

**Public Hearing of the Moreland Commission
to Investigate Public Corruption
Prepared Testimony of U.S. Attorney Preet Bharara
September 17, 2013**

Chairmen Fitzpatrick, Rice, and Williams; distinguished members of the Moreland Commission; U.S. Attorney Lynch; District Attorney Vance; and members of the public, it is a privilege to be here today.

I have never testified in a forum like this before, but when the Commission reached out to me, I leapt at the chance because you are engaged in an effort that is dear to my heart not just as a prosecutor but as a New Yorker.

As I have made clear to the Commission, I pledge the cooperation and assistance of my office with the Commission's vitally important work.

Fighting public corruption has been a top priority for my office for a long while, as it has been for my friends Loretta Lynch and Cy Vance.

The diversity of the officials caught up in our probes reflects not only the level of our commitment but also the depth of the problem in our state. Public corruption, based on all the evidence, appears rampant. And the ranks of those convicted in office have swelled to absolutely unacceptable levels.

We have had to prosecute State Senators as well as State Assemblymen; elected officials as well as party leaders; city council members as well as town mayors; Democrats as well as Republicans.

In an age often decried for increasingly bitter partisanship, we can say that public corruption in New York is truly a bipartisan affair.

Sometimes we have used exclusively federal statutes, but often we have relied on the Travel Act, which requires us to prove a violation of existing state law as a predicate.

Largely, our cases speak for themselves. And a selected summary of those prosecutions is attached as an addendum to my formal testimony and submitted for the record.

In all our cases, we have dedicated ourselves to achieving accountability in every aggressive way possible, by using every legitimate tool available. I want to report briefly on one development in that regard, as it potentially raises an issue for the Commission's consideration.

Our primary mission is to address and to undo injustice – and, in the public corruption context, a galling injustice that sticks in the craw of every thinking New Yorker is the almost inviolable right of even the most corrupt elected official – even after being convicted by a jury and jailed by a judge – to draw a publicly-funded pension until his dying day.

That error of state law, partially fixed a couple of years ago, must succumb to common sense.

The common-sense principle is a simple one: Convicted politicians should not grow old comfortably cushioned by a pension paid for by the very people they betrayed in office.

So, my office has adopted a new set of policies. First, going forward, we will seek appropriate fines that take into account the money a corrupt official might derive from a publicly-funded pension so that the punishment fits the crime and so that we can take the profit out of that crime.

Second, for those defendants previously convicted and who have failed to satisfy the financial obligations imposed at sentencing, we will consider federal civil forfeiture actions against their pensions to satisfy criminal judgments.

And finally, in pending and future cases, to the extent any public official has a pension interest that accrued while engaging in criminal conduct, we will use federal forfeiture law to claw back an appropriate dollar amount commensurate with that pension where appropriate.

In that vein, we have today filed bills of particulars in two pending public corruption cases – *United States v. Malcolm Smith, et al.* and *United States v. Eric Stevenson, et al.* – giving notice of our intent to go after the pensions of elected officials convicted of corruption charges.

If there is a way for state law to be further modified to accomplish this end with respect to politicians elected prior to 2011, the Commission should consider it because I think New Yorkers would welcome it.

In the meantime, we will pursue the strategy I have just outlined.

As for other issues for the Commission to consider, given the collective experience and expertise of its members, it seems a bit presumptuous for someone like me to offer any advice or counsel.

But in the limited time I have this evening, let me just make three quick observations based on some of our experiences in the U.S. Attorney's Office for the Southern District of New York.

First, when District Attorney Rice last month said that the Commission would “follow the money,” New Yorkers had reason to cheer. But it is hard, of course, to do that when the money trails are purposely hidden. When every state or local official is able to lawfully moonlight as a lawyer or accountant and may lawfully withhold deep details of that work, prosecutors face substantial challenges.

That’s why God made the subpoena.

And it is heartening to see its appropriately aggressive use to track the flow of money in politics.

Second, public hearings are important and policy proposals are important too. But so are hard-nosed investigations and prosecutions, which I hope will be a primary, rather than tertiary, focus of the Commission. Nothing shines a light brighter or focuses the public’s anger and attention better than the actual arrest and conviction of a corrupt politician.

It was a wave of prosecutions that reportedly spurred this Commission’s creation in the first place. And worthy prosecutions, I believe, will ratify the importance of your ongoing work and rally support for your ultimate recommendations.

As the Commission does its deep dive, in my office we stand ready to prosecute any appropriate cases you may refer – especially given our track record of success, our access to resources, our tough penalty provisions, and our reputation for nonpartisanship.

Third, sometimes when dealing with a big crime problem, it is important not to overlook the small things. The overlooking of seemingly small things can, over time, breed a dangerous disrespect for the rule of law.

As with every category of criminal conduct, too often it is the accumulation of small and seemingly minor violations that leads to widespread lawlessness.

That is the central insight of the “broken windows” theory, famously posited by James Q. Wilson.

And there seems to be a bit of that going on with our campaign finance laws in New York. Take the case of campaign committee filings. State election law requires every registered political committee that receives or spends any money in connection with an election to file a sworn statement with the New York State Board of Elections.

These filings require the most basic information about contributions received and expenditures incurred by the committee. While a relatively basic requirement designed to ensure some level of transparency in State elections, this past year, more than a hundred campaign committees didn’t even bother to file the statement.

And what was the consequence? A nominal fine, which, in many cases, may be impossible to enforce because the committees often disband post-election.

Respectfully, the Commission might do well to begin by focusing on the broken windows all around.

Ultimately, the members of this Commission have an absolutely daunting mission – it is your challenge, amidst high hopes, to hold public officials to account, to expose obscure corners of graft and greed, and to restore faith in honest government.

That is a tall order.

At the end of the day, in all things, toughness and independence pay off.

When people understand that no one is immune from appropriate investigation or inquiry – whether in the majority or the minority, whether in the upper chamber or the lower, whether in the legislative or the executive branch – then there will be a measure of respect and fear, and perhaps, deterrence. That is true for a prosecutor’s office, and it is true also for a Moreland Commission.

Of course, as I have said before, public corruption in New York is more than a prosecutor’s problem. No one prosecutor can fix it. No one commission can fix it either.

The public and the press have a role to play also – and this Commission, with a bigger bully pulpit than any individual prosecutor, can encourage public engagement.

To repeat a longstanding lament, investigative journalists have become a dying breed, although there are still a few extraordinary practitioners, some of whom are here tonight. With each press outlet that closes or downsizes, opportunities to ferret out fraud and waste and abuse are lost.

And that is too bad because, as Edward R. Murrow once observed, “A nation of sheep will beget a government of wolves.”

But maybe the thinning ranks of investigative journalists will be fortified:

Maybe Politico’s purchase of Capital New York and its planned infusion of staff and resources will mean more Albany muckraking.

Maybe Jeff Bezos’s purchase of the Washington Post and his reported interest in rejuvenating a storied history of eye-popping investigations will prove contagious.

And maybe fresh news outlets like BuzzFeed whose editors are said to be bent on doubling down on political investigations will provide grist for Commissions like this one.

We shall see.

Meanwhile, in cooperation and coordination with the important work of this Commission, we will continue to prosecute those who perpetuate a show-me-the-money culture in Albany.

Thank you.

Addendum to the testimony of U.S. Attorney Preet Bharara before the Moreland Commission to Investigate Public Corruption on September 17, 2013, in New York City.



UNITED STATES ATTORNEY'S OFFICE
Southern District of New York
U.S. ATTORNEY PREET BHARARA

PUBLIC CORRUPTION

FACT SHEET

The U.S. Attorney's Office for the Southern District of New York is committed to rooting out corruption at all levels of government. The office's Public Corruption Unit investigates and prosecutes cases involving corrupt public employees and officials as well as frauds perpetrated against the city, state and federal governments. Below is a summary of the office's most notable Public Corruption cases since August 2009. Defendants in pending cases are presumed innocent unless and until proven guilty.

CONVICTIONS

New York State Legislators and Staff Members

U.S. v. Efrain Gonzalez

On May 7, 2009, former New York State Senator Efrain Gonzalez pled guilty to misusing public funds awarded to non-profit organizations. Gonzalez steered approximately \$200,000 in State member items through two non-profit organizations for his personal benefit, and directed one of the organizations to pay more than \$500,000 worth of his personal credit card and other bills. Gonzalez also arranged for a third non-profit organization to pay at least \$75,000 in his personal expenses. On May 25, 2010, Gonzalez was sentenced to seven years in prison and ordered to pay \$737,775 in forfeiture.

U.S. v. Anthony Seminerio

On July 24, 2009, former New York State Assemblymember Anthony Seminerio pled guilty to honest services mail fraud. From 1999 through September 2008, Seminerio engaged in a scheme to defraud the public of his honest services by using a purported consulting firm to solicit and receive "consulting" payments from persons and entities having business before New York State. Seminerio did little or no consulting work but nonetheless received approximately \$1 million

from various entities. On February 4, 2010, Seminerio was sentenced to six years in prison and ordered to pay \$1 million in forfeiture. Seminerio passed away in January 2011.

U.S. v. Richard Izquierdo Arroyo and Margarita Villegas

On March 12, 2010, Richard Izquierdo Arroyo, former Chief of Staff for his grandmother, a New York State Assemblymember, pled guilty to embezzling \$115,000 from SBCC Management Corp., a non-profit organization that provides management services to buildings for low-income tenants. Izquierdo Arroyo signed checks that diverted an additional \$20,000 from the non-profit and one of the buildings it serviced. Izquierdo Arroyo and co-defendant Margarita Villegas spent the money on personal expenses such as restaurants and clothing, and a small portion of the funds were diverted to pay for new flooring in the office of an Assemblymember (Izquierdo's grandmother), as well as to pay summer interns working in the Assemblymember's office and the office of a New York City Councilmember (Izquierdo's aunt).

U.S. v. Vincent Leibell

On December 6, 2010, former New York State Senator and Putnam County Executive-Elect Vincent Leibell pled guilty to tax evasion and to obstructing a federal grand jury investigation into whether he had extorted cash payments from lawyers working in Putnam County and had failed to report tens of thousands of dollars in cash payments he had received from those lawyers on his income taxes. On May 13, 2011, Leibell was sentenced to 21 months in prison and ordered to pay a \$4,000 fine.

U.S. v. Raymond Maguire

On September 15, 2011, Raymond Maguire, the former Chief of Staff to former New York State Senator Vincent Leibell, pled guilty to obstructing a federal grand jury investigation into whether then-Senator Leibell had a corrupt relationship with a contractor who was building him a new home. Upon learning about the federal investigation, Maguire approached the contractor and directed him to create phony, backdated invoices to hide the fact that the Senator had paid well below the market rate for the contractor's services. He also instructed the contractor to lie to federal investigators. On December 16, 2011, Maguire was sentenced to four months in prison and four months home confinement.

U.S. v. Carl Kruger, et al.

On December 20, 2011, former New York State Senator Carl Kruger pled guilty to participating in multiple bribery schemes in which he accepted nearly \$500,000 in exchange for taking official actions. Kruger was initially charged in March 2011 along with seven other individuals: New York State Assemblymember William Boyland; Richard Lipsky, a lobbyist; Aaron Malinsky, a real estate developer; Solomon Kalish, a health care consultant; David Rosen, CEO of MediSys Health Network; Robert Aquino, the former CEO of Parkway Hospital; and Michael Turano, a doctor. Rosen was found guilty after trial, and Turano, Aquino, Lipsky, and Kalish all pled guilty.

- Kruger was sentenced to seven years in prison in April 2012.
- Rosen was sentenced to three years in prison in May 2012.
- Turano was sentenced to two years in prison in April 2012.
- Aquino was sentenced to four months in prison in May 2012.
- Kalish was sentenced to two years in prison in May 2012.
- Lipsky was sentenced to three months in prison in April 2012.
- New York State Assemblymember Boyland was acquitted by a jury in November 2011.
- The Government entered into a deferred prosecution agreement with Malinsky.

U.S. v. Nicholas Spano

On February 10, 2012, former New York State Senator Nicholas Spano pled guilty to obstruction of justice and to filing fraudulent income tax returns. Spano admitted that he failed to report commissions he received from an insurance company doing business with the State of New York and concealed those commissions by directing them to business entities he owned and controlled. Spano also failed to report commissions he received from the sale of property, and he was able to deduct more than \$180,000 in tax returns as a result of fraudulent rental expenses. On June 8, 2012, Spano was sentenced to a year and a day in prison.

U.S. v. Hiram Monserrate

On May 4, 2012, former New York State Senator and New York City Councilmember Hiram Monserrate pled guilty to charges of conspiracy and mail fraud relating to the misuse of more than \$100,000 in discretionary funds. Specifically, he directed these funds to a non-profit organization to finance his failed 2006 campaign for the New York State Senate. On December 11, 2012, Monserrate was sentenced to two years in prison.

U.S. v. Nelson Castro

On August 27, 2013, former New York State Assemblymember Nelson Castro pled guilty to making false statements to federal authorities on June 17, 2013. Castro, a cooperating witness in the federal criminal investigation against New York State Assemblymember Eric Stevenson, claimed he had not spoken to the press in May 2013 or revealed his cooperation, when in fact he had. Castro is scheduled to be sentenced on January 30, 2014.

New York City Officials and Staff Members

U.S. v. Bernard Kerik

On November 5, 2009, Bernard Kerik, former Commissioner of the New York City Police Department and the Department of Corrections, pled guilty to eight felonies related to actions he took on behalf of contractors seeking to do business with the city while receiving and concealing benefits worth hundreds of thousands of dollars from those contractors. He also failed to report hundreds of thousands of dollars worth of income and took fraudulent deductions. Two of the counts that he pled guilty to relate to false statements he made to White House officials vetting

him for the position of Secretary of the U.S. Department of Homeland Security. Kerik was sentenced on February 18, 2010 to four years in prison and ordered to pay \$187,931 in restitution.

U.S. v. Andrew Stein

On December 1, 2010, former New York City Council President and Manhattan Borough President Andrew Stein pled guilty to one count of willfully failing to file federal tax returns on over \$1 million in income in 2008. As part of his plea agreement, Stein agreed to file accurate amended personal tax returns for the calendar years 2003 through 2007; and to pay past taxes due and owing to the Internal Revenue Service for 2003 through 2008. On March 16, 2011, Stein was sentenced to three years of probation and ordered to perform 500 hours of community service.

U.S. v. Larry Seabrook

On July 26, 2012, former New York City Councilmember Larry Seabrook was convicted of nine counts of federal corruption crimes, including mail fraud and wire fraud. Seabrook steered over \$1 million in City Council discretionary funds to non-profit organizations he controlled to benefit himself and his family. On January 8, 2013, Seabrook was sentenced to five years in prison.

U.S. v. Xing Wu Pan (a/k/a “Oliver Pan”) and Jia Hou (a/k/a “Jenny Hou”)

On May 2, 2013, Xing Wu Pan and Jia Hou were convicted in connection with a fraudulent scheme that involved the use of “straw donors” to funnel large, illegal campaign contributions to the campaign of John Liu, a candidate for New York City mayor in 2013. The contribution was well above the individual limit authorized by the New York City Campaign Finance Board (NYCCFB). The scheme helped donors evade the maximum individual contribution limit, thus increasing the amount they were able to directly give to the campaign. As a result, the campaign was able to claim greater matching funds from NYCCFB’s matching campaign funds program. Pan was convicted of conspiracy to commit wire fraud and attempted wire fraud. Hou was convicted of attempted wire fraud, obstruction of justice, and making false statements to the Federal Bureau of Investigation. Pan is scheduled to be sentenced on October 3, 2013, and Hou is scheduled to be sentenced on October 10, 2013.

Yonkers Officials

U.S. v. Sandy Annabi, Zehy Jereis and Anthony Mangone

On March 29, 2012, Sandy Annabi, the former Democratic Majority Leader of the Yonkers City Council, and Zehy Jereis, the former head of the Yonkers Republican Party, were each convicted of conspiracy, bribery and extortion, in connection with two real estate development projects in Yonkers that were pending before the Yonkers City Council. Annabi was also convicted of

making false statements to the Federal Bureau of Investigation and false statements to banks, and to filing false federal income tax returns. On November 29, 2010, Anthony Mangone, a Westchester County attorney and the former Chief of Staff to former State Senator Nicholas Spano, who had been charged along with Annabi and Jereis, pled guilty to charges of conspiracy, bribery, extortion, and tax evasion. As part of his plea, Mangone admitted to giving Jereis tens of thousands of dollars intended for Annabi so that she would vote to approve one of the development projects. On November 19, 2012, Annabi was sentenced to six years in prison, and Jereis was sentenced to four years in prison. Mangone, who cooperated with the Government, awaits sentencing.

PENDING CASES

U.S. v. Albert Baldeo

On October 24, 2012, Albert Baldeo, a Male District Leader in Queens, New York, was charged with fraud in connection with a scheme to use straw donors to funnel multiple illegal campaign contributions to his 2010 campaign for the New York City Council with the intent to fraudulently increase the amount of matching funds provided by the New York City Campaign Finance Board to his campaign. Baldeo is also charged with obstructing the government's investigation of this matter. Trial is scheduled to begin on November 18, 2013.

U.S. v. Eric Stevenson, et al.

On April 4, 2013, New York State Assemblymember Eric Stevenson was charged with accepting bribes in exchange for official acts, which include drafting, proposing, and agreeing to enact legislation. His co-defendants Igor Belyansky, Rostislav Belyansky, Igor Tsimerman, and David Binman, who were interested in operating and constructing adult day care centers in the Bronx, allegedly paid Stevenson more than \$22,000 to sponsor, and ultimately cause to be enacted, legislation that would declare a three-year moratorium on the construction of new adult day care centers in New York City, but from which their current centers would be exempted. Stevenson is also alleged to have used his office to facilitate the issuance of a certificate of occupancy and the installation of a gas line in connection with one of the co-defendants' adult day care centers, and to have held events in his official capacity to recruit senior citizens to attend a second center. Trial is scheduled to begin on January 6, 2014.

U.S. v. Malcolm Smith, et al.

On April 2, 2013, New York State Senator Malcolm Smith, New York City Council Member Daniel Halloran and four others were charged with bribery, extortion, and fraud arising from an undercover investigation of three distinct but related bribery schemes. In the first scheme, Smith allegedly arranged for cash bribes totaling \$40,000 to be paid to Vincent Tabone and Joseph Savino, two New York City Republican county leaders, as part of an effort by Smith, who is a

Democrat, to appear on the Republican primary ballot as a mayoral candidate in the 2013 election. Halloran is alleged to have received approximately \$20,500 in cash bribes to act as an intermediary with Tabone and Savino on Smith's behalf. In the second scheme, Halloran allegedly received approximately \$18,300 in cash bribes and \$6,500 in straw donor campaign contribution checks in exchange for agreeing to steer up to \$80,000 of New York City Council discretionary funding to a company he believed was controlled by those who paid him the bribes. The final scheme involved Noramie Jasmin and Joseph Desmaret, the Mayor and Deputy Mayor of the Village of Spring Valley in Rockland County, and their alleged receipt of financial benefits, including Jasmin's receipt of a hidden interest in a real estate project and Desmaret's receipt of approximately \$10,500 in cash bribes, in exchange for official acts. A trial date has not yet been set.