Apart from the material in this box, this item is in the form in which it existed between July 17, 2011, and the April 4, 2013 announcement of the hire of Robert E. O'Neill as a managing director of Freeh Group International Solutions, LLC.

Robert E. O'Neill – Prosecutorial Misconduct in *United States of America v. Deborah Gore Dean*

(April 30, 2009; rev. July 17, 2011)

[This is a PDF version of the Robert E. O'Neill profile sub-page under the Misconduct Profiles page on jpscanlan.com, with endnotes converted to footnotes.]

Prefatory notes:

1. General note: *This and other items under the Misconduct Profiles page of jpscanlan.com are supplements to that site's main Prosecutorial Misconduct page* (PMP), *which addresses prosecutorial abuses in* United States of America v. Deborah Gore Dean, *Criminal No. 92-181-TFH (D.D.C.). Robert E. O'Neill, the subject of this profile and since October 5, 2010, the United States Attorney for the Middle District of Florida, was the lead trial counsel in the case and has indicated that he regards the case as one of his most important litigations, describing it as a "showcase trial" in his June 5, 2009 Florida Federal Judicial Nominating Commission application for the position of United States Attorney for the Middle District of Florida. The treatment below assumes that the reader will be generally familiar with the subject of PMP and frequently references parts of that material, with links provided to such parts. It is recommended that the reader review Section B.1 of PMP (also available as a PDF file) in conjunction with the review of this profile. And the reader should be aware that, as discussed in the initial paragraphs of PMP, the trial court repeatedly lamented the near impossibility of evaluating the cumulative effect of the prosecutorial abuses the court had identified and specifically noted that 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. But a detailed understanding of the material on PMP ought not to be essential for an appraisal of the conduct described here. In the January 2011 revisions of this document explanatory material was added at the beginning of some sections in order to make those sections easier to follow.*

2. Note re the false statement on Robert E. O'Neill's application for United States Attorney for the Middle District of Florida and the nomination/confirmation process: *Addendum 7, which was first created on June 28, 2010, involves a false statement O'Neill made his Florida Federal Judicial Nominating Commission application for the United States Attorney position. Specifically, in order to minimize a District of Columbia Bar Counsel investigation of his conduct in the* Dean *case, O'Neill stated that the investigation was initiated by the convicted defendant; in fact, the investigation was initiated by Bar Counsel itself after reading a court of appeals opinion "deplor[ing]" certain actions of O'Neill and his colleagues. Though the false statement involves far less serious conduct than many actions O'Neill took in the* Dean *case, the matter may overshadow O'Neill's conduct in the case, among other reasons, because of its simplicity and irrefutability and because it may well have involved a crime as to which the limitations period will not expire until 2014 or 2015. More succinct treatments of the matter than in Addendum 7 itself may be found in my Truth in Justice items of June 23,*

2010, July 11, 2010, and August 17, 2010. An item of September 4, 2010 addresses the Department of Justice response on the matter. Items of September 26, 2010, and October 3, 2010 address Senate Judiciary Committee actions leading to O'Neill's confirmation on September 29, 2010, notwithstanding O'Neill's making a false statement on the Nominating Commission application. The September 26 item ("The Honorable Robert E. O'Neill Regrets That He Is Unable to Answer Questions from the Audience") also addresses the likelihood that O'Neill will be confronted with such fact during his tenure, which officially began with his swearing in on October 5, 2010. A February 19, 2011 item ("Robert E. O'Neill and 18 U.S.C. § 1001") addresses the bearing of a February 11, 2011 Middle District of Florida decision involving O'Neill on whether O'Neill's false statement on the application violated 18 U.S.C. § 1001. See Prefatory Note 6 infra regarding O'Neill's ongoing prosecution of a case involving an alleged violation of that statute. The case is before the same judge who issued the referenced February 11, 2011 decision.

3. Note re Bruce C. Swartz: *This profile frequently references Bruce C. Swartz, currently Deputy Assistant Attorney General for the Criminal Division of the United States Department of Justice, who, as Deputy Independent Counsel, was O'Neill's immediate superior throughout the* Dean *trial and directly involved in many of the matters addressed on PMP and in this profile. An appraisal of O'Neill's conduct in the* Dean *case should be undertaken with recognition of Swartz's sometimes direct involvement in the conduct and Swartz's presumptive sanctioning of O'Neill's actions.*

A number of Truth in Justice items that primarily focus on Swartz are quite germane to O'Neill since the discussions concerning Swartz frequently involve Swartz's actions in covering up conduct undertaken by O'Neill (though very likely such conduct was undertaken in consultation with Swartz). These include items of September 4, 2010 ("Doubtful Progress on Professional Responsibility at DOJ"), February 6, 2011 ("Bruce Swartz – Our Man Abroad"), and March 10, 2010 ("Criminal Division Assistant Attorney General Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material"). The last item discusses the hiding of a document concerning Andrew Sankin (a subject of Section A infra) that was exculpatory of the defendant as to a number of charges involving Sankin. The document is also discussed in Section B.7a of PMP. O'Neill was certainly involved in the hiding of the document.

4. Note re Jo Ann Harris: *In appraising O'Neill's conduct one should recognize that the scheme of deceit perpetrated by O'Neill was conceived by the original lead counsel in the case, Jo Ann Harris, presumably in consultation with Deputy Independent Counsel Swartz and Independent Counsel Arlin M. Adams as well as co-counsel Paula A. Sweeney. Further, when O'Neill's conduct was first brought to the attention of the Department of Justice on December 1, 1994, Harris was Assistant Attorney General for the Criminal Division. Reasons to believe that such fact influenced the Department's handling of allegations against O'Neill may be found in a December 23, 1997 letter to Department of Justice Inspector General Michael R. Bromwich. Reasons to believe that White House knowledge of Harris's involvements in misconduct in the Dean case may have caused her to resign her position are discussed in the Harris profile. See generally*

Section B.8 of PMP. Harris is the subject of a Truth in Justice item of March 3, 2011 ("The Curtailed Tenure of Criminal Division Assistant Attorney General Jo Ann Harris").

5. Note re Arlin M. Adams: *Truth in Justice items 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 various issues related to Independent Counsel Arlin M. Adams. Among other things, the items discuss the fabrication of charges involving former Attorney General John N. Mitchell in the context of Mitchell's having caused President Richard M. Nixon not to fulfill his promise to appoint Adams to the Supreme Court. See Sections B-D' infra.*

6. Note re the Kevin White Prosecution: *On June 15, 2011, Robert E. O'Neill appeared in court regarding the indictment of former Hillsborough County Commissioner on charges of corruption in public office as well as violation of 18 U.S.C. § 1001. O'Neill has indicated that he will personally try the case. See June 23, 2011 Truth in Justice item styled* "United States Attorney Robert E. O'Neill as Crusader Against Corrupt Public Officials."

7. *Robert E. O'Neill's Tricks of the Trade Series:* On June 29, 2011 Truth in Justice published an item styled Robert E. O'Neill's Tricks of the Trade – One) (The False or Misleading Testimony of Supervisory Special Agent Alvin R. Cain, Jr.). The item is the first of series on O'Neill's deceptive tactics. It treats the subject of Section B.1 of PMP and Section B of this profile. Subsequent items usually will also concern matters addressed here.

8. Visibility note: *On June 26, 2009, Addendum 1 was added to address, inter alia, the visibility of this profile, since its visibility bears on its potential influence. It suffices now to note that as of the most recent revision of this profile, major search engines generally yield this profile and one of the Truth in Justice editorials on O'Neill among the first ten results of searches for "'Robert E. O'Neill'" or "Robert E. O'Neill."*

9. Format note: *Early versions of this item, which were much shorter, were not divided into sections save by spacing. At some point bracketed section numbers were added to facilitate the referencing of particular material and later added formal section headings to make the document more accessible. In order to ensure correspondence with prior references to this document in other documents or communications, I retained the bracketed section numbers at the end of each section heading. Readers will find the bracketed numbers also useful for navigating within the document. In order to further facilitate the review of this document, I provide an outline below:*

Introduction

Set out below is a profile of Robert E. O'Neill along with a description of certain aspects of his conduct as lead trial counsel in the prosecution of *United States of America v. Deborah Gore Dean*, an Independent Counsel case tried in 1993. Most of the material below was created prior to O'Neill's becoming a candidate for the position of United States Attorney for the Middle District of Florida. Discussion of that candidacy and events leading up to (and following) President Barack Obama's June 9, 2010 nomination of O'Neill for the position commences with Addendum 2 hereto. Addendums 3 and 7 address the false statement O'Neill made in June 5, 2009 Florida Federal Judicial Nominating Commission application for the United States Attorney position concerning the initiation of a District of Columbia Office of Bar Counsel investigation of his conduct in the *Dean* case and whether he made any like false statements on the matter before a federal entity in violation of 18 U.S.C. § 1001. As discussed in the latter addendum, O'Neill stated that the investigation was initiated by a complaint filed by Deborah Gore Dean; in fact, the investigation was self-initiated by Bar Counsel after it read the court of appeals' criticism of the conduct of O'Neill and his colleagues. The Bar Counsel investigation is also pertinent to the subject of Section B (as discussed in that section) and generally to the question of whether O'Neill made any false representations in responding to the Bar Counsel investigation or otherwise sought to deceive Bar Counsel during the

investigation. Addendums 5 through 7 pertain to the Department of Justice's obligations in forthrightly advising the President and others involved with the nomination or confirmation process of issues raised about O'Neill's suitability for the position. Addendum 7 is made directly accessible by means of this link, for reasons that are discussed on the directly accessible version of the addendum. But as discussed in introductory material to that addendum, while the addendum comprehensively tracks the nomination/confirmation process, the key issues are more succinctly summarized in various Truth in Justice items. The most recent are those of February 19, 2011 ("Robert E. O'Neill and 18 U.S.C. § 1001"), October 3, 2010 ("Whom Can We Trust?"), and September 26, 2010 ("The Honorable Robert E. O'Neill Regrets That He Is Unable to Answer Questions from the Audience")

The following should be borne in mind in reviewing this profile and the materials it references. First, though having a very limited understanding of the scope of abuses in the *Dean* case, both the District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit strongly criticized the conduct of O'Neill and his colleagues. At a hearing on February 14, 1994, in which it considered the defendant's allegations of pervasive prosecutorial misconduct, the district court (the Honorable Thomas F. Hogan) specifically agreed with many of those allegations, 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 the witnesses' testimony was true; and that those attorneys had reason to know that the testimony of at least two government witnesses was false. The court noted with regard to a particular matter that lead trial counsel Robert E. O'Neill had acted in a manner that the court would not have expected from any Assistant United States Attorney who had ever appeared before it. 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…." Reflecting the scope of the abuses it identified, the court repeatedly noted its concerns about the "cumulative effect" of those abuses, observing that it was "almost impossible to quantify the[ir] total impact" on the defendant's ability to defend herself.[1] In "deplor[ing]" certain actions of Independent Counsel attorneys, the court of appeals not only recognized that the underlying misconduct was severe, but impliedly found that representations that Independent Counsel attorneys made in defense of their actions were false. The decision of O'Neill to falsely describe the origin of the District of Columbia Bar Counsel investigation of his conduct in the *Dean* case in the application for the United States Attorney position that he submitted to the Florida Federal Judicial Nominating Commission – the subject of Addendum 7 *infra* (directly accessible here) – may have been substantially motivated by a concern that a true description would alert readers of the application to the courts' severe criticisms of his conduct in the case.

[1] The link in the text connects one to the complete hearing transcript. The court's criticisms are also quoted with page references in an online document. As discussed in the introduction to the document, the item may eventually be thoroughly annotated. But as of the latest revision of this item, the document is still in draft form.

Second, though fully apprised of the principal matters addressed below and the main Prosecutorial Misconduct page, the Department of Justice has failed to address whether the described conduct calls into question the fitness of Robert E. O'Neill to prosecute criminal cases on behalf of the United States. And, in fact, subsequent to such conduct's first being brought to the Department's attention, O'Neill has been allowed to prosecute federal criminal cases in the Middle District of Florida for close to fifteen years, including one year in which he held the position of interim United States Attorney; to be detailed to prosecute a case for another Independent Counsel; to serve as Deputy Chief in Charge of Litigation of the Narcotics and Dangerous Drugs Section of the Criminal Division of the Department of Justice; and most recently to be appointed to the position of United States Attorney for the Middle District of Florida. In all probability, at no time since O'Neill's conduct in the *Dean* case was brought to the attention of the Department of Justice on December 1, 1994, has anyone from the Department suggested to O'Neill that any aspect of that conduct might be inappropriate or that he should avoid such conduct while serving as an Assistant United States Attorney. One can only imagine the number of prosecutions O'Neill conducted in the Middle District of Florida, many involving drug trafficking and money laundering, that are tainted by the same tactics described here. In the event that the posting of these materials leads to challenges to some of these prosecutions, or the Department of Justice decides to act responsibly on this matter, some notion of the scope of O'Neill's tainted prosecutions may one day be known. But, as no doubt is the situation in the *Dean* case itself, almost always some part of deceitful conduct on the part of prosecutors will remain undiscovered. In any event, counsel for anyone who has been or may be prosecuted by O'Neil should review this profile carefully.

A. Robert E. O'Neill's Ethical Philosophy and the Andrew Sankin Receipts [1]

Robert E. O'Neill, a 1979 graduate of Fordham University and a 1982 graduate of New York Law School, was lead trial counsel on the *Dean* case from sometime in 1992 though the trial in September-October 1993. Prior to joining the Office of Independent Counsel in 1992, O'Neill had worked as an Assistant District Attorney in the Manhattan District Attorney's Office from 1982 to 1986 and as an Assistant United States Attorney in the Southern District of Florida from 1986 to 1990, and had been in private practice in New York from 1990 to 1992. Shortly before the commencement of the Dean trial, O'Neill was appointed to the position of Assistant United States Attorney in the Middle District of Florida. He tried the *Dean* case while serving as an Assistant United States Attorney on detail to the Office of Independent Counsel.

Fordham University, where O'Neill received his undergraduate degree, is a Jesuit institution. As it happens, there is much in O'Neill's behavior as a prosecutor that deserves the term "jesuitical" – not as it bears on the way Jesuit institutions instruct their students today but in the sense in which the term might have been used by opponents of the Society of Jesus in the Seventeenth Century.

The point is illustrated in the matter regarding which, at the February 14, 1994 hearing, the Honorable Thomas F. Hogan was most critical of O'Neill's conduct during the trial. Describing O'Neill as having behaved in a manner in which he (Hogan) had never observed from an Assistant United States Attorney, Hogan excoriated O'Neill for failing to disclose an off-the-stand statement of a witness that certain receipts, which were being introduced into evidence as if they reflected meals or gifts purchased for the defendant, Deborah Gore Dean, did not apply to, or may not have applied to, Dean. Hearing Tr. 27. (The witness said he had told O'Neill that "many of the receipts were definitely not related to Deborah Dean" (Tr. 1194-95); O'Neill said that the witness said "'I can't say whether all of these went to Ms. Dean or to someone else. I have no specific recollection …'" Tr. 1195-96.) But the court's criticism missed the point regardless of what precisely the witness said. As discussed in Section B of the December 1, 1994 document styled "The Andrew Sankin Receipts" and Section II.B.1 of Dean's February 1997 Memorandum, O'Neill knew with virtual or absolute certainty that various receipts he sought to lead the jury to believe applied to Dean in fact did not apply to her.[2] Thus, O'Neill did not regard the witness'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 documents into evidence in a manner to lead the jury to believe they applied to Dean so long as "the Government did not say" they applied to Dean. Tr. 1203. This point warrants some belaboring. O'Neill was maintaining that in order to show that the witness had been "wining and dining" Dean and "buying her gifts," as O'Neill had put it in opening argument (Tr. 58), it was permissible to lead the jury to believe that certain receipts (which O'Neill knew did not apply to Dean) in fact applied to Dean, as long as "the Government did not say" that they applied to Dean.[3]

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[2] As discussed in summary to the of the Sankin Appendix and illustrated in Table 1 (at 6) and 2 (at 9) of that item, there were two distinct groups of receipts: (1) those that named Dean or her position and which had been relied upon in the Superseding Indictment (and which prosecutors, usually, had some reason to believe applied to Dean); and (2) those that did not name Dean or her position and usually identified other positions such as the position of a person Sankin was dating (and which prosecutors knew with virtual certainty did not apply to Dean). O'Neill acknowledged that he intended to lead the jury to believe that all applied to Dean.

[3] It was with regard to the same matter that Hogan also said that he had never heard of a prosecutor's failing to review exhibits with a witness because the witness was thought to be hostile. Hearing Tr. 30. It should be recognized, however, that, while O'Neill did state that he had purposely not reviewed the receipts with the witness, he never advanced the argument that he had not done so because the witness was hostile. O'Neill's defense was rather that "the Government did not say" they applied to Dean when the receipts were introduced in a manner to lead the jury to believe they applied to her. But in defending against Dean's motion for a new trial, Deputy Independent Counsel Bruce C. Swartz and others were unwilling to advance O'Neill's explanation for the use of the receipts in the manner he had used them. They instead sought to deceive the court on the matter. As discussed in the Sankin Appendix, virtually every point Independent Counsel attorneys advanced in defense of the O'Neill's use of the receipts was intended to mislead the courts. *See* Section B.7 of PMP and note 8 *infra*. *See also* Bruce C. Swartz profile (Section C), which addresses the false statements Swartz made on the matter at the February 14, 1994 hearing before Judge Hogan. See generally Addendum 7 to the Swartz profile regarding Swartz's conduct in responding

Further, O'Neill's annoyance at a suggestion that he had done anything wrong seemed genuine enough. And it may warrant note that it was the very suggestion that he had done something unethical that caused O'Neill to state that henceforth in his prosecution of the case "the gloves are going to be off." Tr. 1202-03. In any event, O'Neill's view that a prosecutor may lead a jury to believe things that the prosecutor knows to be false as long as the prosecutor observes certain rules as to how he goes about doing it seems certainly to warrant the term "jesuitical," even if no living Jesuit would defend O'Neill's actions. There are many other examples of this casuistic ethic in O'Neill's behavior, as well as situations where O'Neill declined to be bound by it.

See Section C of the Bruce C. Swartz profile regarding Swartz's effort to deceive the court in defending O'Neill's actions concerning the Sankin receipts. And see the March 10, 2010 Truth in Justice item styled "Criminal Division Assistant Attorney General Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material," regarding the hiding of an exculpatory document relating Sankin.

B. Use of the Testimony of Supervisory Special Agent Alvin R. Cain Jr. [2]

Section B Note *(added January 10, 1011): Since many readers of this item will not follow the suggestion in the General Note supra to read Section B.1 of the main Prosecutorial Misconduct page, the following information is provided to make this section easier to understand: The focal point of the Independent Counsel's case against Dean involved allegations that she had caused HUD to take actions concerning four (or three[4]) projects in order to benefit former Attorney General John N. Mitchell, a person Dean considered to be a stepfather. Mitchell had died in 1987. A critical issue in the case concerned whether Dean was aware that Mitchell earned HUD consulting fees, which she denied. She testified that in April 1989 when she read an entry in the HUD Inspector General's Report stating that Mitchell had earned a HUD consulting fee, she called the author of the report, Supervisory Special Agent Alvin R. Cain, Jr., to demand to see a check showing that Mitchell earned the fee. A hearsay objection prevented her from testifying what Cain told her. Cain was then called as a rebuttal witness and seemed to categorically deny any recollection of the call from Dean. In closing argument O'Neill relied heavily on Cain's testimony in provocatively asserting that Dean had lied on the stand. But O'Neill and Deputy Independent Counsel Bruce C. Swartz had pressured Cain into denying any recollection of the call, evidently persuading Cain that his denial of recollection would technically apply to a different date from that given by Dean. This matter is also addressed in the June 29, 2011 Truth in Justice item styled "Robert E. O'Neill's Tricks of the Trade – One (The False or Misleading Testimony of Supervisory Special Agent Alvin R. Cain, Jr.)"*

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to allegations of prosecutorial abuse as a case study of impermissible deceptions or evasions in responding to such allegations.

[4] I have variously referred to the Mitchell count as involving three or four projects. The Superseding Indictment discussed actions in 1983 concerning a project called Marbilt. While the Superseding Indictment treated the matter as background to the charge concerning the Arama project, the court of appeals seemed to regarded the allegations as involving an additional charge.

Sections C, D, and D' infra also pertain to the Mitchell count. See also Addendum 2 to the Bruce C. Swartz profile regarding the emphasis O'Neill placed on Mitchell's being a former Attorney General notwithstanding the court's instruction that such fact should not be mentioned at all; Section B.3 of PMP regarding the court of appeals' ruling that there was insufficient evidence to sustain a conviction as to three projects in the Mitchell count and Dean's demonstrated innocence as to the fourth, as well as the reasons prosecutors had for knowing the claim as to that project was false when it was brought; and the Arlin M. Adams profile regarding Independent Counsel Adams' belief that Mitchell had prevented Adams' appointment to the Supreme Court.

Inasmuch as this section involves the lengths to which O'Neill would go in order to falsely assert that a someone lied, the reader may find it useful also to consider (a) O'Neill's "a liar is a liar" remarks in US v. Spellissy *(as discussed in the August 17, 2010 and September 26, 2010 Truth in Justice items and quoted in note 10* infra*), as well as (b) the fact, not open to question, that O'Neill lied on his United States Attorney application (discussed in both items and a principal subject of Addendum 7* infra*) and (c) the reasons to believe, not only that O'Neill committed perjury in a 2005 deposition, but that his having done so may be common knowledge within the offices of the United States Attorney for the Middle District of Florida (discussed in the former item). One must suspect that in a long and successful career as a federal prosecutor O'Neill maintained that a great many witnesses committed perjury, sometimes believing or knowing that they had and sometimes believing or knowing that they had not. See also the February 19, 2011 item ("Robert E. O'Neill and 18 U.S.C. § 1001").*

Consider the way O'Neill and Deputy Independent Counsel Bruce C. Swartz pressured Supervisory Special Agent Alvin R. Cain, Jr. into providing testimony that, based on a contrived interpretation of the English language, might be deemed literally true, but that would lead the jury and the court to believe something that O'Neill knew manifestly to be false – testimony, it warrants note, on which O'Neill would heavily rely to provocatively assert that Dean had lied when he knew for a fact that she had not lied. As discussed in Section B.1 of the main Prosecutorial Misconduct page (PMP) of this site, while intended to lead the jury to believe that Dean had lied about calling Agent Cain, Cain's testimony was crafted, albeit imperfectly, to literally mean only that Dean had not called him on a particular date.[5]

[5] Dean testified that she called Agent Cain to complain about the treatment of former Attorney General John Mitchell in the HUD Inspector General's Report after she read the report on "the day the report came out." Tr. 2617. By "the day the report came out" Dean obviously – indeed necessarily – meant the day the report was released to the public and she secured a copy of it. This would have been near the end of April 1989, ten or so days after the report was published internally at HUD. Agent Cain then testified that the "date" the report was "published" was "April 17, 1989" (Tr. 3197), which is the date that appears on the cover of the report. Agent Cain's later denial of any recollection of a call from Dean regarding Mitchell "at or about that date" was intended to tie the response to April 17, 1989, and hence to be literally true. As discussed in the December 17, 1999 letter to Robert J. Meyer and many other places, however, the testimony turned out not even to be literally true. *See also* note 5 *infra*.

In his initial reliance on Agent Cain's testimony, O'Neill's words may have reflected the casuistic ethic expressed in his defense of his actions regarding the Sankin receipts. As discussed in Section B.1, three quarters of the way through the first day of O'Neill's closing argument, he pressed the attack on Dean's credibility with particular acerbity, stating:

> 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 John 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.
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> 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.

The statements "the day the IG report came out" and "it didn't happen like that" may reflect O'Neill's deference to the casuistic ethic – though the first may solely involve and effort to make the seeming contradiction more vivid to the jury.[6]

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[6] The reference to Agent Cain's remembering Marty Mitchell's picking up the report is presumably intended to show that Agent Cain would have remembered the call if it occurred. That is why O'Neill had elicited from Cain detailed testimony, which essentially tracked Dean's testimony, about Cain's providing Dean a copy of the report through Marty Mitchell. But any reference to providing Dean a copy of the report ties the matter to the point in time near the end of April when Dean in fact called Cain. During O'Neill's questioning of Cain, it was the placement of the testimony about Cain's providing a copy of the report to Dean by way of Marty Mitchell between the reference to the date the report was published and the denial of a recollection of the call from Dean "at or about that date" that caused Cain's testimony not to be literally true. Possibly, that is why, in recounting the matter to the jury, O'Neill placed the reference to Cain's providing a copy of the report to Marty Mitchell after the description of Cain's denial of recollection of the call.

While the matter is not precisely germane to the instant point, it nevertheless warrants note here that, as reflected in Section B.1 of PMP (fourth paragraph), the most salient features of Dean's testimony about the call to Agent Cain were her several references to a check showing payment to Mitchell and her demand that Cain produce such a check. As also discussed in that section, it was O'Neill's rising to object that prevented Dean from stating what Cain told her about the check. In examining Agent Cain, and there also seeking to recall Dean's testimony to the jury, O'Neill (who certainly had been told by Cain precisely what Cain had told Dean about the check) avoided any reference to the check. Presumably, O'Neill avoided such reference in order not to raise in the mind of the jury or the court a question as to why Dean would make up the story about her call to Cain, and be apparently also ready to make up a story about what Cain told her about the check, if the call never occurred.

Further, any mention that Dean had demanded to see a check could lead to consideration of the fact that Cain told Dean that the check was in the Regional Inspector General's office, which is something Dean could not have known but from the call to Cain that Cain appeared to testify never occurred. Thus, mention of the check could suggest an avenue by which the parlous course undertaken by Swartz and O'Neill might unravel.

Very likely, that holds as well for the failure to make any reference to Dean's demand to see a check when O'Neill recalled the matter to the jury in closing argument. Of course, the omission of any reference to Dean's demand to see a check showing the payment to Mitchell renders "that's exactly what she told you" rather off the mark.[7]

At any rate, when the following day, in rebuttal, O'Neill again noted the seeming contradiction of Dean by Agent Cain in a further virulent attack on Dean's credibility he did not show the same deference to the literal truth rationale underlying Cain's testimony that he may have shown in the first discussion of Cain's testimony. This time, after listing a number of statements by Dean that he asserted were lies, O'Neill stated:

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

Tr. 3506.

O'Neill's statement that the "conversation never ever happened" involves a stark departure from the theory underlying the eliciting of the testimony. But, as discussed in Section E.2 *infra*, during the rebuttal portion of his argument, O'Neill asserted anything

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[7] *See* Addendum 3 to the Bruce C. Swartz profile and Section B.1a of PMP regarding Deputy Independent Counsel Bruce C. Swartz's effort to deceive the court in trying to explain how Dean could have learned about the whereabouts of the check in April 1989 other than from her call to Agent Cain.

that came into his head that seemed to support the Independent Counsel's case regardless of what the record said.

Because O'Neill had left the Office of Independent Counsel before Independent Counsel attorneys had to respond to Dean's motion concerning Agent Cain and other matters, he was not called upon personally to address the Cain issue before the courts. But as discussed in Section B.11a of PMP, O'Neill would be called upon to address the matter in responding to my complaint to District of Columbia Bar Counsel.[8] Any interest of O'Neill in relying on the literal truth of Cain's testimony in the Bar Counsel proceeding would put him at odds with Swartz, assuming that Swartz should maintain, as he had done before Judge Hogan, that Agent Cain's testimony showed that Dean had lied about the call. Unfortunately, however, as discussed in Section B.11a, the content of any response of O'Neill (or Swartz) – and whether either sought to deceive Bar Counsel in the same way that Swartz had sought to deceive Judge Hogan – cannot be made public at this time.

But O'Neill is not precluded from stating how he addressed this matter with the District of Columbia Bar Counsel, a matter that the interviewing panel of the Florida Federal Judicial Nominating Commission was encouraged to address with O'Neill. As discussed in Addendum 4, the interviewing panel apparently chose not to address that or other issues concerning O'Neill's conduct in the *Dean* case.[9]

The Bar Counsel record is relevant in a number of respects beyond the Cain matter. Since O'Neill was not ostensibly involved in the post-trial response to Dean's motion, he was not necessarily involved in any of the varied efforts to deceive the court in responding to the motion. But given that I raised most of those matters in the Bar Counsel investigation, O'Neill would be involved in efforts to deceive Bar Counsel on any of those matters. See fifth item of the June 16, 2010 Senate Judiciary Committee letter discussed in Addendum 7 *infra.*

There exists substantial irony in the fact that someone who showed himself to be manifestly dishonest in so many ways in the *Dean* prosecution should have in that prosecution spent so much time asserting that the defendant was dishonest. A larger irony may exist in the way O'Neill appears to have made a small art of calling people liars, as

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[8] Because Addendum 7 hereto gives such attention to O'Neill's false statement that the District of Columbia Bar Counsel investigation of his conduct in the *Dean* case was initiated by a complaint filed be Dean, I note here for clarity that the investigation was initiated neither by Dean nor by me. I submitted a formal complaint during the course of an investigation that already was ongoing.

[9] There are actually two questions. The first goes to whether O'Neill knew that Dean had made the call to Cain when he provocatively asserted to the jury that Dean had lied about the call. The second goes to whether O'Neill attempted to deceive District of Columbia Bar Counsel in responding to my allegations concerning the Cain testimony. The latter question involves what may have been actions in furtherance of a conspiracy to obstruct justice previously undertaken by Bruce C. Swartz and others, and raises issues that should be of concern to District of Columbia Bar Counsel. But O'Neill's actions regarding Cain during the trial, by themselves would indicate that O'Neill ought not to be a United States Attorney – indeed ought not to be permitted to represent the United States in any capacity.

illustrated in the July 11, 2010 editorial on truthinjustice.org that also provides documentary proof that O'Neill falsely described the origin of the District of Columbia Bar Counsel investigation.[10]

C. The Deceptions Regarding the Park Towers Project [3]

Section C Note (added Feb. 21, 2011): This item is related to Section B of the Bruce C. Swartz profile.

One also observes elements of same casuistry discussed in the two sections above in a variety of matters pertaining to the Park Towers project. As discussed in the Park Towers Appendix and Part I of my complaint to the District of Columbia Bar Counsel, Independent Counsel attorneys undertook to lead the jury to believe the following things they had reason to know, or knew for certain, were false:

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(1) that Richard Shelby secured the services of former Attorney General 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.

It was important to O'Neill's effort to lead the jury to believe these things that he have immunized witness Richard Shelby (who had contradicted all of these points) testify out of order and in circumstances where the defense had as little time as possible to review Shelby's Jencks material. To accomplish that, on the afternoon of September 15, 1993, O'Neill would orally mislead defense counsel as to who would be called the next day. *See* Part I at page I-8. Shortly after leading defense counsel to believe Shelby would not be called to testify the next day, O'Neill met with Shelby (presumably having already been scheduled to do so at the time O'Neill misled defense counsel) to prepare Shelby for his testimony on the next day. In doing so, O'Neill would show to Shelby certain

[10] O'Neill never actually used the word "liar" in the fifty or so instances where he asserted to the jury that Dean had lied on or off the stand. He was less restrained in *United States v. Spellissey*, where he made the following statement that may prove to be oft-quoted during O'Neill's tenure as United States Attorney: "A liar is a liar. And whether someone is lying to save their soul or their hide, they are still lying. And once you are a liar, you cannot trust that person."

documents reflecting Shelby's contacts with Dean but withhold from him the documents that reflected his contact with Silvio DeBartolomeis, the person who Shelby had stated was in fact the person to whom "the contact at HUD" reference pertained.

The most notable of the documents not shown to Shelby was a one-page March 10, 1986 memorandum to file by Park Towers developer Martin Fine. The memorandum recorded the fact that Shelby had told Eli Feinberg that he had met with DeBartolomeis and that DeBartolomeis had told Shelby that he (DeBartolomeis) would grant the post-allocation waiver. Another notable such document was the one-page June 5, 1986 note in which Shelby transmitted a copy of the waiver to Eli Feinberg, noting that he (Shelby) had received it from DeBartolomeis.

Though calling into question point (2) and specifically contradicting points (5), (6), and (9), the documents were never made part of a *Brady* disclosure. Of course, it must be borne in mind that Independent Counsel attorneys never made a Brady disclosure of any documents, including the Mitchell telephone message slips indicating that the Arama charge was almost certainly false and the Sankin Harvard Business School application stating that an funding decision that the Independent Counsel wanted to tie to Dean was a "fait accompli" because of Sankin's relationship to DeBartolomeis. As discussed in the March 10, 2010 Truth in Justice item "Criminal Division Assistant Attorney General Bruce C. Swartz, Roman Polanski, and the Hiding of Exculpatory Material," the Business School application was actually excluded from discovery and then hidden within a 562 page item group of unrelated documents in a preliminary exhibit production.

In showing some documents to Shelby (while withholding others), O'Neill may have told Shelby that he was showing him the documents in order to refresh Shelby's recollection as to whom he dealt with on the Park Towers project. In any case, in an effort to lead the jury falsely to believe that there existed no documents reflecting Shelby's contact with DeBartolomeis, O'Neill conducted the following questioning of Shelby (Tr. 547):

> Q. Now, did you review any records, trying to refresh your recollection as to who you dealt with at HUD on this project?
> A. I had an opportunity last evening to review some of the records, yes. I believe they've been entered as exhibits.
> Q. And was that in my presence?
> A. Yes.
> Q. Are there any records indicating any dealings with Mr. DeBartolomeis at this period of time?
> A. No, there are not.[11]

[11] As discussed in the profile on Bruce C. Swartz (Section B), in defending the Independent Counsel's effort to lead the jury to believe that "the contact at HUD" was a reference to Dean notwithstanding Shelby's statements to the contrary, Swartz would rely on both the supposed absence of documents reflecting Shelby's contacts with DeBartolomeis and the supposed fact that Dean was responsible for the post-allocation waiver. Though actions of O'Neill and other Independent Counsel attorneys had enabled them to create a record falsely suggesting these premises were true, Swartz had to know that they were both false. But Swartz's conduct concerning this matter raises an issue somewhat different from that raised by O'Neill's conduct. O'Neill was creating a false record to mislead the jury (and eventually the court as

But the aspect of O'Neill's efforts to deceive the jury regarding the Park Towers project to which O'Neill would give the greatest attention in his closing argument, and the one that warrants special attention here, involved developing the testimony that the consultant Eli Feinberg was unaware of Mitchell's involvement with securing the Park Towers funding. The profile on Paula A. Sweeney addresses the way she elicited Feinberg's testimony that he was unaware of Mitchell's involvement with the Park Towers project without confronting Feinberg with the statements of immunized witness Shelby that Feinberg was aware of Mitchell's involvement and even participated in setting Mitchell's fee. In furtherance of the same scheme, when questioning Shelby during the trial, O'Neill changed the subject when Shelby started to talk about Feinberg's role in setting Mitchell's fee. Tr. 546.

Eventually, in the rebuttal portion of his closing argument, O'Neill would then highlight the supposed concealment of Mitchell's role from Feinberg (and from Fine, who learned everything he knew on the matter from Feinberg), in the following terms (Tr. 3519):

> [Dean's counsel] mentioned something about the conspiracies and saying, well, some of the people said they didn't know certain things. Jack Brennan didn't know that John Mitchell was involved in Arama. Well, isn't that the hallmark of conspiracy? Secrecy? Where people don't know it?
>
> Remember Martin Fine, the developer for Park Towers? He said he did not know John Mitchell was involved. The consultant he hired, Eli Feinberg, he did not know Mr. Mitchell was involved. And both of those testimonies were unimpeached. Nobody ever contended that they did know. So the evidence is neither individual knew, and Mr. Fine paid $225,000, 50,000 of which went directly to John Mitchell, and he didn't even know he was involved. His role was secret. That's what conspiracies are about.

O'Neill's belaboring of what the record showed may reflect an aspect of the same literalism in O'Neill's ethic that one observes in a number of places. Here, however, he seems also to be reveling in the fact that he had been able to create a record that he believed to be false.

D. Actions Regarding the Arama Project, Including the Creation of a False Document [4]

Section D note (added Jan. 11, 2011): As discussed in Section B.3 of PMP and elsewhere, documents Independent Counsel attorneys found in the files of John N.

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well). Swartz, however, was going beyond that and falsely representing to the court (1) that in fact (a) there were no documents showing Shelby's contacts with DeBartolomeis and (b) Dean was responsible for the post-allocation waiver; and (2) that these supposed facts were true reasons that Independent Counsel attorneys acted as they did with regard to the "contact at HUD" reference.

Mitchell indicated that the Arama funding occurred as a result of Mitchell's January 1984 contacts to Lance H. Wilson, who in turn had contacted Assistant Secretary Maurice Barksdale on the matter (something Wilson eventually confirmed). The court of appeals would "deplore" the Independent Counsel failure to bring these documents to the attention of the defense. The more serious conduct, however, was the failure to confront Barksdale with the information on the documents and instead to seek to establish an almost certainly false claim with perjured testimony.

Examples of O'Neill's casuistic ethic are also found in his actions with regard to the proof of the conspiracy regarding the Arama project. As discussed in Section B.3 of PMP and elsewhere, Independent Counsel attorneys knew this charge was almost certainly false at the time they brought it and purposely avoided the obvious inquiries that were likely to demonstrate beyond any doubt that it was false. The Nunn Appendix shows how Independent Counsel attorneys fabricated Government Exhibit 25 from documents in Nunn's files. See also Section 9a of PMP. The exhibit was a copy of an April 3, 1984 letter from Arama developer Aristides Martinez to Louie B. Nunn with several attachments. The crucial attachment was the Arama consultant agreement bearing Nunn's annotation stating that Mitchell was entitled to half of the Arama consultant fee. Though bearing the date January 25, 1984, the annotation was made by Nunn some time after he received the April 3, 1984 letter from Martinez. The idea was to introduce the document into evidence through the testimony of Martinez without eliciting from him testimony as to whether various writings on the letter and its attachments were on those items when Martinez sent the letter. The apparent fact that the annotation was on the consultant agreement at the time Martinez sent it to Nunn would support the false entry in the Superseding Indictment that Nunn made the annotation on or about January 25, 1984, and the false suggestion in the Superseding Indictment and the Independent Counsel summary charts that Nunn had annotated the consultant agreement in Martinez's presence or that, in any event, Martinez was aware of the annotation.

Among other things, these false impressions were intended to facilitate O'Neill's efforts to cause the court to permit him to elicit from Martinez testimony that he had been told that Mitchell was related to Dean and that she held an important position at HUD. As discussed in Sections B.1 and C of the Nunn Appendix, in the course of seeking to be allowed to elicit this testimony, O'Neill would several times attempt to mislead the court if in fact he did not explicitly lie to the court.[12]

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[12] The instance where O'Neill might have simply lied to the court occurred when the court asked O'Neill whether an April 1984 conversation about Mitchell's relationship to Dean took place when Dean was in position of Executive Assistant and O'Neill responded: "I don't know the exact date." Tr. 250. It is very likely that O'Neill in fact knew the exact date. In the event O'Neill did know the exact date, his statement that he did not know the exact date was an outright lie. But if he did not know the exact date, he was nevertheless providing a misleading response. For he did know the conversation occurred well before Dean became Executive Assistant even in an acting capacity. He also knew that if he told Judge Hogan that, it would eliminate any chance that Hogan would allow the testimony.

In previously seeking to secure Judge Hogan's permission to elicit the Martinez testimony O'Neill stated (Tr. 230-31):

I have referred to Government Exhibit 25 using phrases like "fabricated document," "false document," or "document represented to be something it was not." Nuances aside, the Independent Counsel's use of the document in the intended manner is what would be called a fraud upon the court. One can imagine, however, that O'Neill might defend the use of the document on the basis that each of the pieces of paper comprising the exhibit was in fact a piece of paper (or a copy of a piece of paper) that Martinez sent to Nunn on April 3, 1984. And, as he had done with regard to the Sankin receipts discussed above, O'Neill might well maintain that it was permissible to present the exhibit in a way to lead the jury and the court to believe that the writing was on the consultant agreement when the letter was sent – something he knew to be false – because "the Government did not say" the writing was on it when sent.

Section B.9a of PMP addresses, *inter alia*, the absence of the consultant agreement from the copy of Government Exhibit 25 that Independent Counsel Larry D. Thompson eventually provided to me. But, as discussed in that section, after O'Neill was not allowed to elicit the testimony that Martinez was told that Mitchell was related to Dean and she held an important position at HUD, he decided instead to elicit from Martinez cryptic testimony that he did not know that Nunn was hiring anyone else. The purpose of eliciting this testimony was to provide Independent Counsel attorneys the option of, rather than maintaining that Mitchell's involvement was touted to developers like Martinez (as maintained in Paragraph 15 of the Statutory Allegations Section of Count One of the Superseding Indictment), to falsely maintain that Mitchell's involvement was concealed from Martinez. Thus, having revised the theory to one not supported by false evidence that Martinez was aware of Mitchell's right to half the Arama consultant fee, O'Neill may have pulled the consultant agreement from Government Exhibit 25 before he introduced it into evidence. But the original intended use of the fabricated document is clear enough.[13]

> What the Government's proffer would be, Judge, is that Mr. Nunn was hired by Mr. Martinez to operate as a consultant on the Arama project. Mr. Martinez requests of Mr. Nunn 293 units. Mr. Nunn goes and hires John Mitchell. He – they sign an agreement between Mr. Nunn and Mr. Mitchell – excuse me, Mr. Martinez and Mr. Nunn, for several hundred thousand dollars, two separate agreements. One is an attorney contract and one is a consultant contract. So they keep them separate.
>
> On the consultant contract Mr. Nunn writes at the bottom one-half of this in the event of my death and disability to go to John Mitchell, $75,000.
>
> Mr. Nunn who will testify, hopefully at some point in this trial, will testify that he went to John Mitchell. …

O'Neill's description of the matter, which is consistent with the false statement in the Superseding Indictment, gives the impression that Nunn's annotation on the consultant agreement was made in Martinez's presence, as is supported by the fabricated Government Exhibit 25. The annotation, however, was made months later.

[13] By email of June 15, 2009, I requested that Robert E. O'Neill advise me whether the consultant agreement was part of Government Exhibit 25 admitted into evidence and whether anything in my discussion of this or other matters was inaccurate. As of the most recent revision of this document,

Further, the eliciting of the cryptic testimony from Martinez is another example of O'Neill's approach to creating a record of literally true testimony in order to lead the jury and the court to believe things O'Neill and other Independent Counsel attorneys knew to be false. In this instance, O'Neill did not himself choose to make the false point in closing argument, as he did with regard to the supposed concealment of Mitchell's role in Park Towers. But, as discussed in the Nunn Appendix and elsewhere, other Independent Counsel attorneys would rely on the Martinez testimony in order to lead the courts falsely to believe that Mitchell's involvement in securing the Arama funding had been concealed from Martinez.

Whether or not they all involve some sort of casuistic ethic, many other aspects of O'Neill's effort to lead the courts and jury to believe things he knew or believed to be false are well documented. Certainly, these include his conduct with regard to Maurice Barksdale, a further aspect of the Independent Counsel's proof on the Arama conspiracy. O'Neill is the one who elicited Barksdale's crucial testimony without confronting him with information indicating that the testimony O'Neill intended to elicit was almost certainly false, as discussed in Section B.3 of PMP. As discussed in that section, it also seems that in order to bolster Barksdale's credibility, O'Neill elicited other testimony from Barksdale that O'Neill had reason to believe was false.

D'. Some of Robert E. O'Neill's False Statements Regarding the Arama Project

Robert E. O'Neill made many statements that he knew to be false regarding the Arama project and many other projects in the Superseding Indictment. Certain of such statements that occurred in the context of the repeated emphasis on the fact that John Mitchell was a former Attorney General warrant mention here.

Addendum 2 to the Bruce C. Swartz profile discusses Swartz's false representation to the court of appeals that the prosecution did not bring to the attention of the jury that John N. Mitchell was a former Attorney General. Fifteen pages into his opening argument, Robert E. O'Neill stated (Tr. 43):

> Another person will be John Mitchell, and your question is, you already saw a question, he's a former attorney general of the United States.

Thus, contrary to Swartz's representation to the court of appeals, minutes into the trial O'Neill had told the jury that Mitchell was a former Attorney General. Further, in doing so, O'Neill implied that the jury had likely heard of John Mitchell, thereby at least intimating the connection to Watergate. O'Neill went to mention that Mitchell was a former Attorney General twice more in the opening argument and again the closing.

O'Neill, who did not respond to other queries regarding the accuracy of my account, has not responded to the June 15, 2009 email.

Two of those three instances are worth noting because they reflect instances where O'Neill stated to the jury things that he knew to be false with absolute certainty. The second time O'Neill mentioned that Mitchell was a former Attorney General, he stated (Tr. 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.

O'Neill knew from the telephone message slips in Mitchell's files that Independent Counsel attorneys would not include in a Brady disclosure – indeed, he had it in black and white – that in January 1984, when Louie Nunn asked Mitchell to help him secure mod rehab unit, Mitchell went, not to the defendant, but to Executive Assistant Lance Wilson. O'Neill also knew that this occurred six month before Dean was Executive Assistant and nine months before Dean had any role in the mod rehab program.

When O'Neill referenced the fact that Mitchell was a former Attorney General in closing argument, he stated (Tr. 3384):

> 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 he said these things, O'Neill knew with absolute certainty that Mitchell was hired not because he knew the defendant, but because he knew Lance Wilson (and Secretary Pierce).

Even though Swartz would tell the court of appeals that Independent Counsel attorneys did not disclose the Mitchell telephone message slips because they regarded them as more incriminating that exculpatory, and Swartz and O'Neill would make the same representation to Bar Counsel, in closing argument O'Neill would try to lead the jury to believe that the message slips related to another matter, stating in his rebuttal (Tr. 3516):

> First of all, we don't know what project they're talking about here. Arama is not mentioned ...

When making this statement, O'Neill knew with complete certain that the message slips applied to Arama. See Section B.3a of PMP.

E. Three Varied Ethical Matters [5]

The above discussion goes to Robert E. O'Neill's willingness to create a false record and then to treat the record as if it were the only truth, without any indication of a recognition that a prosecutor has some obligation toward the actual truth. But even a cursory examination of the prosecutorial integrity of Robert E. O'Neill must go beyond that subject and treat three additional areas.

1. Misleading the Court and Defense Counsel [5a]

The first involves O'Neill's evident willingness to orally mislead the court and the defense counsel in the course of discussions going to admissibility and trial management in order to facilitate his creation of a false record. Such matter is discussed above with regard to Government Exhibit 25, the Martinez testimony, and the scheduling of Shelby's testimony. And, of course, in the case of the receipts discussed in Section A *supra*, there certainly is little reason to accept O'Neill's characterization of the exchange with the witness regarding the receipts over the witness's characterization.

2. Mischaracterizing the Record [5b]

The second area involves O'Neill's characterization of the record in closing argument, particularly in the rebuttal portion, where (in circumstances where defense counsel would not have an opportunity to respond) O'Neill simply falsely described the content of the trial record that had been created. This subject is covered in Section C.2 .a-g (pages 181-203) of Dean's Rule 33 Memorandum, as well as the narrative appendixes styled "Testimony of Ronald L. Reynolds," "The Russell Cartwright Receipt," and "Kitchin's Delivery of the Atlanta Request."

It is necessary to mention here only a couple of points addressed in those materials. As discussed in the Cartwright Appendix, armed with knowledge that a statement on a receipt indicating that Dean had been present at a dinner paid for by a lobbyist named Russell Cartwright was in fact a false statement, O'Neill was able to confront Dean with the receipt knowing that she would deny that it applied to her. This questioning occurred along with questioning about receipts of some other persons, where in most cases Dean seemed to have a sound basis for maintaining that the receipt did not apply to her or did not suggest anything inappropriate on her part. Observing the matter in court, one would think that O'Neill might not have been very well prepared since so much of what he seemed to want to apply to Dean seemed not to apply to her. With hindsight, however, it seems rather more likely that O'Neill was confronting Dean with receipts that he knew she had a legitimate basis for denying precisely in order to elicit anticipated denials of the receipts. Those denials then would figure prominently in O'Neill's closing arguments as instances in which Dean had falsely accused others of lying.

In doing so, he would also mischaracterize the record in two respects. First, he would mischaracterize Dean's testimony, stating (Tr. 3408):

> Mr. Sankin takes her out to lunch, out to dinner. You heard a lot of testimony that his receipts were fabricated, that they're all lies. Well as you go through them you'll see one receipt goes right on point.[14]
>
> And isn't it coincidental that all of his receipts are lies, all the Lance Wilson receipts are lies? Lance Wilson is actually a very good friend. All of Linda Murphy's receipts are lies? Remember Linda Murphy, one of her closest friends. I showed you that on an affidavit. And she said one of her closest friends. All of Russell Cartwright's receipts are lies. All of these people.

As explained in the Cartwright appendix, Dean's testimony was nothing like this.

Second, O'Neill would seek support in the record for demonstrating that Dean's denials were false, by stating (*id.*):

> Look through her calendars. She's meeting with them for lunch all the time, but yet they're all lies, all attempts to deduct business expenses and commit crimes

In fact, however, the calendars showed that during the three-plus year period in which Dean was Executive Assistant, she met with Wilson for lunch on four occasions, Murphy for lunch on one occasion, and Cartwright for lunch on no occasions. But O'Neill felt he could make that statement to the jury because the jury would not trouble to go through the calendars or that they would, unwisely, take his word for it.

3. The Likelihood that O'Neill Instructed Witness Thomas T. Demery to Falsely Deny Ever Having Lied to Congress [5c]

The third additional area involves O'Neill's actions with regard to Thomas T. Demery. As discussed in the narrative appendix styled "Testimony of Thomas T. Demery" and Section B.6 of PMP, Demery was a crucial government witness who had been indicted for perjury before Congress and who in the course of reaching a plea agreement that did not involve a perjury charge acknowledged that the allegations underlying his perjury charge were true and indicated that had also lied to Congress on other matters. On cross-examination, however, Demery repeatedly and unequivocally denied ever having lied to Congress. While it was O'Neill's obligation to correct that false testimony, O'Neill merely proceeded to elicit Demery's most important testimony on redirect. The Demery narrative appendix and Section B.6 of PMP discuss the various efforts of Independent Counsel attorneys to mislead the courts in responding to allegations that it was misconduct for O'Neill to fail to correct Demery's false statements regarding never having lied to Congress.

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[14] Perhaps on rereading the record, I might divine to what receipt the statement "one receipt goes right on point" was intended to refer. Presently I do not know what receipt O'Neill may have meant. But it would hardly be out of character for O'Neill to make the statement simply to lead the jury falsely to believe that there existed one receipt that was particularly pertinent to the government's case.

While O'Neill was the principal Independent Counsel attorney responsible for the underlying failure to correct Demery's testimony, having left the Office of Independent Counsel immediately after trial, he was not involved (or at least not evidently involved) in the efforts to mislead the courts in responding to Dean's motion. But, as discussed in Section B.6, a key issue regarding Demery's testimony is how, in circumstances where his liberty would turn on his fulfilling his agreement to provide completely truthful testimony as a government witness, Demery could possibly deny ever having lied to Congress unless he had been instructed by Independent Counsel attorneys to do so. As lead trial counsel and the attorney examining Demery – and as someone who certainly would have addressed with Demery the ways in which the defense counsel might seek to impeach Demery's testimony on the basis of his acknowledged perjury before Congress – O'Neill was presumably the Independent Counsel attorney providing such instruction.

F. Appeals to Racial Prejudice

Finally, even a summary treatment of O'Neill's conduct in the *Dean* would be incomplete without some attention to O'Neill efforts to appeal to the racial differences between the jury and the defendant, a matter as to which Judge Hogan orally chastised O'Neill on three occasions. Certainly, O'Neill would not have taken the chance he took with regard to the use of Agent Cain's testimony but for the effect he thought he would achieve with an entirely African American jury by having African American agent appear to directly contradict the white defendant. *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.

Only O'Neill would know (unless he told someone) whether the inclusion between the two references to "white collar crime" on page 32 of the opening argument the phrase "white color crime" was a mistranscription, a inadvertent misspeaking, or an instance of what Judge Hogan would refer to as O'Neill's "smart comments" when (at 2776) accusing O'Neill of attempting to exploit the racial difference between the jury and the defendant.

These matters may eventually be treated on a separate page of this site. For the present, I refer the reader to Part V of materials I submitted to the District of Columbia Bar Counsel.

G. Events Subsequent to the Dean Trial [7]

Following the trial, O'Neill returned to the position of Assistant United States Attorney for the Middle District of Florida, from which, as noted, he had been detailed for the trial. When in December 1994, O'Neill's conduct was brought to the attention of the Department of Justice as part of the request for an investigation of the Office of Independent Counsel, apparently no one involved in the matter at the Department of Justice gave any thought to whether the conduct might raise issues about the suitability of O'Neill to act as an Assistant United States Attorney – even though one of the bases for refusing to investigate the Office of Independent Counsel was that O'Neill was no longer employed there.

I first specifically sought O'Neill's removal from the Department of Justice 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 in Section B.8 of PMP.

It would be after O'Neill's conduct in the *Dean* case was brought to the attention of the Department of Justice that O'Neill was detailed to prosecute a case for another Independent Counsel and be appointed to the position of Deputy Chief in Charge of Litigation of the Narcotics and Dangerous Drugs Section of the Criminal Division of the Department of Justice.

In May of 1997, *Florida Today* would discuss an instance of prosecutorial misconduct in of an attorney under Wilson. O'Neill was not the offending attorney. He would, however, be assigned to replace that attorney against whom the charges of misconduct were made.

As of the initial creation of this profile at the end of April 2009, O'Neill was Chief of the Criminal Division of the Office of the United States Attorney for the Middle District of Florida. For approximately a year, commencing in October 2007, he had held the position of interim United States Attorney. While in that position he received a fair amount of press attention 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.thesnipestrial.com/oneill.htm and http://www.sptimes.com/2007/10/27/State/US_attorney_post_gets.shtml.

H. More Recent Efforts to Cause the Removal of O'Neill [8]

As suggested in the introductory points, to the extent that the tactics described above resulted in tainted prosecutions in the Middle District of Florida subsequent to my first raising issues concerning O'Neill's prosecutorial tactics with the Department of Justice on December 1, 1994, the Department of Justice bears substantial responsibility for such matters. That responsibility is heightened with respect to prosecutions occurring subsequent to my bringing to the attention of the Department of Justice the creation of the main Prosecutorial Misconduct page.

See (1) my emails to the Department of Justice of July 14, 2008 and July 17, 2008 regarding whether (then) interim United States Attorney Robert E. O'Neill, and Deputy Assistant Attorney General Bruce C. Swartz, should be permitted to remain with the Department of Justice should they now (a) acknowledge their conduct in the *Dean* case or (b) falsely deny it; (2) my email to the Department of Justice of April 8, 2009 regarding whether Attorney General Eric Holder's asserted commitment to correcting prosecutorial

abuses can be taken seriously if O'Neill and Swartz are permitted to continue serving in their current positions; and my May 12, 2009 letter to the Honorable Emmett G. Sullivan that raises the question of how many prosecutions in the Middle District of Florida may have been affected by conduct similar to that in which O'Neill engaged in the *Dean* case.

By letter of July 9, 2008, I informed O'Neill and other involved Independent Counsel attorneys of the creation of the main Prosecutorial Misconduct page, requesting that they alert me as to any matter as to which my treatment was inaccurate or unfair. By letter of September 8, 2008, I requested from O'Neill and other respondents in the DC Office of Bar Counsel proceeding permission to make those materials public, there noting the attention that had been given to the Agent Cain matter in an August 2008 post on powerlineblog.com. In the letter I again requested to be informed as to any way in which my interpretation regarding the Agent Cain matter or any other matter might be mistaken. O'Neill did not respond to either letter.

The items are significant less for the absence of a response than in the fact that they brought to O'Neill's attention the materials published on this web site and elsewhere and my intention to cause the widespread dissemination of my interpretation of the conduct of O'Neill and others in the *Dean* case. For O'Neill's knowledge of the posted materials raises the issue of whether he brought the existence of the materials to the attention of his superiors at the Department of Justice, which a responsible government attorney would be expected to do regardless of the position the attorney might take as to the merits of the allegations of misconduct. The same issue exists with regard to communications to persons whose support O'Neill may have sought in his effort to secure the nomination to the position of United States Attorney for the Middle District of Florida. And in the event O'Neill did advise anyone of the nature of the materials I have been disseminating, issues exist as to whether O'Neill acknowledged the essential accuracy of the materials with regard to such matters as the use of Agent Cain's testimony, while maintaining that he was nevertheless fit to represent the United States in criminal prosecutions, or whether he represented that the materials are inaccurate and in doing so made false representations in circumstances where false representations would constitute federal crimes.

Events subsequent to the initial creation of this profile are more fully addressed in the following addendums.

Addendum 1- Robert E. O'Neill's Disclosure Obligations (June 26, 2009)

By email of June 15, 2009, I informed O'Neill of his obligation to address this matter with his superiors. The email explained that, regardless of what O'Neill may maintain as to the accuracy of this account, the materials on this site have the potential to increase the likelihood that defendants will raise misconduct issues in cases prosecuted by O'Neill, to generally cause embarrassment to the Office of the United States Attorney and the Department of Justice, and to diminish the faith of the public in the integrity of the criminal justice system. Thus, a responsible attorney in O'Neill's position would address the existence of these materials with his superiors and address with them as well the

accuracy of the materials. But that is a difficult thing to do if in fact the materials are accurate in all or most essential respects.

In any event, the existence of the instant page further increases the likelihood that the public and members of the criminal defense bar will become aware of O'Neill's conduct in the *Dean* case. A June 26, 2009 Yahoo search for "Robert E. O'Neill" returns this profile as the second of 14,300 entries and the first such entry that pertains to the Robert E. O'Neill who is the subject of this profile.

Addendum 2 – Florida Federal Judicial Nominating Commission Decision to Interview Robert E. O'Neill for United States Attorney (July 4, 2009)

The Florida Federal Judicial Nominating Commission has recommended that O'Neill be interviewed for the position of United States Attorney for the Middle District of Florida. The interview is scheduled for July 22, 2009. A July 13, 2009 letter to the Chair of the Commission and the Chair and Members of the Middle District Conference of the Commission brings to their attention reasons why O'Neill is an unsuitable candidate for the position.

Addendum 3 – Correspondence with Florida Federal Judicial Nominating Commission (July 20, 2009)

Following the sending of the July 13, 2009 letter discussed in Addendum 2, I learned that most of O'Neill's June 5, 2009 application for the position of United States Attorney for the Middle District of Florida was publicly available. Having secured a copy of the application, in which O'Neill highlighted his role in the *Dean* prosecution, which he described as the "showcase trial" of Independent Counsel Arlin M. Adams, and stated that the DC Bar Counsel complaint had been filed by Dean, by letter of July 20, 2009, I advised the recipients of the July 13, 2009 letter of ways in which the application's discussion of the *Dean* prosecution and a District of Columbia Bar proceeding arising from O'Neill's conduct in the case were inaccurate or misleading. The July 20, 2009 letter can speak for itself on those matters.

I do note here, however, that the application was particularly revealing with regard to how often O'Neill was the sole prosecutor on a case. While that may be a common feature of the job of an Assistant United States Attorney, it increases the likelihood that an unprincipled Assistant United States Attorney will be able to engage in prosecutorial abuses of which others in the United States Attorney's Office will be wholly unaware. Moreover, in the application O'Neill emphasizes that during periods when he held substantial supervisory responsibilities, including the period when he was interim United States Attorney, he also conducted trials as lead and usually sole trial counsel. In such circumstances – that is, where the supervisor is also the sole trial counsel (and thus, where, for all practical purposes, the trial counsel is not being supervised) – the dangers of prosecutorial abuse are heightened.

Note added August 24, 2010: Addendum 7 below, which is also separately accessible here, addresses the false statement O'Neill made in the Nominating Commission

applications and the likelihood that by making that statement to the Nominating Commission or making the same statement elsewhere he violated 18 U.S.C. § 1001. Such matter is also the subject of Truth in Justice editorials of June 23, 2010, July 11, 2010, and August 17, 2010.

Addendum 4 – Florida Federal Judicial Nominating Commission Selection of Robert E. O'Neill as United States Attorney Finalist (July 24, 2009)

The interviews of O'Neill and other candidates on July 22, 2009, resulted in the Commission's recommending O'Neill as one of three finalists to be forwarded to Florida Senators Bill Nelson and Mel Martinez. The *St. Petersburg Times* account of the interviews suggested that the panel asked no questions concerning either the severe criticism of O'Neill that Judge Hogan rendered in the *Dean* case or the more damning allegations that I have posted on the Internet.

Assuming that O'Neill continues to advance in the selection process, he should eventually be interviewed by Associate Deputy Attorney General David Margolis. As discussed in Section B.1 and Section B.8 of PMP, Margolis is the Department of Justice official, who, during a meeting in the week of December 12, 1994, first suggested to me the possibility that even though Deborah Gore Dean had called Supervisory Special Agent Alvin R. Cain, Jr. just as she testified, Agent Cain's testimony seeming to contradict Dean might have been elicited on the basis that such testimony might nevertheless be literally true.

Addendum 5 – Controversy Over the Middle District of Florida United States Attorney Nomination (Jan. 26, 2010)

As of the date of this addendum, there had been no nomination to the position of United States Attorney for the Middle District of Florida. The nomination is evidently the subject of some controversy, as reflected in the January 25, 2010 *St. Petersburg Times* article "U.S. Attorney candidates face attacks from old adversaries," by Lucy Morgan. Among the subjects of the article is a lawsuit brought against Robert E. O'Neill by a former Assistant United States Attorney, Jeffrey Del Fuoco, with respect to which the article noted:

> O'Neill would not discuss Del Fuoco's accusations. Chief Assistant U.S. Attorney A. Lee Bentley III said the Department of Justice has ordered O'Neill and others in the office to remain silent while the nomination is pending. Bentley would not speak on the record.

Whatever the appropriateness of the Department of Justice's instruction in these circumstances, such instruction has created the curious situation where allegations relevant to a candidate's suitability for a high government position cannot be publicly discussed by the candidate and other knowledgeable persons because of the pendency of the candidacy.

Meanwhile, 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. But the letter (at 4) also briefly addressed issues concerning Robert E. 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 Robert E. O'Neill's suitability for such position. Possibly, in responding to the President or others concerning this matter, the Department will recognize an obligation to learn, and disclose, the truth about things that bear on the suitability of an individual to represent the United States. Doing so will necessarily raise issues concerning the Department's allowing O'Neill to prosecute scores or hundreds of federal cases in light of what was known to the Office of Professional Responsibility as early as 1995, and known, in substance, to Associate Deputy Attorney General David Margolis in early December 1994.

Acknowledging the nature of O'Neill's conduct regarding Agent Cain's testimony will also raise issues about the Department's allowing Bruce C. Swartz to hold the positions he has held in the Department at various times since 1995. Swartz's conduct in the Agent Cain matter, it should be borne in mind, would seem considerably more serious than O'Neill's. For Swartz was supervising O'Neill at the time the two of them pressured Agent Cain into providing testimony intended to lead the jury and the court to believe something Swartz and O'Neill knew to be false. And it was Swartz, not O'Neill, who during the post-trial proceedings conspired with others to deceive the court and probation officer in covering up the actions taken during the trial.

But however disturbing might be the things the Department would reveal about itself in forthrightly advising the President regarding the suitability of Robert E. O'Neill for the United States Attorney position, the Department will be better off if such things come to

light in 2010 than 2012 or 2016, especially if the things that would later come to light should involve the concealing of things from the President during his consideration of whom to nominate for the Middle District of Florida United States Attorney position. Of course, inasmuch as the Florida Federal Judicial Nominating Commission's recommendation has been pending for over six months, the Department may already have provided the President some advice on the matter. Such advice would have to be deemed incomplete if it failed to apprise the President of either Judge Thomas F. Hogan's severe criticism of O'Neill's conduct in the *Dean* case (as discussed in the first paragraph of the Introduction to the main Prosecutorial Misconduct page and Section A of the January 15, 2010 letter to Deputy Counsel Wish) or my allegations of more serious ethical breaches or failed to provide the President a candid assessment of the extent to which Judge Hogan's criticisms and my allegations are well-founded.

Addendum 6 – Nomination of Robert E. O'Neill for United States Attorney and Original Exchange with EOUSA General Counsel Jay Macklin (June 11, 2010)

On June 9, 2010, President Barack Obama announced the nomination of Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida. The same day, I received a letter dated June 8, 2010, from Jay Macklin, General Counsel for the Executive Office for United States Attorneys (EOUSA). The letter advised that my letter of November 2, 2009, to Attorney General Eric Holder had been forwarded to the General Counsel's Office of EOUSA. Describing my letter as an inquiry concerning Bruce C. Swartz, a Deputy Assistant Attorney General for the Criminal Division, General Counsel Macklin advised that allegations involving professional responsibility or prosecutorial misconduct are handled by the Office of Professional Responsibility and that his office is not involved in the investigation of such matters.

By letter of June 10, 2010, I responded to General Counsel Macklin pointing out that, while the subject line of my letter to Attorney General Holder did reference Bruce C. Swartz, a person concerning whom EOUSA had no supervisory responsibilities, the letter was more likely referred to EOUSA because of issues the letter raised about Robert E. O'Neill, an Assistant United States Attorney concerning whom EOUSA did have supervisory responsibilities. Making points similar to those made in the January 15, 2010 letter to Deputy Counsel Wish (see Addendum 5 *supra*), I explained why the fact that allegations of misconduct regarding O'Neill were or could have been raised in litigation would have no bearing on the relevance of such matters to EOUSA's oversight of O'Neill's conduct as an Assistant United States Attorney. I also pointed out that the Office of Professional Responsibility's refusal to investigate the matters heightened EOUSA's responsibility to evaluate the merits of my allegations with regard to the way the issues raised in the allegations may bear on EOUSA's oversight of O'Neill's conduct.

Noting the June 9, 2010 nomination of O'Neill for the United States Attorney position, I also addressed with General Counsel Macklin the possibility of an EOUSA role in previously advising any part of the government concerning O'Neill's suitability for the position, suggesting that if EOUSA had any such role, its responsibility to bring to the attention of the President any knowledge it has that calls into question the suitability of a

nominee to hold a United States Attorney position is a continuing one. I failed to make the obvious point that the Department of Justice generally has a continuing responsibility of this nature regardless of any role in advising the President of O'Neill's suitability for the position prior to the nomination.

Finally, I advised General Counsel Macklin that as the confirmation process moves forward, I would be encouraging members of the Judiciary Committee and other entities to review O'Neill's conduct in the *Dean* case, encouraging those entities as well to seek the Department of Justice's appraisal of the matter. And I pointed out certain things about the Department of Justice's responsibilities in such circumstances that are too self-evident to warrant repeating here.

Addendum 7– Robert E. O'Neill's False Statement on the Florida Federal Judicial Nominating Commission United States Attorney Application (June 28, 2010; rev. February 21, 2011)

Note: A directly accessible version of this addendum may be found by means of this link.

This Addendum was originally created on June 28, 2010, following the nomination of Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida and when it appeared that a false statement O'Neill made on the United States Attorney application he submitted to the Florida Federal Judicial Nominating Commission would cause O'Neill not to be confirmed. It was periodically updated to serially record events as they unfolded and usefully illustrates the way the Department of Justice and the Senate Judiciary committee will sometimes ignore even the clearest evidence of the unsuitability of a candidate for a high law enforcement position. But unless the reader desires to study that issue in depth, it is probably not worth his or her time to read the item in its entirety (or even beyond the first four paragraph of the body of the Addendum).

The crucial aspects of the matter can be gleaned from the Truth in Justice editorials listed below, especially those marked with an asterisk. The July 1, 2010 item, while not as germane to the process issues, highlights the contrast between Robert O'Neill's lying on his application and his penchant for calling other people liars, even when he knows they have not lied (as in the subject of Section B supra and Section B.1 of the main Prosecutorial Misconduct page).

June 23, 2010 ("Curious United States Attorney Nomination for One of Nation's Busiest Districts")

July 11, ne 23, 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")

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")*

**October 3, 2010 ("Whom Can We Trust?")*

February 6, 2011 ("Bruce Swartz – Our Man Abroad")

February 19, 2011 ("Robert E. O'Neill and 18 U.S.C. § 1001")

As discussed in Addendum 3, on June 5, 2009, O'Neill submitted to the Florida Federal Judicial Nominating Commission an application for the position of United States Attorney for the Middle District of Florida. According to its Rules, members of the Nominating Commission are appointed by Florida's United States Senators, though the web site of the Florida Bar shows it as a committee of the Florida Bar and in some of the references below I described it as an arm of the Florida Bar.

In the application, in response to a request for information concerning disciplinary matters, 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 O'Neill's conduct in the *Dean* case. 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 O'Neill's statement that the investigation was initiated by a complaint filed by Deborah Gore Dean is false. In fact, Dean never filed a bar complaint. As is explained on the first page of the June 27, 1996 Bar Counsel letter cited by O'Neill,[15] the investigation was self-initiated by Bar Counsel as a result of its review of the court of appeals' criticism of the conduct of O'Neill and his colleagues.

[15] The page may be found as an attachment to my July 9, 2010 letter to Attorney General Eric Holder discussed *infra*.

O'Neill could not possibly be mistaken on the matter. As noted, the information is on the first page of the letter O'Neill cites. In fact, as discussed at page 4 of the June 27, 1996 letter cited by O'Neill, 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 Bar Counsel.[16] The only possible inference is that O'Neill falsely attributed the initiation of the Bar Counsel investigation to Dean because he believed that an investigation initiated by convicted defendant would raise fewer concerns with the Florida Nominating Commission and other readers of his application than an investigation initiated by Bar Counsel after reviewing court criticism of O'Neill's conduct. And if O'Neill made a similar misrepresentation to a federal entity, he almost certainly violated 18 U.S.C. § 1001. In any event, however, the misrepresentation before the Florida Nominating Commission ought to preclude O'Neill's confirmation to the United States Attorney position.

Because of concern about Bar confidentiality rules for some time I did not disclose that an investigation was initiated by Bar Counsel. In Section B.11a of the main Prosecutorial Misconduct page, I referred only to my Bar Counsel complaint, which was filed after I learned of the ongoing Bar Counsel investigation. The letter of July 20, 2009, to the Florida Nominating Commission mentioned in Addendum 3 *supra* did not disclose whether the Bar Counsel investigation had been initiated by me or some other person or entity, but (at 7-8) encouraged the Nominating Commission to secure such information from O'Neill or DC Bar Counsel. Even when O'Neill was nominated I did not immediately disclose the fact that the investigation was initiated by Bar Counsel.

By letter dated June 14, 2010, to District of Columbia Bar Counsel Wallace E. Shipp, Jr. (copied to O'Neill), among other things, I advised Bar Counsel of O'Neill's statement concerning the initiation of the Bar Counsel investigation in the Florida Nominating Commission application. I suggested that Bar Counsel had an obligation to provide the Senate Judiciary Committee information indicating that O'Neill's description of the initiation of the Bar Counsel investigation was false.

By letter dated June 16, 2010, to members of the Senate Judiciary Committee, I raised a number of issues as to the unsuitability of O'Neill for the United States Attorney position. In the fourth of six briefly summarized items (at 4), I advised that O'Neill's statement concerning the initiation of the Bar Counsel investigation in the Florida Federal Judicial Nominating Commission application was false. I urged the Committee to secure the relevant records from District of Columbia Bar Counsel that would reveal the true origin of the investigation.

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[16] Such disclosures occurred in my November 30, 1995 letter to John C. Keeney, Esq. Acting Assistant Attorney General for the Criminal Division (at 5), which letter was copied to Attorney General Janet Reno, United States Attorney Charles R. Wilson, and Independent Counsel Larry D. Thompson. Bar Counsel concluded (at 4 of the referenced June 27, 1996 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.

On reviewing a publicly available Senate Judiciary Committee questionnaire completed by O'Neill that did not address disciplinary matters, I came to recognize the likelihood that, possibly in a Senate Judiciary Committee questionnaire on sensitive issues that was not publicly disclosed, O'Neill provided information on disciplinary matters. There is a strong chance that any statement O'Neill made to a federal entity akin to that made to the Florida Nominating Commission would violate 18 U.S.C. § 1001. I therefore, by letter dated June 22, 2010, advised Bar Counsel of such matter, suggesting that the obligation to bring to the attention of appropriate authorities that a person seeking a United States Attorney position has made a false statement when doing so would be heightened with respect to a false statement that violated a federal law. I also advised Bar Counsel that upon coming to believe that there is a high likelihood that O'Neill provided the Senate Judiciary Committee or other federal entities the same information concerning the origin of the Bar Counsel investigation that he provided to the Florida Nominating Commission, I would consider myself free, if not obligated, to inform the Senate Judiciary Committee and other government entities of facts I know indicating that the information provided by O'Neill is false, including the identity of the person or entity that actually initiated the investigation and why that person or entity initiated the investigation.[17]

On June 23, 2010, I posted 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 O'Neill's conduct in the *Dean* case as well as the likelihood that O'Neill violated 18 U.S.C. § 1001 by making false statements concerning the initiation of the District of Columbia Bar Counsel investigation. The editorial did not disclose the actual initiator of the Bar Counsel investigation.

By letter dated June 28, 2010, I brought to the attention of Attorney General Eric Holder the aforementioned facts concerning O'Neill's false statement about the origination of the Bar Counsel investigation of his conduct in the *Dean* case and the possibility or likelihood that O'Neill violated 18 U.S.C. § 1001 by making similar statements to federal entities involved in the United States Attorney nomination or confirmation process. As in the case of the Senate Judiciary Committee, I advised Attorney General Holder to secure information on the origination of the Bar Counsel investigation from the Office of Bar Counsel.

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[17] A version of this addendum prior to July 11, 2010, included a note at this point concerning my thinking regarding disclosure:

> I am likely being too scrupulous in not immediately disclosing the circumstances of the initiation of the Bar Counsel investigation. Rule XI of the District of Columbia Court of Appeals' Rules Governing the Bar could hardly be intended to preclude someone from making public that a candidate for a United States Attorney position lied about a Bar Counsel investigation in the course of attempting to secure that position. Further, there may be constitutional questions as to whether Rule XI can preclude me from making public anything I want about the investigation. But there is little harm to the public in allowing Bar Counsel, the Department of Justice, the press, and the attorneys who were subject to the investigation a reasonable opportunity to fulfill their obligations to bring the matter to light (as discussed *infra*).

I also pointed out to Attorney General Holder that the misrepresentation to the Florida Nominating Commission is a very serious matter in any event. And I suggested that even if O'Neill made no like misrepresentation to a federal entity (and whether or not any crime might be involved), Attorney General Holder should advise the President of such misrepresentation and in doing so, recommend that the President withdraw the O'Neill nomination. I also noted that in the event the misrepresentation was among materials provided to the Senate Judiciary Committee, the Committee should also be advised of such fact.

In the letter, I raised certain other issues about the Department's obligation to bring to light information bearing on the suitability of O'Neill for the United States Attorney position. I noted that it is difficult to understand how the Department could provide a candid assessment of O'Neill's suitability for the United States Attorney position without providing information concerning (1) the severe criticism of 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 O'Neill and the fact that the allegations are published on the Internet (as well as the Department's views as to the justification for the courts' criticisms and as to the validity of my allegations). And I suggested that if the Department had so far failed to provide such information to the President or the Senate Judiciary Committee, the Department has a continuing obligation provide such information.

My suspicion, as suggested in Addendums 5 and 6 *supra*, is that the Department of Justice never advised the President of any of the above matters. Such failure, which would seem generally to call into question the Department's vetting process (or at least to do so when one of the Department's own employees is involved), ought to be difficult to explain to the President. But such difficulty hardly provides an excuse for now failing to advise the President of any false statements O'Neill made in the course of seeking the United States Attorney position.

By letter dated June 29, 2010, I brought the matter of O'Neill's misrepresentation on the Florida Nominating Commission application to the attention to staff writers of the *St. Petersburg Times* who had been involved in recent coverage of O'Neill. I urged them, among other things, to address with O'Neill questions as to whether O'Neill statement concerning the origin of the Bar Counsel investigation was true, whether he made the same statement to any federal entity, and why he made the statement.

By letter dated July 1, 2010, I advised Bruce C. Swartz (currently a Deputy Attorney General in the Criminal Division, whose own misconduct in the *Dean* case is discussed frequently in the O'Neill profile and in the Bruce C. Swartz profile) of O'Neill's statement regarding the initiation of the Bar Counsel investigation. I noted that because Swartz had also been a subject of the same investigation, Swartz would know that O'Neill's representation as to the origin of the investigation is false. Pointing out that O'Neill might also have made the same misrepresentation to federal entities in violation of 18 U.S.C. § 1001, I advised Swartz of his responsibility as an official in the Criminal

Division to bring the fact of O'Neill's misrepresentation to the attention of officials in the Criminal Division and elsewhere in the Department of Justice.

I also advised Swartz of his obligation as an official of the Criminal Division to inform officials in the Department of any actions O'Neill may have taken in the Bar Counsel investigation to cover up O'Neill's (and Swartz's) actions regarding the testimony of Supervisory Special Agent Alvin R. Cain, Jr. (the subject of Section B *supra*, which is also the subject of the fifth summarized item in the Senate Judiciary Committee letter, as well as Section A and F of the Swartz profile). It would seem impossible for Swartz to adequately address the matter with Department of Justice officials without addressing Swartz's own conduct in deceiving both the court and Bar Counsel on the matter. But whether such issues would provide Swartz a basis for avoiding addressing these matters as a private citizen, they would not provide him a basis for failing to fulfilling his responsibilities as a Deputy Assistant Attorney General in the Criminal Division.

On July 4, 2010, drawing on the June 23, 2010 Truth in Justice editorial mentioned above, Paul Mirengoff posted an item on powerlineblog.com styled "A Nomination That Should Be Closely Scrutinized." Mirengoff referenced his August 2008 post that had treated the subject of the immediately preceding paragraph. Powerlineblog.com is visited by over 40,000 users daily. Immediately after the posting of the July 4, 2010 item, traffic to the prosecutorial misconduct portions of jpscanlan.com increased dramatically.

By letter dated July 5, 2010, I advised Robert E. O'Neill of his obligation to inform various persons or entities of the misrepresentation in the Florida Nominating Commission application and to advise them of the identity of the person or entity that actually initiated the District of Columbia Bar Counsel investigation and of what O'Neill knows as to why the person or entity initiated the investigation. Persons or entities that I specifically identified as among those to whom O'Neill should provide such information include President Barack Obama, who was presumably unaware of the misrepresentation at the time he nominated O'Neill for the position of United States Attorney for the Middle District of Florida. I also advised O'Neill that I might at any time disclose the identity of the person or entity that initiated the Bar Counsel investigation and requested that he inform me if he had any objection to my doing so.

By letter of July 5, 2010, I advised Jay Macklin, General Counsel for the Executive Office for United States Attorneys (recipient of the June 10, 2010 letter discussed in Addendum 6), of O'Neill's misrepresentation concerning the origination of the Bar Counsel investigation in the application to the Florida Nominating Commission. I also advised General Counsel Macklin that, whether or not O'Neill had violated any federal law, the making of the misrepresentation in the circumstances O'Neill made it called into question the appropriateness of O'Neill's continued employment as an Assistant United States Attorney.

On July 8, 2010, I was advised by a representative of the Office of Bar Counsel that, even if O'Neill committed a crime by falsely representing the origin of the Bar Counsel investigation of his conduct in the *Dean* case, Bar Counsel would not contact the

Attorney General to inform him of the true origin of the Bar Counsel investigation. The representative declined to say what Bar Counsel would do if the Attorney General contacted Bar Counsel on the matter.

By letter of July 9, 2010, I advised Attorney General Eric Holder of certain developments since my above-discussed letter to him of June 28, 2010. I also provided Attorney General Holder a copy of page 1 of the June 27, 1996 letter cited by O'Neill in the Florida Nominating Commission application entry set out at the beginning of this addendum (with all names redacted save for that of O'Neill). Quoting from page 1 of the letter, I advised Attorney General Holder of the identity of the initiator of the Bar Counsel investigation and why that person or entity initiated the investigation. I suggested to Attorney General Holder that the inference is inescapable that O'Neill attributed the initiation of the Bar Counsel investigation to Deborah Gore Dean because he believed an investigation initiated by a complaint filed by a convicted defendant would raise fewer concerns with the Florida Nominating Commission or other readers of his application than an investigation initiated by that actual initiator. I again urged Attorney General Holder to advise the President to withdraw the O'Neill nomination.

I provided copies of the July 9, 2010 letter to Robert Bauer, Esq., Assistant and Counsel to the President, the Honorable Patrick J. Leahy, Chairman of the Senate Judiciary Committee, and the Honorable Jeff Session, Ranking Member of the Senate Judiciary Committee. As with the copy of the letter that is made accessible by the link in the immediately prior paragraph, the copies sent to these persons were redacted as to the identity of the initiator of the Bar Counsel investigation and did not include the page of the June 27, 1996 letter that had been provided to Attorney General Holder.

But on July 11, 2010, I published a second editorial on truthinjustice.org, disclosing the origin of the Bar Counsel investigation and making available an unredacted copy or the July 9, 2010 Holder letter with its attachment.

By letter of July 13, 2010, I advised Jay Macklin, General Counsel for the Executive Office for United States Attorneys (recipient of the June 10, 2010 letter discussed in Addendum 6 and the July 5, 2010 letter discussed several paragraphs above), of the documentary proof that O'Neill's statement in the Florida Nominating Commission application concerning the origin of the DC Bar Counsel investigation was false. I again suggested to General Counsel Macklin that O'Neill's making of the false statement called into question whether O'Neill should be permitted to continue to serve as an Assistant United States Attorney. I also advised General Counsel Macklin of the July 5, 2010 letter to O'Neill (which was copied to his immediate superior First Assistant United States Attorney A. Lee Bentley) stating that O'Neill had an obligation to advise his superiors and others that the statement in the Florida Nominating Commission application was false and suggested that unless O'Neill and Bentley had advised their superiors that the statement was false, inquiry should be made as to why they had not.

By letter of July 14, 2010, to the *St. Petersburg Times* staff writers who had received the June 29, 2010 letter mentioned above of developments, since June 29, concerning the

O'Neill nomination and the false statement in the Florida Nominating Commission application, including the July 4, 2010 item in powerlineblog.com and July 11, 2010 item on truthinjustice.org. I suggested to them that there likely existed a larger story in the failure of the Department of Justice to advise the President of the courts' criticisms of O'Neill's conduct in the *Dean* case and the materials I maintain on the Internet concerning that conduct, as well as the failure of the Florida Federal Judicial Nominating Commission to consider these issues or to secure information indicating that O'Neill's statement concerning the origin of the DC Bar Counsel investigation was false.

By letter of July 26, 2010, I informed members of the Senate Judiciary Committee of the true origin of the District of Columbia Bar Counsel investigation of O'Neill's conduct in the *Dean* case and addressed the fact that that if O'Neill misrepresented that origin of the investigation to the Committee or other federal entity he would like have violated 18 U.S.C. § 1001. I also suggested that whether or not O'Neill violated any federal law, if O'Neill were to be confirmed as United States Attorney notwithstanding the false statement on his application, the public faith in the integrity of federal law enforcement would be substantially undermined. But I also suggested that even if the O'Neill nomination should be withdrawn, the Committee should address the larger issues of prosecutorial misconduct raised in the O'Neill profile and the main Prosecutorial Misconduct page.

By letter of July 29, 2010, I advised former Supervisory Special Agent Alvin R. Cain, Jr. of developments since my last correspondence to him (by letters of July 8, 2008, and July 13, 2008), including the attention given to the securing and use of his testimony in October 1993 (the subject of Section B.1 of PMP, Section B of this profile, and a matter highlighted as the fifth summarized item in the June 16, 2010 Senate Judiciary Committee letter) and nomination of Robert E. O'Neill for the position of United States Attorney for the Middle District of Florida. I suggested to Cain that he had an obligation to bring to the attention of the Judiciary Committee the facts concerning O'Neill's securing of Cain's testimony in October 1993.

Copies of the Cain letter were provided to the Chairman and Ranking Member of the Senate Judiciary Committee, Assistant and Counsel to the President Robert Bauer, and Attorney General Eric H. Holder, Jr. The June 16, 2010 Senate Judiciary Committee letter had encouraged the Committee to contact Cain and provided it Cain's last known address.

On August 17, 2010, I posted another editorial ("Additional Problems with Middle District of Florida U.S. Attorney Nomination") on truthinjustice.org. The editorial discussed two matters arising out of the lawsuit filed against O'Neill and Attorney General Eric H. Holder. Jr., by former Assistant United States Attorney Jeffrey J. Del Fuoco. One matter involves Del Fuoco's allegations that O'Neill committed perjury in an earlier case, a matter as to which he names three present or former Assistant United States Attorneys as witnesses. The second matter involves the fact that in defending against Del Fuoco's claims that O'Neill defamed him by statements made in O'Neill's Florida Federal Judicial Nominating Commission application, Department of Justice

attorneys representing O'Neill and the Department asserted that the statements had an absolute privilege because the Nominating Commission is a "a quasi-legislative body, established by members of the U.S. Senate." The assertion, which means "a quasi-*federal* legislative body," could provide a basis for an argument that O'Neill violated 18 U.S.C. § 1001 by falsely describing the origin of the Bar Counsel investigation in his Nominating Commission application.

The two matters are suggestive of a variety of problems arising from having Department of Justice attorneys represent both O'Neill and the Department. As representatives of the Department, the attorneys ought to be investigating whether O'Neill committed perjury as Del Fuoco alleges (including questioning the witnesses identified in the complaint) and considering their responsibilities to bring their findings to the attention of the Department. But their representation of O'Neill may compromise them in that regard. On the other hand, O'Neill ought to be able to advise his counsel whether there is merit to Del Fuoco's allegations concerning perjury. Presumably, when they filed the motion in April 2010, the Department of Justice attorneys did not know that O'Neill made a false statement about the DC Bar Counsel investigation in the Nominating Commission application. But someone in O'Neill's position ought to be able to advise his counsel of the fact that he made the false representation in considering what position to take regarding the status of the Nominating Commission.

On August 18, 2010, I received a letter dated August 13, 2010, from Jay Macklin, General Counsel for the Executive Office for United States Attorneys, stating that it was a response to my letter of July 13, 2010. General Counsel Macklin's recent letter states that in my July 13, 2010 letter I continued to raise allegations of misconduct by Mr. O'Neill; that those allegations had been reviewed by the Department, the Office of Professional Responsibility (OPR), and the Office of Inspector General; and that I have been informed by OPR that it is that office's "policy to refrain from investigating issues or allegations that were addressed, or that could have been addressed, in the course of litigation" (an apparent reference to the letter dated December 28, 2009, from Judith B. Wish, Deputy Counsel for the Office of Professional Responsibility, which is discussed in Addendum 5). The Macklin letter also stated it would be the Department's last response to me concerning "this matter."

This was a curious letter. Whatever the wisdom of the OPR policy or its relevance to the issues that had been brought to OPR's attention at the time it expressed that policy to me (which matters of wisdom and relevance were addressed in my January 15, 2010 letter to OPR Deputy Counsel Judith B. Wish), the policy had no bearing whatever on the issues raised in July 13, 2010 letter – which involve the simple fact that in an application submitted to the Florida Federal Judicial Nominating Commission on June 5, 2009, O'Neill made a false statement and the possibility that he may have made the same false statement to a federal entity. Further, this a subject that quite obviously was not and could not have been raised in the litigation to which Deputy Counsel Wish referred and that probably could not be raised in any other litigation save in a Department of Justice prosecution of O'Neill for violation of 18 U.S.C. § 1001.

When I received the Macklin letter, I was already in the process of writing an August 18, 2010 letter to both Attorney General Holder and General Counsel Macklin bringing additional information to their attention regarding the subjects of the letters of June 28, 2010, and July 9, 2010, to Attorney General Holder and July 5, 2010, and July 13, 2010, to General Counsel Macklin. Such additional information was mainly comprised of the fact that Department of Justice attorneys had taken the position in the *Del Fuoco* litigation that the Florida Federal Judicial Nominating Commission was a "quasi-(federal) legislative body" and the bearing of that position on the possibility that O'Neil violated 18 U.S.C. § 1001 by making the false statement to the Commission (the first subject of the August 17, 2010 Truth in Justice editorial). I added a further point regarding the plaintiff's claim in the *Del Fuoco* case that Department attorneys could represent O'Neill in his personal capacity regarding the statements in Nominating Commission application only if those statements were considered to have been made pursuant to O'Neill's employment with the Department.

I added a paragraph addressing the Macklin letter along the lines of the second paragraph above. I also pointed out that apart from the fact that the reasoning set out in the Macklin letter had nothing to do with the subject of my July 13, 2010 letter, particularly given that O'Neill is now the nominee for the United States Attorney position, the Macklin letter seems to say that even heinous conduct by a federal prosecutor will not stand as an obstacle to a Presidential appointment if the matter was or could have been addressed in litigation. I suggested that the Department should reconsider that position, if not with regard to the O'Neill appointment, at least with regard to future appointments as to which the Department is called upon to advise the President.

Given that I have been led to understand that the White House will not withdraw the nomination, I shall shortly create a document exploring some of the incongruities of having a United States Attorney who violated a statute that he is charged with enforcing and that he will remain subject to prosecution under until 2014 or 2015 (possibly under a different administration) – unless he makes any new false statement regarding the matter in which case the five-year limitations period will run from the time of the new false statement. In the event that anyone else makes a false statement before the Florida Federal Judicial Nominating Commission, O'Neill would presumably have a large role in determining whether false statements before the Nominating Commission are covered by 18 U.S.C. § 1001. But incongruities abound.

On August 28, 2010, I wrote another letter to the Senate Judiciary Committee member, among other things, advising as to recent developments such as the matter addressed in the August 17, 2010 Truth in Justice editorial and the Macklin letter of August 13, 2010. The same day I wrote a letter to the Florida Senators Bill Nelson (D) and George LeMieux (R) advising them in a somewhat summary fashion of issues previously brought to the attention of the Senate Judiciary Committee.

On September 4, 2010, I posted another Truth in Justice editorial, this one styled "Dubious Progress on Professional Responsibility at DOJ." The item principally addresses the Attorney General's asserted commitment to addressing prosecutorial

abuses, but discusses issues pertaining to Bruce C. Swartz and Robert E. O'Neill with regard to the Department's refusal to address disagreeable integrity issues concerning high-level employees. The item suggests that Swartz's conduct in the defending against allegations of prosecutorial misconduct in the Dean case would be a useful case study illustrating impermissible deceptions or evasions in prosecutor responses to misconduct allegations. A separately accessible Swartz Addendum 7 was added to the Bruce C. Swartz to address the subject further.

On September 8, 2010, Paul Mirengoff posted an item on powerlineblog.com calling for the Senate Judiciary Committee to hold hearings on the issues I raised and the allegation of perjury raised in the Del Fuoco case.

Between September 9 and 13, 2010, I sent emails to members of the Senate Judiciary Committee advising them of the attention given to allegations about O'Neill in my Truth in Justice editorials and the Paul Mirengoff powerlineblog.com items and the issues that could arise concerning O'Neill's credibility unless the Committee addresses the allegations against O'Neill.

On September 22, the Senate Judiciary Committee voted unanimously to forward the O'Neill nomination to the Senate floor with a favorable recommendation. On September 26, 2010, I published a Truth in Justice editorial discussing the Committee's action and the statements by the Chairman and Ranking Republican. It also discusses the likelihood that during his tenure a United States Attorney O'Neill will be confronted by questions as to whether he lied on his application.

On September 29, 2010, by voice vote the Senate confirmed O'Neill for the position of United States Attorney for the Middle District of Florida.

On October 3, 2010, I published a Truth in Justice editorial addressing the implications of the handling during the nomination/confirmation process of issues like the false statement by the Department of Justice and Senate Judiciary Committee with regard to the faith the public may place in assurances by either of these entities or their leadership as to the trustworthiness of other candidates for high government position.

On October 5, 2010, O'Neill was sworn in as United States Attorney for the Middle District of Florida.