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**NOMINATIONS OF MICHAEL E. HOROWITZ,
NOMINEE TO BE INSPECTOR GENERAL, DE-
PARTMENT OF JUSTICE; AND SUSIE MOR-
GAN, NOMINEE TO BE U.S. DISTRICT JUDGE
FOR THE EASTERN DISTRICT OF LOU-
ISIANA**

WEDNESDAY, OCTOBER 19, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, Pursuant to notice, at 2:35 p.m., Room 226, Dirksen Senate Office Building, Hon. Chris Coons, presiding.

Present: Senators Grassley, Cornyn, and Lee.

Senator COONS. Good afternoon, everyone. I'm pleased to call this nominations hearing of the Senate Committee on the Judiciary to order.

I'd like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate them on their nominations. I'd also like to welcome those of my colleagues who are here to introduce one of today's nominees.

We have today two nominees, beginning with Michael E. Horowitz, nominated to serve as Inspector General for the U.S. Department of Justice. Mr. Horowitz currently serves as a partner in the Washington office of Cadwallader, Wickersham & Taft.

We also welcome Donna Sue Morgan, or Susie, whom I've had the pleasure of just meeting, who's been nominated to serve on the District Court for the Eastern District of Louisiana. Ms. Morgan is currently a partner at the New Orleans office of the law firm of Phelps & Dunbar, and she will be introduced by her home State Senator and my friend, Senator Mary Landrieu.

I know that my colleagues have busy schedules to attend to, so we will start a little bit out of order today with the introduction of our second panelist first.

Senator Landrieu, please proceed.

**PRESENTATION OF SUSIE MORGAN NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA
BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE
STATE OF LOUISIANA**

Senator LANDRIEU. Thank you, Chairman Coons, and thank you Senator Grassley and the members of the Committee for giving me

the opportunity to present Mrs. Morgan to you. As long as I've known Susie I did not know her name was Donna Sue.

[Laughter.]

Senator LANDRIEU. So I've even learned something today that I didn't know.

But Ms. Morgan and I have been friends for literally over 30 years, so I've known her a long time. She is also known and so well-respected, Mr. Chairman, by so many members of the Bar in our State. I am just going to give a brief introduction because I know you have all the documentation before you.

First, let me say that she's joined by her husband, Larry Feldman, and several close friends, including one of our mutual friends, the former Chief of Staff for Senator Bennett Johnson, who also knows this nominee very well.

Susie has earned the support of both myself and Senator Vitter, who will I'm sure send a letter of support if he can't be here in person today. She has practiced for many years in State and Federal court, advocating for both plaintiffs and defendants. One of the things that gave me great confidence when I recommended Ms. Morgan and was pleased that the President nominated her is just her even-handedness, fair temperament, et cetera, which I think is important, Mr. Chairman, on the bench.

She is a native of north Louisiana, received a Master's degree from the University of Louisiana at Monroe. She earned her law degree from Louisiana State, graduating in the top 5 percent of her class with Honors. She clerked for one of our most respected Federal judges in the Fifth Circuit Court of Appeals.

I could go on and on with many of her involvements in the legal community. One of the things she's most proud of, and I think it really stands out in showing you her leadership ability and her willingness to step up and do tough work, not just to be a leader that gets credit for the easy things, but Susie led, and it took her almost 14 years.

She chaired the Rules Committee for the Louisiana Bar Association, the Louisiana Supreme Court, and thanks to her leadership the Louisiana Supreme Court agreed to replace the antiquated system where each judicial district in Louisiana adhered only to its own set of court rules, and she helped to lead and implement a standardized set of rules for all the courts in Louisiana. That is tough work, doesn't get a lot of headlines for the general public. But of course for the lawyers and for the plaintiffs and defendants that use the system, it's important.

She's always been a very strong voice for women lawyers, which I so appreciate, in advancing their opportunities and careers. After Hurricane Katrina and Rita in our district, she rallied the community to support so much of the legal community, or people that needed the help of the legal community after that disaster.

So I submit to you Mrs. Susie Morgan for the District Court. I have every confidence that she will do an outstanding job and that she meets all the criteria and qualifications that this Committee and our country depend on to do an excellent job at the Federal bench. I will be happy to answer any questions or provide any other additional comments.

Senator COONS. Thank you, Senator Landrieu.

I believe we'll hold the record open for a week in the event that Senator Vitter also wants to join you in your very compelling introduction of your professional and personal friendship with Ms. Morgan.

I know you have pressing business to attend to, so Senator Landrieu, thank you very much for joining us this morning to introduce our nominee.

Senator LANDRIEU. Thank you, Mr. Chairman.

Senator COONS. I'd now like to move to invite Mr. Horowitz to come forward, and I'll begin with an introduction of Mr. Horowitz, if I might.

Mr. Horowitz is currently a partner, as I mentioned, in the Washington, DC office of Cadwallader, and during his years there he's also served as a Commissioner on the U.S. Sentencing Commission.

Prior to joining the firm of Cadwallader, Wickersham & Taft, Mr. Horowitz spent 3 years in the Criminal Division of the Department of Justice, where he served as a Deputy Assistant Attorney General and Chief of Staff to two Assistant Attorneys General, James Robinson, a Clinton appointee, and Michael Chertoff, a Bush appointee.

He previously spent 8 years as a Federal prosecutor in the Southern District of New York, where he was Deputy Chief of the Criminal Division and Chief of the Public Corruption Unit. He began his legal career as an associate at Devilbois & Plimpton, and clerked for Judge Davies of the U.S. District Court for the Central District of California. Born in New York City, Mr. Horowitz earned his B.A. summa cum laude from Brandeis University, and his J.D. magna cum laude from Harvard Law School, where he was executive editor of the *Harvard Civil Rights and Civil Liberties Law Review*.

Welcome, Mr. Horowitz.

Mr. HOROWITZ. Thank you, Mr. Chairman.

Senator COONS. Please proceed with your statement.

Mr. HOROWITZ. Thank you.

Senator COONS. I need to swear him, don't I? Yes, I do. Thank you. Forgive me. I was confused by the header which says "opening statement." That's for me, not for you.

**STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator COONS. Before we begin your testimony, Mr. Horowitz—forgive me. I'd like to take a moment to highlight the importance of the respective roles of our two nominees today. The Office of Inspector General is charged with conducting independent investigations of Department of Justice personnel and programs to detect and deter waste, fraud, abuse, and misconduct and promote integrity, economy, efficiency, and effectiveness in DOJ operations.

The Office of the Inspector General is within the executive branch, but for it to function properly it must also be independent from it. When the Inspector General steps in it's because of a potential political or personnel conflict which may prevent the normal supervisory structure from operating free of bias. Our Federal laws bestow the IG with formal independence. It takes, however, a spe-

cial personality to shield one's self effectively from the inevitable political pressures that are unavoidable in investigating sensitive and controversial allegations within such an important agency as the Department of Justice.

We rely on Inspector Generals to uncover and report truths that can be tough to learn, but that we must learn if we hope to form a more perfect union and have a more effective Federal Government. The Inspector General's 2008 report within the Department of Justice, covering the improper dismissal of nine U.S. Attorneys, for example, provided factual background for a vigorous public debate surrounding the importance of keeping politics out of prosecutorial discretion, and the Office of the Inspector General also shed critical light on national security letter abuses by the FBI, which led to the FBI revising its internal controls.

The IG conducts regular oversight which requires diligence, tenacity, competency, and fairness. The IG's reports ensure fairness in grant awards, proper information security practices, and integrity in procurement.

I look forward to hearing from Mr. Horowitz, who comes highly recommended regarding his qualifications to be IG, and what principles he would use to guide that office if he were to be confirmed.

I also look forward to hearing from Ms. Morgan, Susie, who is nominated to serve as the District Court judge in the Eastern District of Louisiana. Our vacancy rate today stands at over 10 percent, and many of our judicial districts are in crisis. I hope that my colleagues will move quickly to confirm qualified nominees and bring down the vacancy rate. In my view, Ms. Morgan, I sincerely hope you, if confirmed, will continue in the long and honorable traditions of the Federal bench.

Senator Grassley, do you have any statements at this time?

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM IOWA**

Senator GRASSLEY. I welcome both of our nominees, and will talk about the Office of Inspector General conducting independent investigations, audits, inspections, special reviews of the U.S. Department of Justice personnel and programs to deter and detect waste, fraud, abuse, and misconduct and to promote integrity, economy, efficiency, and effectiveness in the DOJ operation.

The fundamental requirement of this office and other Inspectors General is independence. The IG must not be swayed by political affiliation, loyalty to institutions, personal friendship, or concern about personal popularity or potential embarrassment to colleagues in the Department. That is true whether you are a Republican or Democrat nominee.

I have discussed this in a long visit that I had with Mr. Horowitz, and I hope that he knows my concerns, and I think he does. Much of the hearing today, and any follow-up, will be to establish a record on willingness and ability to maintain that independence.

In addition, we'll be considering the nomination of Susie Morgan to be U.S. District Judge for the Eastern District of Louisiana. The seat to which Ms. Morgan is nominated became vacant upon the removal of Judge Thomas Porteous following his impeachment. It gives me an opportunity to comment on the necessity of our looking

very closely at nominees, with no intimidation toward Susie, our nominee today.

Judge Porteous was one of seven judges nominated on August 25, 1994. A hearing was held just 16 legislative days later. All seven nominees were reported by the Committee later that same day. The very next day, October 7th, the judge was confirmed by voice vote, along with 20 other judicial nominees. Clearly, this nomination, along with others, was on a fast track.

We have no way of knowing whether the impeached judge would have been avoided had more time been spent on reviewing the nomination. However, I think that the compressed timeframe and irregular process was not helpful, nor should it be repeated. There is a reason that we take time to thoroughly review a nominee's record.

Following a hearing, Senators are entitled to review the hearing record and responses to follow-up questions. This is why we routinely ask for the full period of consideration before reporting a nomination to the Senate. Once on the Senate floor, Senators then should be afforded time to review the nomination. Confirmation for lifetime appointments simply should not be rushed through the process.

Today marks the 16th nomination hearing held in this Committee this year. We will have heard from 66 judicial nominees. All in all, 85 percent of President Obama's judicial nominees have received a hearing from this Congress. When my colleagues want to compare the pace of confirmations, I note that at this point in President Bush's presidency, only 78 percent of his nominees had a hearing.

Thank you very much.

Senator COONS. Thank you, Senator Grassley. I certainly agree with your sentiments that it is important that we review closely nominees for Article 3 lifetime appointments to the bench. I am grateful that we have the opportunity for a good and thorough hearing today.

I now would like to invite Mr. Horowitz to please stand and raise your right hand, if you would.

[Whereupon, the witness was duly sworn.]

Senator COONS. Thank you, Mr. Horowitz. Let the record show the nominee has been sworn and taken the oath.

Mr. Horowitz, I welcome you to acknowledge and introduce any family members or friends you have here with you today, and then give us your statement.

**STATEMENT OF MICHAEL E. HOROWITZ, NOMINEE TO BE
INSPECTOR GENERAL, DEPARTMENT OF JUSTICE**

Mr. HOROWITZ. I have, fortunately, family members and friends with me today. My wife, Alexandra; my son, Frederick; my daughter, Clia; my mom, Anne; and my in-laws, Sandra and Charles Kauffman; and some family friends from New York where I grew up, Milton and Janet Leiberman. Thank you.

Senator COONS. Thank you.

Mr. HOROWITZ. Mr. Chairman, Ranking Member Grassley, members of the Committee, thank you for the honor of appearing before you today as the nominee of President Obama to serve as the In-

spector General of the Department of Justice. It is an extraordinarily important position, particularly at this moment in time where the need to eliminate waste, fraud and abuse and to promote integrity and efficiency has never been greater.

I am confident that my investigative, audit, and management expertise in the public and the private sector will enable me to undertake these challenges successfully. I will, if confirmed, exercise my duties with the same independence that I believe I've demonstrated throughout my career and abide by the bedrock principle that Federal District Court Judge John G. Davies instilled in me as his law clerk 24 years ago, that those involved in our justice system must faithfully follow the Constitution and the law and that ideology, partisanship, politics, and favoritism have no role whatsoever.

That wisdom, imparted upon me by Judge Davies, served me well as a prosecutor in the Southern District of New York, where I ultimately became the Chief of the Public Corruption Unit. I was entrusted with some of the office's most sensitive cases and worked regularly with Federal, State, and local Inspectors General, including the Justice Department Inspector General.

We tenaciously followed the evidence wherever it brought us and all too often exposed extraordinary abuses of the public trust. For example, in Manhattan's 30th precinct I helped uncover one of the largest police corruption cases in New York City's history.

On another occasion, I used the RICO statute, the racketeering laws, to prosecute a company and its officers who had defrauded the New York City school system and put children's health at risk by falsely claiming to be able to do asbestos abatement work, which it could not do.

On another occasion, at the then Immigration and Naturalization Service, I led an investigation that arrested 33 people, including 7 INS employees, for taking over \$100,000 in bribes in return for the issuance of green cards that should never have been given out.

The work in the Corruption Unit wasn't always popular, particularly when we were arresting law enforcement officers who were working on cases in our own office with other units. But I wasn't interested in winning popularity contests as the head of the Corruption Unit. I was instructed by the U.S. Attorney to doggedly pursue corruption, to be independent of the other units in the office, and that's precisely what I did.

In many instances, our cases relied heavily on the truth-tellers, those employees who were willing to step forward to report on corruption in their midst. As a result, I understand the importance of encouraging employees to report suspicious activity, of taking whistleblower claims seriously, and of the need to protect them from retaliation. It is a respect that will serve me well, if I am confirmed as the Inspector General.

Over the past 9 years, my work in private practice has involved, among other things, conducting independent internal investigations, working with compliance officers to investigate employee whistleblower allegations, and to protect them from retaliation and drafting compliance and ethics programs.

Many of these matters involve financial fraud and corruption allegations, and as a result I work closely with internal auditors, outside forensic accountants, and audit committees. If confirmed, I will

use this public and private sector experience to oversee and office that aggressively pursues investigations, that makes its decisions based solely on the facts and the law, that conducts thorough and comprehensive audits, and that issues reports that fairly, fully, and accurately reflect its findings.

I also will work tirelessly to protect the office's independence and to fulfill the office's statutory dual reporting obligations to the administration and to the Congress by being responsive and by providing timely and reliable information.

My college alma mater, Brandeis University, has as its motto, "Truth even unto its innermost parts." It's a creed that I intend to live by, if I am confirmed as Inspector General.

I have been asked by family and friends why I'm prepared to leave my law practice to return to the Department of Justice, and the answer to that question for me is easy: because of my love for public service and for our country, and because of my deep affection for the Department of Justice. The Department is much more than just another Federal agency, it is a guardian of our system of justice and is responsible for enforcing our laws fairly, without bias, and above all with the utmost of integrity. The Inspector General plays a critical role in fulfilling that mission and I pledge that, if confirmed, these values will be the basis for any and all decisions that I make.

Thank you for your time, and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Horowitz appears as a submission for the record.]

Senator COONS. Thank you very much.

We will now begin 5-minute rounds of questions.

I wanted to begin by just noting that the Committee has received a range of very notable letters of support for your consideration of your nomination from previous Inspectors General at the Department, from 29 different legal professionals who have served in both Republican and Democratic administrations, and a particularly strong one from Michael Chertoff, whom you worked with when he was Assistant Attorney General in the Criminal Division under President Bush, who wrote that you are an outstanding attorney and public servant who's served in both Democrat and Republican administrations and demonstrated your absolute impartiality and independence, and your integrity is beyond reproach.

I'll ask unanimous consent that these letters be entered into the record at the conclusion of this hearing.

[The letters appear as a submission for the records.]

Senator COONS. I'd be interested in hearing you talk a little bit further. You mentioned your deep affection for the Department of Justice, that being a motivating reason for leaving a successful, vibrant, private sector law practice at a firm.

Given that you spent years at the Justice Department, can you assure the Committee that you will have sufficient distance from your former colleagues to, if required, which it inevitably will, investigate their professional behavior and execute on the role of the IG, and how does your previous experience in the Public Corruption Unit in New York allow us to have any confidence about your ability to do that?

Mr. HOROWITZ. I absolutely make that commitment, Mr. Chairman. I think my experience—it's not just the words that I've mentioned, but I think my deeds will back that up, or have backed that up, in the U.S. Attorney's Office in New York as a corruption prosecutor.

I mentioned an instance where we arrested several law enforcement officers, who at the time we arrested them were about to be the key witnesses in a major drug case that another prosecutor in the office was about to give an opening statement on. As you might imagine, that caused some concern in the office among other parts of the office, but nevertheless the U.S. Attorney completely supported what we were doing, expected us, as I said, to be entirely nonpartisan and independent of the other unit in the office.

In another instance, I was the lead prosecutor before I came down to main Justice on the Teamsters investigation that resulted in the arrest of several individuals connected to the election in the mid-1990s at the Teamsters that resulted in Ron Carey's reelection. That matter was handled by our Civil Division in our office.

Our investigation resulted in the arrest of several people connected to his campaign and resulted in the election being thrown out that our office had obviously spent a considerable amount of time handling. But again, the message we had was, you make the decisions, you follow the evidence in the law, you do so with impartiality, and the results are the results. Wherever the chips fall, they fall.

I've continued that, working in private practice for audit committees and doing independent investigations on several occasions having to make recommendations about misconduct by individuals that we were working with, but that was the responsibility that I was asked and instructed to do by the audit committees, by the clients, and that's what I did.

Then finally, on the Sentencing Commission, I was in private practice at the same time because it was a part-time position by statute, and we, on several occasions, adopted increases in penalties that I can tell you were not welcomed in the defense bar, but nevertheless we did what we thought was right and had to do. I heard many comments from colleagues about that, but nevertheless it was what I was sworn to do and the oath I took, and that would be the same oath I take here and pledge to you.

Senator COONS. If you are to be confirmed, how would you avoid, going forward, political pressures, either within the Department or from elsewhere, to dispose of troublesome investigations or to ignore uncomfortable facts? I know you've got experience in that, but what would you actually use to sustain you in that very difficult work?

Mr. HOROWITZ. Well, I think one of the things that's very important is to understand the Inspector General isn't the only person in the office. It's an office of about 450 people, people with deep working relationships and understandings of the Department, who have been there a long time. I think it's safe to say many—I think most people would agree Glenn Fine and Mike Bromwich, and others before him, built an outstanding office with outstanding people.

So one of the things to do is to understand that, as Inspector General, you need to listen to the people you're working with and

make sure they have the authority to do the investigations and make sure you're not interfering with the investigations, but supervising, oversee it, and giving direction. So that's, I think, a significant part of how you do things and make sure you follow through and do things fairly and honestly.

Senator COONS. And what do you think—my last question. What do you think are the most important characteristics for an effective Inspector General, in addition to listening well?

Mr. HOROWITZ. Well, I think, first and foremost, is independence and the ability to operate independently. I think as well, as with any corruption prosecutor, the ability to think creatively and to be tenacious. These are not easy matters to investigate, cases to make. There are people involved who, in most instances—for example, in investigating law enforcement officers, they went in to do right and turned bad in the job. They didn't go in to steal. Something turned them. So you've got to be prepared to think creatively, be tenacious. Never say something's impossible, because the one thing I learned as a corruption prosecutor, anything is possible. People in authority can do things improperly.

Then finally, given the issues as to the budget, I think it's very important for an Inspector General to go in, to be able to work with auditors, to push them, to pursue waste, fraud and abuse, and that's something that I think is going to be a very important part of this job.

Senator COONS. I couldn't agree more.

Senator GRASSLEY.

Senator GRASSLEY. Yes. My questions would follow along the lines that we talked about in our private conversation in my office. I heard what you said in your opening statement and I heard everything that you've answered here for Senator Coons, and that gives me a great deal of satisfaction.

But I want to be a little more direct. For instance, in private practice you indicated that you had worked with the Attorney General's current chief of staff—and I ask these questions because of Fast and Furious—and that you had contacts with him about your nomination. There are serious questions about exactly what this chief of staff knew and what he may have told the Attorney General about Fast and Furious.

You wrote a letter in support of Lanny Brewer to be head of the Criminal Division. Briefly, how long have you known him? These can be short answers if you want them.

Mr. HOROWITZ. Right. Sometime after 1999, when I came down. I believe he was in private practice by then.

Senator GRASSLEY. OK.

You indicated that you have followed the Fast and Furious news reports. Based on what you know publicly, do you believe that, if confirmed, you will have to investigate some of your friends and former colleagues? For instance, Mr. Brewer or Attorney General's chief of staff, Gary Grindler?

Mr. HOROWITZ. I intend, if confirmed, Senator, to pursue every avenue in that case no matter who's involved. It's clear to me that there are numerous people at various levels of the administration that are—that have had questions raised, and I will pursue them vigorously and fully, and the office will do that.

Senator GRASSLEY. OK.

I think you answered my next question, so let me make a statement. I think your statement is to assure us that you would investigate these individuals independently and impartially, despite your previous subordinate interaction with them.

Mr. HOROWITZ. Absolutely, Senator.

Senator GRASSLEY. As you know, the Office of Inspector General recently provided copies of some secretly recorded audiotapes to the U.S. Attorney's Office in Arizona. On the tapes, the cooperating gun dealer in Fast and Furious and the ATF case agent are talking about my oversight work, and other conversations that the U.S. Attorney's Office and the ATF had about what to say in response to all the questions from Congress. And by the way, they don't like me. That's what I deduced from it.

Mr. HOROWITZ. I've only read the transcript. I haven't listened to the tape yet, Senator.

Senator GRASSLEY. So based on that, do you understand how it interferes with our Congressional inquiry to provide evidence like this directly to the very office we're investigating?

Mr. HOROWITZ. Senator, I understand the significance of that issue and read about it. Let me just briefly mention, I had a similar scenario to have to deal with in the 30th Precinct investigation I dealt with in New York, where we were investigating police officers that the District Attorney's Office were relying on, other parts of the office were relying on. I clearly understand the need to be sensitive to other matters going on and think very carefully, step by step, before taking action.

Senator GRASSLEY. Yes. To continue on this same line about the tapes, the office cited discovery obligations to criminal defendants. But does that require that the evidence be turned over immediately, even before the inquiry is complete?

Mr. HOROWITZ. What I can tell you is, in the cases I've dealt with where that situation arose, oftentimes I've reached out to the defense lawyer and the judge to talk about the timing of the production and try and work out an arrangement that allowed our investigation to continue while ensuring that any constitutional obligations were not violated. So I would certainly approach these matters with that kind of sensitivity.

Senator GRASSLEY. So that kind of is like you're saying indirectly that they probably gave these tapes too soon to the people down there.

Mr. HOROWITZ. Well, I'm hesitant to answer specifically as to this, Senator—

Senator GRASSLEY. That's OK.

Mr. HOROWITZ.—because I don't know the facts. I've simply read about the tape question.

Senator GRASSLEY. OK.

What steps would you take, if confirmed, to ensure better cooperation and coordination with parallel Congressional investigations?

Mr. HOROWITZ. In my mind, Senator, it's very important that both investigations obviously be respected and the independence of both investigations be respected, but that doesn't mean that you go forward without recognizing the legitimacy of the other investiga-

tion and working carefully to ensure that both investigations can successfully proceed, and neither hurts the other. It's got to be done carefully, but that's certainly something I'm sensitive to.

Senator GRASSLEY. The Office of Inspector General currently does not have jurisdiction to investigate allegations of misconduct by attorneys at the Department of Justice. Rather, that jurisdiction falls to the Office of Professional Responsibility, which reports directly to the Attorney General. Former Inspector General Glenn Fine said that this creates a conflict of interest. So my question to you: do you support extending the jurisdiction of the Office of Inspector General to include attorney misconduct?

Mr. HOROWITZ. I've talked with Glenn about that issue. I think it's a very significant issue. The only hesitancy I have with answering that right now, is I feel I'd have an obligation to speak with the other people in the office to get their views before I reached a decision on that. But I have read the transcript of the hearing, I've read his testimony, I've talked to him personally about this. I know how strongly he feels about it and I understand why. He's concerned that this is the only department in the government that doesn't have that authority.

Senator GRASSLEY. Thank you. I'll have a second round.

Senator COONS. Thank you, Senator Grassley.

Senator CORNYN.

Senator CORNYN. Mr. Horowitz, welcome.

Mr. HOROWITZ. Hi. Thank you, Senator.

Senator CORNYN. And thank you for your willingness to serve. Congratulations to you and your family.

I also want to follow up on some of our conversation we had in my office, and thank you for coming by and answering those. But just so we can put this in context, other than the Inspector General, which serves at the pleasures of the Attorney General himself and the President, I think people are familiar with the role of Special Counsel, which is also an office within the Department of Justice, presumably reports to the Attorney General himself, but has some measure of independence. That was actually—the independent counsel position that actually preceded that was allowed to expire by bipartisan support in Congress because of concerns on both sides of the aisle about overreaching that occurred, the tremendous pressure on an independent counsel to come up with some indictment of someone somehow for something.

Mr. HOROWITZ. Right.

Senator CORNYN. But I want to ask you about the—your level of independence. I have great respect for the legal profession, and I heard what you said about your commitment to the law and to the facts. But can you explain to everyone listening how—if ultimately Attorney General Holder and the President himself can terminate you, how do you reconcile your independence with that fact?

Mr. HOROWITZ. I appreciate that concern and that issue, Senator. I can tell you from my standpoint, I'm interested in this job and interested in serving because of the independence in a significant way. If I felt that my independence was being limited in a way that I thought was inappropriate I wouldn't be interested in serving, or continuing to serve. It's—

Senator CORNYN. You'd quit?

Mr. HOROWITZ. I presumably would quit. I'm obviously not committing to doing anything until a situation arose, but I've been in the Department in both administrations and have worked with people who made it clear that they would be willing to do that in an appropriate circumstance. So I don't think it's just an Inspector General, but I understand how it arises even in a greater context with an Inspector General.

Senator CORNYN. As you know, the Fast and Furious debacle came to the public's attention generally when Brian Terry, a Border Patrol agent, was killed using one of these 2,000 some-odd firearms that were bought in the United States but then allowed to walk without the Bureau of Alcohol, Tobacco and Firearms Agency even knowing where they were going.

Then apparently Attorney General Holder, sometime in February-March 2011 timeframe, requested the Acting Inspector General to do an investigation of this. Of course, we're still waiting. That was some seven or 8 months ago.

While the properly functioning Inspector General's Office is important to maintaining the public's confidence in the proper operation of the Department of Justice and accountability, it strikes me as a concern that if in fact an Inspector General's report can—investigation can continue ad infinitum, that there is some obligation to bring it to a reasonable conclusion, or at least provide some sort of interim report so it doesn't look like people are waiting for the next election or some other event for it to occur, which would seem to undermine the credibility of the investigation.

Would you care to comment on that?

Mr. HOROWITZ. Senator, in almost every context I've ever worked in at the Department of Justice, justice delayed is justice denied. Delay is rarely to the benefit of anybody who's doing an investigation, and that's why I mentioned timely reporting in my opening statement because I do care about that, and I think it's very important, particularly in an Inspector General position, as you said, that the Congress, the public, the administration gets timely reports.

Senator CORNYN. If the trail in your investigation, once you're confirmed, would lead to the Deputy Attorney General or the Attorney General himself, would you follow this to the end of that trail?

Mr. HOROWITZ. Absolutely, follow wherever the facts lead, Senator.

Senator CORNYN. What would be a legitimate reason for the Department of Justice to refuse to turn over a document or provide a witness for a—to a Congressional investigation of this matter?

Mr. HOROWITZ. On this matter? On the Fast and Furious matter? Senator, I probably would have to understand more about what the request involved. And I have, at this point, only looked at what's public, including the reports of Senator Grassley and Chairman Issa. But without understanding better perhaps what the request was, I could foresee circumstances—grand jury information for example, is by statute confidential. So I think it would, for my mind, turn on what the specific request was. But I'd need to know, I think, a little bit more.

Senator CORNYN. And finally, do you see any reason why the Department can't, or shouldn't, cooperate with a legitimate congress-

sional investigation while simultaneously conducting its own investigation through the Office of Inspector General?

Mr. HOROWITZ. To my mind, Senator, that's something that the Inspector General's Office should try to do, and I would try to do that, and commit to you I will do that.

Senator CORNYN. Thank you, Mr. Horowitz.

Mr. HOROWITZ. Yes.

Senator COONS. Senator Lee.

Thank you, Mr. Horowitz. We'll go to a second round of questions.

To the question about timeliness and swiftness on the shortness of justice, if you would, you mentioned a number of compelling fact patterns of how aggressively you pursued investigations when you were leading the public Corruption Unit, even those that were uncomfortable or difficult for the broader objectives either of NYPD or the U.S. Attorney's Office.

I think you referenced one where you executed arrest warrants on law enforcement officers who were scheduled to be the opening witnesses in a major—tell us a little bit more about the facts of that particular case, if you would.

Mr. HOROWITZ. Yes. That case involved three officers assigned to an elite drug enforcement task force in New York that were arrested for stealing drugs and being involved in drug dealing themselves. They—we learned about that information. That's obviously the kind of thing you need to bring to a conclusion quickly.

You can't have people with badges and guns going around when you know what they're doing, conduct such as that. And so our obligation was to swiftly get to the end point, but at the same time make sure you had a good case, a case that could stand up in court. So that's the balance that has to go on, but you have to move quickly.

Senator COONS. And what impact did your proceeding swiftly and executing those arrest warrants have on the narcotics case where those officers were signature witnesses?

Mr. HOROWITZ. We decided the case was ready to be taken down and it didn't matter that it was the day before the opening statements in the other trial, or the day of the opening statements. I can't remember which it was. That was a case where it was clear the arrests had to be made and that was the right outcome. It didn't matter what the impact was on the other case.

Senator COONS. You also referenced a broad procurement fraud issue.

Mr. HOROWITZ. Right.

Senator COONS. I think you said you deployed—you used the RICO statute in order to prosecute—investigate and prosecute a New York City Schools procurement fraud case.

Mr. HOROWITZ. Correct.

Senator COONS. And you also referenced some immigration or INS bribes—

Mr. HOROWITZ. Right.

Senator COONS.—for improper issuance of green cards. Tell us anything else if you could that would give the Committee some reassurance about your insistence, your independence, your doggedness as a prosecutor, particularly in these corruption cases,

that may speak to some of the questions that have been asked here today.

Mr. HOROWITZ. Well, a particularly good example comes again out of the 30th Precinct investigation that I did. We had a situation where we had first—what became the first take-down in September 1994, and arrested several officers. Many people—and a very successful case. Many people wanted us to shut it down. We had good press, we had arrests, they were good cases, and that should be it. No more embarrassment. We had evidence that others were involved but we needed more time to make those cases.

Fortunately, the police commissioner at the time, Commissioner Bratton, and our U.S. Attorney agreed that we should be allowed to continue. We did. Six months later we took down a sergeant who had been training new officers and the Assistant Integrity Control officer in the precinct. Those people would have been allowed to stay had we not fought to do the continuation on the investigation, but instead shut it down simply because there was nice press and it was time to move forward.

Senator COONS. And if you'd been in a position where you hadn't had the support of the folks you referenced who supported your continuing these very controversial investigations, if you hadn't had their support and they had insisted on your stopping when you had evidence of further wrongdoing, what action might you have taken?

Mr. HOROWITZ. I would have certainly seriously considered resigning from my position as head of the Corruption Unit. I don't think you can have evidence like that, believe you need to continue, and continue sitting in that position.

Senator COONS. I just want to say thank you—I will turn to Senator Grassley, if he has additional questions—for your willingness to serve and for your bringing such a rich, broad range of experience to bear.

Senator Grassley.

Senator GRASSLEY. Senator Lee, I have to be with Senator Landrieu at 3:30. Could I go ahead of you?

Senator LEE. Yes.

Senator GRASSLEY. OK.

I think I'm going to just ask one question, but it's kind of a long question. I think you and I talked about my authorship of the False Claims bill. It is my hope that, as Inspector General, that you would also vigorously support the False Claims bill, and particularly the qui tam provisions.

Could you inform the Judiciary Committee of your experience, if any, with the False Claims Act?

Mr. HOROWITZ. My experience, Senator, has been somewhat limited with the False Claims Act and the qui tam statute. I've been involved with clients who have had issues that I wasn't directly handling, was present for some meetings where those cases were discussed, but I was never the lead lawyer on the civil side on those matters. I was involved in some of the discussions concerning interactions with the government that were related to those cases.

Senator GRASSLEY. OK.

Without violating any client-lawyer relationships you have, have you ever advised any corporation about retaliation cases under 31

U.S.C. 3738, the anti-retaliation portion of False Claims? If so, what did you advise the corporation?

Also, have any clients you represented been accused of violating that section during the course of your representation, and have you ever advised a client to take any personnel action which could be viewed as adverse against any qui tam relator?

Mr. HOROWITZ. I have not, Senator. I have not been—no to all three questions.

Senator GRASSLEY. OK.

Have you ever found yourself under pressure by a corporate client to discredit a whistleblower rather than investigate their claim, and if so, how did you respond to the pressure?

Mr. HOROWITZ. I have not, Senator. In fact, I've counseled clients in the other direction, which is to take the claim seriously and to pursue them vigorously.

Senator GRASSLEY. Do you have any question as to the constitutionality of the False Claims Act and the qui tam provision?

Mr. HOROWITZ. None, Your Honor—none, Senator.

Senator GRASSLEY. As Inspector General, would you vigorously police enforcement of the False Claims Act?

Mr. HOROWITZ. Absolutely.

Senator GRASSLEY. Will you oppose any—I'm sorry that I'm smiling, but I ask these questions of everybody from the Justice Department.

Mr. HOROWITZ. It's OK. Completely understand, Senator.

Senator GRASSLEY. Will you oppose efforts within the Justice Department to weaken the False Claims Act and its qui tam provision?

Mr. HOROWITZ. To the extent I was asked, Senator, I'd obviously want to understand what was going on there, but I'm guessing that issue wouldn't arise before the Inspector General. But what I can assure you, is I would learn and understand what was involved, and certainly anything that dealt with retaliation against whistleblowers, I would care deeply about.

Senator GRASSLEY. OK.

And the last portion here, and then I'll quit. Would you agree to promote a close working relationship between qui tam relators' counsels and the Justice Department for the purpose of establishing the public/private relationship envisioned—that I envision of the False Claims Act?

Mr. HOROWITZ. To the extent, Senator, that the Inspector General's Office was involved in that, I'd certainly—that's something certainly I'd be willing to be involved with.

Senator GRASSLEY. Thank you very much.

Mr. HOROWITZ. Thank you, Senator.

Senator GRASSLEY. I wish you well.

Mr. HOROWITZ. Thank you.

Senator COONS. Well, thank you, Senator Grassley.

Senator GRASSLEY. I want to apologize to Ms. Morgan. I have to go to be with your Senator Landrieu on some foster kid cases that we work on.

Senator COONS. Thank you for joining us today, Senator Grassley. We'll do our best to carry on.

I just want to say in closing, if I could, Mr. Horowitz, my thanks to your family, your in-laws, your mother, your friends, to Alexandra, and to Frederick and Claire, for being so good during the hearing and for answering—I have small children of my own.

[Laughter.]

Senator COONS. I am grateful for your appearance and testimony before this Committee today. You're excused, and we will move to our second panel.

Mr. HOROWITZ. Thank you, Mr. Chairman.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used)

Michael Evan Horowitz
2. **Position:** State the position for which you have been nominated.

Inspector General, U.S. Department of Justice
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001
Residence: Chevy Chase, Maryland
4. **Birthplace:** State date and place of birth.

1962; New York, NY
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School (August 1984 to June 1987), JD, 1987
Brandeis University (August 1980 to May 1984), BA, 1984
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W.
Washington, DC 20001
Litigation Partner, September 2002 to Present

U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002
Commissioner (part-time), May 2003 to January 2009
Commissioner (ex-officio), January 2001 to August 2001
Member, Advisory Group on the Organizational Sentencing Guidelines, February 2002 to May 2003

U.S. Department of Justice, Criminal Division

950 Pennsylvania Ave., N.W.
Washington, DC 20530
Deputy Assistant Attorney General, January 1999 to December 1999
Chief of Staff, January 2000 to June 2002

Child Online Protection Act Commission
Washington, DC
Commissioner (ex-officio), October 1999 to October 2000

Georgetown Univ. Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001
Adjunct Professor, August 2000 to December 2000

George Washington Univ. Law School, 2000 H Street, NW, Washington, DC 20052
Catholic Univ. Law School, 3600 John McCormack Rd., NE, Washington, D.C. 20064
American Univ. College of Law, 4801 Massachusetts Ave., NW, Washington, DC 20016
Adjunct Professor, August 1999 to December 2000

U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
Assistant U.S. Attorney, May 1991 to January 1999
(served as Deputy Chief, Criminal Division from August 1995 to December 1997;
served as Chief, Public Corruption Unit from March 1997 to January 1999)

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Associate, December 1988 to April 1991

U.S. District Judge John G. Davies
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012
Law Clerk, September 1987 to September 1988

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
Summer Associate, May 1987 to July 1987

Sullivan & Worcester
One Post Office Square
Boston, MA 02109
Summer Associate, July 1986 to August 1986

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Summer Associate, May 1986 to July 1986

Paul Alfred, Inc.
1400 Broadway

New York, NY 10018
Sales Assistant, January 1985, Sept. 1985 to December 1985 (occasional), and May 1984 to July 1984 (occasional)

Sherin & Lodgen
100 Summer Street
Boston, MA 02110
Summer Associate, June 1985 to August 1985

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I am registered with the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Fellow, International Society of Barristers (approx. 2007 to present)
Listed in Super Lawyers, Washington, DC (2008 to present)
Listed in Best Lawyers, Washington, DC (2007 to present)
Listed in International Who's Who of Business Crime Defense Lawyers (2010 to present)
Listed in Benchmark Litigation Guide to America's Top Business Litigation Attorneys (2010 to present)
Listed in Ethisphere Magazine's Lawyers Who Matter (2009 to present)
Listed in Washington Smart CEO's top lawyers (2010 to present)
Listed in The Legal 500 (2011)
Attorney General's Award for Distinguished Service (1995)
Graduated *Magna Cum Laude*, Harvard Law School (1987)
Graduated *Summa Cum Laude*, high honors in Economics Major, Brandeis Univ. (1984)
Elected to Phi Beta Kappa, Brandeis University (approx. 1983)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Edward Bennett Williams Inn of Court (approx. 2002 to present)
American Bar Association (approx. 2002 to present)
New York State Bar Association (approx. 2008 to present)
Federal Bar Council (approx. 2003 to present)
Association of the Bar of the City of New York (approx. late 1980s to early 1990s)
U.S. Sentencing Commission Advisory Group on the Organizational Guidelines (approx. 2001 to 2003)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York State, June 1988

District of Columbia, April 1990
There are no lapses in membership

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. District Court, Southern District of New York, March 1990
U.S. Court of Appeals, Second Circuit, July 1993
U.S. District Court, District of Columbia, June 2004
There are no lapses in membership

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

International Society of Barristers (approximately 2007 to present)
Ethics Resource Center, member of Board of Directors (2009 to present)
Society for Corporate Compliance and Ethics, member of Advisory Board (approximately 2006 to present)
Lawyers Committee for Civil Rights Under Law, member of Board of Directors (2009 to present)
B'nai Brith, former trustee of local unit in New York City (approximately 1988 to present)
Brandeis University Alumni Association (1984 to present)
Harvard Law School Alumni Association (1987 to present)
International Association of Prosecutors (approximately 1999 to present)
Kennedy Center for the Performing Arts (approximately 2006 to present)
Washington National Opera (approximately 2007 to approximately 2009)
U.S. Holocaust Museum (approximately late 1980s to present)
U.S. Supreme Court Historical Society (approximately early 1990s to present)

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities, although the organization may label me a member.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all books, articles, reports, letters to the editor, editorial pieces, or other published material, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

- Artists' Rights in the United States: Toward Federal Legislation, 25 Harv. J. Legis. 153 (1988). Copy supplied.
 - Forward, The State of Federal Prosecution, American Criminal Law Review (Volume 43, Number 3) (2006) (republished by the Corporate Counsel Review, Journal of the Corporate Counsel Section, State Bar of Texas, Vol. XXVI, Number 2, November 2007). Copy supplied.
 - Strategies for Successful Advising and Collaboration with the Client, White Collar Law Defense Strategies: Leading Lawyers on Preparing for Trial, Offering Evidence, and Overcoming the Challenges of a White Collar Crime Case (Aspatore Books, 2007). Copy supplied.
 - The Stockman Decision: An Expansion Of Indemnification and Advancement, White Collar Crime Litigation Reporter (September 2009). Copy supplied.
 - The Blurring of Plain View, White Collar Crime Litigation Reporter (November 2009). Copy supplied.
 - SEC Launches FCPA Probe of Financial Services Industry's Interactions With Sovereign Wealth Funds, Financial Fraud Law Report (to be published September 2011). Unpublished copy supplied.
 - Eulogy for James K. Robinson, former Assistant Attorney General of the Criminal Division, The Wayne Law Review (to be published Fall 2011). Unpublished copy supplied.
- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During my tenure on the U.S. Sentencing Commission, the Commission issued, on an annual basis, federal sentencing guidelines manuals, sourcebooks of federal sentencing statistics, and yearly reports. These materials (except where noted), including the reports and correspondence listed below, are available at www.ussc.gov.

- December 2008 – Overview of Federal Criminal Cases, Fiscal Year 2007

- December 2008 – Changing Face of Federal Criminal Sentencing: Seventeen Years of Growth in the Federal Sentencing Caseload
- November 2008 – Report on Federal Escape Offenses in Fiscal Years 2006 and 2007
- September 2008 – Report to Congress: “Amendments to the Federal Sentencing Guidelines in Response to the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007”
- August 2008 – Letter to Senator Leahy and Senator Specter regarding the Court Security Improvement Act of 2007 (Letter is not on website – Copy supplied)
- May 2007 – Report to Congress: “Cocaine and Federal Sentencing Policy”
- March 2006 – Report to Congress: “Final Report on the Impact of *United States v. Booker* on Federal Sentencing
- April 2005 – Letter to the House Judiciary Committee regarding H.R. 1528, the “Defending America’s Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005”
- November 2004 – Preliminary Findings: Federal Sentencing Practices Subsequent to the Supreme Court’s Decision in *Blakely v. Washington*
- May 2004 – Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines
- May 2004 – Recidivism and the “First Offender”
- April 2004 – Letter to Senator Bill Nelson regarding the CAN-SPAM Act. (Letter is not on website – Copy supplied)
- October 2003 – Report to Congress: “Downward Departures from the Federal Sentencing Guidelines”
- May 2001 – Report to Congress: “MDMA Drug Offenses: Explanation of Recent Guideline Amendments” (issued during my tenure as an ex-officio member of the Commission).

It is important to note that while Commissioners contribute to the Commission’s guidelines, reports, briefs, letters, and other statements of the Commission, these materials are representative of the Commission as a whole, and not of any single Commissioner.

During my tenure, the Commission also held numerous public meetings and hearings; filed amicus briefs in the U.S. Supreme Court; and issued periodic newsletters. Minutes of the Commission’s public meetings, transcripts of select

public hearings, Supreme Court briefs, and other materials are available at www.ussc.gov.

As a Commissioner on the Child Online Protection Act Commission, I joined in the Commission's report to Congress in October 2000. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all official statements or other communications relating to public policy or legal interpretation, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

- October 4, 2000 – House Committee on the Judiciary, Subcommittee on Crime – Hearing on H.R. 469, "Jeremy and Julia's Law," a bill that would have created federal criminal penalties for certain acts by child day care providers. Copy supplied.
- May 15, 2001 – House Committee on the Judiciary, Subcommittee on Crime – Hearing on the Reauthorization of the Department of Justice. Copy supplied.
- December 13, 2001 – House Committee on Government Reform – Hearing on the President's invocation of executive privilege regarding the production of prosecution memoranda. Copy supplied.

Additionally, the Chair of the Commission, and the Vice Chairs of the Commission, periodically testified on behalf of the Commission before various Congressional Committees. Copies of the testimony is available at www.ussc.gov.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be additional speeches or other materials that I have been unable to identify, find or remember. I have located the following:

As a supervisor in the U.S. Attorney's Office for the Southern District of New York, and as a senior official in the Justice Department's Criminal Division, I

participated in numerous CLE presentations and panel discussions. I do not maintain or have a complete list. Those that I have been able to identify include:

- Presentations at various NYPD training programs on preventing and investigating police corruption (I am not certain of the dates but the programs were held during my tenure as an AUSA in the Southern District of New York; New York, NY). Copy supplied.
- Speaker and presenter at conferences of the International Association of Prosecutors on the Foreign Corrupt Practices Act (September 1999; Beijing, China), recent developments in US law enforcement (I am not certain of the dates but I believe it was in September 2000 in Cape Town, South Africa and in September 2001 in Sydney, Australia), and best practices in investigating child pornography (I am not certain of the date but I believe it was in September 2000 in Cape Town, South Africa).
- Faculty for an ATF training seminar on searches, seizures, arrests, testifying, and evidence preservation (September 1995; New York, NY). Copy supplied.
- Speaker at a program entitled Fraud in Today's Business Environment: What You Need to Know to Survive sponsored by Kahn Consulting (March 1996; New York, NY). Copy supplied.
- Speaker at a session entitled Applicable Statutes and Techniques in Investigating Public Corruption at the DOJ Office of Legal Education Public Corruption Seminar (September 1996; Los Angeles, CA). Copy supplied.
- Speaker at a session entitled Initiating an Investigation: How/When/Who to Investigate; at a session entitled Planning the Proactive Investigation: Degree of AUSA Involvement; and at a session entitled Planning the Takedown at the DOJ Office of Legal Education Public Corruption Symposium (November 1996; Austin, TX). Copy supplied.
- Speaker at a session entitled Impeachment at the DOJ Office of Legal Education Basic Criminal Trial Advocacy (February 1997; Washington, DC).
- Speaker at a session on investigating and prosecuting police corruption cases at an FBI Public Corruption training program (June 1997; Quantico, VA). Copy supplied.
- Speaker at a session entitled Police Corruption: A Real Case Analysis at the Arizona Law Enforcement Coordinating Committee entitled Turning Square Corners (December 1997; Prescott, AZ). Copy supplied.
- Speaker at a session entitled Proactive Investigation Techniques: Defining the Direction and Scope of the Investigation and moderator at a session entitled Recurring Issues and Dilemmas: Why and How are Public Corruption Cases Different at the DOJ Office of Legal Education Public Corruption Seminar (April 1998; Phoenix, AZ). Copy supplied.

- Speaker on prosecuting public corruption cases at a program sponsored by Fordham Law School entitled International Seminar on Government Ethics and Law Enforcement (May 1998; New York; New York, NY). Copy supplied.
- Speaker on the role of the prosecutor in investigating and prosecuting public corruption cases at an FBI Public Corruption/Ethics course for Russian law enforcement (July 1998; Moscow, Russia). Copy supplied.
- Speaker at a session entitled Conflicts and Joint Defense Agreements at the DOJ Office of Legal Education Grand Jury Practice Seminar (March 2000; Columbia, SC). Copy supplied.
- Speaker for a session entitled Sentencing Guidelines Update at the ABA National Institute on White Collar Crime (March 2000; Miami, FL).
- Speaker at a session entitled Conflicts and Joint Defense Agreements at the DOJ Office of Legal Education Basic Grand Jury Practice Seminar (May 2001; Columbia, SC). Copy supplied.
- Speaker for sessions entitled Meet the Sentencing Commission and Prosecutor Training at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2001; Palm Springs, CA).
- Speaker at a program sponsored by the John F. Kennedy Library entitled Defending an Open Society: Balancing Security and Liberty (November 2001; Boston, MA). Copy supplied.
- Speaker at a program entitled Under Penalty: Production of Documents in Response to Federal Grand Jury Subpoenas sponsored by the American Corporate Counsel Association (November 2001; New York, NY).
- Moderator of a panel entitled Sentencing Guidelines Update: The New Economic Crimes Package and Money Laundering Guidelines at the ABA National Institute on White Collar Crime (March 2002; Miami, FL).
- Keynote address at the International Law Enforcement Academy for a program entitled Developing Strategies for the Prevention and Detection of Terrorism (March 2002; Bangkok, Thailand). Copy supplied.
- Speaker for a session entitled Organizational Guidelines at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2002; Palm Springs, CA).

Additionally, during my tenure as a Commissioner on the U.S. Sentencing, as well as a former member of the Sentencing Commission and as a private practitioner, I have given numerous CLE presentations and panel discussions on Sentencing Guidelines issues, on corporate compliance and ethics issues, and on criminal law and regulatory matters. Those presentations have usually occurred before ethics and compliance organizations, such as the Society of Corporate

Compliance and Ethics ("SCCE"), the Health Care Compliance Association ("HCCA"), the Blue Cross/Blue Shield Association ("BCBSA"), and the Ethics and Compliance Officer Association ("ECOA"). I also have spoken frequently at programs by the Practicing Law Institute ("PLI"), the American Bar Association ("ABA"), the Federal Bar Association ("FBA"), and the American Conference Institute ("ACI"). I do not maintain or have a complete list. Moreover, I did not give a formal speech at those events and therefore did not prepare a formal text of my remarks. For most of these programs, I used PowerPoint presentations. Those programs that I can recall include:

- Speaker on corporate compliance and Sentencing Guidelines issues for several PLI-Corpedia telephone briefings (I do not know the exact dates but they occurred during my tenure as a Commissioner on the Sentencing Commission; via telephone).
- Speaker on the Sentencing Guidelines at a DOJ Office of Legal Education's Sentencing Guidelines Program (I do not recall the exact date but it occurred during my tenure as a Commissioner on the Sentencing Commission; Columbia, SC).
- Speaker at a session entitled Update on the Federal Sentencing Guidelines at the ECOA Annual Conference (October 2002; Boston, MA).
- Speaker at session entitled Compliance and Ethics: What's Next? at the LRN KnowledgeForum (January 2003, Los Angeles, CA). Copy supplied.
- Speaker at a session entitled Sentencing Guidelines Update: Sarbanes/Oxley, Fraud and the Organizational Guidelines at the BCBSA Compliance and Ethics Conference (February 2003; Orlando, FL). Copy supplied.
- Speaker for a session entitled The Federal Sentencing Guidelines for Organizations: Do they Serve as a Deterrent? Should they be Amended? at the ABA National Institute on White Collar Crime (March 2003; San Francisco, CA).
- Speaker at session on Compliance and Ethics: What's Next? at the LRN Regional Compliance Conference (March 2003; Detroit, MI; April 2003, New York, NY). Copy supplied.
- Speaker at a session entitled Discussion by U.S. Sentencing Commissioners and at a session entitled Campaign Finance Reform Act Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2003, Miami, FL).
- Speaker at a session entitled Sentencing Guidelines Update: Sarbanes/Oxley and the Organizational Guidelines at the PLI Corporate Compliance Institute (May 2003; Chicago, IL). Copy supplied.
- Speaker at a panel on corporate compliance issues at the PLI Corporate Compliance Institute (June 2003; New York, NY).

- Speaker at a session entitled Compliance and Ethics: Recent Regulatory Initiatives at the PLI Advanced Corporate Compliance Workshop (July 2003; San Francisco, CA). Copy supplied.
- Co-chair and speaker at PLI's Advanced Corporate Compliance Workshop (July 2003, San Francisco, CA; July 2004, San Francisco, CA; September 2005, New York, NY; September 2005, San Francisco, CA; September 2006, New York, NY; September 2006, San Francisco, CA; September 2007, San Francisco, CA; November 2007, New York, NY; November 2008, New York, NY; November 2009, New York, NY; October 2010, New York, NY).
- Speaker at a session entitled Update on the U.S. Sentencing Commission's Advisory Group at the ECOA's Annual Conference (October 2003; Orlando, FL).
- Speaker at a session entitled Corporate Compliance and the U.S. Sentencing Guidelines at the HCCA's National Symposium on Corporate Responsibility: Internal Audit, Compliance and Ethics Programs (October 2003, Redmond, WA). Copy supplied.
- Speaker on Sentencing Guidelines and compliance issues for an LRN webinar (November 2003; webinar). Copy supplied.
- Speaker at a program on corporate ethics and compliance issues sponsored by the Association of Corporate Counsel (November 2003, New York, NY).
- Speaker for a PLI telephone briefing entitled The Final Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines: What Your Organization Needs to Know Now (January 2004; via telephone).
- Speaker at session entitled Do You Have an Effective Compliance Program? Possible Changes to the Federal Sentencing Guidelines at the LRN KnowledgeForum (February 2004; Los Angeles, CA).
- Speaker at an ABA panel discussing Attorney General Ashcroft's Sentencing Memorandum (February 2004; Washington, DC).
- Speaker on the proposed changes to the Organizational Sentencing Guidelines for the Greater Phoenix Compliance Network meeting (February 2004; videoconference). Copy supplied.
- Moderator for a session on Parallel Proceedings: A Real and Present Danger at the ABA National Institute on White Collar Crime (March 2004, Miami, FL).
- Speaker for a session entitled Limiting Judicial Discretion: Are We Changing the Balance of Justice? at the District of Columbia Judicial & Bar Conference (March 2004; Washington, DC).
- Speaker at a program entitled After the Dust Settles: The Federal Sentencing Guidelines Six Months Later sponsored by the Federal Bar Council (March 2004; New York, NY).

- Co-chair of PLI program entitled Corporate Counsel Forum: What You Need to Know About Corporate Liability & Government Enforcement After Sarbanes/Oxley (April 2004; New York, NY). Copy supplied.
- Speaker for a session on compliance and enforcement issues at the Food and Drug Law Institute's Annual Conference (April 2004; Washington, DC). Copy supplied.
- Speaker at a panel of the U.S. Sentencing Commissioners and for a session entitled Amendments to Chapter Eight: The Organizational Sentencing Guidelines at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2004, Miami, FL). Copy supplied (for session on Organizational Guidelines).
- Speaker at a session Sentencing Issues at the Sixth Circuit Judicial Conference (May 2004, Lexington, KY).
- Speaker at a program entitled Shifting Balance: Corporate Criminal Justice After the Thompson Memo and the Amended Organizational Sentencing Guidelines sponsored by the District of Columbia Bar (June 2004; Washington, DC). Copy supplied.
- Speaker at a session on compliance issues at the PLI Corporate Compliance Institute (June 2004; New York, NY). Copy supplied.
- Speaker at a session on Developments at the United States Sentencing Commission at the PLI Advanced Corporate Compliance Workshop (July 2004; San Francisco, CA).
- Speaker on the Sentencing Guidelines and compliance at the Delaware Valley Association of Corporate Counsel General Counsel Forum (September 2004; Philadelphia, PA). Copy supplied.
- Moderator and Speaker for the Edward Bennett Williams Inn of Court at programs on the Sentencing Guidelines (September 2004 and September 2006), civil vs. criminal matters, and developments on legal privileges (I am not certain of the dates but they occurred during the time I have been a member of the Inn; Washington, DC).
- Speaker for a PLI telephone briefing entitled The Future of the Federal Sentencing Guidelines After *Blakely* (October 2004; via telephone).
- Faculty for a State Department program in Russia on the U.S. Sentencing Guidelines (October 2004, Russia).
- Speaker at a session entitled Foundations for Compliance with the Sentencing Guidelines and Sarbanes-Oxley at the SCCF's Corporate Compliance Workshop (October 2004; Philadelphia, PA).
- Speaker at a program entitled How Corporations Respond to Regulatory Investigations: Current Trends and Issues sponsored by Association of Corporate Counsel (November 2004; New York, NY). Copy supplied.

- Speaker at a teleconference on the Sentencing Guidelines sponsored by the General Counsel Roundtable (November 2004; via telephone).
- Speaker at a session entitled Municipal Corruption: Identifying the Causes and Understanding the Costs at a event sponsored by the Hills Program on Governance called Corruption in Cities: Identifying Causes and Understanding Costs (December 2004; Washington, DC).
- Speaker on the Sentencing Guidelines at the ABA Committee of Corporate General Counsel meeting (December 2004; Palm Beach, FL). Copy supplied.
- Speaker for LRN webinars on compliance and Sentencing Guidelines issues (various dates in 2005, 2006, and 2007; webinars).
- Speaker on a PLI telephone briefing on the Supreme Court's decision in *Booker* (February 2005; telephone conference).
- Speaker at session entitled The Sentencing Guidelines: Now What? at the LRN KnowledgeForum (February 2005; Santa Monica, CA).
- Moderator for a session entitled Sentencing Guidelines: What's Next? at the ABA National Institute on White Collar Crime (March 2005, Las Vegas, NV).
- Speaker at a program entitled After *Booker*: Navigating the New Federal Sentencing Landscape sponsored by the ABA and the Federal Bar Council (March 2005, New York, NY).
- Speaker at a program entitled Enron, Worldcom, Disney, Spitzer & The FDA: The Revolution in Duties & Liability Beyond Sarbanes-Oxley sponsored by The Directors Roundtable (April 2005; New York, NY).
- Speaker for a session on Ethics Standards and Corporate Culture at the ECOA Sponsoring Partner Forum (April 2005; Atlanta, GA).
- Speaker at a session on How the Organizational Sentencing Guidelines Address Compliance and Ethics Programs at the HCCA's Annual Compliance Institute (April 2005; New Orleans, LA). Copy supplied.
- Co-chair of PLI program entitled Corporate counsel Forum: What You Need to Know About Corporate Liability & Government Enforcement After Sarbanes-Oxley (May 2005; New York, NY).
- Speaker at an LRN webinar entitled The Cost of Legal Failure: What the Government Expects From Companies with Legal Problems (May 2005; webinar). Copy supplied.
- Speaker for a session entitled Meet the Sentencing Commission and a session entitled The Organizational Guidelines in a Post-*Booker* World at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2005, San Francisco, CA). Copy supplied (for session on the Organizational Guidelines).

- Speaker at a session on compliance issues at the PLI Corporate Compliance Institute (June 2005; New York, NY).
- Speaker at a session entitled Panel Discussion with the U.S. Sentencing Commission at the ECOA program entitled Effective Compliance & Ethics Programs in a post-*Booker* World (June 2005; New York, NY). Copy supplied.
- Speaker at a session entitled FCPA: How it Applies to Pharmaceutical Companies and Why it Should be an Integral Part of Your Company's Revised Blueprint for Compliance at the ACI's Global Pharmaceutical Compliance Conference (June 2005; New York, NY). Copy supplied.
- Speaker for a session entitled Sentencing After *Booker* at the Federal Judicial Center's Workshop for Judges of the Eighth and Tenth Circuits (June 2005; Santa Fe, NM).
- Speaker on compliance issues at a program entitled Gateway to Opportunities: Compliance/Ethics Marathon sponsored by the Association of Corporate Counsel (June 2005; New York, NY).
- Speaker at a session discussing current Sentencing Commission work at the Second Circuit Judicial Conference (June 2005; Bolton Landing, NY).
- Speaker at Federal Judicial Center's National Sentencing Policy Institute for session entitled "Federal Sentencing: From the Sentencing Reform Act to Today" (July 2005; Washington, DC).
- Speaker at a panel on the global impact of the U.S. Sentencing Guidelines at The Conference Board Council on Business Conduct (September 2005; Redmond, WA).
- Speaker at a session entitled Trends in Corporate Regulation, Enforcement and Litigation at the Delaware Valley Association of Corporate Counsel General Counsel Forum (September 2005; Philadelphia, PA). Copy supplied.
- Speaker on the Organizational Sentencing Guidelines at a program sponsored by the Colorado Ethics & Compliance Exchange forum (October 2005; Denver, CO).
- Speaker on Sentencing Issues at the Eighth Circuit Judicial Conference (October 2005, Colorado Springs, CO). Copy supplied.
- Speaker at a session on Corporate Compliance Best Practices at the Association of Corporate Counsel Community Forum (November 2005; New York, NY).
- Speaker at a program entitled Sentencing in the Post-*Booker* Era sponsored by the DC Bar (November 2005; Washington, DC).

- Speaker at a program entitled The Impact of the Supreme Court on American Business sponsored by The Directors Roundtable (December 2005; New York, NY).
- Speaker at a session entitled Making Sense of the Recent Developments in Federal Sentencing Guidelines Compliance: *Booker* and Beyond at the ACI's FDA/SEC Centralized Procedure for Referrals with Other Applicable Laws, Guidelines and Obligations Conference (January 2006, New York, NY). Copy supplied.
- Speaker at session entitled Recent Developments in Enforcement and Compliance: *Booker* and Beyond at the LRN KnowledgeForum (February 2006, Santa Monica, CA). Copy supplied.
- Business Finance Magazine Webinar, Upward Mobility: Leveraging Your Sarbanes-Oxley Investment for Broader Risk Management (February 2006; webinar). Copy supplied.
- Moderator for a session on The Sentencing Revolution After Twenty Years: Its Impact on White Collar Crime at the ABA National Institute on White Collar Crime (March 2006; San Francisco, CA). Copy supplied.
- Speaker at a session on Developing an Enterprise-Wide Compliance Curriculum at the HCCA's Annual Compliance Institute (April 2006; Las Vegas, NV).
- Speaker at a session on Structuring the Investigation and Choosing Your Strategy: Preliminary Determinations and Particulars at the ACI's Internal Investigations for the Pharmaceutical & Medical Devices Industries (April 2006; New York, NY). Copy supplied.
- Speaker at a session entitled Cutting Edge Antitrust Compliance Programs: Objectives, Technologies, and Ethics at the ABA Section of Antitrust Law Spring Meeting, (April 2006; Washington, DC). Copy supplied.
- Speaker for sessions entitled Meet the Sentencing Commission and Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2006; Miami, FL).
- Speaker on the Organizational Sentencing Guidelines at a program sponsored by the U.S. Chamber of Commerce (May 2006; Washington, DC).
- Speaker at a session entitled The New Enforcement Agenda: The Carrot & the Stick at the Compliance Week annual conference (June 2006; Washington, DC). Copy supplied.
- Speaker for a session on recent developments at the Sentencing Commission at Federal Judicial Center's National Sentencing Policy Institute (July 2006; Washington, DC).

- Speaker at a session on Creating a Global Culture at the SCCE's Annual Compliance and Ethics Institute (September 2006; Chicago, IL).
- Speaker at a session entitled Ethics in the Boardroom during the pre-conference briefing for PLI's Annual Institute on Securities Regulation (November 2006; New York, NY). Copy supplied.
- Speaker on corporate compliance and Sentencing Guideline issues for a program entitled Ask the Commissioner by the Open Compliance and Ethics Group (various dates in 2007; via telephone).
- Speaker at a session entitled Ensuring FCPA Compliance for Foreign Operations at the ACL's Government Investigation Preparedness for Pharma conference (January 2007, New York, NY).
- Co-chair for PLI conference entitled The New Justice Department Guidelines for Corporate Prosecutions: What the McNulty Memo Means to You (January 2007; New York, NY).
- Speaker at a session on compliance and Sentencing Guidelines issues at the LRN KnowledgeForum (February 2007; Miami, FL).
- Moderator at a session entitled Sentencing for Individuals: Advocacy is Back at the ABA National Institute on White Collar Crime (March 2007; San Diego, CA). Copy supplied.
- Speaker at a session entitled Defense Counsel Perspective for the DOJ Office of Legal Education Criminal Chiefs' Conference (March 2007; Columbia, SC – I joined by videoconference).
- Speaker on FCPA issues at the Pharmaceutical Internal Audit Forum Conference (March 2007; Orlando, FL). Copy supplied.
- Speaker at a session entitled Regulatory Update at the SCCE's Compliance Academy (March 2007, Dallas, TX; and September 2007, San Francisco, CA). Copy supplied.
- Speaker at a session entitled Government Panel at the HCCA's Annual Compliance Institute (April 2007; Chicago, IL). Copy supplied.
- Speaker on Sentencing after *Booker* at the Sixth Circuit Judicial Conference (May 2007, Asheville, NC). Copy supplied.
- Speaker on FCPA issues in the Healthcare and Pharma Industry at the DOJ/FBI Training Program on the FCPA (May 2007; Washington, DC). Copy supplied.
- Speaker for sessions entitled Federal Sentencing Guidelines Post-*Booker* and Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2007; Salt Lake City, UT).
- Co-chair of the ACL's National Conference on the FCPA and Anti-Corruption for Pharma and Life Sciences (May 2007; New York, NY).

- Speaker at a session entitled The New Enforcement Agenda at the Compliance Week Annual Conference (June 2007, Washington, DC).
- Speaker for LRN webinars on FCPA and compliance, including one entitled Current FCPA Compliance Issues and one entitled Discovering and Managing FCPA Issues – M&A Issues (approximately June 2007; webinar). Copies supplied.
- Speaker at a session entitled Controlling Ethics and Compliance Risks Through Culture at the Institute of Internal Auditors Risk and Control Conference (August 2007; San Diego, CA). Copy supplied.
- Speaker on the FCPA and the Practical Implications to Interactions with HCPs at the Pharmaceutical Regulatory and Compliance Congress and Best Practices Forum (November 2007, Washington, DC). Copy supplied.
- Presenter on FCPA issues involving the Healthcare/Pharmaceutical Industry at the U.S. Securities and Exchange Commission FCPA Training Workshop (December 2007; Washington, DC). Copy supplied.
- Moderator at a session entitled U.S. Sentencing Guidelines: A View from the Bench at the ABA National Institute on White Collar Crime, Sentencing Guidelines Update (March 2008; Miami, FL). Copy supplied.
- Speaker at an ABA teleconference entitled The New Federal Sentencing Landscape After *Gall* and *Kimbrough* (March 2008; via telephone).
- Speaker at a session entitled Managing FCPA Issues in a Global Organization at the Institute of Internal Auditors General Audit Management Conference (March 2008; Las Vegas, NV).
- Speaker at a webinar entitled FCPA: Proven Compliance Strategies sponsored by FDA News (March 2008; webinar).
- Speaker for a session entitled Creating Effective Strategies and Policies for Dealing With a Government Investigation at the ACT's FCPA and International Anti-Corruption for Pharma & Life Sciences conference (April 2008; New York, NY).
- Speaker on Sentencing Issues at the Sixth Circuit Judicial Conference (May 2008; Chattanooga, TN).
- Speaker for sessions entitled U.S. Sentencing Commission: A Year in Review and Firearm Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2008; Orlando, FL).
- Speaker at a session entitled Cutting Edge Issues in Compliance and Business Conduct at the Bay Area ECOA Forum (May 2008, Santa Clara, CA). Copy supplied.

- Speaker on Supporting a Culture of Compliance and Ethics at the BCBSA Compliance and Ethics Week (May 2008; Washington, DC). Copy supplied.
- Speaker on Global Compliance Issues at the SCCE's Regional Compliance Conference (May 2008; Washington, DC).
- Speaker at Federal Judicial Center's National Sentencing Policy Institute for session entitled Sentencing Practices Post-*Booker*. *Rita*, *Gall*, and *Kimbrough* (June 2008; Long Beach, CA).
- Speaker at New York State Bar Association program entitled Federal Sentencing in White Collar Cases: Expanded Judicial Discretion or Business as Usual? (June 2008; New York, NY).
- Moderator for a panel on Alternative Sentencing: Rehabilitative and Punitive Models and Evidence-Based Policy and a panel on Federal Problem Solving Courts at the U.S. Sentencing Commission's Symposium on Alternatives to Incarceration (July 2008; Washington, DC).
- Speaker for a webcast entitled Creating and Enforcing a Robust FCPA Compliance and Audit Program by PLI/Ethisphere (August 2008; webcast). Copy supplied.
- Speaker at a session entitled Regulatory Affairs Update at the SCCE's Compliance Academy (August 2008; Chicago, IL). Copy supplied.
- Speaker for PLI video on the FCPA (September 2008; video taping).
- Speaker at a session on Managing FCPA Issues in a Global Organization/Due Diligence and a session on the Government Perspective on Corporate Culture at the SCCE's Annual Compliance and Ethics Institute (September 2008; Chicago, IL).
- Speaker at a session entitled White Collar Sentencing After Sarbanes/Oxley at the ABA Sentencing Advocacy, Practice and Reform Institute (October 2008; Washington, DC). Copy supplied.
- Speaker for a webcast entitled White Collar Law Defense Strategies by West LegalEdcenter (December 2008; webcast).
- Speaker at a program entitled The U.S. Justice Department: Examining the New Leadership and its Priorities for White Collar Enforcement sponsored by the Washington Legal Foundation (February 2009; Washington, DC).
- Speaker at a session entitled Dangerous Silence: What Employees Won't Tell You, Why, and What You Can Do About It at the Dow Jones/Ethisphere Global Ethics Summit (February 2009; New York, NY).

- Speaker at a session entitled Regulatory Affairs Update at the SCCE's Compliance Academy (February 2009, Scottsdale, AZ; and March 2009, Orlando, FL). Copy supplied.
- Moderator at a session entitled The Sentencing Guidelines After *Gall* and *Kimbrough*: Are They Still Relevant? at the ABA National Institute on White Collar Crime, Sentencing Guidelines Update (March 2009; San Francisco, CA). Copy supplied.
- Moderator of panel on White Collar and Fraud Sentencing Trends at the FBA's National Seminar on the Federal Sentencing Guidelines (May 2009; Clearwater, FL). Copy supplied.
- Speaker on recent compliance issues at the SCCE's Regional Compliance Conference (May 2009; New York, NY).
- Speaker on compliance issues at the SCCE's Effective Compliance Systems in Higher Education Conference (June 2009; Austin, TX). Copy supplied.
- Speaker for a session entitled Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (June 2009; New Orleans, LA).
- Moderator of panel on FCPA and Anti-Corruption: What's New and What You Should Do at the SCCE's Annual Compliance and Ethics Institute (September 2009; Las Vegas, NV).
- Speaker at a program entitled Anti-Corruption: A Transatlantic View sponsored by Cadwalader and Simmons & Simmons (February 2010, London, UK; March 2010, New York, NY). Copy supplied.
- Speaker at a session on Dawn Raids and Third Parties at the SCCE's Compliance and Ethics Academy (May 2010; London, UK). Copy supplied.
- Speaker on Sentencing Issues in Securities Cases at the FBA National Seminar on the Federal Sentencing Guidelines (May 2010; St. Petersburg, FL).
- Speaker for a session entitled Restitution and Other Victim Rights Issues and a session entitled Organizational Guidelines: Gaps and Solutions at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (June 2010; New Orleans, LA).
- Speaker at webinar entitled U.S. Sentencing Commission Changes Affecting Compliance Programs and Recent Developments in Ethics Issues sponsored by the ABA (July 2010; webinar).
- Speaker at a session on Managing Your Growing Privacy and Security Obligations and a session on Recent Amendments to the Organizational Sentencing Guidelines at the SCCE's Annual Compliance and Ethics Institute (September 2010; Chicago, IL). Copies supplied.

- Speaker as a session entitled FCPA Update at the Association of General Counsel Fall Meeting (October 2010; Washington, DC). Copy supplied.
 - Speaker on a webinar entitled 2010 UK Bribery Act and "Adequate Procedures" Guideline; The Bar Has Been Raised on FCPA Standards for Anticorruption Compliance for the SCCE (October 2010; webinar). Copy supplied.
 - Speaker at a session on Managing Disclosure of FCPA Issues at the ACT's National Conference on the Foreign Corrupt Practices Act (November 2010; Washington, DC). Copy supplied.
 - Speaker on Sentencing Issues in Securities Cases at the FBA's National Seminar on the Federal Sentencing Guidelines (May 2011; Orlando, FL).
 - Moderator of panel entitled The State of Anti-Bribery Enforcement and What Compliance Programs are Doing at the SCCE's Regional Compliance Conference (May 2011; New York, NY).
 - Speaker at a session entitled Economic Crimes: Loss Determination and Other Issues at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2011; San Diego, CA).
 - Speaker at a session entitled Sentencing Guidelines Update at the FBI Certified Public Accountant Conference (July 2011; Denver, CO). Copy supplied.
- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews I have given to newspapers, magazines or other publications, or radio and television stations, including through a review of my personal files, requesting materials maintained by my law firm, and searches of publicly available electronic databases. I do not maintain a comprehensive list of those stories or interviews. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

- Legal Times, August 9, 2010, *James Robinson, Former DOJ Criminal Division Head, Dies at 66*. Copy supplied.
- Legal Times, April 6, 2009, *Series of Errors Doomed Stevens Prosecution*. Copy supplied.
- Bloomberg.com, March 23, 2009, *Top Cop Khuzami*. Copy supplied.
- Compliance Week, December 2008, *Building a Values-Driven Compliance Program*. Copy supplied.
- L.A. Daily Journal, September 8, 2008, *Sentencing Commission Looks to 2009*. Copy supplied.

- Design Product News, March 17, 2008, *Device Companies Will Be Under FCPA Spotlight, Experts Say*. Copy supplied.
- Associated Press, December 12, 2007, *Sentencing Commission Votes to Allow Retroactive Easing of Crack Cocaine Sentences*. Copy supplied.
- ABC News, December 12, 2007, Television news story regarding Sentencing Commission decision on retroactivity. Transcript supplied.
- Bloomberg News, September 17, 2007, Television interview regarding nomination of Michael Mukasey to be Attorney General (video clip can be found at www.cadwalader.com/search_results.php?search=Horowitz).
- New York Times, May 17, 2007, *Loyal to Bush But Big Thorn in G.O.P. Side*. Copy supplied.
- Compliance Week, December 19, 2006, *Where the 'McNulty Memo' Goes From Here*. Copy supplied.
- Bloomberg News, November 17, 2006, *Corporate Fraud Rules to be Eased by U.S., People Say*. Copy supplied.
- Financial Times, July 10, 2006, *Steamy Welcome Awaits the ex-Natwest Three*. Copy supplied.
- Legal Times, October 31, 2005, *Fitzgerald Leads Legion to Libby Indictment*. Copy supplied.
- Legal Intelligencer, September 15, 2005, *Ebbers' Lawyer: White Collar Bar's 'Rolled Over'*. Copy supplied.
- Legal Times, May 30, 2005, *Gonzales Mulls Need for Terror Reform*. Copy supplied.
- Corporate Legal Times, October 2004, *Sentencing Guidelines Teeter on Brink of Extinction*. Copy supplied.
- Associated Press, July 22, 2004, *Weary of Scandals, Businesses Turn to Ethics Training*. Copy supplied.
- USA Today, July 19, 2004, *Ruling May Have Impact on Corporate Sentences*. Copy supplied.
- C-SPAN's Washington Journal, July 17, 2004, Discussion regarding the Sentencing guidelines and the Supreme Court decision in *Blakely* (video clip can be found at www.c-spanvideo.org/michaelhorowitz).
- Washington Post, June 30, 2004, *Restraining the Gavel's Power*. Copy supplied.
- C'NBC's Kudlow & Cramer, June 28, 2004, Story regarding the Supreme Court's decision in *Blakely*. Transcript supplied.

- Los Angeles Times, June 26, 2004, *Thousands of Cases in Doubt After Decision on Sentencing*. Copy supplied.
- NPR's Morning Edition, June 25, 2004, *Supreme Court declares system used to sentence convicted criminals could be unconstitutional*. Transcript supplied.
- Wall Street Journal, June 25, 2004, *Ruling Puts Limits on Scope of Judge's Sentencing Powers*. Copy supplied.
- FDA News, April 30, 2004, *Top Pharma Management, Boards Face New USSC Compliance Obligations*. Copy supplied.
- Washington Times, March 23, 2004, *Bribery Sentences Toughened*. Copy supplied.
- Legal Times, October 7, 2003, *Career Prosecutor Called a Natural for Deputy AG Job*. Copy supplied.
- Legal Times, October 2, 2003, *Ashcroft Endorses Fast-Tracking for Some Offenders*. Copy supplied.
- The Journal News, June 29, 2003, *Bush Names 1980 Suffern High Grad to Federal Post*. Copy supplied.

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Volunteer summer intern, Rockland County D.A.'s Office, Summer 1982
Appointed by hiring chief for District Attorney Kenneth Gribetz (I do not recall the person's name)

Volunteer intern, Congressman James Shannon, Washington, DC, January 1982
Appointed by Administrative Assistant to Congressman Shannon (I do not recall the person's name)

Paid summer intern, Rockland County Legislature, Summer 1983
Appointed by Herbert Reisman, Chairman of the Legislature

Brandeis University internship for school credit and then volunteer intern
Office of Congressman Barney Frank, West Newton, MA
Fall 1982, Spring 1983 and Spring 1984
Appointed by Administrative Assistant Dorothy Reichard

Law Clerk to U.S. District Judge John G. Davies, Central District of California
September 1987 to September 1988

Appointed by Judge John G. Davies

Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York
May 1991 to January 1999

Appointed by U.S. Attorney Otto Obermaier
(appointed Deputy Chief, Criminal Division (August 1995 to December 1997)
and Chief, Public Corruption Unit (March 1997 to January 1999) by U.S.
Attorney Mary Jo White)

Deputy Ass't Attorney General, U.S. Department of Justice, Criminal Division,
January 1999 to December 1999

Appointed by Assistant Attorney General James Robinson

Chief of Staff, U.S. Department of Justice, Criminal Division
January 2000 to June 2002

Appointed in January 2000 by Assistant Attorney General James Robinson and
re-appointed in April 2001 by Assistant Attorney General Michael Chertoff.

Commissioner (ex-officio), Child Online Protection Act Commission
October 1999 to October 2000

Appointed by Attorney General Janet Reno

Commissioner (ex-officio), U.S. Sentencing Commission
January 2001 to August 2001

Appointed by Attorney General John Ashcroft

Member, Advisory Group to the U.S. Sentencing Commission on the
Organizational Sentencing Guidelines
February 2002 to May 2003

Appointed by Judge Diana Murphy, Chair, U.S. Sentencing Commission

Commissioner, U.S. Sentencing Commission, May 2003 to January 2009
(Senate confirmed appointment; renominated in 2007 but not confirmed)

Appointed by President George W. Bush

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Since leaving law school in 1987, I have not played a role in any political campaigns. As a college student, I volunteered on an unpaid basis for a few political campaigns (and I may have also volunteered in a campaign in law school, but I do not recall any). I do not have a list of those campaigns. The ones I can recall are John Anderson for President, Alan Cranston for President, Herbert Reisman for Rockland County Legislature, and Barney Frank for Congress. I have never had a formal position in any campaign.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk for U.S. District Judge John G. Davies of the Central District of California from September 1987 to September 1988.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street., N.W.
Washington, DC 20001
Litigation Partner, September 2002 to Present

U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002
Commissioner (part-time), May 2003 to January 2009
Commissioner (ex-officio), January 2001 to August 2001
Member, Advisory Committee on the Organizational Sentencing Guidelines, February 2003 to May 2003

U.S. Department of Justice, Criminal Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Deputy Assistant Attorney General, January 1999 to December 1999
Chief of Staff, January 2000 to June 2002

Child Online Protection Act Commission
Washington, DC
Commissioner (ex-officio), October 1999 to October 2000

U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
Assistant U.S. Attorney, May 1991 to January 1999
(served as Deputy Chief, Criminal Division from August 1995 to December 1997; served as Chief, Public Corruption Unit from March 1997 to January 1999)

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Associate, December 1988 to April 1991

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After my clerkship, I served as an associate at the law firm of Debevoise & Plimpton in New York from December 1988 to May 1991. In May 1991, I became a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. I remained in that position until January 1999, when I became a Deputy Assistant Attorney General in the Criminal Division in Main Justice in Washington, D.C. Then, from January 2000 to June 2002, I served as Chief of Staff to the Assistant Attorney General for the Criminal Division.

In addition, during my employment at Main Justice, I began teaching a law school seminar class entitled "The Role of the Federal Prosecutor." Initially, the class was comprised of students from George Washington Law School, American Law School, and Catholic Law School. Subsequently, students from Georgetown Law School also participated in the class. I taught the class from Fall 1999 through Fall 2000.

In September 2002, I joined the law firm of Cadwalader Wickersham & Taft LLP as a litigation partner in Washington, D.C., where I remain today. My practice has generally involved representing individuals and companies in a variety of regulatory, civil, and criminal matters. From May 2003 to January 2009, I also served as a part-time Commissioner to the U.S. Sentencing Commission.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an associate at Debevoise & Plimpton, I participated in a variety of litigation matters, including commercial litigation and white collar investigations. I also undertook a few tax matters. Most of the matters on which I worked involved the firm's corporate and institutional clients. I also worked on several pro bono matters, mostly for individuals as described in response to Question 23 below.

As a federal prosecutor in the U.S. Attorney's Office, I prosecuted a wide variety of cases, but most involved white collar crime and/or public corruption.

As a senior official at Main Justice, I was primarily involved in handling policy issues, although I did assist in overseeing several investigations and prosecutions that involved national or international issues.

Finally, as a partner at Cadwalader, I primarily represent individuals and corporations involved in regulatory and/or criminal investigations. I also assist with some civil litigation matters for corporations. I also have performed pro bono work for both individuals and not-for-profit organizations, as described in response to Question 23 below.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Over 95% of my practice has involved federal court litigation, or potential litigation. At present I appear in court occasionally. While working in the U.S. Attorney's Office for the Southern District of New York, I appeared in federal court frequently. While serving at Main Justice in Washington, and while working as an associate at Debevoise & Plimpton, I appeared in court occasionally.

- i. Indicate the percentage of your practice in:

- | | |
|----------------------------|--------------|
| 1. federal courts: | 95% or more; |
| 2. state courts of record: | less than 5% |
| 3. other courts; | none |
| 4. administrative agencies | less than 5% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-------------|
| 1. civil proceedings; | roughly 15% |
| 2. criminal proceedings. | roughly 85% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried eight cases. I was sole counsel on two of those cases, chief counsel on two of the cases, and co-counsel on four of the cases. Seven of the eight trials were decided by the jury (in one case the judge granted my client a verdict of acquittal at the conclusion of the government's evidence).

- i. What percentage of these trials were:

- | | |
|--------------|-------|
| 1. jury | 100%; |
| 2. non-jury. | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you

represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Corruption Prosecutions Working With Inspector Generals and Internal Affairs:

- U.S. v. Sandaq, et. al., 92 Cr. 381 (CMM) – This case was one of the first uses of the RICO statute to prosecute an environmental crime case and the investigating agency was the Inspector General for the New York City School Construction Authority. Sandaq and its two officers were charged with defrauding the New York City School Construction Authority in order to obtain asbestos removal contracts that they were not qualified to perform. The fraud cost New York City millions of dollars in losses. I was the lead prosecutor on the case and worked on it from 1992 to 1993. The cases were filed in the U.S. District Court for the Southern District of New York and were assigned to U.S. District Judges Charles Metzner and Robert Carter. All three defendants pleaded guilty. Opposing defense counsel was Ozro T. Wells, whose last address I had was 401 Broadway, New York, NY, and Ronald Garnett, 299 Broadway, New York, NY, (212) 587-5159.
- New York City Police Department (“NYPD”) 30th Precinct Corruption Investigation – This was the largest police corruption case involving a single precinct in the history of the NYPD and was worked with the NYPD Internal Affairs Bureau, the Inspector General of the U.S. Department of Agriculture, the Internal Revenue Service’s (“IRS”) Criminal Investigation Division, and the Manhattan District Attorney’s Office. I had primary responsibility for handling the investigation and prosecution of over 30 police officers assigned to the precinct who were involved in drug dealing, extortion, robbery, perjury, and tax evasion. Assisting me at the U.S. Attorney’s Office was Andrew Dember and Sarah Chapman. For our work on this matter, we received the Attorney General’s Distinguished Service Award (the Justice Department’s second highest award). I worked on this matter from early 1993 through approximately 1998. The cases were filed in the U.S. District Court for the Southern District of New York and New York County Supreme Court. AUSA Dember and I handled the one federal trial, and I assisted the state prosecutors with trial preparation on two or three of the cases that went to trial in state court. The cases were handled by over 20 federal and New York state judges, with numerous defense counsel. All but one of the officers was convicted. Counsel for one of the lead defendants was Amy Attias, whose last address that I have is Croton-on-Hudson, NY, (914) 271-2200.
- U.S. v. Joseph Termini, et. al., 93 Cr. 413 (LIS) – This case resulted in the arrest of three officers assigned to the elite New York Drug Enforcement Task Force (“DETF”) and the investigating agencies were the the NYPD Internal Affairs Bureau and the Drug Enforcement Administration’s (“DEA”) Office of Professional Responsibility. The three officers were charged with stealing

heroin and other valuables from the DETF evidence locker. I was co-lead prosecutor on the cases, which ran from 1992 until 1995. The cases were filed in the U.S. District Court for the Southern District of New York and were assigned to U.S. District Judges John Keenan, Michael Mukasey, and Louis Stanton. All three defendants pleaded guilty. My co-counsel was David Fein, who is now the U.S. Attorney for the District of Connecticut. Principal opposing defense counsel was Mark Pomerantz, now with Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY, (212) 373-2000.

- U.S. v. Robert Felzenberg and George Gillmore, 93 Cr. 460 (SS) – This case involved a \$40 million check-kiting scheme by a payroll cashing company that did work for (among others) the City of New York and the investigating agency was the New York City Department of Investigation (the equivalent of the Inspector General for New York City). The owner and the treasurer of the company were prosecuted for the fraud. I was the sole prosecutor assigned to the case, and worked on the matter from 1992 to 1996. The cases were filed in the U.S. District Court for the Southern District of New York. Mr. Felzenberg's case was assigned to then-U.S. District Judge Sonia Sotomayor. I do not recall which District Judge was assigned Mr. Gillmore's case. Both individuals pleaded guilty. Principal opposing defense counsel was Edward M. Shaw, who I believe is now retired, but was formerly with Stillman, Friedman & Shaw in New York, NY.
- U.S. v. Jillian Hernandez, 95 Cr. 281 (RO) – This case involved the theft of cocaine and money from the DEA by three DEA employees (including Special Agent Jillian Hernandez) and the investigating agency was the DEA's Office of Professional Responsibility. The three employees were prosecuted and I worked on the case from approximately 1994 through approximately 1996. The case was brought in the U.S. District Court for the Southern District of New York and was before U.S. District Judge Richard Owen. Agent Hernandez was convicted by a jury after trial. The two DEA employees pleaded guilty. I had sole responsibility for the investigation. My co-counsel at trial was Suzanne Jaffe Bloom, who is now with Dewey & LeBoeuf in New York, NY, (212) 259-7362. Defense counsel was Thomas G. Roth, whose last address I have is with Fleming, Roth & Fettweis, 744 Broad St., Newark, NJ, (973) 565-9495.
- U.S. v. Stephen Mighdoll, 97 Cr. 431 (JES) – This matter involved the arrest of an attorney who used his position as a court-appointed trustee for the Resolution Trust Corporation (RTC) to embezzle RTC money. The investigating agency was the Inspector General for the FDIC. I was the sole prosecutor on the case and worked on it from 1995 until 1997. The case was filed in the U.S. District Court for the Southern District of New York and was assigned to U.S. District Judge John Sprizzo. The defendant pleaded guilty. Opposing defense counsel was Elkan Abramowitz of Morvillo, Abramowitz, Grand, Iason & Silberberg, 565 Fifth Avenue, New York, NY, (212) 880-9500.
- U.S. v. Thomas Middlemiss, et. al., 217 F.3d 112, 124 (2d Cir.2000) – This case involved extortion and illegal self-dealing by a Port Authority employee, a U.S. Secret Service Special Agent, and a private attorney. The investigating agency was the Inspector General for the Port Authority of New York and New Jersey. The three individuals were charged with extorting a restaurant operator at JFK Airport. I was the supervisor overseeing the matter from approximately mid-

1996 until my departure from the U.S. Attorney's office in January 1999. The line AUSA with primary responsibility for the case and the trial was Jonathan Halpern, who is now with Bracewell & Giuliani in New York, NY. (212) 508-6153. The case was brought in the U.S. District Court for the Southern District of New York and was before U.S. District Judge Sidney Stein. All three defendants were convicted after trial.

Other Corruption Prosecutions:

- U.S. v. David Lew, et. al., 91 Cr. 367 (KC) – This multi-defendant bribery investigation and prosecution involved restaurant owners who were paying bribes to an undercover IRS employee in order to eliminate federal tax liabilities. I worked on the case from mid-1991 through 1993. The case was filed in the U.S. District Court for the Southern District of New York and was tried before U.S. District Judge Kenneth Conboy. All of the other defendants pleaded guilty. Mr. Lew went to trial and was convicted by a jury. I prosecuted the case with my co-counsel, Andrea Likwornik Weiss. Ms. Weiss is now at Levi Lubarsky & Feigenbaum, 1185 Avenue of the Americas, New York, NY, (212) 308-6100. Defense counsel was Jonathan Marks, 220 Fifth Avenue, New York, NY, (212) 545-8008.
- U.S. v. Nicholas Rudi, 95 Cr. 166 (LLS) – This securities fraud prosecution involved an alleged fraud on a public agency in connection with a bond refinancing. I was assigned the matter post-indictment, and was co-counsel during trial. I worked on the case from 1995 until 1996. The case was filed in the U.S. District Court for the Southern District of New York and was assigned to U.S. District Judge Louis Stanton. The defendant was acquitted after trial. My co-counsel was Karen Patton Seymour, now with Sullivan & Cromwell in New York, NY, (212) 558-3196. Opposing counsel was Thomas Puccio, whose last address I have was 277 Park Avenue, New York, NY. (212) 421-7889.

Case While Defense Counsel

- U.S. v. Ronald Ferguson, et. al., 3:06-CR-137 (CFD) – I was lead trial counsel for the ex-CEO of the Gen Re Corporation in a criminal jury trial alleging securities fraud against five defendants. My participation in the matter began in mid-2007. The case was brought in the U.S. District Court for the District of Connecticut and was tried before U.S. District Judge Christopher F. Droney. All five defendants were convicted in February 2008, but the convictions were reversed by the U.S. Court of Appeals for the Second Circuit in August 2011. I tried the case with my co-counsel, Al Pavlis of Finn, Dixon & Herling, 177 Broad Street, Stamford, CT, (203) 325-5000. Principal Counsel for the other four defendants are: Fred Hafetz of Hafetz & Necheles, 500 Fifth Avenue, New York, NY, (212) 997-7595; Reid Weingarten of Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C., (202) 429-3000; Alan Vinegrad of Covington & Burling, 620 Eighth Avenue, New York, NY, (212) 841-1000; and Anthony Pacheco of Proskauer Rose, 2049 Century Park East, Los Angeles, CA, (310) 557-2900. Opposing counsel was Assistant U.S. Attorney Eric Glover, U.S. Attorney's Office, 157 Church Street, New Haven, CT, (203) 821-3700.

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did

not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a prosecutor in the U.S. Attorney's Office for the Southern District of New York, I handled numerous significant criminal investigations and prosecutions as a line prosecutor and as Chief of the Public Corruption Unit, including the largest police corruption investigation and prosecution involving a single precinct in the history of the New York City Police Department, and the investigation into the Teamsters election in 1997. I also handled a variety of matters for several inspector general offices, including the Department of Justice Inspector General, the New York City Department of Investigation, the Port Authority of New York and New Jersey Inspector General, and the New York City School Construction Authority Inspector General. As a Deputy Chief of the Criminal Division, I helped supervise and train the new criminal prosecutors in the office, and reviewed and approved Indictments and Informations on behalf of the U.S. Attorney.

As a litigation partner at Cadwalader, I have conducted numerous significant internal investigations on behalf of corporate clients and defended corporate clients and individuals in a number of substantial investigations before, among others, the DOJ and the SEC. These matters have included Foreign Corrupt Practices Act cases, securities fraud cases, health care fraud matters, antitrust issues, and tax investigations, to name a few. I also have helped clients draft and rewrite compliance programs in a variety of areas. Additionally, as described previously in my answer to Question 15, I represented Ronald Ferguson at a two month criminal trial in the District of Connecticut.

As a Commissioner on the U.S. Sentencing Commission, I participated in, among other things, substantially revising and strengthening the corporate compliance guidelines, increasing penalties for terrorism-related offenses, and addressing the crack cocaine sentencing disparity.

I have never performed any lobbying activity.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

For Fall 1999, Spring 2000, and Fall 2000, I taught a law school class on a pro bono basis to law students at American, Catholic, George Washington, and Georgetown Law Schools (Georgetown was only Fall 2000), entitled "The Role of the Federal Prosecutor." The course focused on the exercise of discretion by a federal prosecutor. I have supplied copies of the syllabus for Fall 1999 and Spring 2000.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

- I currently have a capital account at my law firm. Pursuant to the firm's partnership agreement, I will receive a lump sum payment of my capital account one year after separation from the firm. Additionally, pursuant to the firm's partnership agreement, my capital account will continue to receive a monthly interest credit during that one year period, which I may withdraw each month.
- Pursuant to my law firm's partnership agreement, during the first week of calendar year 2012, I will receive my share of the firm partnership distribution, minus a less than 10% hold-back, calculated as of the date that I withdraw as an equity partner. At the conclusion of the firm yearly audit, typically in March 2012, pursuant to the firm partnership agreement, I will receive payment of my remaining share of hold-back funds, if any, calculated as of the date that I withdraw as an equity partner.
- I currently participate in my law firm's 401K and HR10 accounts and intend to maintain those accounts. I will continue to direct investment of funds in those accounts, and neither I nor Cadwalader will continue funding those accounts.
- Within 90 days of separation from my law firm, I will receive a lump sum payout of my funds in the firm's defined benefit plan, which I will rollover into an IRA.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

I have no such plans or commitments.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached SF-278 Financial Disclosure Report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Attached is a financial net worth statement, as of August 1, 2011 (rounded to the nearest \$1,000).

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of

interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While employed at Cadwalader, I have supervised associates who have undertaken pro bono projects, including a Social Security Disability case and a landlord/tenant dispute. I also have personally served on a voluntary pro bono basis on the Boards of the Lawyers Committee for Civil Rights Under Law, the Ethics Resource Center, and the Society of Corporate Compliance and Ethics. Finally, I represented and filed on behalf of a group of former federal prosecutors an amicus brief in the U.S. Court of Appeals for the Ninth Circuit supporting a reversal in *U.S. v. Reyes*, No. 08-10047.

While employed at Main Justice, I taught a law school class on a pro bono basis for three semesters to law students at Georgetown, George Washington, Catholic and American Law Schools, entitled "The Role of the Federal Prosecutor." The class met two hours each week, but also involved significant amounts of preparation time each week outside the classroom.

While employed at Debevoise & Plimpton, I handled a number of matters on a pro bono basis. I do not, however, have a list of each of those matters. The matters I recall are as follows: (a) a mid-level associate and I represented a plaintiff in an employment discrimination case in federal court, which was settled on the eve of trial. The matter required a substantial amount of my time to prepare for trial; (b) a senior associate and I represented a defendant in a narcotics trafficking case in federal court, which resulted in the defendant's acquittal. The matter required a substantial amount of my time to prepare for trial and to try the case; (c) I conducted an internal investigation for a community organization regarding an alleged theft of funds. The matter required a considerable amount of my time; and (d) I represented on two separate occasions individuals who applied for political asylum in the United States. The matters required a considerable amount of my time.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		315	000	Notes payable to banks-secured			0
U.S. Government securities-add schedule		4	000	Notes payable to banks-unsecured			0
Listed securities-add schedule	5	221	000	Notes payable to relatives			0
Unlisted securities-add schedule		1	000	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule (home - Citibank)	369		000
Real estate owned-add schedule (home residence and co-ownership of mother's residence)	1	855	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property (estimate)		75	000	Auto loan (Acura Financial)	12		000
Cash value-life insurance		15	000				
Other assets itemize:							
CWT Partner Capital Account	1	042	000				
Federal TSP Account		332	000				
Maryland and New York 529 accounts		394	000	Total liabilities		401	000
CWT Partnership Retirement Program		222	000	Net Worth	4	270	000
Total Assets	9	671	000	Total liabilities and net worth	9	671	000
CONINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor			0	Are any assets pledged? (add schedule)			No
On leases or contracts			0	Are you defendant in any suits or legal actions?			No
Legal claims			0	Have you ever taken bankruptcy?			No
Provision for Federal income tax			0				
Other special debt			0				

Net Worth ScheduleA. US Government Securities

- U.S. SAVINGS BONDS (\$4,000)

B. Listed Securities

- FIDELITY MUNICIPAL MONEY MARKET – FTEXX (\$409,000)
- MORGAN STANLEY US GOVT MONEY MARKET – DWGXX (\$19,000)
- VANGUARD LIMITED TERM T/E FUND ADMIRAL – VMLUX (\$223,000)
- VANGUARD INTERMEDIATE TERM T/E FUND ADMIRAL – VWIUX (\$47,000)
- FREDERICK CNTY MD GO PUB FACS BDS SER MUNI BOND (\$81,000)
- PUERTO RICO COMWLTH PUB IMPT BDS SER MUNI BOND (\$57,000)
- MASSACHUSETTS STATE G/O CONS LN SER B MUNI BOND (\$23,000)
- PORTLAND ORE FIRST LIEN SWR SYS REV REF SER A MUNI BOND (\$23,000)
- PENNSYLVANIA ST TPK COMMN TPK REV RFDG SER B MUNI BOND (\$23,000)
- LOS ANGELES CNTY CA MTA SALES TAX REV MUNI BOND (\$34,000)
- PUERTO RICO COMWLTH REF GO BDS SER MUNI BOND (\$150,000)
- LEANDER TEX INDPT SCH DIST MUNI BOND (\$57,000)
- CHICAGO IL MET WTR RECL DIST GTR CHICAGO MUNI BOND (\$80,000)
- WASHINGTON ST VAR PURP SER C MUNI BOND (\$24,000)
- UNIVERSITY TEX UNIV REVS RFDG-FING SYS SER B MUNI BOND (\$24,000)
- CENTRAL WEBER UTAH SWR IMPT DIST SWR REV RFDG SER A MUNI BOND (\$18,000)
- PURDUE UNIV IND UNIV REVS RFDG STUDENT FEE SER Z-1 MUNI BOND (\$36,000)
- HEMPSTEAD TOWN NY PUB IMPT SER A MUNI BOND (\$24,000)
- MISSOURI DEV FIN BRD CULTURAL FACS REV NELSON GALLERY MUNI BOND (\$23,000)
- NEW YORK ST DORM AUTH ST PERS INCOME TAX REV RFDG SER A MUNI BOND (\$24,000)
- FLORIDA ST BRD ED PUB ED RFDG CAP OUTLAY SER D MUNI BOND (\$23,000)
- ILLINOIS ST SALES TAX REV MUNI BOND (\$43,000)
- WISCONSIN ST TRANSN REV RFDG SER I MUNI BOND (\$54,000)
- WILMINGTON DE RFDG SER A MUNI BOND (\$24,000)
- IOWA ST SPL OBLIG UOBS MUNI BOND (\$57,000)
- DISTRICT OF COLUMBIA INC TAX REV RFDG SECD SER A MUNI BOND (\$23,000)
- METRO GOVT NASHVILLE & DAVIDSON CNTY TN WTR & SWR MUNI BOND (\$40,000)
- OHIO STATE RFDG-COMMON SCHS SER A MUNI BOND (\$59,000)
- UNIVERSITY WASH UNIV REVS (\$58,000)
- ENERGY NORTHWEST WA ELEC REV RFDG COLUMBIA GENERATING SER A MUNI BOND (\$53,000)

- A T & T INC (NEW) (\$1,000)
- AOL INC COM (\$0)
- ASCENT MEDIA CORP COM SER A (\$0)
- CISCO SYS INC (\$5,000)
- COMCAST CORP NEW COM CL A (\$1,000)
- DIRECTV CLASS A (\$2,000)
- DISCOVERY COMMUNICATNS NEW COM SER A (\$0)
- DISCOVERY COMMUNICATNS NEW COM SER C (\$0)
- ERICSSON L M TEL CO ADR B (\$0)
- GENERAL ELEC CO (\$5,000)
- INTEL CORP (\$14,000)
- LIBERTY GLOBAL INC COM SER A (\$1,000)
- LIBERTY GLOBAL INC COM SER C (\$1,000)
- LIBERTY MEDIA CORP NEW LIB STAR COM A (\$0)
- LIBERTY MEDIA HLDG CORP CAP COM SER A (\$1,000)
- LIBERTY MEDIA HLDG CORP INT COM SER A (\$1,000)
- LSI LOGIC CORP (\$0)
- MICROSOFT CORP (\$3,000)
- ORACLE SYS CORP (\$18,000)
- TIME WARNER CABLE INC COM (\$0)
- TIME WARNER INC COM (\$1,000)
- WAL-MART STORES INC (\$11,000)
- BARON GROWTH – BGRFX (\$37,000)
- BARON GROWTH FUND INST SHARES – BGRIX (\$204,000)
- BLACKROCK EQUITY DIVIDEND FUND – MADVX (\$151,000)
- DODGE & COX STOCK FUND – DODGX (\$74,000)
- FIDELITY CONTRAFUND – FCNTX (\$94,000)
- FIDELITY LOW PRICED STOCK FUND – FLPSX (\$234,000)
- AMERICAN GROWTH FUND OF AMERICA CL F – GFAFX (\$40,000)
- AMERICAN GROWTH FUND OF AMERICA CL F2 – GFFFX (\$58,000)
- ROYCE TOTAL RETURN FD – RYTRX (\$249,000)
- SPDR S&P MIDCAP 400 ETF – MDY (\$99,000)
- TWEEDY BROWNE GLOBAL VALUE – TBGVX (\$238,000)
- VANGUARD MID-CAP INDEX FD – VIMSX (\$167,000)
- BLACKROCK GLOBAL ALLOCATION – MALOX (\$437,000)
- IVY ASSET STRATEGY – IVAEX (\$464,000)
- MORGAN STANLEY GLOBAL LONG/SHORT FD (\$251,000)
- PIMCO TOTAL RETURN FUND – PTTRX (\$260,000)
- TEMPLETON GLOBAL BOND FUND – TGBAX (\$269,000)

C. Unlisted Securities

- ISRAEL BONDS (\$1,000)

AFFIDAVIT

I, Michael E. Horowitz, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

9/9/11
(DATE)

Michael E. Horowitz
(NAME)

Nancy Galanos
(NOTARY)

NANCY GALANOS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2016

Senator COONS. I'd now like to invite Ms. Morgan to come forward. Please raise your right hand and repeat after me.

[Whereupon, the witness was duly sworn.]

Senator COONS. Thank you, Ms. Morgan. Let the record reflect the witness has been sworn, taken the oath.

Ms. Morgan, I'd encourage you to introduce any members of your family or friends who might be with you and then proceed with your statement.

**STATEMENT OF SUSIE MORGAN, NOMINEE TO BE U.S.
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Ms. MORGAN. First, I'd like to introduce my husband, Larry Feldman. Stand up. Larry's a distinguished trial attorney in Louisiana in his own right, and a past president of the Louisiana State Bar Association. I'm very proud of him. I'd also like to introduce my friend Margaret Shehee from Shreveport, Louisiana. I appreciate her being here. And my friends, Charlie McBride and Peggy DeBell, who are from Washington, DC. I appreciate all of them being here to support me. Our daughters are at home watching on the webcast: Summer, Erin, and Jill. They couldn't be here today, but they certainly are watching the proceedings with interest.

Senator COONS. Wonderful.

Ms. MORGAN. I'd like to thank the Committee for scheduling my hearing. I'd like to thank Senator Landrieu and Senator Vitter for their support, and the President for his nomination.

Senator COONS. Do you have any statement you'd like to share with us, Ms. Morgan?

Ms. MORGAN. That's all.

Senator COONS. Thank you.

Senator Landrieu gave a thorough and encouraging introduction, a review of your professional experience and career. I'd appreciate your beginning our first round of questions by just briefly describing your judicial philosophy.

Ms. MORGAN. Well, I believe that the judge's role is to apply the law to the facts and to be fair and impartial, and that the judge's opinions and personal preferences play no role in that process, and I believe that Federal judges must be sure that they decide only the issues before them and that they narrow their rulings in that manner.

Senator COONS. As a District Judge, how would you see your role in ensuring fair access to our legal system and what prior experience might you have in ensuring access to justice that would be relevant to your service in the court?

Ms. MORGAN. Well, I know that it's important for all citizens to have access to the courts and for them all to be treated with respect when they come before the court, regardless of their position in life or station. And I would support the efforts of the Louisiana State Bar Association and the New Orleans Bar Association and our local Federal Bar Association to help ensure that indigent people have the right to counsel.

Senator COONS. Thank you.

What are the most important lessons you've learned in your various legal positions and across your practice, and how would you apply those lessons to your service as a Federal judge, if confirmed?

Ms. MORGAN. Well, I think I've learned—I've had a lot of different kinds of cases over my legal career and I think that's going to help me because I've done oil and gas cases, construction disputes, navigable waterway disputes. I've done product liability cases, I've got—I've had a lot of varied experience. And I've even had some criminal cases because when I practiced in Shreveport, the way that conflicts were dealt with was that the courts appointed private attorneys to represent co-defendants. So I feel I've got a broad range of experience and that that would help me in considering the very many different kinds of cases that I would see in a Federal District Court.

Senator COONS. And in interpreting or applying a statute, what do you view as the role of the judiciary in sort of defining, understanding, and applying the will of the legislative body, whether it's a State or Federal one?

Ms. MORGAN. Well, I think the most important thing, and the first thing that the judge has to do, is look at the words of the statute or the words of the constitutional provision and to apply that as written—as written. If there's an interpretation to be made or application to be made, then I think I would look to the United States Supreme Court decisions and to the Fifth Circuit Court of Appeal decisions. If there were no controlling or close decisions from those courts, then I would look to Circuit Courts from other Circuits or to analogous cases.

Senator COONS. And what do you view as the role of precedent in reaching decisions, whether in the Federal bench or in your previous legal practice?

Ms. MORGAN. Well, I know that the role of the District Court is to apply the law as it's written and it has been interpreted by the higher courts, which would be the U.S. Supreme Court, and in my case the Fifth Circuit Court of Appeal.

Senator COONS. Thank you, Ms. Morgan.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Thank you for joining us today, Ms. Morgan.

Ms. MORGAN. Thank you.

[The biographical information follows.]