

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

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

Elaine Debra Kaplan

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

Judge, United States Court of Federal Claims

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.

U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW  
Suite 7353  
Washington, DC 20415

4. **Birthplace:** State year and place of birth.

Brooklyn, New York; 1955

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.

1976 – 1979, Georgetown University Law Center; J.D. (*cum laude*), 1979  
1972 – 1976, State University of New York at Binghamton; B.A., 1976

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.

2009 – Present  
U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW

Suite 7353  
Washington, DC 20415  
General Counsel

2004 – 2011  
American University  
School of Public Affairs  
Watkins Building, Room 117  
4400 Massachusetts Avenue, NW  
Washington, DC 20016  
Adjunct Faculty

2004 – 2009  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Senior Deputy General Counsel

2003 – 2004  
Bernabei and Katz, PLLC (since disbanded)  
1773 T Street, NW  
Washington, DC 20009  
Of Counsel

1998 – 2003  
U.S. Office of Special Counsel  
1730 M Street, NW  
Washington, DC 20009  
Special Counsel

1984 – 1998  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Deputy General Counsel (1989 – 1998)  
Deputy Director of Litigation (1988)  
Assistant Director of Litigation (1987 – 1988)  
Assistant Counsel (1984 – 1987)

1983 – 1984  
State and Local Legal Center  
444 North Capitol Street, NW  
Washington, DC 20001  
Staff Attorney

1979 – 1983  
Office of the Solicitor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20001  
Attorney

1979  
Law Offices of Martin Sterenbuch (I believe that Mr. Sterenbuch has since retired)  
Washington, DC  
Law Clerk

1978 – 1979  
Karr and Lyons (no longer in existence)  
Washington, DC  
Law Clerk

Summer 1978  
Association of Trial Lawyers of America  
(now American Association for Justice)  
777 Sixth Street, NW  
Washington, DC 20001  
Law Clerk

Summer 1977  
U.S. Railway Association (agency no longer in existence)  
Washington, DC  
Law Clerk

Other Affiliations (uncompensated):

2001 – 2003  
Journal of Public Inquiry  
No physical address  
Board Member

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 United States military. I was not required to register for 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.

Connie Morella Whistleblower Award (June 2003)  
Senior Editor, American Criminal Law Review (1977 – 1979)  
Phi Beta Kappa (1976)  
New York Regents Scholar (1972 – 1976)

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.

Administrative Conference of the United States (2009 – Present)

Gay and Lesbian Attorneys of Washington, DC (approximately 1995 – 1997)

Women's Bar Association (early 1980s)

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.

District of Columbia, 1979

There has been no lapse 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.

Supreme Court of the United States, 1984  
United States Court of Appeals for the D.C. Circuit, 1985  
United States Court of Appeals for the Federal Circuit, 1988  
United States Court of Appeals for the Second Circuit, 1991  
United States Court of Appeals for the Third Circuit, 1991  
United States Court of Appeals for the Fourth Circuit, 1982  
United States Court of Appeals for the Sixth Circuit, 1992  
United States Court of Appeals for the Seventh Circuit, 1991  
United States Court of Appeals for the Ninth Circuit, 1989  
United States District Court for the District of Columbia, 1980

There have been 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.

Friends of the National Zoo (several years since the 1990s)

Gay and Lesbian Parents International (1995 – 1997)

Human Rights Campaign Fund (1991 – 1993)

Journal of Public Inquiry  
Board Member (2001 – 2003)

Montgomery County Road Runners Association (1997, 2002, 2004)

National Gay and Lesbian Task Force (1993 – 1996)

P-Flag (Parents and Friends of Lesbians and Gays) (1995 – 1997)

In addition, at various times, I have been a member of the Parent Teacher Associations at my daughters' elementary, junior high, and high schools.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. 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.

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

**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.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is possible that there exists other published material that I have not been able to remember or identify.

Barbara A. Atkin, Elaine Kaplan & Gregory O'Duden, *Wedging Open the Courthouse Doors: Federal Employee Access to Judicial Review of Constitutional and Statutory Claims*, 12 Emp. Rts. & Emp. Pol'y J. 233 (2008). Copy supplied.

Elaine Kaplan & Tim Hannapel, *Reinvigorating the U.S. Office of Special Counsel: Suggestions for the Next Administration*, American Constitution Society Issue Brief (October 2008). Copy supplied.

Letter to the Editor, *About My Tenure*, American Spectator, April 19, 2005. Copy supplied.

Elaine Kaplan & Tim Hannapel, *Hear the Whistle Blow: Companies Should Welcome, Not Vilify, Newly Protected Informants*, Legal Times, October 7, 2002. Copy supplied.

Letter to the Editor, *More on Mr. Ashcroft*, Washington Post, January 27, 2001. Copy supplied.

Elaine Kaplan, *The International Emergence of Legal Protections for Whistleblowers*, Journal of Public Inquiry (Fall/Winter 2001). Copy supplied.

Letter to the Editor, *Protecting Federal Whistle-Blowers*, Washington Post, September 6, 2000. Copy supplied.

Letter to the Editor, *Blowing the Whistle on the INS*, Dallas Magazine (July 2000). Copy supplied.

Elaine Kaplan, *Protecting the Merit System: The Role of the Special Counsel*, Society of Federal Labor Relations Professionals Reporter, Vol. 99, No. 3 (Fall 1999). Copy supplied.

Letter to the Editor, *We Protect the Whistle-Blowers*, Washington Post, August 31, 1999. Copy supplied.

Elaine Kaplan, *Delays Aside, OSC Shields Many Employees*, Federal Times, July 26, 1999. Copy supplied.

Letter to the Editor, *Federal Employees' Political Contributions*, Wall Street Journal, May 10, 1999. Copy supplied.

Letter to the Editor, *Our Job: Protect All Whistleblowers*, Wall Street Journal, April 1, 1999. Copy supplied.

Elaine Kaplan & Lois G. Williams, *Will Employees' Rights Be the First Casualty of the War on Drugs?*, 36 U. Kansas. L. Rev. 755 (1988). 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.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I also requested that the Office of Special Counsel conduct a search to supply any responsive materials that I would have prepared or that would have been prepared on my behalf during my tenure as Special Counsel. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

Annual Performance Report of the U.S. Office of Special Counsel, 1999-2002, Reports supplied. Report appendices are available at [http://osc.gov/RR\\_GovernmentPerformanceResultsActReports.htm](http://osc.gov/RR_GovernmentPerformanceResultsActReports.htm).

Annual Report of the U.S. Office of Special Counsel on Freedom of Information Act (FOIA) Activities, 1998-2002. Reports supplied.

A Report to Congress from the U.S. Office of Special Counsel, 1998-2002. Reports supplied.

Report of the U.S. Office of Special Counsel in accordance with the Federal Managers' Financial Integrity Act and the Inspector General Act, October, 31, 2002. Report supplied.

Commercial Activities Inventory of the U.S. Office of Special Counsel, September 11, 2001. Report supplied.

Report of the U.S. Office of Special Counsel as required by the the Federal Managers' Financial Integrity Act and the Inspector General Act, October 30, 2000. Report supplied.

Report of the U.S. Office of Special Counsel in accordance with Public Law 106-58, January 10, 2000. Report supplied.

Report of the U.S. Office of Special Counsel in accordance with the Federal Managers' Financial Integrity Act, December 23, 1998. Report supplied.

Report of the U.S. Office of Special Counsel as required by the Inspector General Act, November 2, 1998. Report supplied.

During my tenure as Special Counsel, I transmitted numerous reports of investigation to the President and to relevant Congressional oversight committees, pursuant to 5 U.S.C. § 1213(e)(3). I have provided copies of my transmittal letters to the President, which are identical to the transmittal letters sent to the Congressional oversight committees in each matter. The reports themselves were prepared by other federal agencies.

- 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.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I also requested that the Office of Special Counsel conduct a search to supply any responsive materials that I would have prepared or that would have been prepared on my behalf during my tenure as Special Counsel. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

November 10, 2008: Testimony before the Committee on Legal and Human Rights, the Council of Europe, Moscow, Russia. Written testimony supplied.

On March 30, 2004, at the request of Congressman Barney Frank, I wrote him a letter concerning the interpretation of the civil service laws regarding sexual orientation discrimination in the federal workforce that the Office of Special Counsel had applied during my tenure. Copy supplied.

On March 1, 2004, I wrote a letter to then-OSC Special Counsel Scott J. Bloch requesting that he correct an erroneous assertion made in an OSC press release. Copy supplied.

Testimony of Elaine Kaplan before the Senate Committee on Governmental Affairs regarding the amendment of Chapter 23 of Title 5 of the United States Code (Nov. 12, 2003). Transcript supplied.

In 2003, I wrote a letter as Special Counsel to lawmakers about a proposed statutory amendment that would have prevented OSC from prosecuting a former federal employee for violating the Hatch Act. I have been unable to locate a copy of the letter, but press coverage is supplied.



On October 2, 2002, I wrote an email to the then Inspector General for the Department of Defense, on which I copied all members of the President's Council on Integrity and Efficiency, to respond to a report which made inaccurate assertions about the work of the Office of Special Counsel. I have been unable to locate a copy of the email, but press coverage is supplied.

On September 11, 2002, I wrote a letter to Senator Carl Levin concerning the protection of federal employee whistleblowers. Copy supplied.

On May 14, 2002, I sent Vice-President Dick Cheney, as President of the Senate, a proposed bill to extend the authorization of appropriations for the U.S. Office of Special Counsel for fiscal years 2003 through 2007. Copy supplied.

On March 14, 2002, I sent a letter to Congressman Dan Burton, Chair of the House Committee on Government Reform, responding to his request for information about the policies that the U.S. Office of Special Counsel follows when exercising its authority to investigate Hatch Act complaints and enforce compliance with that law. Copy supplied.

Testimony of Elaine Kaplan, Special Counsel before the Senate Committee on Governmental Affairs, Subcommittee on International Security, Proliferation, and Federal Services, regarding amendments to the Whistleblower Protection Act (July 25, 2001). Transcript supplied.

On June 21, 2000, I sent a letter to several members of Congress that described the U.S. Office of Special Counsel's proposal to reprogram \$185,100 in Fiscal Year 2000 appropriated funds. Copy supplied.

Testimony of Elaine Kaplan before the House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, regarding whistleblower retaliation at the Department of Veterans Affairs (March 11, 1999). Transcript supplied.

Testimony of Elaine Kaplan before the Senate Committee on Governmental Affairs regarding my nomination to be Special Counsel of the U.S. Office of Special Counsel (March 30, 1998). Transcript supplied.

Testimony of Elaine Kaplan before the Senate Committee on Appropriations, Subcommittee on Treasury, Postal Service, and General Government, regarding oversight hearings on the implementation of federal employee drug testing programs (February 19, 1991). Transcript supplied.

- 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.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is likely that there were speaking engagements and conferences in which I participated but for which I have not retained any records and I am not able to remember or identify. For example, I did not keep any records of speeches or talks that I might have given before 1998, when I began my term as Special Counsel, although I do recall generally that I spoke to several conferences on behalf of my then-employer, the National Treasury Employees Union concerning issues related to urinalysis drug testing of employees, which the Union was challenging in court. I also taught one hour classes attended by union officers at several training conferences that were held by NTEU. The courses concerned the Hatch Act and a variety of labor relations issues.

January 18, 2013: Remarks at Hispanic Roundtable, OPM Headquarters, Washington, DC. Notes supplied.

January 18, 2013: Remarks at Disability Roundtable, OPM Headquarters, Washington, DC. Notes supplied.

October 31, 2012: Panel presentation at Out and Equal Conference, Baltimore, Maryland, "Developments for the LGBT Community within the Federal Government." Video is available at:  
<http://www.youtube.com/watch?v=arUgaKfkjLs>.

September 19, 2012: Panel presentation at the White House LGBT Youth Conference, Washington, DC. Notes supplied.

September 5, 2012: Remarks at Worklife Symposium, Washington, DC. Video is available at: <http://www.youtube.com/watch?v=pvt8L3TwRh4>.

April 28, 2012: Panel Presentation at the White House LGBT Conference on Families, Minneapolis, Minnesota. Notes supplied and video is available at: [http://www.youtube.com/watch?v=\\_OSiY5hPqHE](http://www.youtube.com/watch?v=_OSiY5hPqHE).

February 2, 2012: Remarks at Department of Treasury Speaker Series Event, Washington, DC. Notes supplied.

May 24, 2011: Remarks at Staff Conference for the Merit Systems Protection Board, Washington, DC. Notes supplied.

November 5, 2010: Panel presentation, American Bar Association Annual Conference on Labor and Employment Law, Chicago, Illinois, "What's Hot in 2010 in Federal Sector Personnel and Labor Law." I discussed OPM initiatives including hiring reform, our veterans employment initiative, and the extension of benefits to federal employees' domestic partners. I have no notes, transcript, or recording. The ABA's address is 740 15th Street, NW, Washington, DC 20005.

October 7, 2010: Remarks at Kickoff to Federal Labor Relations Authority Combined Federal Campaign, Washington, DC. Notes supplied.

September 23, 2010: Panel presentation at 28th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, Illinois. I discussed OPM initiatives during the panel, including hiring reform, veterans employment, the extension of benefits to federal employees' domestic partners, and labor-management partnerships. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661.

August 27, 2010: Panel presentation at the Lavender Law Conference, Miami, Florida. Notes supplied.

July 14, 2010: Speaker at the Equal Employment Opportunity Commission's Excel Conference, Orlando, Florida. I discussed discrimination in federal employment based on sexual orientation or gender identity. Outline supplied.

June 23, 2010: Remarks at the Office of the Federal Deposit Insurance Corporation, Commemoration of Gay Pride Month, Arlington, Virginia. Notes supplied.

June 22, 2010: Remarks at the Office of the Comptroller of the Currency, Commemoration of Gay Pride Month, Washington, DC. Notes supplied.

June 10, 2010: Panel presentation, National Gay and Lesbian Journalists Association, Washington, DC. To the best of my recollection, I discussed initiatives underway at the Office of Personnel Management ("OPM") to extend benefits to same sex domestic partners of federal employees in accordance with the President's memorandum of June 2009. I have no notes, transcript, or recording. The National Gay and Lesbian Journalists Association is located at 2120 L Street NW, Suite 850, Washington, DC 20037.

May 21, 2010: Moderator, Ethics Panel, American University Key Executive Program Conference, "Extraordinary Leaders in Extraordinary Times," Washington, DC. I introduced panelists at program. I have no notes, transcript, or

recording, but press coverage is supplied. American University Key Executive Leadership Program is located at 4400 Massachusetts Avenue, NW, Watkins Building – Room G10, Washington, DC 20016.

April 16, 2010: Speaker at Luncheon for Administrative Law Judges, Chevy Chase, Maryland. Notes supplied.

April 15, 2010: Remarks to Administrative Law class at American University Law School, Washington, DC. Notes supplied.

June 30, 2009: Keynote speech, Library of Congress, LGBT Pride Month Event, Washington, DC. Notes supplied and video is available at [http://www.loc.gov/today/cyberlc/feature\\_wdesc.php?rec=4641](http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=4641).

June 23, 2009: Remarks at the Merit Systems Protection Board's Commemoration of Gay Pride Month, Washington, DC. Notes supplied.

April 22, 2009: Presentation at Meeting of ABA Committee on Federal Service Labor and Employment Law, Washington, DC. Notes supplied.

January or February 2009: Remarks at Conference on Presidential Appointments sponsored by the Gay and Lesbian Victory Institute, Washington, DC. I spoke about the process for securing a political appointment. I have no notes, transcript, or recording. The Gay and Lesbian Victory Institute is located at 1133 15th Street, NW, Washington DC.

September 18, 2008: Workshop presentation at 26th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, IL. Notes and PowerPoint supplied.

June 20, 2008: "Dealing With Tough Management Issues," Presentation on the Whistleblower Protection Act, Federal Aviation Administration Executive Conference, Washington, DC. Notes and PowerPoint supplied.

September 20, 2007: Workshop presentation at 25th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, "Ethical Dilemmas in the Practice of Federal Sector Labor Relations and Employment Law," Chicago, Illinois. I taught a CLE course on legal ethics issues that can arise in litigating cases involving federal sector labor relations. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661.

June 2005: Panel presentation before World Bank Conference discussing the concept of whistleblowing and the protections afforded to whistleblowers in the United States, Washington, DC. Notes supplied.

September 25, 2003: Presentation at the Conscience Clause Conference, Geneva, Switzerland. I presented on the whistleblower protection laws in the United States. I have no notes, transcript, or recording. The International Labor Organization is located at 4 Rue des Morillons, Geneva, Switzerland.

September 19, 2002: Keynote speaker at 20th Annual Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference, Chicago, Illinois. I likely discussed the work of the Office of Special Counsel. I have no notes, transcript, or recording. The Chicago Kent School of Law Federal Sector Labor Relations and Labor Law Conference is located at 565 West Adams Street, Chicago, IL 60661

August 22, 2002: Speech at Federal Dispute Resolution Conference, Desert Springs, California. My recollection is that I spoke about the work of the Office of Special Counsel. I have no notes, transcript, or recording, but press coverage is supplied. The law firm of Shaw, Bransford and Roth, which runs FDR Conferences, is located at 1100 Connecticut Avenue, NW, Washington, DC 20036.

June 20, 2002: Speech at Equal Employment Opportunity Commission, "Gay and Lesbian Awareness Month Observance," Washington, DC. I discussed procedures for challenging discrimination based on sexual orientation in the federal workplace. I have no notes, transcript, or recording. The Equal Employment Opportunity Commission is now located at 131 M Street, NE, Washington, DC 20507.

April 8, 2002: Presentation at the Twentieth Annual Judicial Conference of the Court of Appeals for the Federal Circuit, Merit Systems Protection Board Breakout Session, Washington, DC. Transcript supplied.

March 27, 2000: Panel presentation at Symposium on Employee and Labor Relations, Chicago, Illinois. I discussed the work of the Office of Special Counsel at this OPM-sponsored event. I have no notes, transcript, or recording. OPM is located at 1900 E Street NW, Washington, DC 20006.

March 8, 2000: Panel presentation for Hatch Act Symposium, Washington, DC. This was an educational program for federal employees regarding the Hatch Act, sponsored by the U.S. Office of Special Counsel. I have no notes, transcript, or recording. OSC is located at 1730 M Street, NW, Washington, DC 20009.

Mid-2000s: Speech before Conference of the World Bank and the American Society of International Law, Washington, DC. Notes supplied.

December 16, 1999: Joint Town Hall with Federal Labor Relations Authority and Office of Special Counsel, Washington, DC. I discussed the mission of the Office

of Special Counsel. I have no notes, transcript or recording. The Town Hall was sponsored by the FLRA, 1400 K Street, NW, Washington, DC 20424.

August 26, 1999: Remarks at the Federal Dispute Resolution Conference, San Antonio, Texas. Notes supplied.

June 25, 1999: Joint Town Hall with Federal Labor Relations Authority and Office of Special Counsel, Chicago, Illinois. I discussed the mission of the Office of Special Counsel. I have no notes, transcript or recording. The Town Hall was sponsored by the FLRA, 1400 K Street, NW, Washington, DC 20424

June 1999: Speech at Federal Personnel Management Institute (FPMI) Conference. I cannot recall where the conference took place. My speech concerned the Office of Special Counsel. I have no notes, transcript or recording, but press coverage is supplied. FPMI is located at 1033 North Fairfax Street, Alexandria, VA 22314.

April 1999: Presentation on the Whistleblower Protection Act, Passau, Germany. I gave a presentation on the law to overseas labor relations staff of the Department of Defense. I have no notes, transcript or recording. I cannot recall the name of the organization that sponsored the program.

March 4, 1999: Remarks at OPM's Symposium on Employee and Labor Relations, Hershey, Pennsylvania. Copy supplied.

February 24, 1999: Presentation entitled "Whistleblower Protection in the United States Government" at the Vice President's Conference on Fighting Corruption Among Justice and Security Officials, Washington, DC. Notes supplied.

May 1998: Speech to the American Bar Association Section on Federal Sector Labor and Employment Law, Washington DC. I recall that I spoke about my new position as head of the Office of Special Counsel. I have no notes, transcript, or recording. The ABA is located at 740 15th Street, NW, Washington, DC 20005.

May 1998: Speech to the Merit Systems Protection Board's Staff Conference, Washington, DC. I recall discussing my new position as head of the Office of Special Counsel and my agenda for the agency. I have no notes, transcript, or recording. The Merit Systems Protection Board is located at 1615 M Street NW, Washington, DC 20419.

1998: Keynote speaker, Annual Conference of the Office of Government Ethics, Chicago, Illinois. I spoke about the role of the Office of Special Counsel. I have no notes, transcript, or recording. The Office of Government Ethics is located at 1201 New York Avenue, NW, Washington, DC 20005.

June 12, 1997: Presentation at the Fifteenth Annual Judicial Conference of the Court of Appeals for the Federal Circuit, Merit Systems Protection Board Breakout Session, Washington, DC. Transcript 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.

To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but it is possible that there exists other material that I have not been able to remember or identify.

Interviews:

Ed O'Keefe, *Postal Service to Resume Retirement Fund Payments*, Washington Post, November 17, 2011. Copy supplied.

Alyssa Rosenberg, *The Federal Government's Same-Sex Quandary*, National Journal, July 17, 2009. Copy supplied.

*Domestic Partner Benefits: Prospects Improving*, 1500AM Fed News Radio, July 14, 2009. Audio is available at <http://www.federalnewsradio.com/index.php?nid=110&sid=1717753>.

Interview, CNSnews.com, June 30, 2009. Audio is available at <http://www.youtube.com/watch?v=jaXbHN47NJg>

Jim Rutenberg, *Outcry on Federal Same Sex Benefits*, New York Times, June 18, 2009. Copy supplied.

Alyssa Rosenberg, *Taking Exception*, Government Executive, March 1, 2009. Copy supplied.

Ari Shapiro, *Fresh Details Emerge in Special Counsel's Ouster*, National Public Radio, October 28, 2008. Copy supplied.

Robert Brodsky, *Next Special Counsel Faces an Uphill Battle*, Government Executive, October 27, 2008. Copy supplied.

*Next up at the Office of Special Counsel*, FedNewsRadio, October 24, 2008. Audio is available at <http://www.federalnewsradio.com/?nid=86&sid=1577117>.

Ari Shapiro, *Could Watchdog Office Probe Taint Justice Inquiry?*, National Public Radio, July 29, 2008. Copy supplied.

Matt Townsend, *VA's Voter Registration Ban Faces More Opposition*, ProPublica, July 23, 2008. Copy supplied.

James Sandler, *The War on Whistleblowers*, Salon.com, November 1, 2007. Copy supplied.

Daniel Pulliam, *GSA Chief Disputes Report on Hatch Act Violations*, Government Executive, June 4, 2007. Copy supplied.

Daniel Pulliam, *Governmentwide Hatch Act Probe Remains in Early Stages*, Government Executive, May 29, 2007. Copy supplied.

Daniel Pulliam, *Lawyer for GSA Chief Argues Investigative Agency is Biased*, Government Executive, May 25, 2007. Copy supplied.

Daniel Pulliam, *Early Special Counsel Report Pushed Punishment for GSA Chief*, Government Executive, May 24, 2007. Copy supplied.

Jason Miller, *How to Navigate the Hatch Act*, Federal Computer Week, May 7, 2007. Copy supplied.

Melissa Harris, *Some Say Bloch Should Be Careful*, Baltimore Sun, May 4, 2007. Copy supplied.

Stephen Labaton & Edmund L. Andrews, *White House Calls Political Briefings Legal*, New York Times, April 27, 2007. Copy supplied.

Melissa Harris, *U.S. Court Voids Labor Rules at Homeland Security Department*, Baltimore Sun, June 28, 2006. Copy supplied.

Karen Rutzick, *Unions Win Broad Victory Over DHS Labor Relations System*, Government Executive, June 27, 2006. Copy supplied.

Melissa Harris, *Merit Board Ruling Reopens 2004 Political E-Mail Case*, Baltimore Sun, June 23, 2006. Copy supplied.

*Political E-Mails Can Put Your Job at Risk, MSPB Rules*, Federal Times, June 19, 2006. Copy supplied.

Daniel Pulliam, *Investigative Agency Earns Fewer Victories for Employees*, Government Executive, February 1, 2006. Copy supplied.

Daniel Pulliam, *The Perils of Political E-mails*, Government Executive, January 20, 2006. Copy supplied.



Patrick Yoest, *DHS Appeals Court Rulings on Proposed Personnel System*, Congressional Quarterly, November 14, 2005. Copy supplied.

Stephen Barr, *Veteran's Successful Challenge Puts Outstanding Scholar Program in Jeopardy*, Washington Post, October 11, 2005. Copy supplied.

Patrick Yoest, *Oral Arguments on DHS Personnel Rules Set for Wednesday*, Congressional Quarterly, September 27, 2005. Copy supplied

David S. Bernstein, *Fun with Adjectives*, Boston Phoenix, July 22, 2005. Copy supplied.

David E. Sanger & Richard W. Stevenson, *Bush Responds to Questioning Over Leak Case*, New York Times, July 19, 2005. Copy supplied.

*Homeland Delays New Personnel Rules*, Federal Times, July 18, 2005. Copy supplied.

Stefan Styrsky, *Gay Groups Call for OSC Director's Ouster*, San Francisco Bay Times, June 16, 2005. Copy supplied.

Fred Kuhr, *A Blind Eye to Discrimination*, The Advocate, April 12, 2005. Copy supplied.

Amelia Gruber, *Culling Complaints*, Government Executive, January 1, 2005. Copy supplied.

Amelia Gruber & Chris Strohm, *Temporarily Parked*, Government Executive, July 29, 2004. Copy supplied.

T. Shawn Taylor, *Federal Office Confirms Laws Cover Lesbian, Gay Workers*, Chicago Tribune, April 13, 2004. Copy supplied.

Marie Beaudette, *Small Agency, Big Controversy*, Legal Times, April 2, 2004. Copy supplied.

T. Shawn Taylor, *Democrats Prod Federal Office on Gay Rights*, Chicago Tribune, April 1, 2004. Copy supplied.

Janet Rabin, *Analysis: New Federal Government Rules About Workplace Discrimination*, NPR Day to Day, March 26, 2004. Transcript provided.

Stephen Barr, *Gay GOP Group Wants Web Site Data Restored*, Washington Post, March 22, 2004. Copy supplied.

Richard B. Schmitt, *Counsel Under Fire for Move on Gay Bias*, Los Angeles Times, March 20, 2004. Copy supplied.

Rob Curtis, *OSC to Study Whether Bias Law Covers Gays*, Federal Times, March 15, 2004. Copy supplied.

Stephen Barr, *Gay Rights Information Taken Off Site; New GOP Head of Agency Says He is Reviewing Material*, Washington Post, February 18, 2004. Copy supplied.

David A. Fahrenthold, *Park Police Chief Turns Down a Deal; Offer to Drop Charges Included Stricture on Talking to Media, Chambers Says*, Washington Post, January 21, 2004. Copy supplied.

David A. Fahrenthold, *Park Service Moves to Fire Police Chief Over Comments*, Washington Post, December 19, 2003. Copy supplied.

CNN, Lou Dobbs Tonight, Interview with Lisa Sylvester regarding whistleblower protection, July 25, 2003. Transcript supplied.

Tania Branigan, *Backlog of Whistleblower Cases Growing, Agency Report Says*, Washington Post, July 21, 2003. Copy supplied.

Stephen Barr, *In IRS Bias Case, Special Counsel Brings About Suspension and Settlement*, Washington Post, June 26, 2003. Copy supplied.

Stephen Barr, *Davis Suggests Calling Off Hatch Act When the Employee Leaves Civil Service*, Washington Post, February 12, 2003. Copy supplied.

Interview, FEDTALK Radio, federalnewsradio.com, January 24, 2003. The station has advised that it has not maintained any transcripts or clips of this interview.

Stephen Barr, *Even Ordinary People Can Be Whistleblowers*, Washington Post, November 3, 2002. Copy supplied.

Guy Taylor, *Worker Hailed for Blowing Whistle*, Washington Times, July 1, 2002. Copy supplied.

Interview, FEDTALK Radio, federalnewsradio.com, June 21, 2002. The station has advised that it has not maintained any transcripts or clips of this interview.

June 3, 2002: Press Conference, held jointly with Federal Aviation Administration, to announce Memorandum of Understanding providing whistleblower protection to employees of the Transportation Security Administration. Statement supplied.

Jerry Seper, *INS Backs Away From Punishing 2 Whistleblowers; Agents Get Reinstatement, Back Pay*, Washington Times, May 3, 2002. Copy supplied.

*Before Blowing Whistle, Experts Urge Preparation, Patience*, Federal Times, April 8, 2002. Copy supplied.

Philip Shenon, *F.A.A. is Accused of Ignoring Security Lapses*, New York Times, February 27, 2002. Copy supplied.

Peter Overby, *Analysis: Whistleblower Protections for New Government Airport Screeners*, NPR All Things Considered, December 10, 2001. Limited transcript supplied.

Interview, FEDTALK Radio, federalnewsradio.com, December 8, 2001. The station has advised that it has not maintained any transcripts or clips of this interview.

Joe Cantlupe, *'Fun Day' at INS Weapons Site Among Allegations in Inquiry; Civilians Said To Be Allowed to Fire Machine Guns*, San Diego Union-Tribune, October 28, 2001. Copy supplied.

Stephen Barr, *Congress Looks to Patch the Safety Net for Whistle-Blowers*, Washington Post, June 11, 2001. Copy supplied.

Katy Saldarini & Kellie Lunney, *Representation Rights*, Government Executive, June 7, 2001. Copy supplied.

Robert Pack, *Whistleblowers and the Law*, Washington Lawyer, June 2001. Copy supplied.

Brad Knickerbocker, *Once the Whistle Blows, Who Follows Up With the Reforms?*, Christian Science Monitor, December 14, 2000. Copy supplied.

December 9, 2000: Interview, FEDTALK Radio, federalnewsradio.com. I assume that this would have involved a discussion about my work at the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

December 6, 2000: Press Conference held at the headquarters of the Office of Special Counsel, Washington, DC, to discuss investigation substantiating whistleblower disclosures and to present Public Servant Award. Copy of statement supplied.

Steve Barr, *Federal Diary Live*, Washington Post, October 18, 2000. Copy supplied.

*OSC Rebuts Former Engineer's Vindication Claim, Issues Warning*, cyberFEDS, September 7, 2000. Copy supplied.

Jason McGarvey, *Blowing Her Own Whistle*, Georgetown Alumni Magazine, Fall 2000. Copy supplied.

Drew Long, *OSC Fights Obscurity, Understaffing, to Protect Federal Workers*, LRRP Publications, August 2000. Copy supplied.

Stephen Barr, *Office of Special Counsel Juggles Image-Building, Advising Workers on Their Rights*, Washington Post, May 21, 2000. Copy supplied.

Radio Interview, WUST-AM, September 18, 1999. The topic was the role of the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

*Q & A: Special Counsel Discusses Goals for Whistleblower Agency*, Government Employee Relations Reporter, March 15, 1999. Copy supplied.

Thomas Hargrove, *More Federal Employee Whistleblowers Suffer Reprisals for Pointing Out Misconduct*, Washington Times, August 3, 1998. Copy supplied.

Heather C. Bodell, *Special Counsel Kaplan Discusses Concerns About Investigations*, Government Employee Relations Reporter, June 8, 1998. Copy supplied.

Christy Harris, *Protecting Employees, Office of Special Counsel Head Wants to Improve Public Image*, Federal Times, June 8, 1998. I have been unable to locate a copy of the article.

Radio Interview, WUST-AM, June 6, 1998. Interview concerned the Office of Special Counsel. The station has advised that it has not maintained any transcripts or clips of this interview.

Laura Myers, *Government Questions 50,000 Workers About 'Good Ol' Boy Roundup*, AP Online, August 30, 1995. Copy supplied.

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Joel Achenbach & Richard Leiby, *We Find the Defendant...; The Bobbit Verdict from the Court of Public Opinion*, Washington Post, January 22, 1994. Copy supplied.

*Appeals Court Refuses to Reconsider Ruling*, AP Online, September 22, 1993. Copy supplied.

Laurie Asseo, *Court Rejects Union Bid on Leaflets at Social Security Headquarters*, AP Online, October 21, 1991. Copy supplied.

*Appeals Court Overturns USDA Testing for Off-Duty Drug Use*, Washington Post, November 18, 1990. Copy supplied.

J. Jennings Moss, *Unions Ask Federal Pay Scale Bargaining*, Washington Times, June 8, 1990. Copy supplied.

J. Jennings Moss, *Court Won't Hear Case on Retiree Address List*, Washington Times, April 17, 1990. Copy supplied.

Enrique J. Gonzales, *Court Ruling May Affect HHS' Drug-Testing Criteria*, Washington Times, March 13, 1990. Copy supplied.

John Purnell, *Unions Sue, Claim SF 86 Snoops Into Private Lives*, Washington Times, June 15, 1989. Copy supplied.

Cheryl Sullivan, *Federal Workers Fight Drug Testing*, Christian Science Monitor, January 25, 1989. Copy supplied.

E. Shiver, Jr., *Few Employees Tested for Drugs in Workplace*, Los Angeles Times, January 12, 1989. Copy supplied.

Andrea Neal, *Mandatory Drug Testing: Court Weighs Civil Liberties Objections*, 74 A.B.A. J. 58, October 1, 1988. Copy supplied.

Ruth Marcus, *Both Sides in War Over Drug Testing Claim Upper Hand in Latest Battle*, Washington Post, November 19, 1987. Copy supplied.

Nancy Lewis, *D.C. School Employee Drug Tests Set Back*, Washington Post, November 18, 1987. Copy supplied.

David S. Hilzenrath, *Federal Worker Wins Time to Pursue Bias Suit*, Washington Post, June 25, 1987. Copy supplied.

Jim Schachter, *Government Vows Private, Accurate Drug Tests*, Los Angeles Times, February 20, 1987. Copy supplied.

Matt Yancey, *Government Still Working Out Details of Drug Tests*, AP Online, December 1, 1986. Copy supplied.

Nancy Lewis, *Performance Basis Upheld in RIF Rules; Judge Here Calls System 'Rational,'* Washington Post, July 1, 1986. Copy supplied.

Press Releases: (All press releases from my tenure at the Office of Special Counsel are available at <http://www.osc.gov/pressarchives.htm>; the press releases in which I am quoted are listed below.)

Press Release, *Statement from Elaine Kaplan, OPM General Counsel*, Office of Personnel Management, December 2009. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Group Settlement of Whistleblower Retaliation Complaints Filed by Former and Current Employees of the Bighorn National Forest*, U.S. Office of Special Counsel, April 22, 2003. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Selection of Kristin Shott as Recipient of Special Counsel's Public Servant Award*, U.S. Office of Special Counsel, March 13, 2003. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Corrective and Disciplinary Action in Case Alleging Retaliatory Denial of Promotion*, U.S. Office of Special Counsel, December 19, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Former Navy Employee's Whistleblower Complaint*, U.S. Office of Special Counsel, December 2, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Roll Out of Government-Wide Whistleblower Protection Act Program*, U.S. Office of Special Counsel, November 7, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Resolution of DeCA Whistleblower's Complaint*, U.S. Office of Special Counsel, October 31, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Awards the U.S. Merit Systems Protection Board 2302(c) Certification for Completion of Whistleblower Education Program*, U.S. Office of Special Counsel, September 5, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Cindy L. Snyder's Selection as Recipient of Special Counsel's Public Servant Award*, U.S. Office of Special Counsel, June 26, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of FAA Whistleblower's Complaint*, U.S. Office of Special Counsel, June 24, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Award of First Certificate of Compliance to the U.S. Office of Personnel Management under Law Requiring Agencies to Educate Employees about the Whistleblower Protection Act*, U.S. Office of Special Counsel, May 29, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement in Case of Fired FAA Whistleblower Who Disclosed Information to FAA Security and the FBI Concerning September 11th Attacks*, U.S. Office of Special Counsel, May 28, 2002. Copy supplied.

Press Release, *No FEAR Signing Prompts Special Counsel to Remind Agencies of Statutory Obligation to Educate Workforce about the Whistleblower Protection Act*, U.S. Office of Special Counsel, May 20, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Resolution of Two Complaints Alleging Retaliation Against Whistleblowers by the Immigration and Naturalization Service*, U.S. Office of Special Counsel, May 2, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel and Office of Personnel Management Launch Pilot Program to Educate Employees about the Whistleblower Protection Act*, U.S. Office of Special Counsel, March 14, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Prohibited Personnel Practice Complaint Filed by MSPB Regional Director*, U.S. Office of Special Counsel, January 3, 2002. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Three HUD Complaints Involving Willful Obstruction of Competition*, U.S. Office of Special Counsel, November 27, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Case for Army Reserve Major Injured During Overseas Military Service*, U.S. Office of Special Counsel, October 9, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Significant Settlement of Whistleblower Complaints Filed Against Veterans Affairs Hospital*, U.S. Office of Special Counsel, September 27, 2001. Copy supplied.

Press Release, *Special Counsel Expresses Concern over Court's Narrow Interpretation of the Whistleblower Protection Act*, U.S. Office of Special Counsel, August 20, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Martin Andersen's Selection as Recipient of Special Counsel's Public Servant Award, and Settlement of His Prohibited Personnel Practice Complaint Against the Department of Justice*, U.S. Office of Special Counsel, July 16, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reorganizes to Cut Red Tape and Provide More Efficient Service to Whistleblowers and Other Federal Employees*, U.S. Office of Special Counsel, June 4, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Establishment of Special Counsel's Public Servant Award Program and Its First Recipient, Dr. Donald Sweeney*, U.S. Office of Special Counsel, March 6, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel and Department of Labor, Veterans' Employment and Training Service, Sign Memorandum of Understanding*, U.S. Office of Special Counsel, February 7, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces 15-Day Suspension of NASA SES Employee for Whistleblower Retaliation*, U.S. Office of Special Counsel, January 16, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Whistleblower Complaint Against U.S. Department of Education*, U.S. Office of Special Counsel, January 9, 2001. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reaches Disciplinary Action Settlement in Hatch Act Case Involving Acting HCFA Administrator*, U.S. Office of Special Counsel, December 15, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Whistleblower Complaints Filed by Nuclear Couriers at Department of Energy's Oak Ridge National Laboratory*, U.S. Office of Special Counsel, October 2, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaint with VA Medical Center*, U.S. Office of Special Counsel, September 27, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaint Against Department of Veterans Affairs*, U.S. Office of Special Counsel, September 19, 2000. Copy supplied.



Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Complaints Against Drug Enforcement Administration*, U.S. Office of Special Counsel, September 6, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Reaches Disciplinary Action Settlement in Hatch Act Case Involving EPA Regional Administrator*, U.S. Office of Special Counsel, August 22, 2000. Copy supplied,

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Misuse of Outstanding Scholar Program and Failure to Appoint Displaced Archeologist*, U.S. Office of Special Counsel, July 25, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Discrimination Based Upon Military Duty*, U.S. Office of Special Counsel, July 11, 2000. Copy supplied,

Press Release, *U.S. Office of Special Counsel Announces Policy Governing Stay Requests*, U.S. Office of Special Counsel, June 14, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of First Amendment Case*, U.S. Office of Special Counsel, May 16, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Retaliation Against Employee for Filing Grievance*, U.S. Office of Special Counsel, May 16, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Criticizes Decision Finding It Liable for Attorney Fees in Disciplinary Action Case*, U.S. Office of Special Counsel, May 15, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Applauds Decision Confirming that Employees Who Disclose Violations of Hiring Rules are Protected Against Retaliation*, U.S. Office of Special Counsel, May 8, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Disciplinary Actions Against Officials for Using Bogus Duty Stations in Illegal Hiring Scheme*, U.S. Office of Special Counsel, March 20, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Launches Mediation Program*, U.S. Office of Special Counsel, March 13, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Retaliation Against Whistleblower by the Immigration and Naturalization Service*, U.S. Office of Special Counsel, March 10, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Disciplinary Action in Hatch Act Case*, U.S. Office of Special Counsel, March 6, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Educational Program on the Hatch Act and Political Activity by Federal Employees*, U.S. Office of Special Counsel, February 22, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Backpay and Reinstatement for INS Employee in First Amendment Case*, U.S. Office of Special Counsel, February 3, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Reduction in Federal Medicaid Payment to State of Connecticut in Hatch Act Settlement*, U.S. Office of Special Counsel, January 18, 2000. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Retaliation Case*, U.S. Office of Special Counsel, December 22, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Provides Training Aid for Agencies Designed to Prevent Prohibited Personnel Practices*, U.S. Office of Special Counsel, August 2, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Praises Board Ruling that Rejects Narrow Interpretation of Whistleblower Protection Act*, U.S. Office of Special Counsel, July 14, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Disappointed by Ruling that Federal Whistleblowers Continue to Have No Protection in Security Clearance Cases*, U.S. Office of Special Counsel, June 17, 1999. Copy supplied.

Press Release, *The Federal Labor Relations Authority and the U.S. Office of Special Counsel Hold First Joint Town Meeting*, U.S. Office of Special Counsel, June 17, 1999. Copy supplied.

Press Release, *Lawyers Prove Their Lung Power*, U.S. Office of Special Counsel, June 16, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Settlement of Unfair Hiring Practice Case*, U.S. Office of Special Counsel, June 10, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Complaint Alleging Illegal Dismissal of Wildlife Biologist by Fish & Wildlife Service*, U.S. Office of Special Counsel, June 2, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Corrective Action in Veterans Affairs' Whistleblower Case*, U.S. Office of Special Counsel, May 21, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Corrective and Disciplinary Action Settlement in Whistleblower Retaliation Case Concerning Public Safety*, U.S. Office of Special Counsel, May 12, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Personnel Violations in Veterans' Preference Case*, U.S. Office of Special Counsel, April 15, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Corrective and Disciplinary Action in INS Whistleblower Case*, U.S. Office of Special Counsel, April 8, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Obtains Precedent-Setting Ruling in Whistleblower Retaliation Case Brought Against Supervisor*, U.S. Office of Special Counsel, March 31, 1999. Copy supplied.

Press Release, *Office of Special Counsel Announces New Outreach Initiatives*, U.S. Office of Special Counsel, February 11, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Improved Web-Site and New Internet Address: [www.osc.gov](http://www.osc.gov)*, U.S. Office of Special Counsel, February 1, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Discipline Against Supervisor Who Violated the Whistleblower Protection Act*, U.S. Office of Special Counsel, January 29, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Requests Oral Argument in Key Case Affecting Whistleblower Rights of Federal Employees Who Hold Security Clearances*, U.S. Office of Special Counsel, January 21, 1999. Copy supplied.

Press Release, *U.S. Office of Special Counsel Wins Back Pay and Reversal of Illegal Suspension for SES Employee*, U.S. Office of Special Counsel, November 24, 1998. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower Reprisal Complaint Against Treasury's Office of Inspector General*, U.S. Office of Special Counsel, October 22, 1998. Copy supplied.

Press Release, *U.S. Office of Special Counsel Announces Favorable Settlement of Whistleblower's Complaint in Alleged Child Abuse Case*, U.S. Office of Special Counsel, September 17, 1998. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **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.

Special Counsel, U.S. Office of Special Counsel, 1998 – 2003, appointed by President William Clinton, confirmed by the U.S. Senate.

Team Lead, Government Operations Group, Obama Transition Team, 2008.

I have never been a candidate for elective office or a nominee for appointed office.

- 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.

I have never held a position in or rendered services to a political party or election committee. I solicited the attendance of friends and colleagues at several fundraisers held during the 2008 Presidential campaign, first for then-Senator Hillary Clinton during 2007 and early 2008, and subsequently for then-Senator Barack Obama during the fall of 2008. I believe that I also solicited the attendance of friends at a fundraiser for then-Senator John Kerry during the 2004 election cycle.

16. **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 have never served as a clerk to a judge.

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

I have never 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.

1979 – 1983  
Office of the Solicitor  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20001  
Attorney

1984  
State and Local Legal Center  
444 North Capitol Street  
Washington, DC 20001  
Staff Attorney

1984 – 1998  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Deputy General Counsel (1989 – 1998)  
Deputy Director of Litigation (1988)  
Assistant Director of Litigation (1987 – 1988)  
Assistant Counsel (1984 – 1987)

1998 – 2003  
U.S. Office of Special Counsel  
1730 M Street, NW  
Washington, DC 20009  
Special Counsel

2003 – 2004  
Bernabei and Katz, PLLC (since disbanded)  
1773 T Street, NW  
Washington, DC 20009  
Of Counsel

2004 – 2009  
National Treasury Employees Union  
1750 H Street, NW  
Washington, DC 20006  
Senior Deputy General Counsel

2009 – present  
U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, NW  
Suite 7353  
Washington, DC 20415  
General Counsel

- 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 never 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.

My first legal job after graduation from law school in 1979 was with the Office of the Solicitor, United States Department of Labor. In October of 1979, I began working as a staff attorney in the Black Lung Section of the Division of Employee Benefits, where I remained through 1981. In this position I represented the Director of the Office of Workers Compensation Programs in administrative hearings held nationwide in cases arising under the Black Lung Benefits Act, drafted briefs for consideration by the Benefits Review Board, an administrative appeals body, and briefed and argued several cases in the federal courts of appeals. In 1981, I was one of several attorneys selected by the Solicitor of Labor to be part of the staff of a new division (the Division of Special Appellate and Supreme Court Litigation) created to handle the Department of Labor's most complex and important cases in the federal courts of appeals, all cases raising significant constitutional issues, and all of the Department of Labor's Supreme Court work (in coordination with the Office of the Solicitor General). In this position I drafted briefs and presented oral argument on behalf of the Department of Labor in cases in the federal courts of appeals. I also drafted petitions for certiorari, oppositions to petitions for certiorari, and merits briefs for the United States Supreme Court, which were reviewed and edited as needed by the Office of the Solicitor General.

I left the Department of Labor at the end of 1983 and took a job with the then newly-established State and Local Legal Center, a nonprofit organization dedicated to improving the quality of advocacy on behalf of state and local governments in the Supreme Court. All of my time was spent either drafting amicus briefs on behalf of state and local government interests or making recommendations regarding whether the Center should file such briefs.

I was employed by the National Treasury Employees Union (a federal sector labor organization) during two separate periods in my legal career. In 1984, I started working at NTEU as a staff attorney and rose over the next 14 years to supervisory positions as Assistant Director of Litigation, Deputy Director of Litigation and then Deputy General Counsel. I left NTEU in 1998 after I was appointed Special Counsel (see below), and then returned in August 2004 as Senior Deputy General Counsel, which I remained until March 2009. At NTEU I assisted and advised the General Counsel in his management of the Office of General Counsel, and conducted litigation at all levels of the federal court system as well as before arbitrators and administrative tribunals and on one or two occasions in state court. I personally briefed and argued (or supervised the briefing and argument of) scores of cases at all levels of the federal courts.

In May 1998, I began a five-year term as the head of the U.S. Office of Special Counsel (OSC), which investigates and prosecutes complaints by federal employees who allege the commission of illegal employment



practices, with an emphasis on reprisal for whistleblowing. OSC also enforces the Hatch Act and operates as a secure channel for federal employee whistleblowers through which their disclosures are investigated and the results of those investigations made public. OSC investigations are often politically sensitive, and may involve high level executive branch officials. While at OSC, I did not personally appear in court or before administrative tribunals. I occasionally reviewed briefs that staff submitted to the Merit Systems Protection Board; the Department of Justice represented OSC in court. I provided input to DOJ on several briefs that involved OSC which were filed in the district courts and courts of appeals.

From June 2003 through August 2004, I was “of counsel” at the law firm of Bernabei and Katz, which specialized in civil rights and employment matters. I provided advice and representation to a largely private sector clientele in cases involving whistleblower retaliation, race and gender discrimination, sexual harassment, wrongful discharge, the Family Medical Leave Act, and other employment-related matters. The vast majority of my practice involved advising clients in connection with employment related matters, representing clients prior to the initiation of litigation, and attempting to secure a settlement of their claims without resort to litigation.

In March 2009, I was appointed General Counsel of the United States Office of Personnel Management, where I currently serve. As General Counsel, I provide legal and policy advice to the Director and officials across the Executive Branch regarding all aspects of federal personnel management and all other matters within the jurisdiction of OPM. I am OPM’s Designated Agency Ethics Officer. I direct a legal department staffed by more than 30 attorneys responsible for oversight of all agency rulemaking, litigation, procurement, contracting, ethics, and other matters. I advise the Director on legislative initiatives and work closely with senior officials in the Office of Management and Budget, White House Counsel’s Office, and the Department of Justice on legal issues.

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

During my time with the Solicitor’s Office in the Department of Labor my clients were the Director, Office of Workers’ Compensation Programs, and the Secretary of Labor. The cases arose under the Black Lung Benefits Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Labor Management Reporting and Disclosure Act, and other laws enforced or administered by the Department of Labor.

When I was with the State and Local Legal Center my clients were state and local governments and nonprofit organizations representing their interests, including the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, and the National Association of Attorneys General. I specialized in areas related to federalism and the protection of state prerogatives in relation to the federal government.

As an attorney for the National Treasury Employees Union, my client was the Union. We also occasionally provided representation to individual employees. I specialized in issues of constitutional law (specifically the First Amendment, the Fourth Amendment, and the separation of powers doctrine), as well as matters arising under the federal sector labor statutes, the civil rights acts, the Fair Labor Standards Act, the civil service laws, and the Administrative Procedure Act.

My clients at Bernabei and Katz were primarily private sector employees; occasionally I provided representation to public sector employees. The areas of law in which I specialized were whistleblower protection, race and sex discrimination (including sexual harassment), wrongful discharge, the Family Medical Leave Act, and other employment-related subject areas.

As the Office of Special Counsel, we considered our "client" to be the merit based civil service. In this position, I specialized in whistleblower protection, Hatch Act enforcement, and federal civil service law.

My clients at the Office of Personnel Management are the Director of OPM, and OPM's senior managers. In addition, because of our government-wide role in the field of personnel law, I provide advice to officials across the executive branch on matters related to civilian pay, benefits, civil service protections, and other matters within the jurisdiction of OPM.

- 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.

The majority of my practice over my legal career has been in litigation. During my years with the Department of Labor and the National Treasury Employees Union (which comprise the majority of my legal career) I was in court (or participating in an administrative hearing) on a regular basis.

- i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 85% |
| 2. state courts of record: | 0%  |

- 3. other courts: 0%
- 4. administrative agencies: 15%

ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- 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.

When I was employed by the Office of the Solicitor at the U.S. Department of Labor I tried dozens of cases arising under the Black Lung Benefits Act before administrative law judges. I do not have an exact number and I do not believe that these cases are publicly reported, but I was travelling at least several days each month in 1980 and 1981 to represent the Department of Labor at hearings in locations around the country where the coal miners lived. Usually, the hearings were several hours in duration; in some instances I cross-examined expert medical witnesses who testified on behalf of coal operators contesting miners' entitlement to benefits. In the majority of instances the witnesses would consist of miners and other lay witnesses. I was usually sole counsel at the hearings; on occasion I was co-counsel.

During my employment with NTEU, all of the cases in federal district court (or the Court of Federal Claims) in which I participated and which were tried to final decision were resolved on motions to dismiss or for summary judgment. Based on a Westlaw search, I would estimate that I either prepared or supervised the preparation of the briefs in 15-20 cases in federal district court that were resolved on motions. I personally argued the majority of these motions.

i. What percentage of these trials were:

- 1. jury: 0%
- 2. non-jury: 100%

- 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.

The cases or matters in which I have either drafted all or part of a brief or supervised its drafting are listed below. Please note that there may be additional briefs that I drafted or whose drafting I supervised, which I have been unable to identify or locate. In particular, I participated in the preparation of additional petitions for certiorari and oppositions to such petitions between 1981 and 1983, when I was with the Department of Labor. In response to my request, the

Solicitor's Office at DOL undertook a search, but its records are not complete and it was unable to locate any additional briefs. I believe that I may also have participated in the drafting of some petitions for certiorari while at the National Treasury Employees Union but I have been unable to identify or locate those briefs. I have never argued a case before the Court.

Office of Personnel Management:

*Elgin v. U.S. Department of the Treasury*, 132 S. Ct. 2126 (2012). Brief for respondents, available at 2012 WL 135052. (My name appears on this brief, although I did not draft or supervise its drafting. The brief was drafted by the Solicitor General's office—my staff supplied edits and I participated in the moot court.)

National Treasury Employees Union (1984 – 1998; 2004 – 2009):

*Gomez-Perez v. Potter*, 553 U.S. 474 (2008). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 2007 WL 4141903.

*Garcetti v. Ceballos*, 547 U.S. 410 (2006). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondent, available at 2005 WL 1749167.

*Whitman v. U.S. Department of Transportation*, 547 U.S. 512 (2006). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 2005 WL 2138281.

*National Federation of Federal Employees, Local 1309 v. U.S. Department of the Interior*, 526 U.S. 86 (1999). Petition for a writ of certiorari, reply brief in support of petition for certiorari, brief for petitioner, and reply brief for petitioner National Federation of Federal Employees, available at 1998 WL 34081041, 1998 WL 34081022, 1998 WL 419391, and 1998 WL 734427.

*Gilbert v. Homar*, 520 U.S. 924 (1997). Brief for the National Treasury Employees Union as *amicus curiae* in support of respondent, available at 1997 WL 88001.

*United States v. National Treasury Employees Union*, 513 U.S. 454 (1995). Brief in opposition and brief for respondents National Treasury Employees Union, et al., available at 1994 WL 16100284, 1994 WL 396914.

*United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994). Brief for the National Treasury Employees Union as *amicus curiae* in support of respondents supplied.

*Parker v. King*, 505 U.S. 1229 (1992) (cert. denied). Petitioner's reply brief supplied. I have been unable to locate a copy of the petition for certiorari.

*Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990). Brief for the National Treasury Employees Union as *amicus curiae* supporting petitioner, available at 1990 WL 10013118.

*Department of the Treasury, IRS v. Federal Labor Relations Authority*, 494 U.S. 922 (1990). Brief for respondent National Treasury Employees Union, available at 1989 WL 1127442.

*National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). Petition for writ of certiorari, reply brief in support of petition for writ of certiorari, petitioners' supplemental brief in support of writ of certiorari, brief for the petitioners, and reply brief for the petitioners, available at 1987 WL 9555325, 1987 WL 880086, 1987 WL 880087, 1988 WL 1025626, and 1988 WL 1025649.

*Carter v. Goldberg*, 498 U.S. 811 (1990) (cert. denied). Petition for writ of certiorari and reply brief in support of writ of certiorari supplied.

*Karahalios v. National Federation of Federal Employees*, 489 U.S. 527 (1989). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondents, available at 1988 WL 1025799.

*National Treasury Employees Union v. U.S. Department of the Treasury*, 493 U.S. 1055 (1990) (cert. denied). Petition for writ of certiorari and reply brief in support of writ of certiorari supplied.

*Bowsher v. Synar*, 478 U.S. 714 (1986). Brief for appellee National Treasury Employees Union, available at 1986 WL 728079.

*EEOC v. FLRA*, 476 U.S. 19 (1986). Brief for the National Treasury Employees Union as *amicus curiae* supporting respondents, available at 1985 WL 669146.

*Peterson v. Merit Systems Protection Board*, 469 U.S. 1189 (1985) (cert. denied). Reply brief in support of certiorari supplied. I have been unable to locate a copy of the petition for certiorari.

On behalf of state and local government interests (1984):

*Estate of Thornton v. Caldor*, 472 U.S. 703 (1985). Brief of the Council of State Governments, the National Association of Counties and the National Conference of State Legislatures as *amici curiae* supporting petitioner, available at 1984 WL 566050.

*Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). Supplemental Brief of the National League of Cities, the National Governors' Association, the National Association of Counties, the National Conference of State Legislatures, the Council of State Governments, the International City Management Association, and the United States Conference of Mayors as *amici curiae* supporting appellees, available at 1984 WL 563997.

*United States v. 50 Acres of Land*, 469 U.S. 24 (1984). Brief for the Council of State Governments, the National Governors' Association, the National League of Cities, the United States Conference of Mayors, the National Association of Counties and the International City Management Association as *amici curiae* supporting respondent, available at 1984 WL 565865.

*Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984). I have been unable to obtain a copy of the *amicus* brief.

*Armco v. Hardesty*, 467 U.S. 638 (1984). I have been unable to obtain a copy of the *amicus* brief.

On behalf of the Department of Labor (1981 – 1983):

*E-Systems, Inc. v. OWCP*, 464 U.S. 956 (1983) (cert. denied). Brief in opposition supplied.

*Helen Mining Co. v. Donovan*, 459 U.S. 927 (1982) (cert. denied). Brief in opposition supplied.

17. **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.

1. Gingery v. Department of Defense, 550 F.3d 1347 (Fed. Cir. 2008)

NTEU filed an amicus brief in this case which involved a challenge brought by a disabled veteran to OPM regulations that permitted agencies to pass over disabled veterans

seeking positions in the “excepted” civil service without securing OPM’s permission to do so. The veteran also challenged the legality of the government-wide Federal Career Intern Program.

I drafted NTEU’s amicus brief and, with the Court’s permission, presented oral argument in the case on the side of the veteran. The court of appeals (Judges Newman, Prost, and Moore) agreed with NTEU’s position and held the OPM regulation unlawful. The decision ensures that significant procedural protections be provided to disabled veterans who are passed over for federal jobs.

Petitioner was represented by Andrew J. Dhuey, 456 Boynton Avenue, Berkeley, CA 94707, (510-528-8200). Opposing counsel from the Justice Department included Hillary Stern, Todd Hughes, and Jeanne Davidson, 1101 L Street, NW, Washington, DC 20530, (202) 616-8277. My co-counsel were Gregory O’Duden and Timothy Hannapel, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

2. National Treasury Employees Union v. Chertoff, 452 F.3d 839 (D.C. Cir. 2006)

This was a challenge brought by the National Treasury Employees Union to regulations promulgated jointly by OPM and the Department of Homeland Security under the Homeland Security Act of 2002, which, among other things, limited the rights of DHS employees to bargain collectively over conditions of employment and allowed DHS to abrogate existing agreements unilaterally. NTEU led a coalition of federal sector unions in challenging these far reaching regulations.

In the district court, Judge Rosemary Collyer ruled in favor of the Union in part, but rejected its challenge to the regulations’ narrowing of the collective bargaining obligation. On appeal, the Court of Appeals for the D.C. Circuit (Judges Edwards, Randolph and Griffith) reversed the district court in part and held that the regulations were unlawful because they failed to ensure collective bargaining rights as required by the statute. The case – which received significant public attention at the time – resolved important and novel issues of federal sector labor law arising out of the creation of the new Department of Homeland Security.

I was responsible for the supervision of the briefing of this case at all stages, and supervised the presentation of oral argument by a more junior attorney before the district court. I assisted the General Counsel in preparing for and presenting argument in the court of appeals.

Opposing counsel included the following attorneys from the Department of Justice: Thomas Bondy (now Deputy General Counsel with the FBI, 935 Pennsylvania Avenue, NW, Washington, DC 20535, (202) 220-9320); William Kanter (now retired), and Susan Rudy (U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, NW, Room 6100, Washington, DC 20001, (202) 514-2071). My co-counsel on the case were Robert Shriver and Gregory O’Duden, both then of

NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. Robert Shriver now works at OPM, 1900 E Street, NW, Washington, DC 20415, (202) 606-2044.

3. National Treasury Employees Union v. FLRA, 139 F.3d 214 (D.C. Cir. 1998); related cases: NTEU v. King, 798 F. Supp. 780 (D.D.C. 1992); National Treasury Employees Union v. FLRA, 961 F.2d 240 (D.C. Cir. 1992); National Treasury Employees Union v. FLRA, 986 F.2d 537 (D.C. Cir. 1993); SSA & NTEU, 45 FLRA 303 (1992); SSA & NTEU, 52 FLRA No. 114 (1997); SSA & NTEU, 55 FLRA 964 (1999).

The issues in these cases concerned the extent to which a rival labor union is entitled (under the First Amendment and/or the Federal Service Labor Management Relations Statute, 5 U.S.C. § 7101, *et seq.*) to leaflet in public areas of an agency's premises when another union represents the employees. The matter arose in the context of a lawsuit that NTEU brought under the First Amendment in the United States district court, and an unfair labor practice that the Union filed against the agency (the Social Security Administration) before the Federal Labor Relations Authority. It raised important and novel questions involving the intersection of federal labor law and the First Amendment and was before the D.C. Circuit several times.

I had primary responsibility for all of these cases. I briefed them and presented oral argument twice in the district court (before Judge Joyce Hens Green) and three times before the D.C. Circuit (Judges Wald, Sentelle and Henderson in 961 F.2d 240; Judges Wald, Silberman, and D. H. Ginsburg in 986 F.2d 537 and 139 F.3d 214). I also presented oral argument before the FLRA in the case (this matter is one of only a few that have ever been orally argued before the FLRA in its 32 years of existence).

The district court granted NTEU's request for a preliminary injunction, finding that the Union's First Amendment rights were violated. After the court of appeals' decision remanding the FLRA's initially unfavorable ruling on the labor issue, the FLRA ruled in NTEU's favor, finding that it was entitled under the labor statute to leaflet in the public areas. As a result, the preliminary injunction that Judge Green ordered in favor of the Union was ultimately vacated as moot.

Opposing counsel in the cases were R. Craig Lawrence and Daniel Standish, Office of the U.S. Attorney, 555 Fourth Street, NW, Washington, DC 20530, (202) 307-0406; James Blandford and William Tobey, Federal Labor Relations Authority, 1400 K Street, NW, Washington, DC 20424, (202) 218-7770; Mark Roth, Alexia McCaskill, Judith Galat, American Federation of Government Employees, 80 F Street, NW, Washington, DC 20001, (202) 639-6424. My co-counsel was Gregory O'Duden, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

4. National Treasury Employees Union v. King, 132 F.3d 736 (Fed. Cir. 1998)

This case was a class action for monetary and injunctive relief brought on behalf of tens of thousands of federal employees who were paid "special rates" as a result of their hard



to fill occupations. Between 1982 and 1989, a regulation issued by OPM had denied these employees the salary increases they had received in previous years. NTEU successfully challenged the regulation as unlawful and secured a decision from the Court of Appeals for the Federal Circuit in this appeal (Judges Newman, Archer, and Bryson) directing an award of backpay based on the regulatory formula in effect prior to the issuance of the illegal regulation. As a result of this decision, the case was ultimately settled after I left NTEU for in excess of \$180 million.

I represented NTEU in this matter for some nine years, beginning in 1989. I briefed the issues before the district court and appeared before the United States District Court for the District of Columbia (Judge John Garrett Penn) on several occasions to argue portions of the case. I also briefed and argued the case in the court of appeals.

Opposing counsel in this case was John Tyler, United States Department of Justice, Civil Division, Federal Programs Branch, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 305-0198). My co-counsel in the case was Gregory O'Duden, NTEU General Counsel, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

5. Weaver v. U.S. Information Agency, 87 F.3d 1429 (D.C. Cir. 1996)

This case arose out of a lawsuit filed by an employee of the U.S. Information Agency who sought to challenge a regulation that required her to submit all writings for pre-publication review, on penalty of discipline. NTEU filed an amicus brief on the side of the employee on the issue of whether her constitutional challenge should be dismissed for failure to exhaust administrative remedies.

I drafted NTEU's amicus brief and, with leave of the court, I presented oral argument on behalf of NTEU as amicus. The court of appeals (Judges Wald, Silberman, and Williams) agreed with NTEU and held that the employee was not required to exhaust administrative remedies to bring a facial challenge to the regulation on constitutional grounds. The case established an important principle of law that ensured that federal employees could mount pre-enforcement constitutional challenges to regulations restricting speech.

Opposing counsel on appeal was Craig Lawrence of the U.S. Attorney's Office for the District of Columbia, 555 Fourth Street, NW, Washington, DC 20530, (202) 307-0406. Counsel for the appellant, Ms. Weaver, was Steven M. Kohn, Kohn, Kohn, and Colapinto, 3233 P Street, NW, Washington, DC 20007, (202) 342-6980. My co-counsel in the case were Gregory O'Duden and Barbara Atkin, of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

6. Saraco v. United States, 831 F. Supp. 1154 (E.D. Pa. 1993), *aff'd*, 61 F.3d 863 (Fed. Cir. 1995)

This case raised an important and recurring jurisdictional issue: whether the Court of Federal Claims had exclusive jurisdiction over cases brought by federal employees under the Fair Labor Standards Act where the amount in controversy exceeded \$10,000.

NTEU represented a class of over 800 employees of the United States Customs Service who claimed that they had been unlawfully exempted from the Fair Labor Standards Act. The lawsuit was brought in the United States District Court for the Eastern District of Pennsylvania (Judge Jan DuBois). I supervised the briefing of the case before the district court on the government's motion to dismiss. The court dismissed the case and transferred it to the Court of Federal Claims. I briefed and orally argued the case on appeal. The Court of Appeals for the Federal Circuit (Judges Newman, Archer and Michel) affirmed, establishing the exclusive Tucker Act jurisdiction of the Court of Federal Claims in these cases.

Opposing counsel was Shalom Brilliant, Department of Justice, Commercial Litigation Branch, 1101 L Street, NW, Washington, DC 20530, (202) 514-2217. My co-counsel were David Klein and Gregory O'Duden of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. David Klein is now a partner at the Orrick Law Firm, 1152 15th Street, NW, Washington, DC 20005, (202) 339-8629.

7. United States v. National Treasury Employees Union, 788 F. Supp. 4 (D.D.C. 1992), *aff'd*, 990 F.2d 1271 (D.C. Cir. 1993), *aff'd*, 513 U.S. 454 (1995)

This case, which was brought as a class action on behalf of all executive branch employees below grade GS-16, involved a constitutional challenge to a portion of the Ethics Reform Act of 1989 which prohibited federal employees from receiving any compensation for making speeches or writing articles during their off-duty time, even when the speeches and articles had nothing to do with their official duties. NTEU, which was certified as the class representative, secured a decision from the district court (Judge Thomas Penfield Jackson) holding that this prohibition violated the First Amendment. Judge Jackson's decision was affirmed on appeal by the D.C. Circuit (Judges Williams, Randolph, and Sentelle). A petition for rehearing was denied. Thereafter, the United States Supreme Court granted the government's petition for certiorari and upheld the court of appeals' decision that the "honoraria ban" was unconstitutional.

I was involved in all aspects of the briefing of this case from the district court to the Supreme Court. I either drafted or participated in the supervision of the drafting of all of NTEU's briefs. I also assisted NTEU's General Counsel in preparing for the oral arguments in the case and in devising NTEU's legal strategy.

Opposing counsel in the case included Michael Dreeben, Office of the Solicitor General; Alfred Mollin and Michael Singer, U.S. Department of Justice, Civil Division, Appellate Section, 950 Pennsylvania Avenue, NW, Washington, DC 20530, (202) 514-5432; and

Jeffrey Gutman and Susan Rudy, U.S. Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, NW, Washington, DC 20001, (202) 514-2071). Co-counsel in the case were Gregory O'Duden and Barbara Atkin, NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500.

8. National Treasury Employees Union v. U.S. Customs Service, 829 F. Supp. 408 (D.D.C. 1993), *aff'd*, 27 F.3d 623 (D.C. Cir. 1994)

NTEU challenged the constitutionality of an expanded program of random urinalysis testing of Customs employees who had access to certain sensitive but unclassified databases. The issue in the case was whether such information was "truly sensitive" within the meaning of the Supreme Court's decision in NTEU v. Von Raab, in which I also participated (see below).

The district court (Judge Thomas Penfield Jackson) entered summary judgment against the Union. On appeal, in a 2-1 decision (Judges Wald, Buckley, and Williams) affirmed the district court's decision. I supervised the briefing and argument of the case in the district court. On appeal, I wrote the brief and argued the case. The court's opinion in this case established new parameters for the government's authority to conduct drug tests based on public employees' access to sensitive information.

Opposing counsel in the case were Peter Robbins and Robert Zener of the Department of Justice. (Mr. Zener has retired; Mr. Robbins is no longer at the Department of Justice). My co-counsel were David Klein and Gregory O'Duden of NTEU, 1750 H Street, NW, Washington, DC 20006, (202) 572-5500. David Klein is now a partner at the Orrick Law Firm, 1152 15th Street, NW, Washington, DC 20005, (202) 339-8629.

9. Department of the Treasury, IRS v. FLRA, 494 U.S. 922 (1990)

This case involved the issue of whether challenges to violations of OMB Circular A-76 (governing the contracting out of federal positions) could be pursued under the negotiated grievance arbitration procedure or whether allowing such grievances would violate management rights.

NTEU prevailed before the Federal Labor Relations Authority and the D.C. Circuit. The Supreme Court, however, reversed in a 6-3 ruling. I drafted the brief for NTEU as intervener in the Supreme Court, and assisted the General Counsel in preparing for the oral argument. The case resolved important questions of federal sector labor law regarding the permissible scope of the negotiated grievance-arbitration procedures and the rights of federal employees to challenge decisions to contract out their jobs.

Opposing counsel in the case included Harriet Shapiro, Thomas Bondy (now Deputy General Counsel with the FBI, 935 Pennsylvania Avenue, NW, Washington, DC 20535, (202) 220-9320) and William Kanter of the Department of Justice (retired). Counsel for the FLRA was Robert J. Englehart, now with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570, (202) 273-2978.

10. National Treasury Employees Union v. Von Raab, 649 F. Supp. 380 (E.D. La. 1986), *rev'd*, 816 F.2d 170 (5th Cir. 1987), *aff'd*, 489 U.S. 656 (1989)

This was a lawsuit brought by NTEU challenging the constitutionality of a program implemented by the U.S. Customs Service requiring employees to submit to drug tests as a condition of promotion into certain positions. At the time that the lawsuit was brought, the Fourth Amendment law governing such programs had just started to develop.

The district court (Judge Robert Collins) ruled that the program violated several provisions of the Constitution, including the Fourth Amendment, and issued an injunction against its implementation. On appeal, the Fifth Circuit reversed in a 2-1 decision (Judges Rubin, Hill and Edwards). The Supreme Court granted NTEU's petition for certiorari and, in a 5-4 decision, affirmed the Fifth Circuit's ruling. I briefed this case at every stage, up to the Supreme Court, and assisted NTEU's then Director of Litigation, Lois Williams, in preparing for oral arguments. The Supreme Court's decision in this case established the standards that have since been applied to determine the Fourth Amendment rights of public employees in this and other contexts.

Opposing counsel in the case included Richard Willard, Steptoe and Johnson, 1330 Connecticut Avenue, NW, Washington, DC 20036, (202) 429-6263, and Robert Chesnut, Chegg, Inc., 4655 Old Ironsides Road, Suite 130, Santa Clara, CA, 95054, (888) 992-4344. My co-counsel in the case was Lois G. Williams, 874 Douglass Street, San Francisco, CA 94114, (202) 558-8699.

18. **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.)

My work at the Department of Labor and for the National Treasury Employees Union almost exclusively involved litigating cases in the federal courts or before administrative tribunals. At the State and Local Legal Center I worked almost exclusively on the preparation of amicus briefs for state and local government organizations in the Supreme Court.

At the National Treasury Employees Union I occasionally worked with our legislative department reviewing proposed legislation for purposes of crafting the Union's position or analyzing its legal implications. I did not engage in any "lobbying" activities on behalf of the Union except on a handful of occasions in the 1980s, when I accompanied union members on visits to their Congressional representatives in connection with the Union's annual legislative conference. I have not otherwise engaged in any lobbying activities on behalf of any private interests.

In my position as Special Counsel, I was routinely required to make legal judgments regarding matters within the agency's jurisdiction that did not directly involve litigation. These would include: determining whether and to what extent certain types of activities were or should be considered prohibited by the Hatch Act; overseeing the referral and investigation of certain whistleblower disclosures pursuant to 5 U.S.C. § 1213; and interpreting the civil service laws and the statutes prohibiting whistleblower retaliation and other "prohibited personnel practices" for purposes of deciding which complaints should be investigated and prosecuted. OSC was also asked on occasion for its views on pending legislation. As Special Counsel, I had final responsibility for all of these matters.

While at Bernabei and Katz, I counseled and advised clients regarding their rights at the workplace, predominantly in the private sector. I secured significant settlements for several of my clients without resort to litigation, including but not limited to securing monetary relief for a whistleblower whose disclosures regarding the violations of established accounting principles by a major corporation were ultimately substantiated; securing a monetary settlement for a female executive who had suffered retaliation and sexual harassment at the company at which she held a senior position, and securing a favorable settlement for a physician who claimed that she suffered retaliation for complaining about lax procedures at a medical facility.

In my current position as General Counsel for OPM, I provide legal and policy advice to the Director of the agency and officials across the Executive Branch regarding all aspects of federal personnel management and all other matters within the jurisdiction of OPM. I am OPM's Designated Agency Ethics Officer. The Office of General Counsel reviews all aspects of agency rulemaking, and advises the Director and other components of OPM on procurement, contracting, ethics, and other matters. I advise the Director on proposed legislative initiatives. I am also responsible for interpreting and assisting the implementation of recently enacted legislation, such as the Affordable Care Act, which directly affects OPM's administration of the Federal Employee Health Benefits Program, and which has imposed new responsibilities upon OPM with respect to the establishment of multi-state insurance plans that will be made available to the general public. I also work closely with senior officials in the Office of Management and Budget, White House Counsel's Office, and United States Department of Justice on legal issues including but not limited to the preparation and implementation of Executive Orders and Presidential memoranda. In addition, I consult with the Department of Justice on significant matters in litigation in which OPM is named as a defendant or otherwise has an interest.

19. **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.

Member, Adjunct Faculty  
2004-2011

From July 2004 to May 2009, and again in June and July 2011, I taught “Legal Issues in Public Administration” for the American University Masters in Public Administration Program. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. Spring 2007, Fall 2008, Spring 2009, and Summer 2011 syllabi supplied.

In July 2006 and 2007, I taught “Legal Basis of Public Administration” for the American University Masters in Public Administration Program. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. No syllabus available, but the syllabi were similar if not identical to those used for the “Legal Issues in Public Administration” courses.

In Spring 2006, I taught “Independent Study: Legal Issues for Executives” for the American University Masters in Public Administration Program. No syllabus available.

From October to December 2007, I taught “Legal Issues in Public Administration” for the USDA Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. October 2007 syllabus supplied.

From January 2008 to May 2009, I taught “Office of Inspector General – Legal Issues in Public Administration: Leading in the Context of Constitutional Government” for the Key Executive Leadership Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives and supervisors working for federal inspectors general, to the legal principles that govern public policy administration and the work of inspectors general, and to teach them about the role of the courts in our Constitutional system. April 2008, May 2008, October 2008, and February 2009 syllabi provided.

In January 2009, I taught “Open Enrollment – Legal Issues in Public Administration” for the Key Executive Leadership Certificate Program at American University. The purpose of the course was primarily to introduce the students, who were predominantly government executives, to the legal principles that govern public policy administration and to teach them about the role of the courts in our Constitutional system. No syllabus available.

20. **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 do not have any anticipated receipt of any deferred income or benefits from any source, including those identified in this question.

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

No.

22. **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 Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements 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.

If I am confirmed to the United States Court of Federal Claims, it is possible that cases or specific matters on which I worked involving federal employment issues (either at OPM or the National Treasury Employees Union) could come before the Court. If this were to occur I would recuse myself from such cases. I do not anticipate any other situations that would present potential conflicts of interests, but should such arise I would conduct myself in accordance with the relevant standards of judicial conduct, including the Code of Conduct for United States Judges.

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

If confirmed, I will conduct myself in a manner that will avoid situations in which my impartiality might be questioned. I will recuse myself from sitting on any cases in which any personal, financial or fiduciary matter might cause others to question my impartiality. In any case where I have a question about whether a conflict, real or apparent, exists, I will consult with my colleagues, with counsel for the Court, and/or with the Committee on Codes of Conduct of the Administrative Office of the U.S. Courts.

25. **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.

I volunteered with Legal Counsel for the Elderly during the 1980s. I can recall three matters on which I worked. In one case I represented an elderly woman who was wheelchair bound and who owned a house in which certain individuals were essentially squatting. I secured a notice of eviction on her behalf and arranged for the eviction to take place. I probably spent 30-40 hours on her case and possibly more. I also represented an elderly man who had been denied veterans benefits. I probably spent 20 hours on his case. I represented him before the Veterans Administration and my recollection is that the denial of benefits was reversed. In addition, I represented a widow who was seeking to collect death benefits under the Black Lung Benefits Act; my recollection is that I represented her in a hearing in Washington D.C., but I cannot remember the other details or the amount of time that I spent on her case.

Most of my career has either been in government service or as an attorney for a federal sector labor organization which provides legal representation to its members free of charge. Some of my government service as an attorney at the Department of Labor was in service of the disadvantaged. In addition to representing the Department in appeals of cases that involved violations of wage and hour laws, for the first two years of my work at DOL, I routinely represented the Department in hearings to advocate on behalf of coal miners who suffered from black lung disease when coal operators challenged their receipt of benefits under the Black Lung Benefits Act.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.



In 2011, I was considered for a federal judgeship, but another candidate was ultimately nominated. With respect to the U.S. Court of Federal Claims, in early January 2013, an official from the White House Counsel's Office discussed the upcoming vacancies with me and my possible interest. Since January 6, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 5, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On March 19, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

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

3/21/2013

(DATE)

El Kaplan

(NAME)

Amanda Whitaker

(NOTARY)

