

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO FATHER ROBERT DRINAN

Mr. DURBIN. Mr. President, last October, my alma mater, Georgetown Law Center, established an endowed chair in human rights in honor of Father Robert Drinan. At the ceremony, Yale Law School Dean Harold Koh called Robert Drinan "a father in more senses than one." Dean Koh said:

He is the father of a remarkable revolution—a human rights revolution—a person of simple, radical faith.

Sunday night, at the age of 86, Robert Drinan died. The world has lost a courageous champion for justice, human rights, and human dignity.

I just missed Father Drinan. I graduated from Georgetown Law before he joined the faculty, and he left Congress before I arrived. So I never had the chance to study and work with him directly. But like a lot of others, I was inspired and challenged by him.

Georgetown University estimates that Father Drinan taught 6,000 students in a teaching career that stretched over more than five decades. But those are just the students who enrolled in his classes at Boston College and, later, at Georgetown. In fact, he taught a lot of people. He taught all of us about the responsibility each of us has to speak out for the voiceless and the oppressed, not just to speak, but to work for justice.

In the 1960s, as dean of Boston College Law School, Father Drinan showed courage by calling for the desegregation of Boston's public schools. He challenged his students at the law school to become active in the civil rights movement.

In 1970, the people of Boston's western suburbs elected Father Drinan to represent them in Congress, making him the first Catholic priest ever to serve as a voting Member of Congress. He ran as a strong opponent of the Vietnam war. He was the first Member of Congress to call for the impeachment of Richard Nixon, but not over Watergate, rather over the undeclared war against Cambodia. He fought to make human rights the cornerstone of American foreign policy and to establish a bureau for human rights within the U.S. State Department. He fought against government abuses of power and led a successful battle to finally abolish the House Internal Security Committee, formerly the Un-American Activities Committee, which we recall was responsible for so many unjust findings by this Congress, ruining the private lives of so many American citizens.

In 1975, he became the first American to receive his own CIA and FBI files under the Freedom of Information Act. With Congressman Frank Church and others, he worked to safeguard our right to privacy.

Father Drinan was elected to five terms in Congress, each time by larger

margins. Finally, in his last race in 1978, he didn't have an opponent. He would have been reelected again in 1980, but he was forced to step down when Pope John Paul II barred Catholic priests from holding elective office. Father Drinan left office, but he never left the struggle. He continued to work and speak out for justice until the day he died.

In 1981, he took a post at Georgetown Law Center where he taught human rights, civil liberties, and government ethics. He taught his students that the central commandment of the Bible is that "the people of God must be devoted to justice in every way." He taught that it is a sin that 31,000 children die of starvation every day in this world. He urged his students, all of us: "Sharpen your anger at injustice." Use the talents God gave you to make this world better.

Two months ago Father Drinan told a reporter that he hadn't given any thought to retiring; there was just too much left to do. And, he said, "Jesuits don't ordinarily retire. We just do what you do."

Earlier this month Father Drinan was called on for a particularly symbolic ceremony. He celebrated Mass for Speaker NANCY PELOSI at her alma mater in Washington, Trinity College. It was a special mass in honor of "the children of Darfur and Katrina."

Father Drinan spoke to our conscience. He spoke for the overlooked and underpaid, for those who were too poor or too weak to speak for themselves. He spoke out in passionate defense of the great moral and political values of our Nation.

In his lifetime he received many awards. Last May he received Congress's Distinguished Service Award for his service in the House. The American Bar Association honored him with the ABA medal for his work on behalf of human rights. He was a founder of the Lawyers Alliance for Nuclear Arms Control; president of Americans for Democratic Action; a member of the national board of Common Cause, People for the American Way, the Lawyers' Committee for Human Rights, the National Interreligious Task force on Soviet Jewry, the American Civil Liberties Union, and the NAACP Legal Defense Fund.

He received 22 honorary degrees from colleges and universities. One of those degrees, given to him by Villanova University in 1977, hung on the wall of his office in the House of Representatives. It read:

Your life's work has provided proof that service to God and country are not inimical.

How true.

In his sermon on the mount, Jesus told us:

Blessed are they who hunger and thirst after justice: for they shall have their fill.

Robert Drinan is, indeed, blessed, and we were blessed to have him serving America for so many years. Those of us who admired him and loved him were saddened by his death. But we take

comfort in knowing that just as his influence in Congress has lasted beyond those 10 years of service, Robert Drinan's influence on this world will continue to be felt long after we are all gone.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SEC INVESTIGATION FINDINGS

Mr. GRASSLEY. Mr. President, I am very happy to be on the floor with my colleague Senator SPECTER on something we have worked on together over a long period of time, and it falls very much into the category of congressional oversight. I am not going to go into the details now because I have a statement I want to use as a basis for our cooperation, and then you will hear from Senator SPECTER. I want to say how great it was to work with Senator SPECTER.

We are here to update the Senate on the interim Finance Committee findings of the joint investigation into the Securities and Exchange Commission that was conducted by the Finance Committee on the one hand, and the Judiciary Committee on the other, during the 109th Congress.

Before I go into details, there is another person I would thank for his cooperation. I want to take this opportunity to thank Securities and Exchange Commission Chairman Christopher Cox for his cooperation in providing access to thousands of pages of documents, as well as interviews with the staff at the Securities and Exchange Commission. Chairman Cox's cooperation was very essential to our ability to conduct our constitutionally mandated oversight of Federal agencies.

That said, I hope Chairman Cox takes today's findings to heart and will work to implement recommendations Senator SPECTER and I plan to put forth into the forthcoming final report.

Today, we want to update the Senate on some of the details of our investigation, which began early last year when allegations were presented to our staffs by former Securities and Exchange Commission attorney Gary Aguirre. Mr. Aguirre described the roadblocks he faced in pursuing an insider trading investigation while he was employed as a senior enforcement attorney at the Securities and Exchange Commission. Specifically, he alleged his supervisor prevented him from taking the testimony of a prominent Wall Street figure because of his "political clout," which obviously should not be ignored if an agency is doing the job they should be doing.

Well, after Mr. Aguirre complained about that sort of preferential treatment given to somebody with "political clout," his supervisors terminated him from the SEC while he was on vacation.

The interim findings we released today outlined the three primary concerns shared by Senator SPECTER and me. First, the SEC's investigation into Pequot Capital Management was plagued with problems from its beginning to its abrupt conclusion. Second, the termination of Mr. Aguirre by the SEC was highly suspect given the timing and the circumstances. Thirdly, the original investigation conducted by the SEC Office of Inspector General was both seriously and fatally flawed. The inspector general's failure required our committees to take a more thorough look at Mr. Aguirre's allegations and examine this matter closely. Taken together, these findings paint a picture of a troubled agency that faces serious questions about public confidence, the integrity of its investigations, and its ability to protect all investors, large and small, with an even hand.

The SEC should have taken Mr. Aguirre's allegations more seriously and very seriously. Instead, it does like too many agencies do when under fire: it circled the wagons and it shot a whistleblower—an all too familiar practice in Washington, DC. As we know, whistleblowers are about as welcome as a skunk at a picnic.

There is more information to follow and more details that need to come to light. Senator SPECTER and I together plan on releasing a comprehensive report in the near future. For now, I hope these interim findings will spur the SEC to consider meaningful reforms. I urge all my colleagues to read these important interim findings and to read the final report when it is made available.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I would like to begin by thanking my distinguished colleague, Senator GRASSLEY, for his outstanding work on the issues which he has just addressed. Senator GRASSLEY and I have a long record of working together. We were elected together in November 1980 with the election of Ronald Reagan. There were 16 members of the incoming class of Republican Senators at that time. Two Democrats were elected.

In the intervening years, Senator GRASSLEY and I have become the sole survivors, and we have done a great deal of work together.

We sit together on the Judiciary Committee, and Senator GRASSLEY has had a very distinguished record as chairman of the Senate Finance Committee during the 109th Congress, and I chaired the Judiciary Committee during the 109th Congress. We are making a presentation today of interim findings on the investigation into potential abuse of authority at the Securities and Exchange Commission.

I join Senator GRASSLEY in commending the Chairman of the SEC, Christopher Cox, for his cooperation, and I also join Senator GRASSLEY in urging Chairman Cox and the SEC to do more. The oversight which our two committees undertook constituted a review of over 9,000 pages of documents and the interviewing of 19 witnesses over the course of 24 interviews.

The Judiciary Committee, on which we both serve, held a series of three public hearings regarding this matter, most recently on December 5, 2006, when the committee heard detailed sworn testimony from current and former SEC employees involved in the so-called Pequot investigation.

Based upon our review of the evidence, we have serious concerns, which are documented in a lengthy report, which we will make a part of the record, plus supplemental documents. Our investigation has raised concerns about, first, the SEC's mishandling of the Pequot investigation before, during, and after the firing of Mr. Gary Aguirre; secondly, the circumstances under which Mr. Aguirre was terminated; and third, the manner in which the SEC's Inspector General's Office handled Mr. Aguirre's allegations after he was fired.

Viewing these concerns as a whole, we believe a very troubling picture evolves. At best, the picture shows extraordinarily lax enforcement by the SEC, and it may even indicate a cover-up by the SEC. We are concerned, first of all, as detailed in this report, that the SEC failed to act on the GE/Heller trades for years. We are concerned about the suggestions of political power which was present in the investigation, which has all of the earmarks of a possible obstruction of justice.

There is sworn testimony by Mr. Gary Aguirre that he was told in a face-to-face meeting with his immediate supervisor, Branch Chief Robert Hanson, that he could not take the testimony of Mr. John Mack, who was thought to have leaked confidential information. Mr. Aguirre testified that Mr. Hanson refused to allow the taking of testimony, as Mr. Aguirre pointed out, because of Mr. Mack's "powerful political contacts."

Now, Mr. Hanson denied to the SEC inspector general and to the committee that he ever said that, but we have contemporaneous e-mails, for example, where Mr. Hanson admitted to a very similar statement when he wrote to Mr. Aguirre on August 24, 2005, "Most importantly, the political clout I mentioned to you was a reason to keep Paul," referring to a man named Paul Berger, "and possibly Linda," referring to a woman named Linda Thomsen, "in the loop on the testimony." Now, that is conclusive proof of the political clout or at least what Mr. Hanson thought was political clout when the SEC made a decision not to permit the taking of key testimony, the testimony of Mr. MACK.

Mr. Hanson submitted a written statement to the committee con-

cluding that it was "highly suspect and illogical" to link Mr. MACK as the tipper, but in his prior writings he said, in written form, "Mack is another bad guy."

The rationale used by the SEC officials who denied Mr. Aguirre's request to take the testimony of Mr. MACK was that they wanted to get "their ducks in a row." But the overwhelming evidence in the matter showed that the testimony should have been taken at a much earlier stage. There is no problem with taking testimony again if necessary at a later stage.

A key SEC investigator, Mr. Hilton Foster, with knowledge of the Pequot matter, said, "As the SEC expert on insider trading, if people had asked me, 'When do you take his testimony,' I would have said take it yesterday."

Mr. Joseph Cella, Chief of the SEC's Market Surveillance Commission, told committee investigators, "it seemed to me that it was a reasonable thing to do to bring Mack in and have him testify," and "in my mind there was no down side."

Mr. MACK's testimony was taken 5 days after the statute of limitations expired. But let me point out at this juncture that even though the statute of limitations has expired, there is injunctive relief and other action that can yet be taken by the SEC.

The problems with the Pequot investigation are amplified by the suspect termination of Mr. Aguirre. On June 1, 2005, in a performance plan and evaluation, Mr. Aguirre was given an acceptable rating, and Mr. Hanson, on June 29, 2005, noted Mr. Aguirre's "unmatched dedication" to the Pequot investigation and "contributions of high quality." These evaluations were submitted to the SEC's Compensation Committee, which later approved Mr. Hanson's recommendation on July 18. Despite these favorable reviews, Aguirre's supervisors wrote a so-called supplemental evaluation on August 1, and this reevaluation on August 1 occurred 5 days after Mr. Aguirre sent supervisor Berger an e-mail saying that he believed the Pequot investigation was being halted because of Mr. MACK's political power.

There was an investigation by the inspector general of the SEC, and in my years in the Senate and hearing many inspectors general testify, I can't recall hearing an inspector general who said less, did less, and was more thoroughly inadequate in the investigation. For example, the inspector general's staff said, "we don't second guess management's decisions. We don't second guess why employees are terminated." Well, that is precisely the purpose of having an inspector general. The purpose of having an inspector general is to review those kinds of decisions.

The inspector general testified that he was given advice by the Department of Justice, which made absolutely no sense. This appears in some detail in the record.

Then the inspector general initiated an attempt to take what was really punitive action against Mr. Aguirre by seeking enforcement of a subpoena for documents which were involving Mr. Aguirre's communications with Congress. Now, how can an individual communicate, talk to an oversight committee, such as the Judiciary Committee or the Finance Committee, if those communications are going to be subject to a subpoena by the SEC, by the inspector general? It is just preposterous. We have constitutional oversight responsibilities, and we obviously cannot conduct those responsibilities if the information we glean is going to be subject to somebody else's review.

The subpoena wasn't pursued, but the lack of judgment—and it is hard to find a strong enough word which is not insensitive to describe the inspector general's conduct in trying to subpoena the records of the Senate Judiciary Committee and the Senate Finance Committee. It just made absolutely no sense.

We hope that the SEC will reopen its investigation even though the statute of limitations has run on criminal penalties. It has run because of the inaction of the SEC waiting so long to start the investigation, then not taking Mr. MACK's testimony until 5 days after the statute of limitations had expired. Notwithstanding that, there are other remedies, such as disgorgement, which still may be pursued.

The oversight function of Congress, as we all know, is very important. Pursuing an investigation of this sort is highly technical, but we have done so, so far, in a preliminary manner. We believe this matter is of sufficient importance so that Senator GRASSLEY and I have come to the floor jointly today to make a statement.

On behalf of Senator GRASSLEY and myself, I ask unanimous consent that the full text of the interim findings on the investigation of potential abuse of authority of the Securities and Exchange Commission be printed in the RECORD, together with extensive documentation which supports the findings.

Again, we acknowledge the cooperation of Chairman Cox and the SEC, and we ask that further investigation be undertaken there. It is a matter of continuing oversight concern to Senator GRASSLEY and myself and the respective committees where we now serve as ranking members.

Mr. President, I ask Senator GRASSLEY, what did I leave out?

Mr. GRASSLEY. You didn't leave anything out, but we did ask unanimous consent that this be put in.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SPECTER-GRASSLEY INTERIM FINDINGS ON THE INVESTIGATION INTO POTENTIAL ABUSE OF AUTHORITY AT THE SECURITIES AND EXCHANGE COMMISSION

OVERVIEW

These findings follow the Judiciary Committee's December 5, 2006, hearing that ex-

amined allegations that the Securities and Exchange Commission (SEC) abused its authority in handling its now-closed investigation of suspicious trading by the hedge fund Pequot Capital Management ("Pequot" or "PCM"). We submit these preliminary findings based upon the evidence received by both Committees to date because we believe it is important to share with the full Senate.

Between July 2006 and the end of the 109th Congress, the Senate Judiciary and Finance Committees conducted a joint investigation into allegations raised by former SEC employee Gary Aguirre. Mr. Aguirre contends that his efforts to investigate potentially massive insider trading violations by Pequot were thwarted by his superiors when his investigation increasingly focused on current Morgan Stanley Chief Executive Officer John Mack. Mr. Aguirre also alleges that his insistence on taking Mr. Mack's testimony met resistance within the SEC and ultimately led to his firing. In addressing these allegations, we have focused on the internal processes of the SEC. We have not attempted to decide the merits of the underlying Pequot insider trading investigation and, at this juncture, take no position on whether Pequot or Mack violated any securities laws.

To date, Committee investigators have received and reviewed over 9,000 pages of documents and interviewed nineteen (19) key witnesses over the course of twenty-four (24) interviews. The Judiciary Committee also held a series of three (3) public hearings regarding this matter—most recently on December 5—when the Committee heard detailed sworn testimony from current and former SEC employees involved in the Pequot investigation.

Based on our review of this evidence we have serious concerns. As discussed further below, our primary concerns involve: (1) the SEC's mishandling of the Pequot investigation before, during, and after Aguirre's firing; (2) the circumstances under which Aguirre was terminated; and (3) the manner in which the SEC's Inspector General's office handled Aguirre's allegations after he was fired. Viewing these concerns as a whole, we believe a troubling picture emerges. At best the picture shows extraordinarily lax enforcement by the SEC. At worse, the picture is colored with overtones of a possible cover-up. Either way, we believe the SEC must take corrective and preventative action to ensure that future investigations, internal and external, do not follow the same path as the Pequot matter.

FINDINGS

THE SEC'S INVESTIGATION OF PEQUOT WAS PLAGUED WITH PROBLEMS

The SEC Failed To Act on the GE/Heller Trades for Years

The alleged insider trading occurred in July 2001 when Pequot CEO Arthur Samberg began purchasing large quantities of Heller Financial stock while also shorting General Electric ("GE") stock a few weeks before the public announcement that GE would purchase Heller. On January 30, 2002, the NYSE "highlighted" some of these trades for the SEC as a matter that warranted further scrutiny and surveillance. But it appears that the SEC did next to nothing to investigate these trades until after Aguirre joined the Commission over 2 years later on September 7, 2004. In fact, it is clear to us that Aguirre was the driving force behind the investigation of the GE-Heller trades that had otherwise remained dormant at SEC since 2002.

The Circumstances Surrounding the Investigation of John Mack as the Potential Tipper Are Highly Suspect

The evidence shows that Aguirre's immediate supervisors, Branch Chief Robert Han-

son and Assistant Director Mark Kreitman, initially were enthusiastic about investigating Pequot and Mr. Mack as the possible supplier of inside information to Pequot. Indeed, after Aguirre developed a plausible theory connecting Mack to the trades, Hanson wrote on June 3, 2005, in an email that "Mack is another bad guy (in my view)" (Attachment 1). And on June 14, 2005 Aguirre's supervisors Hanson and Kreitman authorized him to speak with federal prosecutors concerning the trades. Six days later on June 20, 2005, in response to a more comprehensive analysis of his theory regarding Mack, Hanson wrote: "Okay Gary you've given me the bug. I'm starting to think about the case during my non work hours" (Attachment 2).

What is troubling is how this enthusiasm waned after public reports on June 23, 2005, that Morgan Stanley was considering hiring Mack as its new CEO. Specifically, we are concerned about the circumstances leading to the decision by Aguirre's supervisors to delay taking Mack's testimony. The Judiciary Committee received sworn testimony from Aguirre that he was told in a face-to-face meeting with his immediate supervisor, Hanson, that he could not take Mack's testimony because of his "powerful political contacts." While Hanson denied to the SEC/IG and to the Committees that he ever said that, we question his denial because of conflicting contemporaneous emails. For example, Hanson admitted to a very similar statement when he wrote to Aguirre on August 24, 2005, "Most importantly the political clout I mentioned to you was a reason to keep Paul [Berger] and possibly Linda [Thomsen] in the loop on the testimony" (Attachment 3, emphasis added). He also used the term "juice" when referring to Mack's attorneys (Attachment 4). Another witness testified before the Judiciary Committee that Hanson referred to Mack's "prominence" as a reason for not taking his testimony (Attachment 5).

To be sure, Hanson's supervisor, Mark Kreitman, also referred to John Mack's "prominence." Speaking about former U.S. Attorney Mary Jo White's contact with SEC Enforcement Director Linda Thomsen regarding the Pequot investigation, Kreitman told the Inspector General's Office, "White is very prestigious and it isn't uncommon for someone prominent to have someone intervene on their behalf" (Attachment 6). Kreitman's supervisor, Associate Director Paul Berger, also brought up the issue of prominence, when asked whether he could remember examples of witnesses other than John Mack for whom he required a staff attorney to prepare a memorandum to justify the taking of investigative testimony (Attachment 7).

We also have reason to question Hanson's credibility given certain inconsistent statements that he gave to the Judiciary Committee during its December hearing. Specifically, we find it difficult to reconcile Hanson's submitted written statement to the Committee concluding that it was "highly suspect and illogical" to link Mack as the tipper with his prior writings that "Mack is another bad guy (in my view)" (Attachment 8). Moreover, it bears noting that despite Hanson's statement that Aguirre's theory was "highly suspect and illogical" the SEC ultimately took Mack's testimony on August 1, 2006. Furthermore, we are troubled by Hanson's failure to recall a key investment that Mack entered into with the help of Pequot prior to his alleged passing of inside information to Pequot CEO Samberg regarding the GE-Heller transaction. Hanson's failure to recall this transaction at the hearing raises doubt as to whether Aguirre's theory regarding Mack was ever taken seriously by his supervisors at the SEC.

Moreover, we question the rationale advanced by Aguirre's supervisors in not taking Mack's testimony: to get "their ducks in a row." While reasonable minds may disagree on an appropriate investigative strategy, the SEC's rationale for delaying the taking of Mack's testimony runs contrary to what insider trading experts have told us and contrary to what others within the SEC believed at the time. According to Mr. Hilton Foster, an experienced former SEC investigator with knowledge of the Pequot matter: "as the SEC expert on insider trading, if people had asked me, 'when do you take his testimony,' I would have said take it yesterday." In addition, Joseph Cella, Chief of the SEC's Market Surveillance Division, told Committee investigators, "it seemed to me that it was a reasonable thing to do to bring Mack in and have him testify," and "in my mind there was no down side[.]"

The explanation offered by Aguirre's supervisors that without direct evidence that Mack had knowledge of the GE transaction—what Aguirre's supervisors referred to as proving Mack went "over the wall" (Attachment 3)—the deposition would consist simply of a denial by Mack is not at all convincing. Indeed, although the SEC apparently never found such direct evidence, the SEC did manage to question Mack for over 4 hours when it finally took his testimony on August 1, 2006, after the statute of limitations had expired. And although Aguirre's supervisors advance the rationale that taking Mack's testimony in the summer of 2005 would have been merely premature, this notion is contradicted by the staff attorney who took the lead in the investigation after Aguirre was fired. In particular, shortly before taking Mack's deposition in August 2006, that attorney wrote explicitly in a July 19, 2006, email that the rationale for taking Mack's testimony was not a matter of being "premature" but rather an issue of establishing the necessary "prerequisite" of when Mack had obtained inside information (Attachment 8).

The purpose of taking investigative testimony is not to confront a witness with accusations of wrongdoing, as Aguirre's supervisors seem to believe. Rather it is to gather information that helps to either confirm or rule-out working theories, which by their nature must be speculative at the beginning of the investigation. One SEC witness who wishes to remain anonymous told the Committees' investigators that SEC training personnel teach new attorneys that:

it was important to immediately "nail down" the stories of any individuals who possibly had been involved in the suspicious trades so that the person could not adjust their story to account for any information we later uncovered. This also served to assist the direction of the investigation because it allowed us to immediately identify whether or not any subsequent evidence supported the individual's initial statement thereby giving us a strong indication of whether the initial statement appeared to be true and what, if any, additional investigation needed to be conducted (such as the need for more in-depth testimony if we found contradictions).

Although the SEC finally took Mack's testimony in August 2006, we are concerned about the circumstances under which it was done. Mack's testimony was taken five days after the statute of limitations expired, and only a few months after we initiated our inquiry into this matter. We question why the SEC failed to take this obvious step earlier. The evidence suggests that his testimony was taken primarily to deflect public criticism for not having taken it much earlier. It took the SEC over a year to ask John Mack

about his communications with Arthur Samberg and Pequot's trading in Heller and GE. By contrast, it took Mary Jo White only two days to do so. On the Sunday after Morgan Stanley's Board of Directors hired her and her firm, Debevoise & Plimpton, to look into Mack's potential exposure in the Pequot investigation, she quickly obtained documents and questioned Mack about specific emails with Arthur Samberg. The SEC should have been at least as curious about Mack's answers as Mary Jo White was.

The Problems With the Pequot Case Are Amplified by the Testimony of Other SEC Employees

Our concerns are further heightened by the testimony of one key SEC employee who raised issues with the manner in which the Pequot investigation was handled. Specifically, the Judiciary Committee received compelling sworn testimony from SEC Market Surveillance Branch Chief Eric Ribelin who sought recusal from the Pequot investigation shortly after Aguirre's termination because, as he alleged at the time, "something smells rotten." Ribelin also explained to the Judiciary Committee that he believed Aguirre's supervisors, especially Associate Director Paul Berger, failed to "support the aggressiveness and tenacity of [Aguirre]" (Attachment 5). This is significant testimony from a witness who felt it was his duty to come forward and testify. As such, we trust that Commissioners at the SEC will take every step to ensure that no retaliation against Ribelin will occur.

THE SEC'S TERMINATION OF AGUIRRE IS HIGHLY SUSPECT

The documents and testimony adduced by the Committees show that Aguirre, a probationary employee while at the SEC, was a smart, hardworking, aggressive attorney who was passionately dedicated to the Pequot investigation. These positive attributes were noted in a June 1, 2005 "Performance Plan and Evaluation" prepared by Kreitman which give Aguirre an "acceptable" rating for numerous work criteria, and then followed by a more detailed "Merit Pay" evaluation written by Hanson on June 29, 2005, which noted Aguirre's "unmatched dedication" to the Pequot investigation and "contributions of high quality." These evaluations were submitted to the SEC's Compensation Committee which later approved Hanson's recommendation (among others) on July 18, 2005.

Despite these favorable reviews, Aguirre's supervisors (Kreitman, Hanson and Berger) wrote a so-called "supplemental evaluation" on August 1 that spoke negatively of Aguirre. Aguirre's supervisors never shared this evaluation with Aguirre and indeed admitted that they are "fairly rare". In fact, during the December 5, 2006 hearing, current SEC supervisors could not recall other instances where a supplemental evaluation was prepared for an employee. We are skeptical of the supervisors' explanations regarding the creation of this document. According to Hanson and Kreitman, their initial positive evaluations covered only the period ending April 30, 2005, thus suggesting that the evaluation was accurate with respect to performance up to that date. But these same supervisors also testified that the initial evaluations were perhaps too generous, thus suggesting that there were performance issues that should have been addressed in the initial evaluation and Merit Pay recommendation.

Rather than taking them at face value, we have attempted to assess the credibility of the negative statements Aguirre's supervisors made about him in his re-evaluation, in his notice of termination, in interviews with the SEC/IG, in interviews with Com-

mittee staff, and in their hearing testimony. In doing so, we have noted the considerable lack of contemporaneous documents corroborating the concerns they raised.

For example, the IG's closing memo cites his supervisors' concerns about subpoenas that Aguirre issued allegedly in violation of law. While his supervisors now claim that this was a significant error, which seriously undermined their confidence in Aguirre, they have produced no documents to the Committees suggesting that they viewed it that way at the time. Another example is Hanson's allegation that Aguirre behaved "unprofessionally" while taking the testimony of Arthur Samberg. This allegation is based on second-hand knowledge, as Hanson did not actually attend the testimony. Moreover, the SEC has not produced records to the Committees suggesting that Hanson or any of his other supervisors were concerned at the time about the way Aguirre took the Samberg testimony. In fact, Hilton Foster told the Committees that he planned to use a portion of the transcript as a model for how to take testimony in his training of new SEC attorneys. A third former SEC employee told staff that the testimony of current SEC supervisors at the December 5, 2006 hearing concerning the reasons for terminating Aguirre were not consistent with that employee's experience with Aguirre.

Aside from these inconsistencies, the greater concern is with the timing of Aguirre's re-evaluation. Aguirre's supervisors prepared the re-evaluation on August 1 after the Compensation Committee (on which Berger sat) had already approved the merit pay increase for Aguirre and most significantly, 5 days after Aguirre sent Berger an email saying that he believed the Pequot investigation of Mack was being halted because of Mack's political power.

Finally, there are questions about Paul Berger's outside employment with the law firm of Debevoise & Plimpton—the private firm that represented John Mack's prospective employer during the time that Berger allegedly vetoed efforts to take Mack's testimony. Although Berger testified recently before the Judiciary Committee that he "first approached Debevoise in January of 2006" (at which time he recused himself from the Pequot investigation and all other matters in which Debevoise had entered an appearance), Committee investigators identified a September 8, 2005, email suggesting that a contact was made on behalf of Berger through an intermediary who was also seeking employment with the same firm at the time. While we have found no proof of actual quid pro quo for Berger's employment in exchange for the favorable treatment of Mack, the SEC should take steps to avoid the appearance of impropriety of the sort that this email seems to suggest. This is especially true given that this contact on Berger's behalf occurred just days after Aguirre was fired and months before Berger recused himself from the Pequot matter.

THE FOLLOW-UP SEC INSPECTOR GENERAL'S INVESTIGATION WAS SERIOUSLY FLAWED

We are deeply troubled by what appears to us to be a cursory investigation of Aguirre's allegations by the SEC's Office of Inspector General, headed by Walter Stachnik. Subsequent to SEC Chairman Cox's September 7, 2005, referral of Aguirre's allegations to the IG, Stachnik failed to interview Aguirre or any of the other SEC employees mentioned in Aguirre's letter to Chairman Cox. The testimony of one such witness, Eric Ribelin, saw the light of day only through our investigation. Moreover, our concerns were further enhanced when the IG's investigators repeatedly told our staff that in investigating Aguirre's allegations of improper

motivation for his termination, "we don't second guess management decisions . . . we don't second guess why employees are terminated." (Attachment 9). Such statements are fundamentally incompatible with the mission and purpose of the Office of Inspector General. This may explain why the IG spoke only to Aguirre's supervisors, accepted everything they said at face value, and reviewed only documents identified by those supervisors. However, it is certainly not a recipe for an independent and thorough investigation.

Furthermore, the IG initially attempted to take punitive action against Aguirre by seeking enforcement of a subpoena for documents in his possession—including confidential communications with Congress. We are pleased that the scope of the subpoena was subsequently narrowed to exclude communications with Congress. Nevertheless, Stachnik's continued insistence that his first investigation was "professional," and his refusal to answer the Committee's questions about the subpoena at the instruction of the Justice Department are similarly troubling. The SEC's IG is supposed to provide employees an alternate, objective, open-minded avenue for reporting abuse of authority or other misconduct. At no time, before or after his termination, was Aguirre able to obtain at the SEC an objective and thorough consideration of his concerns. It is unfortunate that he had to reach out to our Committees to obtain such a review.

CONCLUSION

The handling of the Pequot investigation, the basis for and the timing of Aguirre's termination, and the woefully inadequate IG investigation of serious allegations of abuse of authority, present a very troubling picture. Based upon the evidence we have reviewed to date, the SEC's handling of the Pequot investigation shows either inexplicably lax enforcement or possibly a willful cover-up. Either way, the SEC must review this matter and take appropriate corrective measures. Anything less will undermine public confidence in our capital markets. We owe it to the public to ensure that securities enforcement is rigorous and unbiased.

As such, we hope the SEC will consider reopening its investigation into the Pequot matter given our findings. While the statute of limitations has run on criminal penalties and civil penalties related to the underlying trades, we understand that other remedies, such as disgorgement, may still be pursued. There also may be reasonable cause for the SEC or the Department of Justice to investigate whether any testimony given in the underlying Pequot investigation was false. We urge the SEC to take Aguirre's allegations seriously and seek to improve the management and operations of the Commission based on lessons learned from this controversy. We anticipate transmitting more detailed findings, conclusions and recommendations to the Senate during the 110th Congress after we conclude our assessment of the evidence adduced to date.

ATTACHMENT 1

From: Hanson, Robert.
Sent: Friday, June 03, 2005 10:00 a.m.
To: Aguirre, Gary J.
Subject: Re: Possible tipper new Pequot Chairman?

Mack is another bad guy (in my view).

Sent from my BlackBerry Wireless Handheld

From: Aguirre, Gary J.

To: Ribelin, Eric; Foster, Hilton; Eichner, Jim; Conroy, Thomas; Glascoe, Stephen; Miller, Nancy B.

CC: Hanson, Robert; Kreitman, Mark J.

Sent: Fri Jun 03 08:36:07 2005

Subject: Possible tipper new Pequot Chairman?

John Mack, who came up on radar screen as possible GE-Heller tipper, has just become chairman of Pequot Capital, according to WSJ article below. Mack moved from Morgan Stanley, adviser in Heller acquisition, to CSFB, also adviser in Heller, in late July 2001, the month of acquisition. The are hundreds of Pequot e-mails referring to Mack, including a dozen in July 2001. See e-mail below between Samberg and his son referring to Mack ("It's nice to have friends in high places . . .") Is there something to this perverse logic: Mack is the only person in the world who would have as much to loose as Samberg if we could prove that he provided material-nonpublic info to Samberg. Who safer for Samberg to head Pequot and keep its secrets? Please note the happy face which has already come up twice in relating to possible flow of insider info. Ironically, Mack's article quoted below is C-1 of WSJ, just as was when Samberg's exchanged e-mails below.

[From the Wall Street Journal, June 3, 2005]

JOHN MACK TO JOIN PEQUOT HEDGE FUND IN CHAIRMAN'S ROLE

(By Gregory Zuckerman and Ann Davis)

In the latest example of a prominent financial figure entering the hedge-fund world, former Wall Street heavy-hitter John Mack is joining Pequot Capital Management Inc. as chairman.

Mr. Mack, 60 years old, was co-chief executive of Credit Suisse Group and CEO of that bank's Credit Suisse First Boston until last year, and previously was president of Wall Street firm Morgan Stanley. He will work with Pequot's founder, Art Samberg, to help lead the firm into new markets, recruit money managers and help guide the Westport, Conn., firm. Hedge funds are lightly regulated investing pools, traditionally for the wealthy and institutions.

[John Mack] Mr. Samberg, 64, an investor with a well-regarded record, will remain chief executive of Pequot, which manages about \$6.5 billion, effectively running the firm day-to-day. (Meanwhile, a British financial regulator, Gay Huey Evans is joining a hedge fund run by Citigroup.)

Speculation about where Mr. Mack would land after he was replaced last year at CSFB has been something of a parlor game on Wall Street. Various companies put out feelers, including Goldman Sachs Group Inc., and he was approached as a possible candidate to run mortgage giant Fannie Mae, among other positions, according to people close to the matter. Some expected Mr. Mack, who is active in politics, to seek an office or ambassadorship.

But like many Wall Street traders and analysts lately, Mr. Mack is heading for the hedge-fund world, where assets are growing and the rewards can be lucrative. Hedge funds generally charge a management fee and a percentage of the firm's investment gains, meaning that stellar results bring big paydays. In addition to a salary, Mr. Mack will receive equity in Pequot, according to the firm.

Mr. Mack wouldn't address details of other possible job offers but said in an interview that he was attracted to Pequot because he and Mr. Samberg have been friends for more than a decade, starting when Mr. Mack gave some money to Mr. Samberg to invest. Mr. Mack also said he was eager to help the firm push into new investment areas.

[Arthur Samberg] "Many people who have called me for a job want me to fix something, but I'd like to focus my job on building," Mr. Mack said.

For Pequot, the hiring of Mr. Mack is part of a change in recent years from traditional hedge-fund strategies, such as buying and selling U.S. and European shares. Returns for some hedge-funds have fallen, amid concern by some that too many savvy "hedge funds were seeking the same opportunities in the market.

Hedge funds lost less than 1 percent this year through April—results that topped the returns of the market though they pale in comparison to the double-digit gains hedge funds scored in recent years. Pequot's various hedge funds are up about 3 percent in 2005, according to investors. But Mr. Samberg predicts that the growth of the hedge-fund business will lead to a shakeout that forces as many as 30 percent of existing hedge funds to throw in the towel, even as institutions continue to up their investments in so-called alternative investments. At the same time, the market is neither cheap nor especially expensive, presenting few obvious opportunities. That is why Pequot has been looking elsewhere lately, starting hedge funds focused on emerging markets, parts of the debt world and other strategies.

As reported in The Wall Street Journal, Pequot recently formed a joint venture with Singapore-based Pangaia Capital Management to invest in distressed assets in Asia, including real estate.

Mr. Mack's move effectively blunts speculation that he might join a new investment-banking boutique with some recently departed top Morgan Stanley executives. A group of former Morgan alumni waged a loud campaign for the ouster of Morgan CEO Philip Purcell this spring, after a management shakeup and several executive departures. Mr. Mack, who clashed with Mr. Purcell before he left the firm in 2001, has kept a studied distance from the dissidents.

Mr. Mack's move effectively blunts speculation that he might join a new investment-banking boutique with some recently departed top Morgan Stanley executives. A group of former Morgan alumni waged a loud campaign for the ouster of Morgan CEO Philip Purcell this spring, after a management shakeup and several executive departures. Mr. Mack, who clashed with Mr. Purcell before he left the firm in 2001, has kept a studied distance from the dissidents.

Mr. Mack will be asked to tap into his wide-ranging contacts to find new investment ideas around the globe, as well as coach Pequot's investment team. Mr. Mack is expected to help smooth the way for Pequot fund managers by introducing them to company executives.

"I see an opportunity to build something really great here and John will be a big part of that," Mr. Samberg said.

Mr. Samberg's previous alliance with a high-powered partner ended when Pequot co-founder Dan Benton quit the firm in 2001, taking about \$7 billion of investor money with him to his new firm, Andor Capital Management LLC. Mr. Samberg says he is confident his new partnership with Mr. Mack will work, in part because of his close relationship with Mr. Mack. In recent months, Mr. Mack has been using spare space in Pequot's New York office, weighing his options.

The move to bring in an established Wall Street executive like Mr. Mack could signal that Pequot, like some other hedge-fund firms lately, might be interested at some point in selling itself, or part of the firm, to a mainstream Wall Street firm or even going public through a stock offering, although Mr. Samberg says he has no plans to do so.

J.P. Morgan Chase & Co. recently purchased a majority stake in big hedge-fund firm New York-based Highbridge Capital Management., and Lehman Brothers Holdings Inc. has purchased 20 percent of Ospraie Management LP, a New York hedge fund.

Merrill Lynch & Co. agreed to provide \$300 million in capital for a venture with Pequot to place money with 15 to 30 new fund managers. Pequot is expected to offer the managers research and administrative support—part of a trend of hedge funds providing services also offered by investment banks., blurring the lines between the two.

To: 'Joe@' [Joe@]
From: Samberg, Art
Re: John Mack.
Date: 07/12/2001.

Spoke to him last night and commented on how up he sounded. He said he was close to something, but I didn't know it would be today. Sounds like the perfect opportunity for him.

From: Joe Samberg. <joe@
To: 'jmault' <jmault
CC: 'art@' <art@
Sent: Thu Jul 12 13:00:59 2001
Subject: John Mack

If you read the front page of the C Section of the WSJ, you will see that our friend and latest investor, John Mack, is to become the new CEO of CFSB, the no. 2 underwriter in the U.S.! It's nice to have friends in high places . . .

JOSEPH D. SAMBERG
PRESIDENT, JDS CAPITAL MANAGEMENT, INC.

ATTACHMENT 2

From: Hanson, Robert
Sent: Monday, June 20, 2005 8:25 PM
To: Aguirre, Gary J.
Subject: Re: Pequot: Connecting the dots with the CSFB-Mack-Samberg-theory.

Okay Gary you've given me the bug. I'm starting to think about the case during my non work hours.

ATTACHMENT 3

From: Hanson, Robert
Sent: Wednesday, August 24, 2005
To: Kreitman, Mark J.
Subject: FW: Mack testimony
More of the same.

From: Hanson, Robert
Sent: Wednesday, August 24, 2005
To: Aguirre, Gary J.
Subject: RE: Mack Testimony
Gary,

I read your "over the wall" e-mail when you sent it by cc to me. I assumed that Mark used that phrase to mean whether Mack had the information, not in the technical sense of the phrase (I doubt the technical sense would have any relevance in this case). I still recommend that we try and figure out whether Mack had the information before approaching him.

Most importantly the political clout I mentioned to you was a reason to keep Paul and possibly Linda in the loop on the testimony. As far as I know politics are never involved in determining whether to take someone's testimony. I've not seen it done at this agency. It does make sense though to have all your ducks in a row before approaching a significant witness like Mack. Hence, the reason to try and figure out a number of things about him before scheduling him up, not least of which is whether he knew about the deal.

Less importantly, perhaps I was wrong but I thought the word assessment came from your e-mail. If not, my bad. As for urgency, I just wanted to understand when Paul asked for the information, since I heard it from

him but never from you (not the normal way to keep informed). Also, can I get a copy of the lengthy e-mails or memos you sent Paul in mid-July? It's important for me to be kept in the loop on things that have a bearing on the case.

Thanks.

From: Aguirre, Gary J.
Sent: Wednesday, August 24, 2005
To: Hanson, Robert
Subject: RE: Mack testimony
Bob:

I have three comments regarding "the over the wall" requirement. First, before and after the Mack decision, you have told several times that the problem in taking Mack's exam is his political clout, e.g., all the people that Mary Jo White can contact with a phone call. Second, proof that a witness was "over-the-wall" had not been a prerequisite for any other examination in this matter. Third, see my memo to Mark on the same subject below.

You sate, "My suggestion a while ago was to write a memo so that we could vet the issue with Paul." I sent Paul a comprehensive memo in mid-July. When you told me in early August that he was still waiting for a memo, I drafted another memo and sent it to you on August 4.

Finally, you state "on that note, do you remember when Paul asked for the assessment from you? I got the sense from him that it had been a while ago. Is the assessment the third e-mail below?" I have clear recollections of my discussions with Paul, but I do not recall his request for an "assessment," other than a statement of my views why we should proceed with the Mack testimony. As stated above, I have sent two lengthy memorandums on that issue to him.

In my office, in mid-July, I told Paul that I would be sending him a second memo discussing the factors which, in addition to the Mack decision, led to the tender of my resignation. I intend to complete and send that memo to Paul as soon as I return, since I do not have access now to the documents I need. If there is some urgency that Paul receive it, which I did not understand before, I will endeavor to do it from my recollection of the events and dates, but that will be tough because it will cover approximately seven months.

From: Kreitman, Mark J.
Sent: Wednesday, August 17, 2005
To: Aguirre, Gary J.
Cc: Hanson, Robert
Subject: RE: Pequot pending matters.

Please confer with Susan Yashar, Elizabeth Jacobs, or Scott Birdwell at OIA re Swiss privacy law issues.

From: Aguirre, Gary J.
Sent: Wednesday, August 17, 2005
To: Kreitman, Mark J.
Cc: Hanson, Robert
Subject: RE: Pequot pending matters.

As I understand the term "over the wall," I do not think it applies here in its usual sense: someone within a securities firm going over the "wall" restricting access to non-public, material information. The tip to Samberg, assuming it took place, must have occurred before Mack started with CSFB. There will be no evidence in the classic sense that he went over the wall, as there was no wall at that time.

The question is whether GE-Heller acquisition was disclosed to Mack during the wooing period with CSFB. This will not be easy for two reasons. First, 90 percent was handled by Credit Suisse in Geneva which, as a Credit Suisse, is beyond the reach of our subpoena I have been working through CSFB to try to get them to produce CS's documents,

and they sound cooperative. Second, all subpoena documents are passing through Lynch who is going back to Morgan Stanley to join Mack. I am hearing a lot about privacy rights under Swiss law.

Patalino (CSFB contact) says Mack had two limited contacts with CSFB shortly before he started work. He met with CSFB's CFO and an attorney two weeks before he started (around June 29) and again just before he started. Both dates are very significant in terms of Samberg's trading: June 29 is when Mack spoke by phone with Samberg, which is just before Samberg began trading in Heller. July 8-9 is the time frame when Samberg increased his buy on Heller from 15,000 to 400,000 shares, suggesting that his information was refreshed. This also correlates with the date that GE increased its offer for Heller.

Bottom line: evidence suggests that Samberg had his info refreshed on exact days that Mack met with CFO of CSFB. Item 8 is an effort to obtain information relevant to the possibility that info went to Mack during meetings with CSFB and CS. I am not optimistic, given the Lynch filter.

From: Kreitman, Mark J.
Sent: Wednesday, August 17, 2005
To: Aguirre, Gary J.; Jama, Liban A.; Eichner, Jim
Cc: Hanson, Robert
Subject: RE: Pequot pending matters.

Where are we on determining the date Mack was brought over the wall re GE-Heller deal—the necessary prerequisite to subpoena to Mack?

From: Hanson, Robert
Sent: Wednesday, August 24, 2005
To: Aguirre, Gary J.
Subject: RE: Mack testimony

Mark's idea makes complete sense to me. Normally we start questioning those who had the insider information.

It's been my experience that Mark views issues very objectively and closely and Paul does also. I attempt to as well. I believe Mark has thought long and hard about the best way to proceed on GE/Heller and continues to think about it. You may disagree with his determinations (and mine as well) and that, of course, is your right. My suggestion a while ago was to write a memo so that we could vet the issue with Paul. From your e-mail directly below it seems that Paul had the same idea.

On that note, do you remember when Paul asked for the assessment from you? I got the sense from him that it had been a while ago. Is the assessment the third e-mail below?

From: Aguirre, Gary J.
Sent: Wednesday, August 24, 2005
To: Hanson, Robert
Subject: RE: Mack testimony

Bob:
While you were on vacation, Mark informed me that I would have to establish that Mack "went over the wall" before I could take Mack's testimony and ask him whether he went over the wall. This makes no sense to me.

Further, Paul had asked me to send him my assessment why it was necessary to take Mack's testimony and I delayed it in hopes that the assessment would be reviewed objectively. Since Mark has already made up his mind, I see no point in further delaying the analysis that Paul requested.

GARY

From: Hanson, Robert
Sent: Tuesday, August 23, 2005
To: Jama, Liban A.; Aguirre, Gary J.
Subject: FW: Mack testimony
Please take a look at this—if possible before we meet with Mark.

From: Aguirre, Gary J.
Sent: Thursday, August 04, 2005
To: Hanson, Robert
Subject: Mack testimony

Bob: You have asked that I do a memo why I believe the Mack testimony should be taken as the next logical step in the Pequot investigation. I believe there are three reasons. First, a profile of the tipper was developed in this case that has multiple elements. The possibility that Mack acted as the tipper satisfies almost every element and is inconsistent with none. Second, whether or not Mack is the tipper, his testimony will advance the investigation. If he is the tipper, his testimony will likely suggest some avenues to be pursued and other to be dropped. It will pin him down to a story which we can begin to disprove. If he is not the tipper, his testimony is the likely first step to eliminating him from consideration. This would allow our limited resources to be focused on starting a new screening process to find another possible tipper.

MACK MEETS EACH ELEMENT OF THE PROFILE.

The timing of the trading with Mack's access to possible information

The first element is whether Mack had possible access to information that GE would make a tender offer for HF. He had access from two sources: he had been the CEO of Morgan Stanley, who advised GE, until late March. He also took over as CSFB's CEO on July 12, 2001. Samberg's trading pattern, which I can discuss in more detail if you want, suggests that he obtained information just before Monday, July 2, around July 9, and around July 25. Mack coincidentally met with CSFB's CFO on June 28 or June 29, again a few days before he began work on July 12, and was CEO at the third key time. Hence, Mack had relevant contacts with CSFB at each time. Also, CSFB was "wooing" Mack away from Merrill Lynch and other investment banking firms during the period from April through July 2001. It would be consistent with this effort for someone at CSFB or CS to mention, as part of this wooing process, what inventory Mack would be taking over. Incidentally, we know how Samberg saw Mack's new role as CEO of CSFB. He and his son discussed the fact that CSFB was the second largest investment banker at that time and "it was good to have friends in high places." Of course, there is also the possibility that Mack, through his contacts at Morgan Stanley, knew about the pending GE tender offer.

Questioning Mack about this transaction could take us in several directions, each of which suggests a different focus for the investigation. First, Mack could deny that he ever knew that GE would make the offer until the public announcement. The investigation would then focus on whether this was true. Second, Mack might say he learned on June 28 or June 29. The focus would then be placed on his contacts with Samberg at that time and whether he learned that GE had bumped its offer around July 9. Finally, he might give convincing testimony that he learned after July 12 for the first time and cause us to reevaluate whether his should even be considered.

Also, Samberg's trading suggests that he did not get the tip until shortly before he started trading. He would not be the largest purchaser of HF during July if he had the tip before. It also makes sense that his tipper, likely someone he trusted, got the tip just before Samberg started trading. Had the tipper had it earlier, why would he have not communicated it earlier? Further, GE made its first offer in early June. It would make sense for Samberg to start buying then if he knew about the trade. The Mack-CSFB meeting on June 28 or June 29 and the Samberg huge trading the next week fits.

Further, we are operating in the dark regarding who Mack spoke with and when he spoke with them about stepping in as CSFB's CEO. CSFB's counsel tells me he spoke with CSFB's CFO and the Credit Suisse chairman of the board. Were these the only people? Mack's testimony could point us towards the key people at CSFB. Conversely, he might tell us that he was seeing some of the people on the acquisition team as Morgan Stanley at this time. That would take the investigation in a completely different direction.

Mack had the motive to tip Samberg

Mack had multiple reasons for tipping Samberg about the GE tender offer for Heller.

(a) Mack got into Closed Pequot funds and special deals that Mack thought would have big returns to him during and after 2001.—Mack was getting into private deals that Pequot was putting together for its own principals, including projects with the following code names: \$5 million into "Fresh-start" (Lucent spin-off bought cheap), \$2 million into Baby C, and an unknown amount into Distressed Guys, which later became Pequot Special Opportunities Fund. The most interesting situation involved Fresh Start. Mack was pressing to get into this for sometime. On June 20, a Samberg e-mail said that he was with Mack and that Mack was "busting his chops" Samberg's chops because he had not got the documents on this investment. Neither the Pequot principals nor Samberg's son seemed happy about Mack getting into this Fresh Start. During the call on June 29, when the suspected tip occurred, Samberg arranged for Mack to get into Fresh Start. Mack also was getting into Pequot funds when they appear to be closed. At that time, Samberg's funds were doubling in value in less than 3 years and the Pequot Scout fund was doing even better. In general, the funds had a \$5 million lower limit. E-mails show Mack putting at least \$13 million into these funds. One of the spread sheets I provided to Mark on June 28 shows Mack invested in 15 different Pequot funds (but it does not show when). As a rough estimate, based on performance over 1999 and 2000, Mack could reasonably expect that his new investments in Pequot during 2001 alone would have returned something in the range of \$5 million per year to Mack.

(b) Board seats—As shown on one of the spreadsheets, Samberg was promoting Mack for board seats on both Baby C and Fresh-start.

(c) Office Space—Mack was using Pequot office space intermittently during the period from March 2001 through July, 2001, when he began work for CSFB.

(d) Stop tips—Samberg was giving Mack stock tips on public companies that Mack directly invested in. "That's where were putting our money."

(e) Friendship—Mack and Samberg were close friends. Two months ago, Mack took over as CEO as Pequot. That Samberg would choose Mack in the middle of an investigation that could land Mack in jail tells much about the level of trust Samberg had in Mack. I discussed how the friendship played as a motive in my June 27 memo.

(f) Mack's crossing the line for Pequot. While Mack was at CSFB, he was acting as Pequot's agent to introduce one of the companies Pequot co-owned with Lucent, to an investment banker in China. Mack's letter, written on behalf of Pequot reads, "I have not given this first to CSFB (where he was then CEO) or to Morgan Stanley because I think your contacts in China are the best." Samberg had a relationship of trust deep friendship with Mack

We do not have a complete picture of Mack's financial assets, but his holdings in

his Pequot funds in 2001 exceeded \$400 million. He holds an engineering degree from MIT, a Masters of Science from Stanford and an MBA from Columbia. He started with \$3.5 million and built the largest hedge fund in the world as of 2001, when the GE-HF trading took place. He has generally been very careful about his comments in his e-mails. He used AOL instant messaging, which leaves no trace in any computer, to communicate with key people. In short, he's a smart guy who took few changes. It does not fit the pattern for him to be taking big chances where he got his tip. It makes sense that he got it from someone he trusted and who also trusted him. That was Mack. Mack's e-mails to and from Samberg have a different ring about them. In one e-mail, Samberg's secretary tells Samberg Mack had called and that, "he loves you." In sum, there was a deep trust and friendship between them. It is exactly the kind of relationship that Samberg would feel comfortable calling on for a tip as big as HF and GE.

Samberg's need for a big favor from an old friend

In July 2001, Samberg's company was splitting a part. Benton was a younger and a rising star. Benton's performance was dwarfing Samberg's, Samberg was recovering from heart surgery. Benton was leaving with at least half the company. Samberg was looking at even bigger staff losses to Benton. He testified that he was concerned at this time more of his executive committee "might walk." A big hit on GE-HF would illustrate that his fast ball had not slowed. Regarding GE-HF, Mack was just the guy to do his old friend a big favor, one that would also benefit him.

Regarding Samberg's situation during this time frame, he testified at the first session:

The company was about to split, it was about to split. In September '00, I had an aortic medical situation and was near death. I was on heavy medication, and I was trying to reestablish the franchise value of Pequot and the core funds. I was actively looking for help, and I did things in a manner that was expedient at the time given my expertise in this area.

In a similar vein, he testified at the second session:

My firm was going to split in three months. These people were my other managing director partners. *Times were fragile*. I needed their approval to do whatever I wanted to do or *they might walk* (emphasis added).

THERE DO NOT APPEAR TO BE OTHER LEADS IN THE SAMBERG E-MAILS

The evidence does not merely point to Mack. It points to no one else. I have been through the Samberg e-mails, his calendar, his credit card receipts and his phone slips: Hilton, Eric, Nancy, have been through the e-mails. No one has shown up as a possible candidate. Further, Fried Frank has stated that Samberg made the decisions alone. No one was listed with him on the Fried Frank lists of those participating in investment decisions. If we don't take a look at Mack, we start all over again looking for someone that fits the profile. Then the question would remain: If we find him or her, will there be a similar reason for not proceeding with the examination? Very possibly yes, given Samberg's circles.

GARY.

ATTACHMENT 4

From: Hanson, Robert
Sent: Thursday, August 04, 2005 10:16 AM
To: Aguirre, Gary J.
Subject: RE: Ferdinand Pecora

GARY: We seem to be miscommunicating and I'm not sure why. We both have the same

objectives. I learned through the grapevine, rather than directly, that you were not leaving but staying and wanted to know what your plans are. I still am not sure because we covered different issues last night and never got to the heart of the question. I inquired because I need to figure out how to staff the case and the like. Your status is obviously very important to figuring out what to do and how to staff the case.

I think we should prepare a memo discussing why it is appropriate to take Mack's testimony at this point. I said I would do it at one point and I thought you said you would do it shortly thereafter. We've discussed this several times thereafter and Paul mentioned recently that he was still looking for a memo. We may have different recollections, but at bottom I still believe one should be prepared. I'm happy to do the memo, though it will have to wait now until after my vacation.

I believe that Mark feels it is premature to take Mack's testimony. I don't disagree. I thought and think it makes sense to write a memo to make sure everyone has a chance to understand the facts we have and whether it makes sense to take the testimony at this juncture. Paul had wanted to talk about taking the testimony at one point. I think the memo should precede such discussion. As a general matter I try to alert folks above me about significant developments in investigations that may trigger calls and the like so that they are not caught flat footed. I also think that Paul and possibly Linda would want to know if and when we are planning to take Mack's testimony so that they can anticipate the response, which may include press calls, that will likely follow. Mack's counsel will have "juice" as I described last night—meaning that they may reach out to Paul and Linda (and possibly others). Hope this clarifies things somewhat.

Thanks,

BOB.

PS: I do not believe in micromangement or feel it is necessary.

From: Aguirre, Gary J.
Sent: Thursday, August 04, 2005 9:48 AM
To: Hanson, Robert
Subject: RE: Ferdinand Pecora

BOB: I do not believe you have accurately characterized our discussion last night nor do I have any recollection of your request for an e-mail a month ago.

I came to your office last night to discuss Pequot because, as I told you, I realized we would not be seeing each other for the next month. Before we got into that discussion, you told me that you had heard I was staying with the Commission and asked that I tell you about my plans.

I then told you that the "micromanagement" of my work had nothing to do with the reason I was leaving the Commission. I did not "grumble" about micromanagement. To the contrary, I told you that I was aware when I accepted the staff attorney position that micromanagement came with the job and that I had fully accepted this as part of the way things are done here, and I understand why you and others believe that is necessary.

I then told you there were two reasons that have collectively triggered my decision to leave. I told you that Mark was not listening to the rationales for the steps I had proposed in the Pequot investigation, that this represented a major shift that occurred overnight in our relationship, that we had an excellent relationship before, that I believe other people at the Commission were involved in Mark's sudden shift, and that the shift was ultimately traceable to the fact that I had filed an EEO claim that had not

been dismissed after I accepted employment. I also told you some of the reasons I believed this, i.e., what I had been told by reliable sources how my complaint was viewed by higher levels within the Division, e.g., including a statement that "I would get mountains . . . hills out of my way if I dismissed the case." I told you I had decided to handle this problem in a different way than resigning and have in fact done so.

Second, I told you that the decision not to take Mack's testimony because of his powerful political connections was the event that triggered my decision, when added to the first problem above. We then discussed at some length what standard had to be met to take Mack's testimony. You told me that Mack was "an industry captain," that he had powerful contacts, that Mary Jo White, Gary Lynch, and others would be representing him, that Mary Jo White could contact a number of powerful individuals, any of whom could call Linda about the examination. I told you I did not believe we should set a higher standard for a political captain than anyone else.

Turning to the statement that you had requested a memo a month ago, I do not recall any such request. I will be specific about what I do recall. Late in the week of June 20, you told me you were going to prepare memo to Paul Berger regarding Pequot. That followed a series of e-mails between us that same week. You also mentioned, as you did last night, that Mack's testimony would be difficult because Mack had powerful political connections. For that reason, the political hurdle, I spent a big chunk of my weekend preparing two lengthy memos that described in detail the facts relating to Samberg's trading in HF and GE, which suggested elements of the tipper's profile, and a second memo describing all possible avenues for establishing the identity of the tipper, proposing that Mack was the most likely candidate, and suggesting that we focus on him to eliminate him or establish it was in fact him. Those e-mails were prepared for you and Mark and assumed some knowledge of the investigation. I also thought they might assist you in preparing your memo to Paul. I had no expectation they would be sent to Paul. I also had copies sent to Mark and, at his request, two spreadsheets summarizing e-mails relating to Mack's motivations and list of the funds he had invested in. I do not recall a request by you or anyone else for any other memo. I had hoped that these two memos, with citations and quotes to the evidence, would at least prompt a discussion. You and Mark discussed the memos and then Mark called me with a question that demonstrated that my memos had either been rejected or bypassed. In mid-July, I spoke with Paul about my continuing concern about Pequot. Mark asked that I provide him with a memo of the factors that might have motivated Mack to tip Samberg on HF. Since this subject was addressed in the two memos and two spreadsheets that I delivered to Mark on June 27 and June 28, he obviously wanted something more. I had just begun to take "Official Time" and thought this request was not urgent. About a week later, on July 25, I received an e-mail from Mark that responded to my e-mail of June 28, four weeks earlier. It raised new questions about Mack. I responded in detail to Mark's e-mails issue by issue last Friday.

I don't know of any request from you or Mark for any memos relating to Pequot over the past six weeks.

GARY.

From: Hanson, Robert
Sent: Thursday, August 04, 2005 7:38 AM
To: Aguirre, Gary J.
Subject: RE: Ferdinand Pecora

GARY: The constant back and forth on these issues consumes a lot of time. I suggested that you write a concise memo on the issue of taking Mack's testimony more than a month ago. That way people can see your proposal, meet on it and comment on it. It's a natural thing that Paul and perhaps Linda would want to know about. At this point, I'm still waiting for the memo (as is Paul I believe), though I understand from talking with you last night that you have given Mark and Paul some materials that I haven't seen. People here are smart, hard working and want to do the right thing. I'm making suggestions to you that you either ignore or don't like and grumble about (the micromanagement comment last night)—but my experiences here shows that they work. I hope you give that some consideration.

GARY J. AGUIRRE,
*Senior Counsel, Division of Enforcement
Securities and Exchange Commission*

From: Hanson, Robert
Sent: Thursday, August 04, 2005 7:38 AM
To: Aguirre, Gary J.
Subject: RE: Ferdinand Pecora

GARY: The constant back and forth on these issues consumes a lot of time. I suggested that you write a concise memo on the issue of taking Mack's testimony more than a month ago. That way people can see your proposal, meet on it and comment on it. It's a natural thing that Paul and perhaps Linda would want to know about. At this point, I'm still waiting for the memo (as is Paul I believe), though I understand from talking with you last night that you have given Mark and Paul some materials that I haven't seen. People here are smart, hard working and want to do the right thing. I'm making suggestions to you that you either ignore or don't like and grumble about (the micromanagement comment last night)—but my experiences here shows that they work. I hope you give that some consideration.

From: Aguirre, Gary J.
Sent: Thursday, August 04, 2005 7:25 AM
To: Hanson, Robert
Subject: Ferdinand Pecora

BOB: I mentioned last night that Ferdinand Pecora was chief counsel for the Senate Committee that drafted the 1933 and 1934 Acts, including the key operative language of Section 10(b). Those hearings eventually were named after him, the Pecora Hearings. Pecora warned in his opening words in Wall Street under Oath:

"Under the surface of the governmental regulation of the securities market, the same forces that produced the riotous speculative excesses of the 'wild bull market' of 1929 still give evidences of their existence and influence. Though repressed for the present, it cannot be doubted that, given a suitable opportunity, they would spring back into pernicious activity. Frequently we are told that this regulation has been throttling the country's prosperity. Bitterly hostile was Wall Street to the enactment of the regulatory legislation. It now looks forward to the day when it shall, as it hopes, reassume the reigns of its former power . . ."

When the SEC declines to question "industry captains," when an investigation suggests it is the next logical step, we are granting them a pass to play the trading game by their own rules. We do the same when we set artificially high barriers to question them that do not exist for others, e.g., don't question them about going over the wall until we proved they have already made the trip.

I don't think Pecora was suggesting that regulatory scrutiny be delayed until we have

another market collapse. I do not think he would have delayed a heartbeat before taking John Mack's testimony on the record in this matter. Mack had multiple motives, Samberg's trust, contact with Samberg at the key moment, and two possible sources for the tip. He should be asked the obvious questions.

GARY.

ATTACHMENT 5

of 2005 that Paul Berger, who had a reputation for being an aggressive and smart attorney, did not seem as though he was aggressive in supporting the attempts of Mr. Aguirre to get subpoenaed documents on time and to get e-mail production so that we can conduct an investigation. That is one example of what I was referring to when I said "something smells rotten."

That went through a very long period of time of the investigation where it was my sense that there was not the support for the aggressiveness and the tenacity of the investigator.

There are other examples I can give you. Chairman Specter. Would you please do that?

Mr. Ribelin. I can do that. As I said, for a very long period of time, we had a hard time getting e-mail production, and I can tell you that if you subpoena a document or subpoena e-mails and you don't get them, you are not going to be able to do the investigation. And so we continued to push.

There was a period of time when a very significant, large portion of e-mails were put out of our ability to get a hold of and to examine. Part of the reason given was because these e-mails may be privileged e-mails, communications between attorney and client.

We thought certainly there was a possibility that some of those e-mails fell into that category, but there was a very large number of e-mails that we suspected fell outside of that category. And there was one point that an attorney was hired who had custody of some of those e-mails—I can't remember how many thousands they were. Mr. Aguirre was not allowed by Mr. Kreitman to speak to that attorney about trying to get production of e-mails. To this day I don't know why that is.

And I can tell you that Mr. Mack had been the CEO of Morgan Stanley. He was being courted to become the CEO of CS First Boston. We did not have information that he had material nonpublic information as it related to the GE/Heller merger. That is for sure.

It was Gary's theory—I agreed; I think other people supported the idea—that it wasn't unlikely, it was certainly possible that he could have gotten access to the information based on the fact he had been the former CEO of Morgan Stanley and he was being courted at the time by CS First Boston of the trades engaged in by Pequot.

After the word came down that the testimony of John Mack was not going to be taken, I had a conversation within a week or so of that with Bob Hanson, and Bob Hanson said to me that because Mr. Mack was a prominent person or because he had connections—I don't remember exactly how he put it—that we would have to be careful about taking his testimony, we would have to, my impression is, move maybe more carefully than we would if it was somebody other than somebody of prominence. And I said, "Well, Bob, if that is the case or not, just call him up on the phone instead of bringing him in for testimony and ask a couple of basic questions."

And this is something, by the way, that Gary proposed, Gary Aguirre proposed a couple of times. Mr. Hanson didn't respond to me.

And then finally, of course, Gary Aguirre was fired when he was on vacation. I was stunned. I was outraged. And the e-mail that you just referred to was soon after these events.

Chairman Specter. Mr. Hanson, do you recall the comment that Mr. Ribelin has testified to, that you called Mr. Mack a "prominent person" and then suggested that there would have to be treatment of him a little different?

Mr. Hanson. I certainly felt he was a prominent person and I wanted to, as I have said to Mr. Aguirre and Mr. Ribelin, make sure we had our ducks in a row before taking Mr. Mack's testimony. And what I meant by that was, let us figure out what we can about whether he had the information before taking his testimony.

ATTACHMENT 6

Mark Kreitman:

I spoke to Mark Kreitman by telephone on October 24, 2005, regarding Gary Aguirre. Kreitman told me that the evaluation process had 2 pieces to it. First, there was an initial evaluation of Aguirre by Bob Hanson that went to Berger around the end of June, and then second Kreitman did a supplemental evaluation because he felt that Hanson had not addressed problems. Kreitman said that he wrote the supplemental evaluation on August 1, 2005, before going to the Compensation Committee. Kreitman said that he later learned, upon inquiry, that only Hanson's evaluation went to the Compensation Committee in error. Kreitman said that he knows the date that he prepared the supplemental because it is a Word document that shows August 1, 2005. I asked Kreitman to send me something that showed it was created on August 1, 2005. Kreitman said that he may have discussed the supplemental evaluation with Berger, but does not recall. Kreitman was sure he discussed it with Bob. Kreitman said that it was not unusual for him to rate subordinates, and that he is directly responsible for rating Branch Chiefs, para-professionals and a couple of staff attorneys (not including Aguirre). Kreitman does not know if Aguirre received a copy of the supplemental rating, but he said that Aguirre was already terminated when he would normally meet with staff attorneys and their branch chief to give them their written evaluation and tell them their step increase.

Kreitman told me that he knew Aguirre as a student at Georgetown's LLM program where he taught and Aguirre was a student and had edited his law review article that was published. Kreitman also said that they were friends and him and his wife would visit Aguirre and his wife's houses. Kreitman said that Berger made the decision to transfer Aguirre from another Asst. Director Grimes to Kreitman.

When I asked Kreitman what the inquiry was regarding the supplemental evaluation he said that Berger checked to see if it went in Aguirre's personnel file, and it turned out that it did not. Kreitman said that he got advice from Linda Borostovik in HR and Lindy Hardy in GC. Kreitman said that there was some confusion and that he got conflicting advice.

Kreitman said that he concurred with Aguirre getting two steps as a merit promotion, even though he had problems with Aguirre's conduct. Kreitman said that there are few carrots in government work, and that he gives more leeway with conduct than with performance. Kreitman said that Aguirre worked out well in the beginning of coming to his group; Aguirre brought with him the Pequot case he developed which Kreitman described as a complicated, dif-

ficult insider trading case. Kreitman remembers telling Aguirre that he could have 5 weeks to see if the case was manageable given SEC resources. Kreitman said that after five weeks it was unclear if it was manageable but he let Aguirre continue. Kreitman said that it was clear that there were problems with how it was being investigated by Aguirre, because he was resistant to supervisors, especially his branch chief Hanson, he sent out subpoenas without going through his branch chief which violated protocol and criminal statutes resulting in the subpoenas being recalled.

Kreitman said that Aguirre did not conduct the investigation in the normal course; he gathered "millions of e-mails" hoping to find the smoking gun. As to calling in John Mack for testimony, Kreitman said that there was insufficient evidence to call him in and that Enforcement does not drag in ordinary citizens on unfounded suspicion. According to Kreitman, Enforcement still does not have enough evidence after more investigation. Kreitman said that there is no doubt that Mack may be a tipper and that there is illegal insider trading in the case, but that none of the five potential tippers have been called in. Calling in persons to give testimony is a serious matter, according to Kreitman, and is not done lightly. He also said that it is pointless to call in a witness if there is no evidence because they will just deny tipping and there is no where to go from there. Kreitman said that his reputation at the agency is that he is the most aggressive trial attorney (when he was in that position for many years) and Assistant Director, and that he has taken the testimony of many high profile persons. He said he is hardly afraid of taking anyone's testimony. Kreitman told me that him, Berger and Bob had many discussions about taking Mack's testimony.

Kreitman also said that it is a little out of the ordinary for Mary Jo White to contact Linda Thomsen directly, but that White is very prestigious and it isn't uncommon for someone prominent to have someone intervene on their behalf. Kreitman recalls that Thomsen called him to say that she received correspondence from White, and Kreitman went to get it.

I asked Kreitman whether he had given Aguirre a Perry Mason award for his good work. He laughed and said that it is a joke he does in the office, where he gives someone an 8½ x 11 xerox of Raymond Burr's face. He said that he did give one to Aguirre after he went to meet with the SDNY USAO to see if they were interested in the Pequot case. Kreitman said that he was worried about Aguirre presenting the case to them because he said that Aguirre tends to talk "in a nonlinear fashion". Aguirre reported back that the SDNY was very interested, so Kreitman was pleased and gave him the Perry Mason award.

Kreitman said that he fired Aguirre by telephone because Aguirre was in California on vacation and would not be back before his probationary period was over. He said that he had never had to fire anyone. Kreitman said that Aguirre and him were friends as of the summer when Kreitman believed that Aguirre was unhappy at work but still came to Kreitman's house for a party he has every year for staff. Aguirre felt that his investigation into Pequot was being thwarted, according to Kreitman. Aguirre told Kreitman that he wanted to report directly to him, but Kreitman told him that could not happen. Kreitman said that the Pequot case was staffed more heavily than any other case in his group. Kreitman told me that there was a consensus that Aguirre should be terminated by Thomsen, Berger, Hanson and himself and that he drafted the termination letter to Aguirre. When I asked Kreitman why

Aguirre was fired, he told me that Aguirre refused to work in a structure, which presented possible dangers for the Commission, he was a loose canon (he had threatened to resign and Aguirre made it clear he did not need to work financially), Aguirre said that he would leave once the investigation was over but would not do the write up of the case, and he was uncooperative with the other 2 staff attorneys assigned to his case by being disrespectful and refusing to bring them in to the heart of the case, he would not take supervision from Hanson, and Berger received many complaints from opposing counsel about

ATTACHMENT 7

Mr. BERGER: Well, in order to establish a case that you're building against an individual, that's what you'd want to do. You'd want to set out here are the elements for the violation, here are the facts that we have relating to that element.

Mr. FOSTER: Well, that's what you would need to set out in order to justify taking an enforcement action against that person. But is that what you would need to establish in order to take investigative testimony?

Mr. BERGER: Well, I think you would have to have some reasonable basis to take that testimony, and then the reasonable basis is the analysis under the elements of the violation and the facts that you have supporting those elements.

Mr. KEMERER: How often did you require staff attorneys to write memos in order to justify taking evidentiary testimony?

Mr. BERGER: It was not infrequent.

Mr. KEMERER: Well, for instance, on the multiple occasions when Mr. Samberg's testimony was taken, did Mr. Aguirre have to do a memo such as this?

Mr. BERGER: I don't remember.

Mr. KEMERER: In the Mainstay case, did Mr. Swanson have to do a memo in order to take testimony?

Mr. BERGER: I don't remember. I think he did actually do a memo at one point. I just don't remember what point that was.

Mr. KEMERER: So you don't recall whether it was in order to get permission to issue a testimonial subpoena?

Mr. BERGER: Well, we were talking about taking some testimony from individuals fairly prominent, a Senator or a former Senator, and some other individuals, and we wanted to see what we had. So I think that—I remember reading something in advance of the testimony that would support—that supported taking their testimony.

Mr. FOSTER: You mentioned prominence just now.

Mr. BERGER: Uh-huh.

Mr. FOSTER: Is it the case that you're more likely to require a memo such as this in a case where the proposed testimony is of someone prominent?

Mr. BERGER: No, I don't think so. We've done this, we've done memos in advance of people that no one would know.

Mr. FOSTER: Can you give us an example?

Mr. BERGER: Not off the top of my head.

Mr. FOSTER: Can you get back to us on that?

Mr. BERGER: I can think about it. I mean, I was there for 14 years. I was probably involved in maybe a thousand investigations, brought 400 or so investigations. I mean, that's a lot of people.

Mr. FOSTER: Why did you mention prominence just now, though?

Mr. BERGER: I don't know why I mentioned prominence.

Mr. KEMERER: Directing your attention to page 2 of Exhibit II, the third full paragraph begins with, "Further . . ." Do you see that line?

Mr. BERGER: Yes.

Mr. KEMERER: Mr. Aguirre appears to contend that the SEC's operating in the dark with respect to whom Mack spoke to while CSFB was wooing him to come on as the CEO. Is that true?

Mr. BERGER: I really don't know what was in Gary Aguirre's head when he wrote this, so I can't tell you what he was thinking. One of the reasons this is not a particularly good memo is I have no idea what he's talking about, operating in the dark. We were sending out subpoenas. We were getting information. We were making inquiries to Credit Suisse to get information concerning contacts or possible contacts between Mr. Mack and others. So I don't know what he's referring to here. He obviously didn't make it clear enough for me to understand.

Mr. KEMERER: Okay. Were you aware from reading any of these memos ever that Mr. Mack was meeting with people in Zurich or, you know, outside of the country?

ATTACHMENT 8

From: Eichner, Jim
Sent: Wednesday, July 19, 2006 4:59 PM
To: Hanson, Robert
Subject: FW: Pequot pending matters.

I assume Walter has this—not premature but prerequisite

From: Kreitman, Mark J.
Sent: Wednesday, August 17, 2005 11:26 AM
To: Aguirre, Gary J.; Jama, Liban A.; Eichner, Jim

Cc: Hanson, Robert
Subject: RE: Pequot pending matters.

Where are we on determining the date Mack was brought over the wall re GE-Heller deal—the necessary prerequisite to subpoena to Mack?

From: Aguirre, Gary J.
Sent: Wednesday, August 17, 2005 11:21 AM
To: Jama, Liban A.; Eichner, Jim
Cc: Kreitman, Mark J.
Subject: Pequot pending matters.

I summarize below a list of pending matters following up on our conversations over the past couple of days, yesterday with Liban alone. These items in bold will be the subject of phone calls this afternoon, if you would like to sit in.

Mark: since Bob is out, I am copying you on the list. I am leaving for vacation tomorrow, which I cleared with Bob.

1) Confirm exam date for Benton in NY for week of 9/5; get exam room and reporter;

2) Confirm exam dates for Dartley for week of Sept. 19 in DC and Samberg for week of Sept. 26 for NY; get exam room and reporter;

3) Pequot subpoena: Press Harnish for compliance with July subpoena (lets discuss);

4) Get status from Storch on each class of back up tapes.

5) Morgan Stanley: Get clarification from Ashley Wall on any soft spots in her letter re MS subpoena compliance; you can tackle this if you want while I'm out or I'll do when I'm back.

6) Status of FBI contact with Zilkha; we want Samberg exam immediately after Zilkha interview; we're waiting agent's call-back. Agent is David Markel, tel # 718-286-7385

7) Telephone company subpoenas: Any useful phone records produced of Samberg calls from mid-June through end of July?

8) CSFB: Get press on Patalino for the following:

a) July subpoena paragraph 1: Thornberg and Rady's e-mails with Mack; Mack—CS (as parent) e-mails;

b) July subpoena paragraph 2: Thornberg or Radis notes or memo re Mack; CS notes or memos re Mack

c) Letter to Patalino on above;

d) Look for August 30 production of items 3-8.

e) Remind Patalino next week if we do not have his letter re above.

f) August 17 subpoena: we need to work out; he will ID info flow; we make sure his doc review gets docs.

9) Andor backup tapes issue: See my memo raising construction issue on Pequot-Andor agreement (will send an e-mail on this today);

10) Other acquisition players have contacts with Pequot before Samberg trades? You can ask them to collect this info by request letter. However, I doubt any will admit w/o docs. GE and JP Morgan say no docs. You have Wall letter. Need to check with Merrill on Hughes.

ATTACHMENT 9

the termination were, in fact, the true reasons for the termination? Was that the characterization—a fair characterization?

Ms. ANDREWS: No. We don't second-guess management decisions, so we wouldn't have been looking at, well, gee, did he really not get along with others or was it that he didn't do this 'i'.

We were looking only at the allegations that Mr. Aguirre raised in his September 2nd and October 11th letter, so the allegation was he was terminated for, among other reasons, the fact that he complained about not taking Mr. Mack's—him not being able to take Mr. Mack's testimony when he wanted to.

Ms. MIDDLETON: So you were looking for—yes. He was saying, I was terminated for—

Ms. ANDREWS: Complaining.

Ms. MIDDLETON:—unlawful reasons.

Ms. ANDREWS: He did say—

Mr. BRANSFORD: No, I don't think that's what he said.

Ms. ANDREWS: Right.

Ms. MIDDLETON: Okay.

Well, he did say—

Mr. BRANSFORD: It's not a fair way to characterized what he said. It's not necessarily

Ms. ANDREWS: What I see as the function?

Mr. FOSTER: Yes. I mean, you seem to be very narrowly construing Mr. Aguirre's September 2nd letter and his October 2nd letter, sort of very narrowly reading exactly what did he claim, and we're not going to investigate anything else besides what he exactly claimed.

Do you see it as the IG's function to just sort of very narrowly respond to a complaint like that? Do you think that you have a broader mandate to investigate and to seek out where there may be evidence of fraud, waste and abuse or misconduct, more generally speaking, regardless of whether a complaint comes to your office about it? Specifically—

Ms. ANDREWS: Well, one, I don't think it's for me to say what the role of the Inspector General's office is. At this point now, what I do is investigate allegations that come in, so that's what I was doing here. I was investigating the allegations, and that was what I was told to do.

Other unlawful reasons or—we don't second-guess management decisions and we don't necessarily look at every unlawful allegation, every unlawful reason that he was terminated. That's not something we normally look at. We don't second-guess why employees are terminated.

Ms. MIDDLETON: But if a letter comes to you to investigate and it says the management decisions were based on unlawful reasons, some of which I'm putting in my letter and some of which I'm not going to—

Ms. ANDREWS: Well, one of which he was putting in the letter.

Ms. MIDDLETON: One in the letter and others I'm not going to lay out right now to you, Commissioner Cox.

Ms. ANDREWS: Right, Chairman Cox.

Ms. MIDDLETON: Chairman Cox.

You're saying it's not your job to second-guess the management decisions, so it seems to me, if the letter is challenging the management decision and says it's for unlawful reasons, you're saying, well, I can't second-guess that. I can't investigate that. I can't see if it's true.

Ms. ANDREWS: My marching orders were to investigate the allegations he had made in both the September 2nd and October 11th letters. That's it.

Ms. MIDDLETON: Right. But—

Ms. ANDREWS: It's not my decision necessarily of what else we would be investigating.

Ms. MIDDLETON: But his allegation was, I was terminated for unlawful reasons.

Ms. ANDREWS: Right. We did not investigate to their allegations in the same way that you went to them to get their reaction to his, is that—

Ms. ANDREWS: Well, I didn't get their reaction to his. I'm calling them because they've been, you know, accused of wrongdoing, so I have to call them and—

Mr. FOSTER: And then when you did, they accused Mr. Aguirre of—

Ms. ANDREWS: He was—

Mr. FOSTER: —if not wrongdoing, of—

Ms. ANDREWS: Again, we're not second-guessing management decisions on terminating a probationary employee. Absolutely not. That's my understanding of our role in the IG's office.

Mr. FOSTER: Did you assume that Mr. Aguirre didn't have documents or wouldn't have been able to have documents that might substantiate his allegations that you might need to seek from him?

Ms. ANDREWS: I didn't make any assumptions about it. I have a lot of e-mails that he sent to people and people sent back to him.

Mr. FOSTER: Right. Which were given to you by the people—

Ms. ANDREWS: Right.

Mr. FOSTER:—against whom he made the allegations.

Mr. SPECTER. In the absence of any Senator on the floor seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

Mr. SPECTER. Madam President, a personal comment or two. On the Senate floor, some years ago, I compared Senator GRASSLEY to Senator Harry Truman, later President Harry Truman. I did so after observing Senator GRASSLEY's work over a long period of time. Senator GRASSLEY prides himself on being a farmer—on being a farmer Senator. May the record show that Senator GRASSLEY is nodding in the affirmative. It may be—Senator GRASSLEY would have to speak for himself—he prides himself more on his status as a farmer than as a Senator. But if he were to do that, I would disagree with

him, even not knowing his prowess as a farmer because of his prowess as a Senator.

Senator GRASSLEY is very direct and very plain spoken. I know of his career when he became a member of the Iowa legislature, the lower house. I have only a recollection, Senator GRASSLEY can correct me, that he earned \$6 a day in the Iowa legislature at that time?

Mr. GRASSLEY. It was \$30 a day but no expenses.

Mr. SPECTER. It was \$30 a day but no expenses. As I recollect, Senator GRASSLEY told me it was an increase in pay from what he earned as a farmer.

Mr. GRASSLEY. It was.

Mr. SPECTER. It was. Senator GRASSLEY corroborates that. But I have seen Senator GRASSLEY take on the giants in the Senate. They say people in glass houses should not throw stones. Senator GRASSLEY has thrown a lot of stones in the 26 years he has been here and he doesn't live in a glass house, but he has taken on the giants in the Federal executive branch. He believes thoroughly in oversight, as I do. The work we are submitting today is an example of that.

I think it is a good analogy, between CHUCK GRASSLEY and Harry Truman. I may search the CONGRESSIONAL RECORD to see how long ago it was that I said it, but it is time it is said again.

Mr. GRASSLEY. Thank you, I appreciate that.

Mr. SPECTER. May the record show Senator GRASSLEY said thank you, and he appreciates it.

I may make one addendum, and that is that I say this notwithstanding the 26-years-plus ribbing I have taken from Senator GRASSLEY for being a Philadelphia lawyer.

Mr. GRASSLEY. I have always said: Thank God we only have to have one Philadelphia lawyer in the Senate.

Mr. SPECTER. The Senator said off-camera: Thank God we only have one Philadelphia lawyer in the Senate.

Mr. GRASSLEY. But I say that complimentary.

Mr. SPECTER. But says it complimentary. I don't know. The tone of his voice was usually derisive. There was one time the Senate had two Philadelphia lawyers, Senator Hugh Scott and Senator Joe Clark, they were lawyers together. Senator Clark was elected to the Senate in 1956 for two terms and Senator Scott in 1958 for three terms. So there was an overlapping period of time where there were two Philadelphia lawyers in the Senate.

But notwithstanding the questioning tone, sometimes, of Senator GRASSLEY about a Philadelphia lawyer, I maintain my view of him at the highest level of comparison to President Truman.

Mr. GRASSLEY. Thank you.

Mr. SPECTER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Virginia is recognized.

IRAQ

Mr. WARNER. Madam President, about a week ago, I think it was on the 23rd, my colleagues, the Senator from Nebraska, Mr. BEN NELSON, and the Senator from Maine, Ms. COLLINS, and I, together with several cosponsors, put into the RECORD a resolution—I underline put into the RECORD—so that all could have the benefit of studying it.

We three have continued to do a good deal of work. We have been in consultation with our eight other cosponsors on this resolution, and we are going to put in tonight, into the RECORD—the same procedures we followed before—another resolution which tracks very closely the one that is of record. But it has several provisions we believe should be considered by the Senate in the course of the debate. How that debate will occur and when it will occur. I cannot advise the Senate, but I do hope it is expeditious. I understand there is a cloture motion that could well begin the debate, depending upon how it is acted upon.

We have also had a hearing of the Senate Armed Services Committee last Friday. We had a hearing of the Senate Armed Services Committee again this morning. Friday was in open session. The session this morning was in closed session. The three of us, as members of the Armed Services Committee, have learned a good deal more about this subject and, I say with great respect, the plan as laid down by the President on the 10th of January. We believed we should make some additions to our resolution.

We have not had the opportunity, given the hour, to circulate this among all of our cosponsors so at this time it will not bind them, but subsequently, tomorrow, I hope to contact all of them, together with my two colleagues, and determine their concurrence to go on this one. I am optimistic they will all stay.

But let me give the Senate several examples of what we think is important in the course of the debate—that these subjects be raised. We put it before the Senate now in the form of filing this resolution, such that all can see it and have the benefit, to the extent it is reproduced and placed into the public domain. Because the three of us are still open for suggestions, and we will continue to have receptivity to suggestions as this critical and very important subject is deliberated by the Senate.

Our objective is to hope that somehow through our efforts and the efforts