

James P. Scanlan
Attorney at Law
1529 Wisconsin Avenue, NW
Washington, D.C. 20007
(202) 338-9224
jps@jpscanlan.com

August 28, 2010

The Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

The Honorable George LeMieux
United States Senator
356 Russell Senate Office Building
Washington, DC 20510

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

Dear Senators Nelson and LeMieux:

This letter concerns Robert E. O'Neill, whom, on June 9, 2010 President Obama nominated for the position of United States Attorney for the Middle District of Florida. I write to you jointly because of your roles relating to the Florida Federal Judicial Nominating Commission (FFJNC) and because the subject of the letter involves matters of special interest to the State of Florida.

By letters to members of the Senate Judiciary Committee dated [June 16, 2010](#),¹ [July 26, 2010](#), and [August 28, 2010](#), I brought to the Committee's attention certain matters concerning Mr. O'Neill's suitability for the United States Attorney position. One such matter involved the fact that Mr. O'Neill made a false statement in an application for the position that he submitted to FFJNC.

As explained in the referenced letters, the false statement in Mr. O'Neill's FFJNC application involves the initiation of a District of Columbia Office of Bar Counsel investigation of Mr. O'Neill's conduct as lead trial counsel in *United States v. Deborah Gore Dean*, Criminal. No. 92-181-TFH (D.D.C.), an Independent Counsel case Mr. O'Neill tried in the District of

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

The Honorable Bill Nelson
The Honorable George LeMieux
August 28, 2010
Page 2

Columbia in 1993. Mr. O'Neill stated that the investigation was initiated by a complaint filed by the defendant when in fact the investigation was initiated by Bar Counsel itself after reading a court of appeals [decision](#) "deplor[ing]" the conduct of lead counsel O'Neill and his colleagues.

More specifically, in the FFJNC [application](#) he signed on June 5, 2009, responding to a request for information on disciplinary matters, Mr. O'Neill provided the following entry (at 43):

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

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

But the first page of the June 27, 1996 Bar Counsel letter quoted by Mr. O'Neill explicitly states that the investigation was initiated by Bar Counsel itself after reviewing the court of appeals opinion. The page, which may be found as an attachment to the Senate Judiciary Committee [letter](#) dated July 26, 2010, states:

We commenced an investigation upon review of the opinion of the United States Court of Appeals for the District of Columbia Circuit in United States v. Deborah Gore Dean, 55 F.2d 640 (1995), which raised questions concerning the prosecutors' compliance with their obligations under Brady v. Maryland, 373 U.S. 83 (1963), and certain of the prosecutors' trial tactics.

The defendant Deborah Gore Dean in fact never filed a bar complaint at all.

The unavoidable inference is that Mr. O'Neill falsely described the origin of the District of Columbia Bar Counsel investigation because he believed that an investigation initiated by a convicted defendant would raise fewer concerns with the FFJNC or other readers of his application than an investigation Bar Counsel itself initiated after reading a reported opinion criticizing prosecutor conduct.

The latter two letters to the Judiciary Committee also discuss the possibility that by falsely describing the origin of the District of Columbia Bar Counsel investigation, either in the FFJNC application itself or at some other point in the process of seeking the United States Attorney position, Mr. O'Neill violated 18 U.S.C. § 1001, as well as some of the implications of such violation with regard to Mr. O'Neill's tenure as United States Attorney should he be confirmed in that position.

This and other issues concerning the suitability of Mr. O'Neill for the United States Attorney position are also subject of three editorials I published on truthinjustice.org [June 23, 2010](#)

The Honorable Bill Nelson
The Honorable George LeMieux
August 28, 2010
Page 3

(“Curious United States Attorney Nomination for One of Nation’s Busiest Districts”); [July 11, 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”), and a [July 4, 2010](#) item posted by Paul Mirengoff on powerlineblog.com (“A Nomination That Should Be Scrutinized Closely”). I call your particular attention to the July 11, 2010 Truth in Justice [editorial](#), which discusses Mr. O’Neill’s false statement in the context of his penchant for provocatively calling people liars, as in the case of *United States v. Spellissy*, a case that I understand to be a matter of some controversy in certain parts to Florida. In the event that Mr. O’Neill is confirmed and that editorial becomes widely read, or the facts it discusses otherwise become widely known, I suggest that Mr. O’Neill is likely to be the subject of considerable ridicule, which will also generally diminish the confidence of the public in the integrity of federal law enforcement.

I also call your particular attention to the August 17, 2010 Truth in Justice [editorial](#), which discusses issues about the status of the FFJNC as well as a matter in a pending civil litigation that may materially affect the morale of the Office of the United States Attorney for the Middle District of Florida in the event Mr. O’Neill become the United States Attorney.

Finally, while I recognize that admirable intentions may have prompted the establishing of the FFJNC, I question whether it is sound policy for United States Senators to curtail their own discretion to the extent that is suggested by the [Florida Federal Nominating Commission Rules of Procedure](#). The apparent failure of the FFJNC to address with Mr. O’Neill the issues raised in my letters to the FFJNC Chair and members of the FFJNC Middle District Conference dated [July 13, 2009](#), and [July 20, 2009](#), would seem additional reason to question the according of such deference to that body. See Addendums 2 to 4 of the [Robert E. O’Neill profile](#) on [jpscanlan.com](#).²

If I can provide you any additional information concerning this matter, please let me know.

Sincerely,

/s/ **James P. Scanlan**

James P. Scanlan

² The July 20, 2009 letter, while not stating that the District of Columbia Bar Counsel investigation of Mr. O’Neill’s conduct in the *Dean* case was initiated by Bar Counsel, did make clear that Mr. O’Neill’s statement that the defendant initiated the investigation was false. It is possible that the letter was not received by members of the FFJNC in time to consider it when Mr. O’Neill was interviewed on July 22, 2009, or when the finalists were forwarded to Florida Senators (which apparently occurred later than day). But a responsible body ought to review concerning about finalists received at any time, at least to determine whether it contains information of sufficient importance to be brought to the attention of the Florida Senators. A false statement on the FFJNC application has to be considered important information.