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July 13, 2010

Jay Macklin, Esq.
General Counsel
Executive Office for United States Attorneys
U.S Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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

Dear Mr. Macklin:

This is a follow-up to [my letter to you dated July 5, 2010](#).¹ In that letter, I informed you that Robert E. O'Neill had made a false statement in a Florida Federal Judicial Nominating Commission application for the position of United States Attorney and suggested that Mr. O'Neill may have made that or similar false statements in circumstances where he violated federal law. I also suggested that, whether or not Mr. O'Neill violated any federal law, the making of the misrepresentation in the circumstances Mr. O'Neill made it called into question the appropriateness of Mr. O'Neill's continued service as an Assistant United States Attorney.

The misrepresentation at issue was Mr. O'Neill's statement (at page 43 of the referenced application) that a District of Columbia Bar Counsel investigation of Mr. O'Neill's conduct in *United States v. Deborah Gore Dean* was initiated by a complaint filed by the defendant Deborah Gore Dean. I advised you that the statement was false, but I did not identify the initiator of the investigation and did not provide documentary proof that the statement was false. By [letter of July 9, 2010](#), to Attorney General Eric Holder I provided documentary proof that the statement was false. Said proof also indicates that the investigation was self-initiated by Bar Counsel as a result of reading the court of appeals' criticism of Mr. O'Neill's conduct in the case. The only possible inference is that Mr. O'Neill falsely attributed the initiation of the Bar

¹ As with my July 5, 2010 letter, the underlinings of words or phrases in this letter indicate links to referenced documents in an online electronic copy of this letter that may found by its date on the Letters (Misconduct) sub-page of the Prosecutorial Misconduct page of jpscanlan.com.

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Counsel investigation to Ms. Dean because he believed that an investigation initiated by a convicted defendant would raise fewer concerns with readers of the application than an investigation initiated by Bar Counsel after reviewing court criticism of Mr. O'Neill's conduct in the case – especially given that the court of appeals' criticism of Mr. O'Neill's easily might lead the reader to the more extensive criticism by the district court.

Two other matters warrant mention. First, by [letter of July 5, 2010](#) to Robert E. O'Neill, I advised Mr. O'Neill that, whatever explanation he might have for stating that the defendant initiated by the Bar Counsel investigation, he had an obligation to inform various persons or entities that the statement was false. Mr. O'Neill's immediate superior, First Assistant United States Attorney A. Lee Bentley, was provided a copy of the letter. Unless Mr. O'Neill and Mr. Bentley have advised their superiors that the statement in Mr. O'Neill's application was false, I suggest that you inquire as to why they have not done so.

Second, On June 23, 2010, I published an [editorial](#) 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 Mr. O'Neill's false statement in the Nominating Commission application (though it did not disclose the actual initiator of the Bar Counsel investigation). On July 5, 2010, drawing on the June 23, 2010 Truth in Justice [editorial](#), Paul Mirengoff posted an [item](#) on [powerlineblog.com](#) styled "A Nomination That Should Be Closely Scrutinize" that also raised the issue of Mr. O'Neill's misrepresentation in the Nominating Commission application. The PowerLine blog is visited by over 40,000 users daily. On July 11, 2010, I published a [second editorial](#) on [truthinjustice.org](#), this one styled "The Reason for the Bar Counsel Investigation of FL US Attorney Nominee Robert O'Neill." The editorial again addressed Mr. O'Neill's false statement in the Nominating Commission application, this time also providing information as to the actual initiator of the Bar Counsel investigation and the evident reason Mr. O'Neill made the false statement. The last item also addressed Mr. O'Neill's apparent practice of calling people liars, including in his Nominating Commission application. Given broad public awareness of these matters that may arise from the above treatments (and probable subsequent treatments) of Mr. O'Neill's false statement in the Nominating Commission application, allowing Mr. O'Neill to continue to act as a federal prosecutor will diminish the faith of the public in the administration of justice generally and reduce the esteem in which the public holds federal prosecutors in the Middle District of Florida and elsewhere. This would be especially so if Mr. O'Neill made the false statement in circumstances where he violated federal law and the Department of Justice ignored such violation.

Sincerely,

/s/ **James P. Scanlan**

James P. Scanlan

cc: The Honorable Eric Holder
Attorney General

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