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July 26, 2010

The Honorable Russ Feingold  
United States Senator  
Washington, DC 20510

**Letter made available electronically**

Re: Nomination of Robert E. O'Neill for the Position of United States Attorney for the Middle District of Florida – False Statement on Application Submitted to Florida Federal Judicial Nominating Commission

Dear Senator Feingold:

This is a follow-up to my [June 16, 2010 letter](#)<sup>1</sup> concerning the nomination of Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida. The fourth summarized item of that letter (at 4-5) concerned a false statement Mr. O'Neill made in an application he submitted to the Florida Federal Judicial Nominating Commission.

The key facts are as follows. On June 5, 2009, Mr. O'Neill submitted to the Florida Federal Judicial Nominating Commission (an arm of the Florida Bar<sup>2</sup>) an [application](#) for the position of United States Attorney for the Middle District of Florida. 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.

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<sup>1</sup> As in the earlier letter, underlinings of words or phrases reflect links to the referenced items in an electronic copy of this letter that may be located by its date on the Letters (Misconduct) sub-page of the Prosecutorial Misconduct page of jpscanlan.com. While hard copy letters are addressed to individual Senators (save those who preferred email), only the copy addressed to the Chairman is posted online.

<sup>2</sup> In my earlier letter (at 4), I stated that it was my understanding that the Commission is a body created by Florida Senators to provide guidance on suitable candidates for federal judicial and law enforcement positions. I did not know at the time that the Commission was an arm of the Florida Bar.

In my letter of June 16, 2010, I stated that that Mr. O’Neill’s statement as to the origin of the District of Columbia Bar Counsel investigation of Mr. O’Neill’s conduct in *United States v. Dean* was false (and that the defendant in the case did not file a bar complaint at all). Noting that Bar Counsel rules might preclude me from disclosing the identity of the person or entity that initiated the investigation, I did not make such disclosure at the time. Recently, however, I have revealed the identity of the initiator in several places (as discussed in [Addendum 7](#) to the [Robert E. O’Neill profile](#) on [jpscanlan.com](#)). As explained on the first page of the June 27, 1996 Bar Counsel letter cited by Mr. O’Neill in the quoted entry (a copy of which page is attached and may also be found online as an attachment to my [letter to Attorney General Eric H. Holder, Jr., dated July 9, 2010](#)), the District of Columbia Bar Counsel investigation of Mr. O’Neill’s conduct in the *Dean* case was self-initiated by Bar Counsel as a result of its review of the May 26, 1995 [decision](#) of the United States Court of Appeals for the District of Columbia Circuit that criticized certain prosecutor conduct in the case. One can only infer that Mr. O’Neill falsely described the initiation of the investigation because he believed that an ethics investigation initiated by a convicted defendant would raise fewer concerns with the Commission and other readers of the application than an investigation initiated by Bar Counsel itself, especially in circumstances where the investigation was prompted by court criticism of prosecutor conduct.

The discussion of this matter in the June 16, 2010 letter did not address the implications of any similar misrepresentations Mr. O’Neill may have made to federal entities in the course of the United States Attorney nomination/confirmation process. While the Judiciary Committee Questionnaire for Non-Judicial Nominees that is available online and identified as “[Public](#)” does not address disciplinary matters, I assume that there exists a similar, non-public document that would cover sensitive issues like discipline concerning ethical matters. As discussed in the [June 28, 2010 letter to Attorney General Holder](#), by misrepresenting the origin of the Bar Counsel investigation either in a Judiciary Committee questionnaire or to any federal entity at any other point in the nomination/confirmation process, Mr. O’Neill would seem to violate 18 U.S.C. § 1001. But regardless of any violation of federal law, the great majority of Americans would regard a person’s making a false statement in the course of seeking a high law enforcement position as disqualifying the person from further consideration for such position.

A fuller discussion of this matter, including my effort to cause Mr. O’Neill to disclose the true origin of the Bar Counsel investigation,<sup>3</sup> may be found in the above-mentioned [Addendum 7](#) to the [Robert E. O’Neill profile](#). That Addendum also discusses the online treatment of the O’Neill nomination in my editorials of [June 12, 2010](#) and [July 11, 2010](#) on [truthinjustice.org](#) and a [July 4, 2010 posting](#) styled “A Nomination That Should Be Scrutinized Closely” by Paul Mirengoff on [powerlineblog.com](#). There is likely to be further public discussion of the nomination and the false statement by Mr. O’Neill on his Florida Nominating Commission application (and possibly

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<sup>3</sup> For reasons detailed at pages 3-4 of my [letter of June 28, 2010](#), to Attorney General Eric Holder, it seems not possible to believe that Mr. O’Neill could have been mistaken as to the origination of the Bar Counsel investigation. Nevertheless, by [letter dated July 5, 2010](#), I addressed the matter with Mr. O’Neill, suggesting that, whatever explanation he might have for stating that the Bar Counsel investigation was initiated by the defendant, he is obligated to disclose to persons involved in the nominating/confirmation process and others that the statement is not true.

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on submissions to the Committee). And if Mr. O'Neill were to be confirmed as United States Attorney notwithstanding the false statement, the public faith in the integrity of federal law enforcement would be substantially undermined. But larger issues than the false statement involve the underlying conduct of Mr. O'Neill and his colleagues in the *Dean* prosecution (such as is discussed in the fifth summarized item of my letter of June 16, 2010, and more generally addressed in the O'Neill profile and the [Prosecutorial Misconduct](#) page of [jpscanlan.com](#)); the Department of Justice's failure to address that conduct either in itself or for its bearing on the fitness of the involved attorneys to hold high positions in the Department; and the vetting process that allowed Mr. O'Neill to be nominated notwithstanding the documented allegations on my web site and the severe criticisms of Mr. O'Neill's conduct by the district court and the court of appeals in the *Dean* case. Thus, even if the President should withdraw the O'Neill nomination, as I have suggested that Attorney General Holder advise the President to do, I urge the Committee to address these larger issues.

Sincerely,

James P. Scanlan

Attachment

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