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Loretta E. Lynch and Harris Fischman, Partners—Litigation

Loretta Lynch's legal career has included both private law practice and public service, including three presidential appointments. She served as the U.S. Attorney General (2015–2017), appointed by President Barack Obama, and she has twice been appointed U.S. attorney for the Eastern District of New York. Today, at Paul, Weiss, Loretta is consistently called upon as a trusted mediator and fact finder. She handles sensitive investigations matters and high-profile litigation defense for some of the world's largest companies. Loretta received her J.D. from Harvard Law School and her B.A. in American Literature from Harvard University.

Harris Fischman is a partner in the Paul, Weiss Litigation Department and a widely respected trial lawyer and litigator. He has extensive public and private experience in white collar and regulatory matters, and regularly counsels companies, boards of directors, investment advisory firms, and senior executives in proceedings before regulators and prosecutors. Previously, Harris was a prosecutor in the Southern District of New York, where he was chief of the Violent and Organized Crime Unit and deputy chief of the Narcotics Unit. He received his J.D. from Northwestern University and his B.A. from Emory University.

Describe your practice area and what it entails.

Loretta: My practice largely focuses on advising corporate clients on complex government and internal investigations and high-stakes litigation. I help them navigate significant regulatory enforcement issues and substantial reputational concerns that are often international in scope. I also lead racial equity audits for corporations as co-chair of Paul, Weiss's new Civil Rights and Racial Equity Audit practice.

Harris: I represent an array of public companies, investment advisory firms, and executives facing SEC and other regulatory investigations, and counsel clients facing criminal prosecution in jurisdictions across the country. I handle all stages of civil and criminal investigations and proceedings, including trials and appeals. Like Loretta, I also conduct many internal investigations for corporations.

What types of clients do you represent?

Loretta: I represent a wide range of corporate clients. I have recently handled major matters for Amazon, BlackRock, McDonald's, the National Football League, and private and public universities, among many others. I also serve as a mediator in a matter involving issues of legal access for those in federal pretrial custody during the COVID-19 closures.

Harris: I am fortunate to represent a diverse mix of sophisticated clients. Many of my clients are confidential, but some recent representations include a major sports league, a Fortune 20 company, two of the largest private equity firms in the world, a subsidiary of a foreign government, and a well-known telecommunications company.

What types of cases/deals do you work on?

Loretta: Much of what I do remains behind the scenes; my job is to keep my clients out of the spotlight. A large part of my work is focused on internal investigations in which we're brought on by a company or the board to investigate allegations of wrongdoing or regulatory noncompliance within the company. I've worked on internal investigations regarding claims of sexual harassment, discrimination, bribery, and other issues. I also frequently defend companies and executives in high-profile lawsuits concerning alleged discrimination. Additionally, I help corporations proactively assess their policies and practices around racial equity and civil rights, and propose solutions where gaps are illuminated.

Harris: I also aim to keep my clients out of the headlines by ideally resolving issues before an enforcement action or criminal charges are filed, or by working to reduce their liability as much as possible. In the past few years, I've represented several public companies and investment firms

in high-profile U.S. Securities and Exchange Commission, Commodity Futures Trading Commission, and Department of Justice investigations, and conducted internal investigations on behalf of several corporations. Additionally, I represent clients when necessary at trial in both criminal and civil cases. On average, I try one to two cases a year.

How did you choose this practice area?

Harris: A combination of my interest in issues of fairness and justice, as well as my love for trial work. In law school, I did an externship at the U.S. attorney's office in Chicago and an internship for a federal judge in Manhattan, and just after graduation, I spent a year working at the International Criminal Tribunal for the former Yugoslavia, prosecuting the former Yugoslav president Slobodan Milosevic for war crimes. I later worked at the Southern District of New York as an assistant U.S. attorney. One of the great opportunities in being a prosecutor is the chance to be a steady hand trying to ensure that the cases brought and the punishments sought are fair and reasonable. On the defense side, it's been incredibly rewarding to work with individuals and companies to ensure that they receive fair and reasonable treatment.

Loretta: As a former prosecutor, I saw a number of situations where it seemed that white collar defendants had crossed a line that they hadn't set out to cross; they followed an agenda or incentives that may have fit in the business world but led them out of compliance or into regulatory or criminal problems. I thought it would be worthwhile to try and get in front of these kinds of situations and help companies avoid them. If they found themselves on the wrong path through misguided policies or bad actors, I felt I could help them navigate these issues in a manner that would let them reaffirm their commitment to compliance, be good corporate citizens, and reward good employees while excising bad actors.

What is a typical day like and/or what are some common tasks you perform?

Harris: One of my favorite things about my job is that every day is different. There are constantly new problems, industries, and jurisdictions that I'm dealing with and learning about, and that keeps it exciting. The first part of any engagement is usually figuring out the facts and overseeing internal investigations or other similar efforts. From there, a good portion of my days are spent talking through strategy with general counsel, public company directors, or chief compliance officers. I also spend a lot of time talking to the SEC, the CFTC, and various U.S. attorney's offices to help clients work through regulatory and other issues. Although most matters don't go to trial, occasionally they do, and then I devote substantial time to managing the case and preparing arguments.

Loretta: Echoing Harris's sentiment, every day is different. I spend a lot of time checking in with my teams working on various investigations and making sure we are considering all issues. I conduct many of the interviews in the investigation process myself, so that involves preparing and immersing myself in the documents and witness statements. I also spend time meeting with clients, preparing reports for boards of directors, and checking in with our clients' general counsel and lawyers for any co-defendants.

What training, classes, experience, or skills development would you recommend to someone who wishes to enter your practice area?

Harris: Don't worry too much about taking white collar-specific classes in law school; it's the last chance you'll have to be a student, so study what interests you. Doing an internship or clinic or working for a regulator or prosecutor will give you a window into the day to day of white collar work. Grab any opportunity you can to get on your feet in court as soon as possible and get a feel for whether you love it or not. No matter what type of litigator you become, writing is a core skill, and you will be writing for the rest of your career. If that's an area you're not confident in, take advantage of the resources at your school to sharpen your writing skills.

What is the most challenging aspect of practicing in this area?

Loretta: I've always found it most challenging to represent individuals facing significant liability. They often don't think of themselves as possible wrongdoers or criminals; it requires a lot of emotional support as they come to grips with the fact that the government may find them guilty of something. With corporations, the obstacle is that there are so many variables and so many ways to be culpable; even in companies with strong internal controls, there may still be people who take advantage of any weaknesses and do things that can drag the company down.

Harris: The emotional investment in clients can take a toll on you, particularly if an individual's freedom is at stake. These legal proceedings can have serious repercussions for people's careers, mental state, family life, and so on, and because it matters so much to your clients, it matters a great deal to you. So it's important to try to maintain some space and emotional separation from your work so it does not consume you. Also, white collar work often involves taking on new clients facing crisis situations, unlike the more drawn-out process of civil litigation. It can be really exciting and one of the best parts of the job, but it can also be very disruptive and demanding.

What do you like best about your practice area?

Harris: Helping our clients. Working with them to come up with the best plan to address their issues and then executing on that plan in a thoughtful and efficient manner.

Loretta: I've always liked solving the puzzle—what happened and who was involved.

What are some typical tasks that a junior lawyer would perform in this practice area?

Harris: Our junior associates are crucial to executing our internal investigations. They help come up with the plan, prepare for and take witness interviews, prepare drafts of our investigations, and prepare senior lawyers for presentations to boards of directors or government bodies. In a trial context, the people I want in the room with me are the people who are completely immersed in the case and really know the facts,

regardless of seniority. The best opportunities go to the team members who are the most engaged in the matter.

How important is prior criminal law experience (e.g., working for the Prosecutor's office or DA) in paving a successful career in white collar defense?

Loretta: It can be very important to your development as a litigator, but it's not the only way to be successful in this field. I work with several excellent white collar trial lawyers who were never prosecutors, such as Ted Wells, who is one of the most highly regarded trial lawyers in the country. The key to being a good white collar lawyer is to flip the perspective and think how the other side is thinking; that's what you do as a prosecutor. As long as you're able to get to the heart of the issues, connect with your clients and put yourself in the government's shoes in terms of how they would view certain behavior, then you're on the right track.

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Loretta E. Lynch, Partner