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July 1, 2010

Bruce C. Swartz, Esq.  
Deputy Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Re: False Statement of Robert E. O'Neill in Application for position of United States Attorney for the Middle District of Florida

Dear Mr. Swartz:

As I trust you know, Robert E. O'Neill, who served under your supervision in the Office of Independent Counsel in the prosecution of *United States v. Deborah Gore Dean*, Criminal No. 92-181-TFH (D.D.C.), was recently nominated for the position of United States Attorney for the Middle District of Florida. As you may not know, in a June 5, 2009 [application](#)<sup>1</sup> for the United States Attorney position that Mr. O'Neill submitted to the Florida Federal Judicial Nominating Commission, Mr. O'Neill provided the following entry in response to a request for information concerning disciplinary matters (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.

As you know because you were originally a subject of the same investigation, the Bar Counsel investigation discussed by Mr. O'Neill was not initiated by Deborah Gore Dean or anyone

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<sup>1</sup> Underlinings of references in this letter indicate that active links to the references are available in 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](http://jpscanlan.com).

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associated with her. Given what you know about actual circumstances of the initiation of the matter, I think you have to infer that 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. Further, assuming that Mr. O'Neill made a similar misrepresentation as to the origin of the Bar Counsel investigation to a federal entity during the course of the nomination/confirmation process, in doing so he almost certainly violated 18 U.S.C. § 1001.

I suggest that, as an official of the Criminal Division, you have a responsibility to make known to appropriate officials within the Criminal Division and the elsewhere within the Department of Justice that Mr. O'Neill made a false statement during at least one stage in the process of securing the United States Attorney nomination and may have made similar false statements in circumstances that may have violated federal law. For your information, I have already raised the matter in a [letter dated June 16, 2010](#), to members of the Senate Judiciary Committee and a [letter dated June 28, 2010](#), to Attorney General Eric Holder. In the latter item, I advised Attorney General Holder that you would be knowledgeable about the circumstances of the initiation of the Bar Counsel investigation.<sup>2</sup>

I suggest that you also have an obligation to bring information concerning two related matters to the attention of Department of Justice officials, one of which involves Mr. O'Neill's fitness for the United States Attorney position.

First, in Sections [B.1](#) and [B.1a](#) of the main [Prosecutorial Misconduct](#) page (PMP) of [jpscanlan.com](#), as well as in Sections [1] and [5] and Addendum 2 of the [Bruce C. Swartz](#) profile and Section B of the [Robert E. O'Neill](#) profile on the same site, I maintain that you and Mr. O'Neill pressured Agent Alvin R. Cain, Jr. into providing testimony indicating that Deborah Gore Dean lied about calling Agent Cain in April 1989 to complain about the treatment of former Attorney John N. Mitchell in the HUD Inspector General's Report, even though you and Mr. O'Neill knew that Dean had told the truth about the call. Apparently you and Mr. O'Neill had persuaded Agent Cain that his testimony would be literally true because supposedly tied to a different date from the date of the actual call. But when the matter was raised in post-trial proceedings, you did not explain to the court that, while Dean's testimony was true, Agent Cain's testimony was also literally true (or intended to be literally true). Rather, in an effort to cover up the circumstances in which you and Mr. O'Neill secured Agent Cain's testimony, you attempted to deceive the court by leading it to believe that the testimonies were not reconcilable and that Dean had lied about the call. In various places, I have suggested that you and those assisting you in this effort were involved a conspiracy to obstruct justice. This is also one of the subjects of my letters to you dated [September 8, 2008](#), and [August 14, 2009](#).

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<sup>2</sup> The subject is also addressed in Addendum 7 of the [Robert E. O'Neill](#) profile. This letter may be referenced in that addendum, possibly before you receive it.

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To my knowledge, however, Mr. O'Neill was not involved in responding to Dean's post-trial allegations and hence not initially involved in any effort to cover up his and your actions regarding Agent Cain. But, as discussed in Section B of the O'Neill profile and [Section B.11a](#) of PMP (and the fifth summarized item of the Senate Judiciary Committee letter (at 5-6)), Mr. O'Neill was forced to address the matter in responding to my allegations in the Bar Counsel investigation. Assuming Mr. O'Neill joined in an effort to deceive Bar Counsel on the matter in the same way you and others attempted to deceive the district court, then he would likely have joined the conspiracy to cover up your and his conduct during the trial. Whether or not any crime was involved, any effort of Mr. O'Neill to deceive Bar Counsel in this matter would raise issues about his suitability for the United States Attorney position. Thus, I suggest that when disclosing to Department of Justice officials that Mr. O'Neill made a false statement about the initiation of the Bar Counsel investigation, it is your obligation also to disclose whether in the investigation Mr. O'Neill participated in efforts, to deceive Bar Counsel on the Agent Cain matter or any other matter.

Second, in the paragraph that is redacted in the online version of my August 14, 2009 letter to you, I discuss the involvement of the late Claudia J. Flynn in the efforts to cover up your and Mr. O'Neill's conduct concerning Agent Cain, including causing Dean's sentence to be increased for supposedly lying about the call to Agent Cain. You never responded to my question concerning the extent to which Ms. Flynn's involvement was a knowing involvement. Meanwhile, as you know, Attorney General Holder has created a Claudia J. Flynn Professional Responsibility Award. Given that the eventual revelation of Ms. Flynn's involvement in what most persons would regard as heinous and possibly criminal conduct may cause the Department embarrassment, I suggest that you have a responsibility to fully inform your superiors of the circumstances of Ms. Flynn's involvement in efforts to deceive the district court in post-trial proceedings in the *Dean* case.

As I have repeatedly observed in the past, in the event I have misinterpreted any of your actions in the materials I have created pertaining to the above matters or any other matters in the *Dean* case, please let me know and I shall consider making appropriate corrections.

Sincerely,

/s/ **James P. Scanlan**

James P. Scanlan

cc: The Honorable Eric Holder  
Attorney General

The Honorable Lanny Breuer  
Assistant Attorney General  
Criminal Division