the steering of a lucrative contract to a friend, the use of government vehicles and travel, and what he perceived to be the general misuse of government resources. In the view of the document manager, personnel in the Office of Independent Counsel were engaging in the same sort of conduct for which the Independent Counsel was prosecuting people. Other concerns involved the use of government resources to compile chronologies of the putative sexual partners of a subject of the investigation (as it happens, Deborah Gore Dean), as well as certain practices involving the questionable editing of witness interview reports. After exploring various avenues to bring his concern to the attention of appropriate governmental entities, the document manager decided to broach certain concerns directly with Independent Counsel Arlin M. Adams.

The document manager met with Judge Adams on November 8, 1993, raising with Adams several issues concerning what the document manager perceived to be improper conduct. These included Deputy Independent Counsel Swartz's use of his former law firm for Office of Independent Counsel business and Jo Ann Harris's steering of a contract for the analysis of the handwriting of Deborah Gore Dean to a friend of Harris's, when in other cases the Office of Independent Counsel had relied on the FBI (which, in the view of the document manager, was recognized to be the best in the world). A week later, Adams advised the document manager that he (Adams) believed most issues could be addressed with a memorandum to the file though he might have more trouble with certain items like the handwriting contract. Adams also informed the document manager that due to the need to make staffing cuts, the document manager was being terminated, effective 60 days from November 15, 1993.

Over the next few years the document manager filed a number of complaints with government agencies raising issues of improper conduct by the Office of Independent Counsel, the first of which was submitted to the Office of Special Counsel for

Whistleblowers on November 17, 1993. At the end of December 1993, having learned of certain of the document managers' efforts to bring these matters to the attention of governmental authorities or the press, the Independent Counsel terminated the document manager immediately for allegedly disclosing grand jury information and violating a nondisclosure agreement and thereafter caused the Department of Justice to investigate the document manager for such disclosures. In early 1994, when the Office of Special Counsel started to investigate the allegations (which included the allegation that Jo Ann Harris steered a contract to a friend), the Criminal Division of the Department of Justice (then headed by Harris) requested that the Office of Special Counsel to hold its investigation in abeyance until the Department of Justice concluded its investigation of the former document. The request was made with Harris's knowledge, but without knowledge of the Public Integrity Section trial attorney handling the document manager's case. At least for a time, the Office of Special Counsel acceded to that request.

The Department of Justice's investigation then lasted until September 1996. Though the Department apparently led the document manager to believe it might very well prosecute him, ultimately, by letter dated by letter dated September 9, 1996, the Public Integrity Section informed the document manager that it would not prosecute.

On November 15, 1996, the document manager then filed a complaint with the Department of Justice's Office of Professional Responsibility. By letter dated February 25, 1997, Michael E. Shaheen, Jr. forwarded the letter to Independent Counsel Larry D. Thompson, "for investigation and appropriate action." The transmittal added: "Of course, if your investigation should determine that any criminal prosecutions were tainted by misconduct, we expect you will take appropriate steps to inform the affected courts."

The document manager's November 15, 1996 letter is short enough to speak for itself. But I list below just four of the nine items identified by the document manager:

> (1) The Independent Counsel Arlin Adams and his Deputy, Bruce Swartz destroyed dozens of FBI 302s. The reason offered for the collection (and shredding) of all copies (and the originals) was that the interview did not further the case.
>
> (2) The Independent Counsel Arlin Adams, Deputy Bruce Swartz and the Office Administrator, Terry Dugan, edited hundreds of FBI 302s. Special Agent Matthew Kelleher expressed to me his uneasiness with 302s (the final version of an interview) being edited at all, much less edited by personnel who were not present at the actual interview.
>
> (3) Deputy Independent Counsel Bruce Swartz knowingly and willfully suppressed evidence, and violated discovery rules, including Brady and Jencks.
>
> (4) Federal Prosecutor Paula Sweeney directed Office of Independent Counsel employees [names redacted in my copy] to create a chronology of bed partners whom Deborah Gore Dean (Office of Independent Counsel Target) allegedly slept

> with while employed at HUD. The FBI agents used their reports of interview (302s) and Federal Prosecutors [name redacted on my copy] to solicit information about Dean's romantic trysts. The chart that was created was known as the "The Dean Sex Chronology". The chart (created at the taxpayer's expense) had no relevance to the charges the government brought against Dean or to the Office of Independent Counsel's Mandate.

I set out the first three items because they raise issues closely related to the issues discussed in the December 1, 1994 materials and other materials referenced here. I set out the fourth item because it suggests an attitude toward Deborah Gore Dean within the Office of Independent Counsel, and certainly of Paula Sweeney, one of the trial counsel in the case, that may have had some role in causing the seemingly exceptional actions catalogued in the December 1, 1994 materials and elsewhere. *See* Paula A. Sweeney profile.

The document manager is the former Independent Counsel employee mentioned in Section B.1 who informed me of the circumstances observed in the offices of the Independent Counsel regarding the securing of Agent Cain's testimony and the reaction to the fact that the coaching of Agent Cain had not been revealed in cross-examination. Section B.9b discusses, in light of the document managers allegations that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz altered or destroyed by interview reports, (a) the fabrication of Government Exhibit 25, (b) the apparently missing part of Government Exhibit 25 as provided to me by Larry D. Thompson, (c) the reason to believe that the interview report of Aristides Martinez was altered, and d) my efforts to examine a copy of the Martinez interview (matters that are also summarized in Section B of my March 2, 1998 letter to Attorney General Janet Reno).

At this point, however, I address only two issue related to the document manager's complaint. First, the Department of Justice's handling of the document manager's complaint must be evaluated in light of the Department's also having the materials I submitted to it concerning like issues. Similarly, an evaluation of the Department of Justice's handling of my complaints, as well as the Department's actions in the continued prosecution of the Dean case while aware of the matters I brought to its attention, must also take into account the Department's awareness of the document manager's complaint.

Second, my January 5, 1998 letter to Deputy Independent Counsel Dianne J. Smith summarizes the situation to that point regarding my efforts to secure by way of the Freedom of Information Act all documents not filed in court alleging prosecutorial misconduct by the Office of Independent Counsel. The letter discusses the representations by the Office of Independent Counsel that no documents meeting the description of the document manager's complaint existed. In the letter I also advised the Office of Independent Counsel for the first time that I was aware of the Office of Professional Responsibility's February 25, 1997 transmittal of the document manager's complaint, attaching a copy of said transmittal.

By letter of February 2, 1998, Deputy Independent Counsel Smith provided a copy of the Shaheen transmittal. Somehow reading my request to be solely for a copy of the same document I had sent to her, Smith did not provide the underlying, more detailed complaint or say anything about it. In explanation for the previous representations that no document of the description of the document manager's complaint existed, Smith stated that my letter of January 5, 1998 had caused the Independent Counsel to search again for the letter and that the "Office of Independent Counsel found a copy of the letter in a location not ordinarily containing correspondence of the nature you requested." Deputy Independent Counsel Smith did not state whether the underlying complaint had been found there as well.

If Deputy Independent Counsel Smith had originally misrepresented her knowledge of the document manager's complaint, there exists the possibility that complaints of other persons were never revealed. If Smith's responses were truthful, the fact that Smith, who ran the office on a day-to-day basis and had signed the Independent Counsel's motion to strike Dean's February 1997 motion, was not even aware of the document managers complaint is itself revealing of the of the manner in which the Independent Counsel complied with Michael E. Shaheen's instruction to investigate the allegations and take appropriate action.

9a. Developments Regarding the Fabrication of Government Exhibit 25 and Alteration of the Martinez Interview Report [b9a]

The Nunn Appendix shows that Government Exhibit 25, in the form provided to the defense, was a fabricated document. It seems clearly to have been created in order to support certain false statements in the Superseding Indictment and the Independent Counsel's summary charts. Specifically, as discussed in the Nunn Appendix, the Superseding Indictment and summary charts stated that the Arama consultant agreement was reached on or about January 25, 1984 and on or about that date Nunn made his annotation concerning Mitchell's right to half the consultant fee. The statements created the impression that the annotation was written in the presence of Arama developer Aristides Martinez, and the suggestion that he knew of Mitchell's entitlement to half the consultant fee would play significantly into Independent Counsel efforts to elicit from Martinez testimony that he had been told Mitchell was related to Dean and that she held an important position at HUD. Such testimony was intended to support statements in the Superseding Indictment that co-conspirators in Count One would tell their developer clients of Mitchell's relationship to Dean.

Were Government Exhibit 25 what the Independent Counsel represented it to be – an April 3, 1984 letter from Martinez to Nunn enclosing a copy of the consultant agreement bearing Nunn's annotation – it would conclusively establish that Martinez knew Mitchell was to receive half the consultant fee. But the document, which would be introduced though Martinez as if it were a document from his files, had been pulled together from materials in Nunn's files.[24] Nunn did not make his annotation until after he received the

[24] While not material to the false use of the document discussed here, I note that Attachment 5e, a copy of the letter from Melvin J. Adams of the Metropolitan Dade Department of Housing and Urban

April 3, 1984 letter from Martinez, and the record is clear that Martinez did not know anything about Nunn's and Mitchell's fee arrangement.

My February 26, 1997 letter to Independent Counsel Larry D. Thompson, in which I requested to review originals of Government Exhibit 25 and several related exhibits, also sets out strong reason to believe that the Martinez interview report was altered in order to remove the statements that would show that Martinez did not know about Nunn's annotation thereby demonstrating that Government Exhibit 25 was a false document. At the time I raised this issue, I was unaware of the allegations of the former document manager that Independent Counsel Arlin M. Adams and Deputy Independent Counsel Bruce C. Swartz had altered interview reports. As it happened, however, at the time Thompson received my letter he would also have just received the February 25, 1997 transmittal from Counsel for the Office of Professional Responsibility Michael E. Shaheen, Jr., enclosing the former document manager's complaint and advising Thompson of the allegations of alteration of interview reports.

In any case, a month later, by letter dated March 25, 1997, while refusing to allow me to examine the originals of any exhibits, Thompson provided what he represented to be a copy of Government Exhibit 25. But the most crucial part of the exhibit – the consultant agreement – was missing from the copy provided by Thompson. The absence of the consultant agreement may have occurred because the document had been tampered with.[25] But, as discussed in the March 31, 1997 letter to Thompson advising him that the crucial item was missing from the copy of Government Exhibit he had provided me, the following is also possible.

The Nunn Appendix shows how, after the court refused to allow Independent Counsel attorney Robert E. O'Neill to elicit from Martinez testimony about the remark concerning Mitchell and Dean, O'Neill decided not to attempt to lead the jury and the court falsely to believe that Martinez possessed a copy of the Arama consultant agreement bearing Nunn's annotation. O'Neill decided instead to attempt to lead the jury and the court falsely to believe that Mitchell's involvement with the Arama funding was concealed from Martinez. O'Neill may then have pulled the consultant agreement from Government Exhibit 25 before introducing it into evidence, since in its original form the exhibit would seem to conclusively establish (though falsely) that Martinez knew of the

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Development, to Harry I. Sharrott, Manager of HUD's Jacksonville Office bearing notations indicating it had been received in HUD's Jacksonville Area Office and at HUD Headquarters, is not the copy that had been enclosed with the Martinez letter. The document that had actually been enclosed, which may be found in Attachment 9 to the Nunn Appendix, included its attachment, a ten-page listing of the projects in the Dade pipeline. That attachment would have undermined the crucial testimony of Maurice Barksdale. See December 1996 Memorandum and Section B.3 of the main Prosecutorial Misconduct page.

[25] It was the practice in the District Court for the District of Columbia for originals of trial exhibits in criminal cases to be maintained by the prosecutors. That may not be the best practice, among other reasons, because, as in the case of Independent Counsel Thompson's refusal to allow me to examine the originals of Government Exhibit 25 and related exhibits, prosecutors can impede or deny public access to exhibits that may have been fabricated or tampered with.

annotation concerning Mitchell. The March 31 letter requested that Thompson inform me whether the copy of Government Exhibit 25 he had provided me was a copy of the document in the form in which it was introduced into evidence or whether a part was missing from Independent Counsel files.

By letter of April 3, 1997, Thompson informed me that he was taking my March 31, 1997 letter under advisement. I never heard from him again despite repeated follow-ups to resolve these and related issues. See my letters of May 14, 1997, May 26, 1997, June 9, 1997, July 3, 1997, and August 13, 1997. My July 23 letter sets out the pending questions regarding the fabrication of Government Exhibit 25 and the alteration of the Martinez interview report.

Meanwhile, through the Freedom of Information Act, I sought to examine originals of Government Exhibit 25 and related exhibits and copies of the original of the Martinez interview report. Deputy Independent Counsel Diane J. Smith denied access to the originals of the exhibits, asserting that copies had been provided by Independent Counsel Thompson's letter of March 25, 1997 (though without responding to my still pending request for clarification regarding the consultant agreement that had been part of the copy of Government Exhibit 25 provided to the defense but missing from the copy Thompson had provided to me). For a time it seemed that Smith was going to grant the request to review the original of the Martinez interview report. But in the same February 2, 1998 letter in which Smith for the first time acknowledged the existence of the former document manager's complaint (*see* Section B. 9), Smith ultimately refused to make the original available.

This subject is also discussed Section D of the profile on Robert E. O'Neill who was presumably involved in the fabrication of Government Exhibit 25 in the form it was provided to the defense and who ultimately introduced the exhibit into evidence with or without the consultant agreement included. See my June 15, 2009 email to Robert E. O'Neill inquiring as to whether the consultant agreement was pulled from the exhibit before it was introduced into evidence.

10. Larry D. Thompson's Fitness to Hold Public Office [b10]

Larry D. Thompson replaced Arlin M. Adams as Independent Counsel on July 3, 1995, and served in that position until sometime in 1999. Thompson, a former United States Attorney, had been with the Office of Independent Counsel from October 1990, though he apparently worked there only part time while maintaining a law practice with the Atlanta firm of King & Spaulding. I do not know what matters Thompson was involved with in his work for the Independent Counsel. As noted earlier, however, it is certainly possible that even before he succeeded Arlin M. Adams as Independent Counsel in July 1995, he was aware of, if not involved with, many of the things I brought to his attention commencing in September 1995. As noted in Section B.6, Thompson was apparently specifically chosen by Adams.

After leaving the Office of Independent Counsel in 1999, Thompson served as Deputy Attorney General from 2001 to 2003. In that position, among other things, Thompson headed the federal task force on corporate fraud. He was thereafter a Senior Fellow at the Brookings Institution and is now Senior Vice President, Government Affairs, General Counsel and Secretary of PepsiCo. He has been mentioned as a possible appointee both to the Supreme Court and to the position of Attorney General of the United States.

Profiles of Thompson may be found at http://www.answers.com/topic/larry-thompson and http://en.wikipedia.org/wiki/Larry_Thompson

In any future Republican administrations, Thompson likely will be again considered for high government positions. Thus, his role as an Independent Counsel, particularly with regard to the continued concealment of any ways in which Independent Counsel attorneys deceived the courts concerning the various matters addressed the Prosecutorial Misconduct page, is a matter warranting substantial attention. It may eventually receive further attention here. A few points warrant mention at this time.

In 2002 an issue arose concerning Thompson's making between $1 million and $5 million on the July 2001 sale of a stock of Providian Financial Corporation, a company of which he had been a director and chairman of the auditing committee. The sale occurred very shortly before concerns about the company's prospects, and then a company announcement of problems, caused the stock's price to drop dramatically. Thompson's transactions apparently involved the sale of 27,151 shares already owned and the exercising of stock options on another 62,500 shares to be simultaneously sold. According to an August 15, 2002 *Washington Post* account of the matter, a spokesperson for Thompson (who was apparently the Public Affairs Director of the Department of Justice) stated that Thompson's understanding was that he had to sell the stock. But, according to the *Post* article, in fact Thompson's ethics agreement merely required that he recuse himself from matters involving Providian.

Many readers of the article might well conclude that Thompson used the Deputy Attorney General appointment as an excuse to divest himself of a stock that he knew was soon going to drop substantially in price. They might well also conclude that the statement that he understood that he had divest himself of the stock was intended to mislead. A troubling aspect of the statement is that it was made by a representative of the Department of Justice. Neither the representative nor the Department in fact knew what Thompson's thinking was on the matter. Thus, the Department ought not to have been making statements on behalf of one of its officials regarding a personal matter, when the Department was not a position to judge the true nature of the official's conduct.

A crucial question for Thompson, of course, was whether at the time he made the decision to sell the stock he, as head of the audit committee or otherwise, was aware of the impending problems. Thompson avoided addressing that or other questions. Instead he refused to comment directly, and in a press conference simply stated with respect to his fitness for the position of Deputy Attorney General:

> Well, this is Washington, isn't it? And I believe all those who have worked with me and against me will attest of [sic] my integrity. I think my integrity and record of public service speaks for itself.

As with Thompson's representation in support of the motion to strike Dean's February 1997 motion that his predecessors in the prosecution of the Dean case had not attempted to mislead the courts, the approach Thompson took to this matter illustrates how much easier it is respond broadly to a matter than to directly address specific issues.
In any case, there seem to be two parts to Thompson's statement. The first part is that all those who had worked with or against him would attest to his integrity. As suggested by the discussion in certain other parts of this section, and many other statements in my letters to Thompson (including the ten questions posed in my letter of July 3, 1997), regardless of whether there was merit to my assertions, Thompson's suggestion that no one has questioned his integrity was plainly inaccurate.

The second part involves Thompson's assertion that his record of integrity and record of public service speak for themselves, which presumably implies that, in so speaking, they show Thompson to be a person of integrity and one whose record of public services is unblemished. This part of the statement raises issues that are more complicated, though, I suggest, not all that complicated. In any event, until I give the matter further attention the reader is encouraged to review the materials posted here regarding Thompson's action in the Dean case following my bringing certain issues to his attention and following the filing of Dean's motions of December 1996 and February 1997.

11. Additional Evidence of Ill Feelings Independent Counsel Arlin M. Adams Bore toward John N. Mitchell [b11]

Various materials referenced on this page mention a statement by Arlin M. Adams, made shortly after he was appointed Independent Counsel in 1990, that he might have been on the Supreme Court had he not offended Attorney General John Mitchell. I suggest that intelligent readers of these materials will conclude that Arlin M. Adams sought to involve John Mitchell, posthumously, in a conspiracy claim that Independent Counsel attorneys believed was, in whole or in part, false, and that in the course of attempting to prove such claim those attorneys led the jury and the courts to believe many things those attorneys knew or believed to be false. Such readers will also conclude that with regard to most of the other claims against Dean, Independent Counsel attorneys engaged in egregious misconduct that also included leading the courts and the jury to believe things those attorneys knew or believed to be false. Putting such issues entirely aside, however, thoughtful observers would question the appropriateness of the involvement of Adams in the Dean prosecution in light of the expressed belief that Mitchell had kept Adams from the Supreme Court. That would hold even if in fact Adams bore no animus toward Mitchell, since it was Adams' obligation to avoid any appearance of bias. And it would hold with respect to the prosecution of Deborah Gore Dean, a person regarded as John N. Mitchell's stepdaughter, regardless of whether the claims also involved Mitchell.

In any case, the recent book on John N. Mitchell, *The Strong Man* (at 484), by James Rosen, suggests that Adams may have harbored ill feelings toward Mitchell for reasons beyond those based on the perception that Mitchell had kept Adams from the Supreme Court.

As to Adams' direct involvement with prosecutorial abuses, I suggest that the reader review my letter to Associate Deputy Attorney General David Margolis of December 25, 1994, as well as the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." *See also* Section B.9 concerning the document manager's complaint that alleged that Adams himself had been involved in the improper editing of reports of witness interviews at which he was not present.

11a. Complaint to the District of Columbia Office of Bar Counsel [b11a]

Note: This material below has not been materially changed since some time in 2009. Thus, it refers to my complaint to the District of Columbia Office of Bar Counsel, while, out of deference to Bar confidentiality rules, not mentioning that when I filed my complaint Bar Counsel itself had already initiated an investigation of Independent Counsel conduct in the Dean *case. Following Robert O'Neill's falsely stating in his Florida Federal Judicial Nominating Commission application for the US Attorney position that the DC Bar Counsel investigation had been initiated by Dean, and the subsequent nomination of O'Neill for the US Attorney position, I eventually revealed that Bar Counsel had initiated the investigation itself (as discussed in Appendix 7 to the Robert E. O' Neill profile and the July 11, 2010 editorial on truthinjustice.org). The O'Neill nomination also led to my encouraging the Senate Judiciary Committee to secure the Bar Counsel record to determine whether in the investigation O'Neill sought to deceive Bar Counsel in the same way that Bruce C. Swartz and others had sought to deceive the court. See July 16, 2010 Letter to members of the Senate Judiciary Committee (at 5-7).*

In late 1995, I filed a formal complaint with the Office of Bar Counsel of the District of Columbia Court of Appeals against certain Independent Counsel attorneys involved in the Dean prosecution, including Robert E. O'Neill, Bruce C. Swartz, and Paula A. Sweeney. The complaint included the various allegations I made in materials provided to the Department of Justice on December 1, 1994.

Whether or not the subjects of such a complaint are representatives of the government, they are obligated to tell the truth in representations they make in a Bar Counsel proceeding. Materials made available on this page will show that Independent Counsel attorneys' responses in the courts to Dean's allegations of misconduct were almost always misleading, and that in cases where the responses included express or implied representations, such representations were almost always false. A Bar Counsel proceeding would put Independent Counsel attorneys in a position where they could either again make misleading arguments and false representations or make straightforward arguments and true representations, but it would do so in circumstances

where the issues should be somewhat different. That is, an ethical proceeding is, or should be, more concerned with the true intent of the attorneys whose conduct is called into question than in whether the actions of those attorneys affected the outcome of the trial.

It also warrants note that the allegations I brought to the attention of Bar Counsel raised many issue that had not been raised in Dean's Rule 33 Motion or in the courts and pointed out many things not noted in the court proceedings. Some of these matters included efforts of Independent Counsel attorneys to deceive the court in responding to Dean's Rule 33 Motion. For example, as discussed in the Park Towers appendix and the profile on Bruce C. Swartz, in oral argument on February 14, 1994, Deputy Independent Counsel Bruce C. Swartz defended the effort to lead the jury to believe that a reference in a document to "the contact at HUD" concerning the Park Towers project was a reference to Dean, even though an immunized witness had stated otherwise, on the grounds that there were no documents showing the contacts with the other person and that Dean had been responsible for a post-allocation waiver on the project. In fact, documents of which Swartz could not possibly have been unaware – and which should have been part of a *Brady* disclosure to the defense – did show contacts with the other person and also showed that the other person, not Dean, had been responsible for the waiver.

Unfortunately, at the time I filed the Bar Counsel complaint I had not yet come fully to realize that Agent Cain had testified that he did not remember the April 1989 call from the defendant Deborah Gore Dean, even though he did remember the call, based on a rationale that his testimony was nevertheless literally true (*see* Section B.1). So, while I raised the issue of the use of Agent Cain's testimony, I was not in a position to force a response to the issues concerning whether Agent Cain had been coached to give an answer that may have been deemed literally true or the implications of the subsequent efforts to mislead the courts on the matter. Nevertheless, the matter of Agent Cain's testimony provides one useful means of adding context to the situation in which my complaint placed Independent Counsel attorneys O'Neill, Swartz, and Sweeney. For they could tell Bar Counsel the truth about the circumstances in which they secured Cain's testimony. Or, as Independent Counsel attorneys including Swartz (though not including O'Neill and Sweeney) had done in responding to Dean's motion in court, and as Arlin M. Adams had done in the letter to the probation officer, they could attempt to deceive Bar Counsel in the matter. If they were to do the latter, and I am correct that the earlier actions to conceal the circumstances of Agent Cain's testimony constituted a conspiracy to obstruct justice, the effort to deceive Bar Counsel would be an additional act in furtherance of that conspiracy. And if O'Neill and Sweeney were to be involved in such effort to deceive Bar Counsel, they, too, would now be parties to the conspiracy regardless of whether they previously had been.

The rules of the District of Columbia Court of Appeals require that Bar Counsel proceedings be kept confidential (though, I am confident, such rules neither intend to nor could deny me the right to state publicly that I filed a complaint or describe the nature of the complaint). None of the named attorneys responded to my requests (made subsequent

to the initial posting of these materials) for their permission to make the proceedings public.

I will eventually seek to secure the permission of the Office of Bar Counsel to publicly disclose all materials filed in connection with my complaint or any other complaints of prosecutorial misconduct in the Dean case on the grounds that important public interests will be served by such disclosure. In doing so, I will also assert that in the event that Independent Counsel attorneys sought to mislead Bar Counsel as to the nature of their actions in responding to my complaint, they remain subject to sanction regardless of how long in the past those efforts to mislead Bar Counsel occurred.

For the present, however, I have posted Part I of my complaint (mainly for its bearing on issues discussed in the profile on Jo Ann Harris). The document is redacted to exclude any information other than that indicating that I made various arguments to the Bar Counsel in support of my allegations that Independent Counsel attorneys engaged in unethical conduct.

12. Developments Regarding the Independent Counsel Attorneys Involved with the Original Prosecution [b12]

Set out below are summaries of developments concerning the Independent Counsel attorneys involved with the Dean prosecution. Subsequent to the creation of these summaries, they were expanded into profile pages on each of the attorneys, including their role in particular matters in the prosecution. Such profiles, which can be found as sub-pages on the Misconduct Profiles page of this site, exist for Arlin M. Adams, Jo Ann Harris, Bruce C. Swartz, Robert E. O'Neill, Paula A. Sweeney, and Robert J. Meyer.

a. Jo Ann Harris

In February 1995, I provided the same materials I had provided the Department of Justice to White House Counsel Abner J. Mikva, asserting that the information in the materials indicated that former Independent Counsel attorney Jo Ann Harris was not fit to serve as Assistant Attorney General for the Criminal Division. Judge Mikva forwarded those materials to the Department of Justice in early March 1995. Later that month, Harris informed the Attorney General that, for personal reasons, she (Harris) was resigning at the end of the summer. Unaware of the March 1995 conversation, on May 17, 1995, I delivered a letter to Judge Mikva complaining of Harris's continued service as Assistant Attorney General for the Criminal Division. The letter detailed matters in which Harris was involved and presented some additional considerations for as to why she should not be allowed to serve in her current position.

By letter dated May 18, 1995, referencing the March 1995 conversation and noting that when appointed she had intended to serve only two years, Harris formally advised the Attorney General of her resignation "effective around the end of summer." The Department of Justice issued a press release the following day attaching a copy of the

resignation letter. The resignation letter is ambiguous as to when Harris might have informed Reno that she (Harris) had intended to serve only two years. But in a *Legal Times* story of September 12, 1994, which highlights Harris's appointment to newly-created Department of Justice Advisory Board on Professional Responsibility (see Klaidman D, "Prosecutorial Abuse Target of Reno Plan," *Legal Times* September 12, 1994, 1, 23-24), there is no suggestion that Harris intended to leave within a year and the appointment would seem to make little sense if such intention were known.

The timing of Harris's March 1995 informing of the Attorney General of Harris's intention to leave the Department of Justice suggests at least a fair possibility that knowledge of the forwarding of the materials by Judge Mikva influenced that decision. It is not inconceivable that the May 17, 1995 letter to Judge Mikva had some role in causing Harris to formalize her resignation on May 18, 1995, and the Department of Justice to publicize it on May 19, 1995. But one generally would not expect a letter like mine of May 17, 1995, even if read immediately, to prompt action so soon thereafter.

Harris is currently a Scholar in Residence at Pace Law School. A profile of Harris may be found at http://www.pace.edu/page.cfm?doc_id=23172.

b. Bruce C. Swartz

Before leaving the Department, Harris hired Bruce C. Swartz as a special assistant. Swartz had resigned from his position as Deputy Independent Counsel effective June 25, 1995, thanking Arlin M. Adams for all he had done "for me, for the Office, and for our country," and noting: "There has never been a finer Independent Counsel." Swartz then joined the Department of Justice as a special assistant to Harris effective June 26, 1995. In an undated memorandum presumably drafted some time thereafter, Harris recommended Swartz for a $3,500 monetary award for "exceptional performance while serving as my Acting Special Assistance since May of this year." Swartz then received such award on September 17, 1995. He then remained in the Justice Department after Harris's departure. I first sought Swartz's removal from the Justice Department by letter of November 30, 1995 to Acting Assistant Attorney General John C. Keeney. By letter from Michael E. Shaheen dated January 30, 1996, the department declined to investigate Swartz's conduct as Deputy Independent Counsel. Swartz resigned from the Department of Justice effective January 5, 1998.

But Swartz rejoined the Department as some time thereafter. He is currently a Deputy Assistant Attorney General in the Criminal Division in charge of international issues. He occasionally testifies before Congress and has some role in the approval or wiretaps.

c. Robert E. O'Neill

Robert E. O'Neill, who was lead counsel in the Dean case, left the Office of Independent Counsel immediately following the trial to become an Assistant United States Attorney in the Middle District of Florida. While I suggest that the reader will regard O'Neill's conduct during the trial to reflect an astonishing lack of regard for truth, it warrants note

that O'Neill had no known role in responding to Dean's motion for a new trial and hence possibly no role in any efforts to deceive the court in such response.

I sought O'Neill's removal in the same November 30, 1995 letter to Acting Assistant Attorney General John C. Keeney mentioned with regard to Swartz as well as in a letter of the same date to Charles R. Wilson, the United States Attorney for the Middle District of Florida. The Department of Justice took the same position as to O'Neill that it took with regard to Swartz, as discussed above. O'Neill remains with Office of the United States Attorney for the Middle District of Florida to this date. In October 2007, he was appointed on an interim basis to the position of United States Attorney for the Middle District of Florida. He was recently in the news in connection with the prosecution of the actor Wesley Snipes for failing to pay income taxes.

Profiles of O'Neill may be found at http://www.thesnipes trial.com/oneill.htm and http://www.sptimes.com/2007/10/27/State/US_attorney_post_gets.shtml.

d. Robert J. Meyer

Robert J. Meyer, the attorney who signed the Independent Counsel's opposition to Dean's motion for a new trial, left the Office of Independent Counsel in July 1994. On July 18, 1994, he joined the Public Integrity Section of the Criminal Division of the Department of Justice, though his name would still appear on the Independent Counsel's appellate brief in the Dean case filed on September 16, 1994. I first raised a question of Meyer's fitness to represent the United States by letter or August 3, 1998, to Lee J. Radek, Chief of the Public Integrity Section. While such matter was pending, in July 1999, after the Dean case was transferred from the Office of Independent Counsel to the Justice Department, Meyer was placed in charge of the case. The Department of Justice never specifically responded with respect to my concerns about Meyer, save as might be implied by the letter from H. Marshall Jarrett dated December 20, 1999. *See* my January 22, 2000 response to the Jarrett letter.

My letter to Meyer dated December 17, 1999 (RM) has been referenced above as providing a relatively a succinct summary of the Cain matter that includes discussion of the implications of the Cain testimony's being put forward on the basis that it was literally true notwithstanding that Dean had called Cain, and, in light of such fact, the Independent Counsel's response to Dean's allegations. Meyer never responded to the question posed in that letter, to wit: "Did you seek to lead the court to believe that Deborah Gore Dean had not called Agent Cain to ask about a check in April 1989 even though you knew not only that she had called Agent Cain but that he remembered the call?" At some point in the year 2000, Meyer resigned from the Department of Justice. He is currently in private practice with the firm of Willkie Farr & Gallagher, LLP, in Washington, DC.

A profile of Meyer may be found at: http://www.willkie.com/RobertMeyer

e. Arlin M. Adams

Arlin M. Adams resigned as Independent Counsel by letter dated May 15, 1995, having the same day met with the three judges comprising the Division for the Purpose of Appointing Independent Counsels (usually referred to as the "Special Division"). Apparently during the meeting there occurred no discussion of the suitability of the appointment of David M. Barrett to investigate HUD Secretary Henry Cisneros (which appointment would then take place on May 24, 1995), or, at least, in 1999, Adams could not recall being asked about such matter. See note 4 of the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge." On May 17, the judges of the Special Division wrote Adams to convey their "unmeasured appreciation for a job well done," stating also: "No one has better carried out the role of independent counsel than you."

Arlin M. Adams remains a highly respected former jurist. In 2007, the new College of Law of Drexel University created an Arlin M. Adams Professorship of Legal Writing, naming Judge Adams an honorary member of its inaugural class. In 2005 the Annenberg Foundation established the Arlin M. Adams Professorship in Constitutional Law at the University of Pennsylvania Law School. In an address on the professorship, Michael A. Fitts, the dean of the law school observed:

> Arlin Adams' unquestionable integrity and prudent leadership exemplify the highest ideals of the legal profession. A professorship in his name does honor to Penn Law. Therefore, the entire Penn Law community is grateful to the Annenberg Foundation, which has been such a good friend to the University, for its generous support of the Law School and of an alumnus whom we hold in the highest regard.

There exists an Arlin M. Adams Center for Law and Society at Susquehanna University in Selinsgrove, Pennsylvania. The Center is precisely the kind of institution that would study things like prosecutorial abuse and its director writes on that and related issues. A recent example, styled "Prosecutors Rarely Penalized for Misdeeds," may be found at http://www.susquehanna.edu/lawandsociety/prosecutors%20misdeeds.doc.

A profile of Judge Adams may be found at http://www.schnader.com/newest_4_02/site%20files/attorneys/attorneyBio.asp?attyID=35.

C. Recently-Created Materials

In addition to the materials created between 1994 and 2000, certain documents have been created recently. They are listed and briefly described below. Since it is easy to do so without breaking up the narrative, links to posted documents are provided immediately after the document.

A May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge" addresses a matter not previously treated Such matter involves the Independent Counsel's bringing to Judge Thomas F. Hogan's attention an off-the-stand remark Dean had made on October 14, 1993, about David M. Barrett and the judge. Barrett, now best known for his later serving, from 1995 to 2005, as an Independent Counsel to investigate HUD Secretary Henry Cisneros, was a figure in the events that underlay the appointment of Independent Counsel Arlin M. Adams and was also a close friend of Judge Thomas F. Hogan. The document maintains that, while recognizing the innocuousness of Dean's remark, on October 18, 1993, shortly before Independent Counsel attorneys called Supervisory Special Agent Alvin R. Cain, Jr. to seemingly contradict Dean's testimony about calling him in April 1989, Independent Counsel attorneys brought the remark to Judge Hogan's attention as if it were something quite odd. They did so, the document maintains, to undermine the court's impression of Dean in a way that would both facilitate the use of the Cain testimony and generally prejudice the court against Dean. The document also suggests that the tactic may well have achieved its purpose. It also illustrates Arlin M. Adams' close involvement with the matter and presumptive involvement with the decision to use Agent Cain in the manner described above.
http://www.jpscanlan.com/images/David_Barrett_and_the_Judge.pdf

Aspects of the matter are also addressed in a March 8, 2011 Truth in Justice item styled "The Remarkable Careers of Sometimes Prosecutor David M. Barrett."

A May 31, 2008 document is styled "The Putatively Curative Instructions that Informed the Jury that the Prosecutor's Provocative Statements that the Defendant Had Lied Reflected the Prosecutor's Personal Opinion." The document discusses the way in which the court, in seeking to correct the impact of the jury's possible perception that Robert E. O'Neill's repeated statements that the defendant lied reflected O'Neill's personal opinion, reinforced such impact by repeatedly telling the jury that the statements did reflect the prosecutor's personal opinion. It also addresses the Independent Counsel's efforts to obscure these parts of the instructions in its briefings on the matter as well as the fact that in reality, with regard to all or almost all of prosecutor Robert E. O'Neill's provocative assertions that Dean had lied – including that she lied about the call to Cain – O'Neill's personal opinion had to be have been that Dean had not lied. This matter was treated somewhat in the Introduction and Summary, at a point while the initial appeal was pending. The Independent Counsel's opposition to the certiorari position was not yet written.
http://www.jpscanlan.com/images/Personal_Opinion.pdf

A July 8, 2008 letter to former Supervisory Special Agent Alvin R. Cain, Jr. advises Cain of the creation of this page and its discussion of his testimony, as well as of the substantial body of material previously created pertaining to him. The letter requests that Cain advise me of any aspect of the discussion of him and his testimony that is inaccurate or unfair, and requests that he provide me with his account of the matter (though advising him that he should first consult with the Public Integrity Section of the Criminal Division of the Department of Justice, the arm of the federal government last in charge of United States of America v. Deborah Gore Dean).

http://www.jpscanlan.com/images/Cain_s_07-08-08.pdf

A July 9, 2008 letter advises the Honorable Thomas F, Hogan of the creation of this page, suggesting that he give special attention to Section B.1 and the document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge."
http://www.jpscanlan.com/images/Hogan_07-09-08.pdf

A July 9, 2008 letter to former Independent Counsels Adams and Thompson, as well as the other persons listed in Section B.12, advises the recipients of the creation of this page. It also requests that they advise me as to any matter with respect to which they believe the treatment is inaccurate or unfair – with regard either to the nature of the described conduct generally or to their particular roles in any matter. As with the letter to Cain, the letter advises that the recipients consult with the Public Integrity Section before contacting me.
http://www.jpscanlan.com/images/Adams_et_al_s_07-09-08.pdf

A July 11, 2008 letter advises former Supervisory Special Agent Alvin R. Cain, Jr. of a correction to a sentence involving him.
http://www.jpscanlan.com/images/Cain_s_07-11-08.pdf

A July 14, 2008 e-mail to various officials of the Department of Justice advises them of the creation of this page and addresses issues concerning the appropriateness of the continued service of Deputy Assistant Attorney General Bruce C. Swartz and interim United States Attorney Robert E. O'Neill.
http://www.jpscanlan.com/images/DOJ_e-mail_07-14-08.pdf

A July 17, 2008 e-mail to various officials of the Department of Justice further discusses the appropriateness of the continued employment of Swartz and O'Neill. It gives particular attention to whether the conduct of Swartz and O'Neill in the Dean case should be considered as having occurred a long time ago when the defendant and the public continue to suffer from such conduct and when, if only by their silence, those attorneys continue to conceal the nature of the conduct.
http://www.jpscanlan.com/images/DOJ_email_07-17-08.pdf

A July 27, 2008 document styled "The Responsibility of Independent Counsel Arlin M. Adams for the Appointment of Independent Counsel David M. Barrett" addresses some issues related to the May 31, 2008 document styled "The Independent Counsel's Use of Dean's Off-the-Stand Remark about David Barrett and the Judge," especially with regard to Independent Counsel Arlin M. Adams failure to raise an issue about the appropriateness of the appointment of David M. Barrett as Independent Counsel to investigate HUD Secretary Henry Cisneros.
http://www.jpscanlan.com/images/Adams_Barrett.pdf

An April 9, 2009 e-mail to various officials of the Department of Justice following up on the July 2008 e-mails concerning the appropriateness of the continued service of Deputy

Assistant Attorney General Bruce C. Swartz and interim United States Attorney Robert E. O'Neill.
http://www.jpscanlan.com/images/DOJ_email_04-09-09.pdf

See Prefatory Note 2, supra, regarding materials created after April 9, 2009.