

# **Testimony Concerning SEC Personnel Matters**

**by Mark Kreitman**

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**Before the U.S. Senate Committee on the Judiciary**

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Chairman Specter, Ranking Member Leahy, and Members of the Committee:

Thank you for the opportunity to address what I understand to be your concerns about a personnel matter involving a former member of my staff, and to answer any remaining questions you may have after the extensive interviews my staff and I have provided to your staff and the staff of the Senate Finance Committee.

Please let me first say that my colleague, friend, and branch chief Robert Hanson, also on this panel, is among the most dedicated public servants I have had the privilege to know, a person of unimpeachable character, honor and fierce dedication to our agency's mission to protect investors. Paul Berger, my former supervisor and mentor, is known far beyond our circle of professional colleagues for his zealous fair-minded enforcement of the securities laws during his 14 years at the Commission. Any suggestion that I, or either of these individuals, was moved in any way by political influence in our investigation that is the subject of your committee's inquiry has no basis whatever in fact.

I have been an Assistant Director in the Division of Enforcement for about three years. I supervise a staff that has, during my tenure, included between 10 and 15 attorneys. Previously, I was an Assistant Chief Litigation Counsel – a trial lawyer -- with the Division for about 16 years, and tried some notorious cases including the successful prosecution of First Jersey Securities and its principal Robert Brennan to a \$75 million verdict. I've brought cases against a department head at a major New York law firm, the president of a Beverly Hills bank, the son of a prominent local banker, and numerous Wall Street luminaries. My reputation at the Commission, in the industry, and at the bar is hardly that of a shrinking violet intimidated by power, money, or anything else.

I've won some awards, including the Irving M. Pollak Award named for our first Division Director, the Chairman's Award for Excellence, and most recently, an award from the United States Attorney for the Southern District of New York for my participation in the repatriation and recovery for investors of \$200 million of proceeds of fraud from the Isle of Man. I've been an Adjunct Professor in the Graduate Program at Georgetown Law School since 1999 and was named Charles Fahy Distinguished Adjunct Professor for the 2004-5 academic year. I'm a graduate of Yale College and Harvard Law School, where I was a Wasserstein Public Interest Fellow for the 2003-2004 academic year.

I have been a public servant for 26 of my 31 years of law practice, 19 of them at the Commission. I come from a family of lawyers and judges with a long commitment to legal ethics and public service. I am 56 years old.

Mr. Aguirre was a student of mine at Georgetown – an excellent student who participated actively in class. I supervised his Masters paper; when he decided to submit it for publication, I edited the draft, and it was published in several journals. We became friends and socialized together with our wives. That has made this entire episode particularly painful for me, and for my wife.

When Mr. Aguirre graduated from the Georgetown program, he had not practiced law for a number of years after leaving his California practice at a small firm doing work unrelated to the federal securities laws. He had no enforcement investigative experience and was unfamiliar with a closely supervised working environment like the Commission, where investigative zeal must be tempered by respect for the rights and legitimate interests of citizens, and where collegiality and mutual respect is the hallmark of our working environment. As I understand it, Mr. Aguirre applied unsuccessfully for employment at the Commission 22 times before being hired here in Washington, where he was assigned to another Assistant Director group as a staff attorney with a standard one year probationary period. Mr. Aguirre complained repeatedly and bitterly to me that his supervisors in that group were inexperienced and incompetent. I understand, however, that his supervisors attributed Mr. Aguirre's problems to his inability to accept supervision or work effectively with his colleagues. When an opening occurred in my group, Mr. Aguirre requested transfer to my group, I acquiesced, and he was granted that unusual accommodation. However, I refused his request for special treatment to be allowed to report