Testimony of

Mr. Paul Berger

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U.S Securities and Exchange Commission
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United States Senate
Committee on the Judiciary
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Chairman Specter, Ranking Member Leahy, Members of the Committee, good morning. Thank you for the invitation to appear before this Committee and to respond to allegations of abuse of authority that have been made by a former staff lawyer of the Division of Enforcement of the United States Securities and Exchange Commission.

I believe that accountability, and oversight are healthy, and I commend you, Mr. Chairman, as well as Senator Grassley for taking these matters seriously.

These allegations deserve to be put to rest, for they are utterly and completely false. They are a slur on the good names of literally hundreds of members of the SEC's Enforcement staff, who show up to work each and every day with only one goal in mind -to protect the Nation's investors. And they are a slur on the presidentially appointed Commissioners of the SEC, members of both political parties.

The allegations also are an offense against basic standards of law enforcement. Throughout my 14 years at the SEC's Division of Enforcement, we recommended that the Commission bring cases -or not -solely on the basis of the evidence. If we believed that the evidence was there, we were prepared to be put to our proof in the courts or in administrative tribunals. But suspicion is no substitute for evidence, and innuendo is no substitute for proof.

Mr. Aguirre has done a great deal of damage. To be sure, those who are the subject of Mr. Aguirre's baseless slurs have had to deal with all sorts of inconvenience, disruption, and
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embarrassment that come from dealing with this type of matter. I'm more concerned, though, with the harm to investors. For all I know, by publicly disclosing the details of a then-ongoing investigation, Mr. Aguirre compromised the very investigation he falsely claims he was impeded from pursuing.

I fear also that Mr. Aguirre's false claims have made it harder for the Division of Enforcement, which many SEC chairmen, including Chairman Cox, have referred to as the Commission's "crown jewel," to do its job. All members of the Enforcement staff must feel free to do their jobs, to shoot straight, without fear of reprisal from those with whom they may have professional disagreements. It does not help the Nation's investors for their watchdogs to investigate defensively, to make decisions as to whom to investigate and sue -or not to ¬based on excessive concerns about how enforcement decisions will look if someone tries to twist them for his own purposes. Nor is it fair to those who may be innocent of any charges for Enforcement staff to

bring charges solely out of a fear that they may be called before a Congressional committee to explain themselves.

This submission touches in some detail upon some of the many ways in which Mr. Aguirre's allegations are utterly and completely false. I want there to be no doubt about the truth: Contrary to what Mr. Aguirre says, he is no whistleblower. My 14 years of law enforcement experience taught me to appreciate how much the public is served by whistleblowers. The SEC's law enforcement efforts have been greatly enhanced by the actions of whistleblowers, and members of this Committee have been in the forefront of efforts to afford them appropriate protection. But Mr. Aguirre was not a long-term valued employee who came forward with reports of wrongdoing and was terminated for his efforts. No, Mr. Aguirre was a probationary employee who had trouble accepting supervision and who, rather than accepting honest differences in professional judgment, has fabricated fantastic tales in an effort to "explain" why his more experienced supervisors simply had a different view.

* Contrary to what Mr. Aguirre says, no one stopped an SEC investigation in which he was involved while he was at the Commission. In fact, that investigation continued a year after Mr. Aguirre's departure.
* Contrary to what Mr. Aguirre says, no one refused his request to take testimony of John Mack. In fact, Mr. Aguirre was told that his request to take testimony might make sense, but that he hadn't yet done enough investigating to obtain testimony that would be useful. Based on my 14 years of law enforcement experience, I believed then, as I believe now, that it would not have been in the best interests of the government to take Mr. Mack's testimony when Mr. Aguirre wanted, when we had not yet done the investigative homework necessary to make sure that the testimony would be successful from the government's point of view.
* Contrary to what Mr. Aguirre says, no one told him that the SEC staff was reluctant to take Mr. Mack's testimony because he had some "political influence." In fact, I told Mr. Aguirre exactly the opposite and pointed out to him some of the many powerful people, both in and out of government, that the Division of Enforcement had taken on.
* Contrary to what Mr. Aguirre says, Mr. Mack was accorded no special treatment when, in June 2005, lawyers for Morgan Stanley's board of directors called to see if Mr. Mack, who was under consideration to be hired as Morgan Stanley's chief

executive officer, had regulatory exposure. In fact, counsel was told the staff could give no assurance, one way or the other about Mr. Mack's exposure.
* Contrary to what Mr. Aguirre says, his employment was not terminated because he sought to take Mr. Mack's testimony. In fact, the SEC decided not to extend Mr. Aguirre's employment beyond his probationary period because Mr. Aguirre could not or would not accept reasonable supervision and direction and arrogated to himself power that is not supposed to be exercised by any single member of the SEC staff.
* Contrary to what Mr. Aguirre has insinuated, I did not support the decision of Mr. Aguirre's direct supervisors to delay Mr. Mack's testimony to curry favor with any potential employer. No potential employer with which I later dealt had any interest in the outcome of the investigation nor would I ever alter the course of an investigation to curry favor with anyone. It simply did not happen.

Background

I had the great privilege of serving for 14 years in the Enforcement Division of the Securities and Exchange Commission, starting as a staff attorney in 1992 and serving as Associate Director of Enforcement from 2000 until my departure in 2006.

I had senior responsibility for some of the SEC's most significant cases. These included the recent FannieMae enforcement case, which resulted in a $350 million civil penalty (at that time second only to WorldCom); the financial fraud case against Xerox (which resulted in what was then the largest civil penalty against a company in a financial fraud case); the AremisSoft financial fraud case (in which the SEC and the DOJ successfully froze assets in the Isle of Man and repatriated $200 million to the U.S.); cases involving the anti-bribery provisions of the federal securities laws such as the landmark case against Titan Corporation (which resulted in the largest civil penalty ever paid in such a case and seminal guidance to issuers of securities); executive compensation cases against General Electric and Tyson Foods; and auditor independence cases against KPMG, PricewaterhouseCoopers, and Ernst & Young. During my tenure I supervised investigations that resulted in major cases brought against, among others, Knight Securities, Merrill Lynch, NationsBank and Morgan Stanley.

I participated in literally scores of insider trading investigations, including the Deephaven Capitalcase, (which involved a hedge fund that traded improperly in PIPEs transactions); the Nalco,investigation against prominent Mexican nationals who paid over $4.7 million in disgorgement and penalties (the case also resulted in 2 criminal prosecutions); and the McDermott case against 3 individuals including the former Chairman and CEO of an investment bank (resulted in 3 criminal prosecutions).

I received several awards for my work in the Enforcement Division, notably the Chairman's Award for Excellence and the Commission's Stanley Sporkin Award for excellence in aggressive but fair enforcement activities.

Over the years, I received my share of criticism. In many times, and in many ways, I was told I was being unreasonably tough, that I didn't "understand" how business was done. I've been accused of "overreacting" to small problems by insisting that the Enforcement Division recommend enforcement actions for what defense lawyers deemed "understandable" transgressions. I've been told my investigations went too quickly or too slowly. I've been called names. But I've never been told I was too soft or too lenient, or that I didn't pursue my cases vigorously enough.

The culture of the SEC's Division of Enforcement is to conduct investigations aggressively, fairly, and within the bounds of the laws it is charged with enforcing. Congress and the SEC itself have given the enforcement staff considerable power. That power must be used wisely and judiciously. The American public expects and deserves nothing less. Senior members of the staff of the Division of Enforcement recognize that the power given to the staff is enormous and can, if used improperly, have a dramatically adverse effect on public companies, on the market place, and on the lives and careers of individuals.

Our power has legal limits as well. For example, the SEC has extremely broad powers to compel the production of books and records of companies and individuals on the basis of little more than official curiosity. But with that power comes stringent protections of individual privacy. The Right to Financial Privacy Act, to take one statute, limits the ability of the SEC to subpoena the financial records of companies and individuals without their knowledge. The Electronic Communications Privacy Act imposes similar restrictions on the SEC's power to conduct electronic searches, and the Privacy Act provides important procedural safeguards to protect the

privacy of individuals.
Supervisors at the SEC make every effort to train new staff to use their power in a measured way, always balancing the need to do our due diligence against what is fair and, most important, what is right. Every day at the SEC, in sitting down with my colleagues to discuss a matter, we would ask ourselves one overriding question, "Is this the right thing to do"? I always was careful, in every investigation, to question and consider whether the planned course of action was the right thing to do. I hope, during my 14 years, we made the right decision most of the time.
One of the many decisions that the Division of Enforcement made (well before Ijoined the SEC), was to create an organizational structure designed to ensure that mistakes were rare and that the staff was doing the right thing. While many people bristle over the multiple layers of supervision at the SEC -staff attorneys reporting to branch chiefs, who report to assistant directors, who report to associate directors, who report to the Director of Enforcement -that organizational and supervisory structure has served the SEC well for over 40 years. It works because instead of letting one person be responsible for the actions of the SEC, it places numerous, experienced people in an oversight position that demands that questions be constantly asked and re-asked. It works because it forces staff lawyers to evaluate and reevaluate their course of action, their development of the evidentiary record, and their investigative and legal strategy. And it works because it reins in those who think there are investigative shortcuts that avoid the necessity of sound, unglamorous, tedious, and painstaking investigative work.
Gary Aguirre
Mr. Aguirre came to work at the SEC in September 2004. Like every other new employee, he was hired subject to a one-year probationary period. That meant that, unless the SEC decided otherwise, Mr. Aguirre's employment was subject to termination during his first year at any time, for any lawful reason. At the end of a year's employment, Mr. Aguirre was subject to a business decision: either retain him in perpetuity, absent gross misconduct, or terminate his employment.
As a staff attorney, Mr. Aguirre was assigned a branch chief to whom he reported. That branch chief reported to an Assistant Director of Enforcement. The Assistant Director reported to me, as did three other Assistant Directors. I did not supervise Mr. Aguirre's work directly. At any one time, I had anywhere from 150-200 open investigations under my indirect supervision, plus approximately 40 cases being litigated. Though I did not supervise Mr. Aguirre, I soon heard about him. I heard that he was hard working and enthusiastic but that he did not take well to supervision. At some point in the fall of 2004, I learned that Mr. Aguirre had had a falling out with his branch chief, one of the more talented branch chiefs under my supervision. Apparently, Mr. Aguirre was unhappy with edits to a rather routine memorandum to the Commission on a relatively ministerial matter. Rather than accept his supervisor's edits to his prose, he accused the supervisor of withholding information from the Commission. I looked into it and was able to come up with language that satisfied everyone.
Shortly thereafter, Mr. Aguirre came to me with a proposal that, unlike all other staff attorneys, he be permitted to report directly to his Assistant Director, rather than report to a branch chief. I turned that down. Mr. Aguirre next came to me with a request that he be transferred to a group supervised by a different Assistant Director. He asked that he be assigned to work in a group supervised by Mark Kreitman, who had been his teacher in a securities law class. Initially I refused this request, because there were no openings in Mr. Kreitman's group. I also told Mr. Aguirre that, even though he appeared talented and had substantial experience in private practice, I was concerned about his apparent reluctance to accept supervision. I explained to him that, even though he had significant private experience, there was still much to learn about the SEC's

procedures and investigative techniques. Several weeks later, there was an opening in Mr. Kreitman's group, and I granted Mr. Aguirre's transfer request and hoped that the fresh start would signal an end to his apparent difficulty in working with others.

Mr. Aguirre's Allegations Are Baseless

Mr. Aguirre alleges that senior officials of the Division of Enforcement, including me, halted an insider trading investigation involving Pequot Capital Management when he sought to take testimony from John Mack. Mr. Mack is now Chief Executive Officer of Morgan Stanley and had previously served in a similar position at Credit Suisse First Boston. According to Mr. Aguirre, his plan to take Mr. Mack's testimony had met with the enthusiastic support of his supervisors until, in June 2005, the press reported that Mr. Mack was under consideration for the Morgan Stanleyjob. Thereafter, according to Mr. Aguirre, his supervisors did an about face. He claims that Robert Hanson, his branch chief, told him that getting a subpoena involving Mr. Mack would be difficult because of Mr. Mack's political influence. According to Mr. Aguirre, the investigation was shut down. When he pressed the issue, he says, he was fired. And when he complained, he says, to the Chairmnan of the SEC and all the Commissioners, he was ignored. That would be quite an alarming story -if it had a shred of evidence to support it. Mr. Aguirre has come forward with no evidence -none -that Mr. Mack or anyone else used any sort of influence to stop this investigation. He has relied instead on falsehoods, innuendo, and smears. Here is what they are, and here are the answers.

1 Mr. Aguirre says that the investigation was stopped when it became clear that Mr. Mack was under consideration to be CEO of Morgan Stanley. This is false. The investigation was not stopped at all. In fact, in the months before Mr. Aguirre left, we added two additional staff lawyers to the case, in large part because of concerns about Mr. Aguirre's reliability. Public reports indicate that the investigation continued for a year after Mr. Aguirre left the SEC.

2 As I mentioned earlier, it is true, as discussed below, that Mr. Aguirre's supervisors, including myself, declined to authorize the issuance of a subpoena for Mr. Mack's testimony. But Mr. Aguirre fails to point out that he was told that he was not given the authority to subpoena Mr. Mack at that time for the very reason that it was imperative to do more investigating to increase the,odds that Mr. Mack's testimony would be fruitful. In other words, far from telling Mr. Aguirre to abandon the Pequot investigation, he was told to continue it and not to take shortcuts.

To explain, in insider trading cases, where the investigation starts relatively contemporaneously with the trades in question, it may be useful to get witnesses under oath quickly, before they have a chance to consider their stories and before they can rely on faded memories to justify foggy accounts of the events in question. But where, as in the Pequot investigation, the trades in question are months and years in the past, testimony of witnesses is most useful after reviewing all the documents in question, including phone records and emails. In that situation, to take one example, if investigators ask Mr. X if he spoke to Ms. Y on date Z, Mr. X is almost certain to say that he does not recall. When the question to Mr. X is "why did you speak to Ms. Y seven times between 11I and 2 on August 5, 2005," "I can't remember" is a much harder answer to give with any credibility.

I have been asked what would have been the harm in taking Mr. Mack's testimony when Mr. Aguirre wanted. Taking testimony at the right time serves to speed up the efficient resolution of a case. Taking it too soon means that it will have to be taken twice -at least. As Mr. Aguirre has stated publicly, in the few months he worked on the Pequot investigation he took testimony from some witnesses multiple times. Mr. Aguirre also has stated that he issued over 100 subpoenas in

the few months he worked on the Pequot investigation. I was very upset when I learned this; this was several multiples of the number of subpoenas one would ordinarily see in an investigation of comparable scope to the Pequot investigation. Our investigations need to be efficient. And bombarding private citizens and companies with multiple information requests undermines public confidence in our processes.

At what stage of an investigation witness testimony is most fruitful is a matter of investigative judgment. Reasonable persons can disagree. Since this was Mr. Aguirre's first SEC investigation of any sort, much less insider trading investigation, I had no problem relying on the judgment of Mr. Aguirre's direct supervisors, who were far more experienced, particularly since it was consistent with my own experience from being directly involved in approximately 100 insider trading investigations. Mr. Aguirre's direct supervisors -Mr. Kreitman and Mr. Hanson -were very experienced and very able. They are dedicated public servants and extremely aggressive and effective investigators.

3. Mr. Aguirre alleges that the SEC Enforcement staff did not take Mr. Mack's testimony because Mr. Mack had some power or influence over the SEC. As he put it in his prior testimony, his superiors at the SEC threw "a roadblock" in front of his investigation because of Mr. Mack's "powerful political connections." To this day, I have no idea what Mr. Aguirre is talking about; I have no knowledge of Mr. Mack's political connections, powerful or otherwise. Until I read in the press that Mr. Mack was a donor to the Republican Party, I had no idea whether Mr. Mack was a Republican or a Democrat. I cannot fathom to this moment how Mr. Aguirre thinks Mr. Mack might have exercised his "powerful political connections."

I do know that the staff of the Enforcement Division is totally and completely non¬political. In all my years of government service, no one ever asked me if I was a Republican or Democrat. We did not bring or fail to bring cases based on people's political connections or affiliations. As for Mr. Mack's alleged Republican connections, I note that during my tenure at the SEC, it was publicly reported that the Enforcement Division vigorously investigated cases involving the then Governor of Texas, the Vice-President of the United States, and the Majority Leader of the Senate, all Republicans.

I explained all this to Mr. Aguirre when he complained to me about his supervisors' unwillingness to authorize a subpoena for Mr. Mack's testimony at the time Mr. Aguirre wanted it. His complaint was not that Mr. Mack had influenced anyone not to take his testimony but that on the judgment of Mr. Aguirre's direct supervisors, who were far more experienced, particularly since it was consistent with my own experience from being directly involved in approximately 100 insider trading investigations. Mr. Aguirre's direct supervisors -Mr. Kreitman and Mr. Hanson -were very experienced and very able. They are dedicated public servants and extremely aggressive and effective investigators.

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I explained all this to Mr. Aguirre when he complained to me about his super-visors' unwillingness to authorize a subpoena for Mr. Mack's testimony at the time Mr. Aguirre wanted it. His complaint was not that Mr. Mack had influenced anyone not to take his testimony but that we were afraid to do it. I explained to him that this could not be further from the truth, that the Commission had a history of investigating cases on their merits, without regard to the identity of potential subjects of the investigation. At the time, Mr. Aguirre seemed satisfied with our conversations, and his later allegations surprised me.

4. When he testified before this Committee on June 28 of this year, Mr. Aguirre seriously distorted a conversation he heard on the speakerphone between Mr. Kreitman and me in June 2005. Mr. Kreitman called me to tell me about a request from the head of compliance at Morgan Stanley that we tell him whether Mr. Mack had a serious problem, because Morgan Stanley was thinking of hiring Mr. Mack to be its chief executive officer. Mr. Kreitman called me on my cell phone to ask my views and said we should consider telling Morgan Stanley we were serious about Mr. Mack. This much is essentially accurate.

Mr. Aguirre further testified that I abruptly interrupted Mr. Kreitman and said, "I don't think we are," -meaning, serious about Mr. Mack -and "we shouldn't say anything." Mr. Aguirre said that he was surprised about my comments, because I was not fully up to date with the progress of the investigation. After that, Mr. Aguirre testified, the attitudes of his supervisors changed.

Mr. Aguirre is correct that I answered abruptly. I was speaking from a mobile phone on the street outside my doctor's office. It was not my practice to discuss sensitive SEC matters over unsecured wireless lines, much less in a public place. Mr. Aguirre is also correct that I believed we should be extremely circumspect about what we told Morgan Stanley about the investigation. It is SEC policy that it does not intrude into private business decisions, nor should individual staff members give their opinions about the likely outcome of investigations in progress. That was particularly the case where Morgan Stanley was not a party to the investigation, and Mr. Mack was not even a Morgan Stanley employee. If we were to give an opinion to Morgan Stanley about the probable outcome of an ongoing investigation, we would run a substantial risk of, depending on the ultimate outcome of the investigation, either damaging the career of a person we later concluded was innocent of any wrongdoing or causing a regulated entity to employ as its chief executive officer someone who we later concluded was complicit in serious wrongdoing. Either outcome would have been unfortunate and inappropriate.

Mr. Aguirre distorted the truth by testifying that I said we were not "serious" about Mr. Mack. I did not in any way indicate a view on the merits of the investigation as it related to Mr. Mack. I don't make those statements casually; I don't make them without weighing the evidence; and I certainly don't make them on the streets of Washington. And that was the very point I was making: we were in no position in the middle of an investigation to give opinions on its likely outcome. To the extent Mr. Aguirre testified that I indicated a view on the merits, and that the view was that evidence indicated that Mr. Mack could not be complicit in any wrongdoing, that testimony is false.

I returned the call to Morgan Stanley's head of compliance. I told him we could not tell him anything about the progress of the investigation. He asked if there was anything they could do to

help us reach a resolution. I told him I would let him know if it turned out there was. That was the end of it.

5. Mr. Aguirre alleges that his employment was terminated because he wanted to take Mr. Mack's testimony. This is simply untrue. Mr. Aguirre testified that this must be the case because the Enforcement staff had no other reason to decline to extend his employment beyond the one-year probationary period. Sad to say, Mr. Aguirre is not the first employee to be blind to his own shortcomings.

As I previously noted, when I accommodated Mr. Aguirre's request to transfer to Mr. Kreitman's group, I raised with him my concerns about his willingness to tolerate supervision. These concerns did not abate following Mr. Aguirre's transfer. While Mr. Aguirre's super-visors praised his talent and his appetite for hard work, they complained that he was unwilling to comply with Commission procedures.

For example, Mr. Aguirre's supervisors discovered that he had issued two subpoenas on his own that did not comply with applicable privacy laws. While we were able to cure the matter quickly by canceling the subpoenas and issuing appropriate ones, we took the matter seriously. As a law enforcement agency, it is imperative that the SEC itself complies with the laws enacted by the Congress. Though no harm was done, Mr. Aguirre's refusal to act within the system could have had significant repercussions.

It also came to my attention that Mr. Aguirre was on occasion abusive and hostile with private counsel; I heard of episodes in which Mr. Aguirre made demands on counsel that were inconsistent with SEC policy, in which he shouted in testimony, and hung up on counsel in the midst of telephone calls. That type of behavior might be common practice on the part of private litigants, but it has no place with those representing the government of the United States. Again, Mr. Aguirre's propensity for going it alone raised doubts about his capacity to function within an organization.

During the late spring and summer of 2005, the complaints from Mr. Aguirre's supervisors about his conduct became more frequent. I was told that when they disagreed with him, at times, he flew into a rage. Several times, I was told, he simply left the premises for a day after a discussion with his supervisor about a professional matter. At one point, I learned that Mr. Aguirre purported to resign and then rescinded his resignation shortly thereafter. In the summer of 2005, he did it again, this time submitting his resignation to me, and again changing his mind a few days later. I became concerned about Mr. Aguirre's reliability and assigned additional attorneys to the Pequot investigation to ensure continuity in the event Mr. Aguirre resigned again. I heard from Mr. Kreitman or Mr. Hanson that Mr. Aguirre was unwilling to work collegially with the new members of the Pequot team. One of them -in my opinion one of the best junior lawyers in the group -balked at continuing to work with Mr. Aguirre.

Also during the summer of 2005, Mr. Aguirre's supervisors showed me a draft work evaluation for the period running through the end of April 2005. The evaluation praised Mr. Aguirre's diligence and recommended that he receive a two-step pay raise. I had no problem with the evaluation. I had little first-hand familiarity with Mr. Aguirre's work, and his supervisors had told me that he was talented and hard working. I certainly had no problem with the pay raise. I believed that many of our Enforcement staff members were underpaid and that hard work and dedication should be rewarded.

I noted, though, that the draft evaluation did not contain any constructive criticism. In light of the complaints I had gotten from Mr. Kreitman and Mr. Hanson about Mr. Aguirre' s conduct, I raised with them whether they wanted to include any such criticism. They pointed out that the

evaluation draft concerned Mr. Aguirre's conduct through April 2005, and their concerns had gotten much more acute since then. I left the decision to them, because they were the ones with the experience working with Mr. Aguirre. They decided that, to be fair to Mr. Aguirre, they should include some constructive criticism. They showed me those comments and told me that they had relayed their substance to Mr. Aguirre. I believed that these statements were included in Mr. Aguirre's personnel file. In September 2005, after Mr. Aguirre's employment was terminated, it turned out that they had not been, apparently as a matter of inadvertence.

Shortly after Mr. Aguirre's evaluation was completed, he was awarded a two-step increase at a meeting at which senior staff of the Enforcement Division reviewed proposed compensation for literally hundreds of lawyers, accountants, and support staff. I do not remember the discussion of Mr. Aguirre, which must have been brief. As noted, I was comfortable with the recommendation that he get a two-step increase, which was typical, principally as a reward for his hard work. Later, when it came time to decide whether Mr. Aguirre should, in effect, be given a tenured position at the SEC or whether we should decline to extend his employment beyond his probationary period, we decided to terminate his employment for the reasons I have just indicated. Perhaps we were too generous in our earlier evaluation of Mr. Aguirre. Perhaps we should have been more critical of his performance almost from the outset. These are fair comments. But it is grossly inaccurate to suggest that the criticisms that did emerge were pretexts, much less that they were an after-the-fact rationalization for an improperly motivated decision to termninate Mr. Aguirre.

6. Mr. Aguirre has alleged, and it has been reported in the press, that my employment at my law firm was some sort of payoff for my role in derailing Mr. Mack's testimony. This is a complete fabrication. Again, Mr. Aguirre offers no evidence here, just innuendo. The allegation is deeply offensive, not only to me but to my colleagues in the government and now in private practice. It is also nonsensical on its face. So far as I know, there is no evidence from any source that the firm tried to derail any testimony from Mr. Mack or anyone else. I believe the record is quite clear that the firm was retained by the board of directors of Morgan Stanley to perform due diligence on whether to hire Mr. Mack. It contacted the SEC only to determine whether he had any risk from the Pequot investigation and whether, as a result, there was any risk to Morgan Stanley in hiring him. From what I understand, the firm's representation of the Morgan Stanley board of directors lasted for exactly six days in June 2005 and at no time involved advocating any position concerning Mr. Mack or seeking any action on his behalf. The firmn played absolutely no role in connection with Mr. Mack or the Pequot matter thereafter. It is a leap without any foundation in fact to jump from this evidence of extremely limited involvement of the firmn for purposes of seeking information to a conclusion that the firm in any way sought to influence the outcome of the investigation.

The record is clear that I absolutely did not give the firmn the information it sought. I was never contacted by the firm on this matter, and as indicated previously, my only involvement was to deny a request from Morgan Stanley that we provide it an assessment of the risk to Mr. Mack. I understand that the SEC staff provided no informnation to the firmn on the probable outcome of the investigation and was not at all reassuring; indeed, I'm told that the staff said that it was simply too early in the investigation to draw any conclusions.

As for my employment with the firm, my first contact with the firm was in January 2006, nearly six months after Mr. Aguirre's employment was terminated. At no point during any of the numerous discussions I had with partners of the firm about the prospect ofjoining them was there any discussion of Mr. Mack, Morgan Stanley or the Pequot matter. It never came up and was

completely irrelevant to the hiring process.

I did know in September 2005 that a colleague of mine was interviewing at the firm. Before he went, he told me that it would be great if we could practice together and that he would like to mention to the firm that I might be interested in leaving the Commission. I told him that hie could do that but that no firm would be interested in two partners from the government with no book of business. After I did so, I checked with the SEC's Ethics Office to confirmn whether this contact would be sufficient to cause me to recuse myself from the firm's cases before the SEC. I was told that no recusal was necessary. As I predicted, the firm expressed no interest and I had no contact whatsoever with the firm until January 2006 -seven months after the firm ceased playing any role in connection with Morgan Stanley's decision to hire Mr. Mack.

Mr. Chairmnan, I thank you again for the opportunity to set the record straight. For fourteen years, I gave everything I had to further the mission of the Securities and Exchange Commission to protect our Nation's investors. I had the privilege of working with colleagues of enormnous talent and dedication. Every day, they take the Commission' s "crown jewel" and through their hard work, skills, decency, and honor, they add to its luster.

I would be pleased to answer any questions.