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June 28, 2010

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Violation of 18 U.S.C. § 1001 by Robert E. O'Neill, Nominee for United States Attorney for the Middle District of Florida

Dear Attorney General Holder:

The purpose of this letter is to call to your attention information indicating that Robert E. O'Neill, the nominee for the position of United States Attorney for the Middle District of Florida, may have violated 18 U.S.C. § 1001 by providing false information regarding a District of Columbia Office of Bar Counsel investigation of his conduct as lead counsel in the *United States v. Deborah Gore Dean*, Criminal No. 92-181-TFH (D.D.C.). The record is absolutely clear that while seeking the United States Attorney position, Mr. O'Neill provided false information concerning the origination of the Bar Counsel investigation. The only question is whether he provided such false information in circumstances that implicate the referenced statute. The letter is also to advise you that materials that may have been previously considered by the President with regard to the nomination and that may now be considered by the Senate Judiciary Committee may contain false information.

On June 9, 2010, President Barack Obama nominated Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida. The nomination occurred ten-and-a-half months after the Florida Federal Judicial Nominating Commission (Florida Nominating Commission) recommended Mr. O'Neill as one of three candidates Florida Senators should consider recommending that the President nominate for the United States Attorney position.

The Florida Nominating Commission recommendation occurred following a process in which, on June 5, 2009, Mr. O'Neill submitted to the Commission an [application](#)¹ for the United States

¹ As with my [November 2, 2009 letter](#) to you that discussed (at 5) Mr. O'Neill's candidacy for the United States Attorney position, underlinings of references in this letter indicate that active links to the references are available in

Attorney position. In the application, in response to a request for information concerning disciplinary matters, Mr. O'Neill provided the following entry (at 43):

(b) Deborah Gore Dean, Office of Bar Counsel, The Board on Professional responsibility, District of Columbia Court of Appeals (1995):

I prosecuted Deborah Gore Dean on behalf of the Office of Independent Counsel. The trial occurred in Washington, D.C. After her conviction on all counts, Ms. Dean filed a bar complaint alleging a number of instances of prosecutorial misconduct during the trial. On June 27, 1996, Bar Counsel sent a letter stating that there was "insufficient evidence of professional misconduct" and Bar Counsel terminated the investigation.

The Office of Bar Counsel in the District of Columbia did investigate Mr. O'Neill's conduct in the *Dean* case, a case that Mr. O'Neill tried in September and October of 1993. The investigation commenced some time after the Court of Appeals for the District of Columbia Circuit issued its May 26, 1995 [decision](#) "deplor[ing]" certain conduct of prosecutors in the case. But Mr. O'Neill's statement that the investigation was initiated by a complaint filed by Deborah Gore Dean is false. In fact, Ms. Dean never filed a bar complaint. And, while I both filed a formal complaint and submitted various materials to Bar Counsel following Bar Counsel's request for Ms. Dean's counsel to comment on a response by Mr. O'Neill and others in an ongoing investigation, the investigation was already in progress when Ms. Dean's counsel and I learned of it. Bar Counsel rules may preclude me from disclosing what person or entity initiated the investigation. But I can unequivocally assure you that the proceeding was initiated by a person or entity other than Ms. Dean and other than me. Thus, I urge you to secure from Bar Counsel information as the person or entity that initiated the proceeding and why that person or entity initiated the investigation. On the basis of that information, you can determine whether Mr. O'Neill deliberately misrepresented the origin of the investigation because he believed that a complaint filed by a convicted defendant would raise fewer concerns with the Florida Nominating Commission than an investigation initiated by the person or entity that actually initiated it. You can also make that determination as to any like misrepresentation Mr. O'Neill may have made to any federal entity during the course of the nomination/confirmation process and hence whether any such misrepresentation violated 18 U.S.C. § 1001.²

I note that the failure to state that I filed a complaint would seem also to make Mr. O'Neill's statement, if not false, at least seriously misleading by omission. A mention that I had filed a complaint could alert the Nominating Commission to the existence of the extensive materials I maintain on the Internet regarding Mr. O'Neill's conduct in the *Dean* case (of which materials I

an electronic copy of this letter that may be found by its date on the Letters sub-page of the Prosecutorial Misconduct page of jpscanlan.com.

² A basis for such violation would concern the fact that the matter is within the jurisdiction of legislative and executive branch entities involved with the nomination and confirmation processes. There may also be a basis for a violation in the fact that the representation related to Mr. O'Neill's responsibilities as an employee of the Department of Justice or the Office of Independent Counsel. The latter basis may also apply to the statement to the Florida Federal Judicial Nominating Commission.

had made Mr. O'Neill aware by letters of [July 9, 2008](#), and [September 8, 2008](#)). Such materials include discussion of the District of Columbia Bar Counsel investigation for its bearing on actions Mr. O'Neill may have taken to cover up his conduct during the *Dean* trial – as discussed in [Section B.11a](#) of the main [Prosecutorial Misconduct](#) page of [jpscanlan.com](#) and Section B of the [Robert E. O'Neill](#) profile on the same site.³ But, whether or not the failure to mention my complaint in describing the Bar Counsel investigation to a federal entity would itself either constitute a violation of 18 U.S.C. § 1001 or be a basis for Mr. O'Neill's disqualification for the United States Attorney position, I urge you to secure from Bar Counsel the aforementioned information concerning the original initiation of the investigation by another person or entity.

Mr. O'Neill could not be mistaken as to what person or entity actually initiated the investigation. His counsel had already filed at least one response in the investigation by the time Ms. Dean's counsel and I learned of the matter. Further, as would be shown at page 4 of the June 27, 1996 letter Mr. O'Neill cites in his application before the Florida Federal Judicial Nominating Commission, Mr. O'Neill and his co-respondents complained to Bar Counsel concerning my prior revealing (in 1995) to officials at the Department of Justice that an investigation had been initiated by the person or entity that initiated it.⁴ In addition, my letter to Mr. O'Neill dated [September 8, 2008](#), while referencing the Bar Counsel complaint I had filed, attached a [July 25, 2008 letter](#) to Mr. O'Neill's counsel in the Bar Counsel investigation that in the first paragraph specifically noted that the investigation had been initiated by the person or entity that in fact initiated it. Finally, the circumstances of the initiation of the investigation are spelled out quite clearly on the first page of the June 27, 1996 letter Mr. O'Neill cites in his Florida Nominating Commission application.

The points in the preceding paragraph relate to Mr. O'Neill's knowledge of the origin of the Bar Counsel investigation at the time he submitted the Florida Nominating Commission application on June 5, 2009. In a [June 15, 2009 email](#) to Mr. O'Neill in which I posed questions about the fabrication of Government Exhibit 25 in the *Dean* case and discussed Mr. O'Neill's obligation to inform his superiors and anyone whose support he sought for the United States Attorney position of the allegations I have publicly made against him, I also addressed the Bar Counsel investigation, discussing the matter in terms of an issue raised by "my complaint to the District of Columbia Bar." And I copied Mr. O'Neill (along with his immediate superiors and you) in my [July 20, 2009 letter](#) to the Florida Nominating Commission, which letter (Section B, at 6-8) addressed the fact that the description of the origination of the Bar Counsel investigation that Mr.

³ Discussions of the Bar Counsel investigation in most places on my site mention the matter only in terms of a complaint filed by me, without mention that an investigation was ongoing at the time I filed the complaint. Such approach obviated any concern about disclosing that an investigation was initiated by another person or entity where such disclosure might implicate Rules of the District of Columbia Bar regarding confidentiality of Bar Counsel investigations. See note 4 *infra*. As noted in a number of places, such rules cannot preclude me from stating that I filed a complaint.

⁴ Bar Counsel concluded (at 4 of the referenced letter) that my disclosures, "while not technically in compliance with Rule XI [of the District of Columbia Court of Appeals' Rules Governing the Bar], do not warrant responsive action on our part." Bar Counsel noted that its ruling did not foreclose the respondents from raising the matter with the Board of Professional Responsibility or the court. But I am unaware of any further action taken by the respondents concerning the matter.

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O'Neill provided in his application was false and urged the Commission to determine what person or entity had in fact initiated the investigation. But I am belaboring the obvious. For any reader of the first page of the June 27, 1996 letter Mr. O'Neill cites in his Florida Nominating Commission application will have no doubt that at all times since Mr. O'Neill first became aware of the Bar Counsel investigation he has been fully cognizant of the actual circumstances of the initiation of the investigation.

I assume that at some point during the course of the nomination process in which federal entities were involved information was sought from Mr. O'Neill concerning disciplinary matters.⁵ If he then provided the same information concerning the District of Columbia Bar Counsel investigation involving the *Dean* case that he provided the Florida Nomination Commission, I believe that you must conclude that Mr. O'Neill violated 18 U.S.C. § 1001. In the event that Mr. O'Neill has provided only truthful accounts of the initiation of the Bar Counsel investigation to federal entities, it would also be possible that he violated 18 U.S.C. § 1001 by any statements he made as to reasons that he provided a false account of the matter in the Florida Nominating Commission application.

The misrepresentation to the Florida Nominating Commission, however, is a very serious matter in any event. Even if Mr. O'Neill made no like misrepresentation to a federal entity (and whether or not any crime might be involved), I suggest that you should advise the President of such misrepresentation and in doing so, recommend that the President withdraw the O'Neill nomination. In the event the misrepresentation is among materials provided to the Senate Judiciary Committee, the Committee should also be advised of such fact.

Two final matters warrant mention. First, in addition to its relevance to the truthfulness of Mr. O'Neill's statements concerning the origination of the Bar Counsel investigation, the record of the Bar Counsel proceeding is relevant to the issue of what actions Mr. O'Neill may have taken to cover up aspects of his conduct in the *Dean* case. For example, my [letter to you dated November 2, 2009](#), discusses actions of Bruce C. Swartz (now Deputy Assistant Attorney General in the Criminal Division) and others to cover up the conduct of Mr. Swartz and Mr. O'Neill with regard to the securing and use of the testimony of Supervisory Special Agent Alvin R. Cain, Jr. And I suggested (at 4) that such actions may have constituted a conspiracy to obstruct justice or other federal crimes. As discussed in [Section B.11a](#) of the main Prosecutorial Misconduct page on [jpscanlan.com](#) and Section B of the [Robert E. O'Neill](#) profile, the record of the Bar Counsel proceeding should reveal whether Mr. O'Neill joined that conspiracy in responding to allegations about the Agent Cain matter in the Bar Counsel investigation.

Second, as I have suggested elsewhere, regardless of the Department's views as to the validity of issues I have raised with the Department about Mr. O'Neill's conduct in the *Dean* case, it is difficult to know how the Department could provide a candid assessment of Mr. O'Neill

⁵ A [Senate Judiciary Committee questionnaire](#) marked "Public" that is available on the Internet does not address disciplinary issues. I assume that there is a similar document pertaining to more sensitive matters that include discipline matters. There is no point, however, in my speculating about such issues in correspondence with an official who is highly knowledgeable about the processes at issue.

suitability for the United States Attorney position without providing information concerning (1) the severe criticism of Mr. O'Neill's conduct in the *Dean* case by the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit and (2) my extensive allegations against Mr. O'Neill and the fact that the allegations are published on the Internet. The Department ought also to provide its views as to the justification for the courts' criticisms and as to the validity of my allegations. If the Department has so far failed to provide such information to the President or the Senate Judiciary Committee, I suggest that the Department has a continuing obligation to do so.

Other materials pertinent to these issues, apart from the [November 2, 2009 letter](#) to you discussed above and some recent correspondence on this matter with the Office of Bar Counsel, include:

(1) The above-mentioned [July 20, 2009 letter](#) from me to the Chairman and members of the Florida Federal Judicial Nominating Commission: As noted above, Section B of the letter (at 6-8) addresses, *inter alia*, the same misrepresentation discussed in this letter.⁶ I refrained at that time from categorically stating that the investigation was initiated neither by Ms. Dean nor by me, while suggesting that the Commission should determine the circumstances of the initiation of the investigation. Since that time, as here, I have categorically stated in a number of places that the investigation was initiated by a person or entity other than Ms. Dean and other than me. Recently, I have advised District of Columbia Bar Counsel that, on coming to believe that there is a high likelihood that Mr. O'Neill violated 18 U.S.C. § 1001 by misrepresenting the circumstances of the initiation of the Bar Counsel investigation to a federal entity, I will feel free, if not obligated, to disclose to the Senate Judiciary Committee and other government entities the identity of the person or entity that initiated the investigation.

(2) A [January 15, 2010 letter](#) from me to Judith B. Wish, Deputy Counsel, Office of Professional Responsibility: The letter (at 8-9) discusses the Department of Justice's responsibility to bring to light all matters that bear on Mr. O'Neill's suitability for the United States Attorney position and the irrelevance to such responsibility of whether a matter was or could have been raised in litigation.

(3) A [June 10, 2010 letter](#) from me to Jay Macklin, General Counsel, Executive Office for United States Attorneys: The letter generally discusses the Department of Justice's responsibility to bring to light all matters that bear on Mr. O'Neill's suitability for the United States Attorney position and the continuing nature of that responsibility.

(5) A [June 16, 2010 letter](#) from me to members of the Senate Judiciary Committee. The letter (at 4-5) discusses the misrepresentation to the Florida Nominating Commission, though without addressing issues as to the implications of any like misrepresentation to a federal entity. Pages

⁶ Section A of the letter (at 2-6) discussed what I maintained was Mr. O'Neill's misleading description of the *Dean* litigation, which he had listed as one of his ten most important litigations. Essentially the same description appears at page 39 of the Judiciary Committee questionnaire discussed in note 5 *supra*. The criticism advanced to the Florida Nominating Commission therefore would also apply to the description in the questionnaire. But I hold no view that Mr. O'Neill's treatment of the matter in the questionnaire would violate a federal statute.

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5-6 of the letter also discuss the relevance of the record of the Bar Counsel investigation to the issue of what actions Mr. O'Neill may have taken to cover up his conduct regarding the securing and use of the testimony of Supervisory Special Agent Alvin R. Cain, Jr., aspects of which matter are also addressed at pages 2-4 of my [November 2, 2009 letter](#) to you and discussed briefly above. The letter also (at 2-3) discusses the courts' criticism of Mr. O'Neill's conduct in the *Dean* case, a subject also discussed briefly above.

(6) A June 23, 2010 [editorial](#) by me styled "Curious United States Attorney Nomination for One of Nation's Busiest Districts" on the web site truthinjustice.org: The editorial discusses, *inter alia*, the courts' criticism of Mr. O'Neill's conduct in the *Dean* case as well as the likelihood that he violated 18 U.S.C. § 1001 by making false statements related to the Bar Counsel investigation.

(7) The [Robert E. O'Neill profile](#) mentioned on page 3 [supra](#): The addendums to that document commencing with Addendum 2 generally address issues related to Mr. O'Neill's candidacy for the United States Attorney position and Department of Justice obligations related to that candidacy. In the latter regard, see especially Addendums 5 and 6. Further addendums likely will be address additional issues and developments, including this letter.

(8) The [Bruce C. Swartz profile](#) maintained on jpscanlan.com, an earlier version of which was enclosed in the November 2, 2009 letter to you: The profile, particularly its discussion of actions Mr. Swartz took to cover up conduct of Mr. O'Neill, is pertinent to an appraisal of Mr. O'Neill's conduct in varied respects. Further, Mr. Swartz presumably would respond to questions of (1) whether following the issuance of the court of appeals decision in the *Dean* case there occurred a Bar Counsel investigation of Mr. Swartz's conduct in that case and (2) what person or entity initiated that investigation and why the person or entity initiated it. Obviously, of course, the same questions can be posed to Mr. O'Neill, as well questions concerning why he provided false information concerning the Bar Counsel investigation in the Florida Nominating Commission application, whether my accounts of his conduct in the *Dean* case are accurate in all or most essential respects, and whether he attempted to deceive Bar Counsel in responding to issues raised by me or any other person or entity in the Bar Counsel investigation.

Sincerely,

/s/James P. Scanlan

James P. Scanlan

cc: Robert Bauer, Esq.
Assistant and Counsel to the President

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Commission

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Wallace E. Shipp, Jr.

Bar Counsel

Board of Professional Responsibility

District of Columbia Court of Appeals