

From: Sand, Peter
To: Dean, Nicole M; Andrew, Emily; Brown, Michael A. RADM; Goode, Brendan; Rock, Lee
Cc: Eberle, Carole; Falkenstein, Cindy; Landesberg, Martha; (b) (6); (b)(3)-P.L. 86-36
 (b)(3)-P.L. 86-36; (b) (6)
Subject: RE: DPIAC/Cyber - Updated Agenda for 12/6 meeting
Date: Wednesday, November 16, 2011 8:30:05 AM
Attachments: Agenda 20111206 20111116.docx

Nicole,

Updated to add in DIB...

Good?

Pete

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Reserve your spot in the front row! (b) (6)

From: Dean, Nicole M
Sent: Tuesday, November 15, 2011 3:42 PM
To: Sand, Peter; Andrew, Emily; Brown, Michael A. RADM; Goode, Brendan; Rock, Lee
Cc: Eberle, Carole; Falkenstein, Cindy; Landesberg, Martha; (b) (6); (b)(3)-P.L. 86-36
 (b)(3)-P.L. 86-36; (b)(3)-P.L. 86-36
Subject: RE: DPIAC/Cyber - Updated Agenda for 12/6 meeting

(b) (5)

From: Sand, Peter
Sent: Tuesday, November 15, 2011 1:27 PM
To: Andrew, Emily; Brown, Michael A. RADM; Dean, Nicole M; Goode, Brendan; Rock, Lee
Cc: Eberle, Carole; Falkenstein, Cindy; Landesberg, Martha; (b) (6); (b)(3)-P.L. 86-36
 (b)(3)-P.L. 86-36; (b)(3)-P.L. 86-36
Subject: DPIAC/Cyber - Updated Agenda for 12/6 meeting

All,

Attached please find an updated draft agenda for the next cyber subcommittee meeting.

Please feel free to edit at will!

Pete

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PRIVACY IMPACT ASSESSMENT (PIA)

For the

Defense Industrial Base (DIB) Cyber Security/Information Assurance Activities
DoD CIO

SECTION 1: IS A PIA REQUIRED?

a. Will this Department of Defense (DoD) information system or electronic collection of information (referred to as an "electronic collection" for the purpose of this form) collect, maintain, use, and/or disseminate PII about members of the public, Federal personnel, contractors or foreign nationals employed at U.S. military facilities internationally? Choose one option from the choices below. (Choose (3) for foreign nationals).

- (1) Yes, from members of the general public.
- (2) Yes, from Federal personnel* and/or Federal contractors.
- (3) Yes, from both members of the general public and Federal personnel and/or Federal contractors.
- (4) No

* "Federal personnel" are referred to in the DoD IT Portfolio Repository (DITPR) as "Federal employees."

b. If "No," ensure that DITPR or the authoritative database that updates DITPR is annotated for the reason(s) why a PIA is not required. If the DoD information system or electronic collection is not in DITPR, ensure that the reason(s) are recorded in appropriate documentation.

c. If "Yes," then a PIA is required. Proceed to Section 2.

SECTION 2: PIA SUMMARY INFORMATION

a. Why is this PIA being created or updated? Choose one:

- New DoD Information System
- Existing DoD Information System
- Significantly Modified DoD Information System
- New Electronic Collection
- Existing Electronic Collection

b. Is this DoD information system registered in the DITPR or the DoD Secret Internet Protocol Router Network (SIPRNET) IT Registry?

- Yes, DITPR Enter DITPR System Identification Number
- Yes, SIPRNET Enter SIPRNET Identification Number
- No

c. Does this DoD information system have an IT investment Unique Project Identifier (UPI), required by section 53 of Office of Management and Budget (OMB) Circular A-11?

- Yes
- No

If "Yes," enter UPI

If unsure, consult the Component IT Budget Point of Contact to obtain the UPI.

d. Does this DoD information system or electronic collection require a Privacy Act System of Records Notice (SORN)?

A Privacy Act SORN is required if the information system or electronic collection contains information about U.S. citizens or lawful permanent U.S. residents that is retrieved by name or other unique identifier. PIA and Privacy Act SORN information should be consistent.

- Yes
- No

If "Yes," enter Privacy Act SORN Identifier

DoD Component-assigned designator, not the Federal Register number.
Consult the Component Privacy Office for additional information or
access DoD Privacy Act SORNs at: <http://www.defenselink.mil/privacy/notices/>

or

Date of submission for approval to Defense Privacy Office
Consult the Component Privacy Office for this date.

e. Does this DoD information system or electronic collection have an OMB Control Number?
Contact the Component Information Management Control Officer or DoD Clearance Officer for this information.

This number indicates OMB approval to collect data from 10 or more members of the public in a 12-month period regardless of form or format.

Yes

Enter OMB Control Number

In process

Enter Expiration Date

No

f. Authority to collect information. A Federal law, Executive Order of the President (EO), or DoD requirement must authorize the collection and maintenance of a system of records.

(1) If this system has a Privacy Act SORN, the authorities in this PIA and the existing Privacy Act SORN should be the same.

(2) Cite the authority for this DoD information system or electronic collection to collect, use, maintain and/or disseminate PII. (If multiple authorities are cited, provide all that apply.)

(a) Whenever possible, cite the specific provisions of the statute and/or EO that authorizes the operation of the system and the collection of PII.

(b) If a specific statute or EO does not exist, determine if an indirect statutory authority can be cited. An indirect authority may be cited if the authority requires the operation or administration of a program, the execution of which will require the collection and maintenance of a system of records.

(c) DoD Components can use their general statutory grants of authority ("internal housekeeping") as the primary authority. The requirement, directive, or instruction implementing the statute within the DoD Component should be identified.

Department of Defense (DoD) Instruction (DoDI) 5205.13, "Defense Industrial Base (DIB) Cyber Security/Information Assurance (CS/IA) Activities," January 29, 2010, directs the conduct of DIB CS/IA activities to protect unclassified DoD information that transits, or resides on, unclassified DIB information systems and networks. DoD Directive (DoDD) 5505.13E, "DoD Executive Agent (EA) for the DoD Cyber Crime Center (DC3)," March 1, 2010, addresses the responsibilities of DC3, including its electronic and multimedia forensics laboratory, which is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board; collaboration with U.S. Government (USG) and private industry organizations; and designates DC3 as the information sharing focal point for the DIB CS/IA program. These activities, including the collection, management and sharing of information for cyber security purposes, support and implement national and DoD-specific guidance and authority, including the following:

1. Information Assurance (IA):

DoD is required by statute to establish programs and activities to protect DoD information and DoD information systems, including information and information systems operated and maintained by contractors or others in support of DoD activities. Section 2224 of title 10, U.S. Code (U.S.C.), requires DoD to establish a Defense IA Program to protect and defend DoD information, information systems, and information networks that are critical to the Department during day-to-day operations and operations in times of crisis. (10 U.S.C. § 2224(a)). The program must provide continuously for the availability,

integrity, authentication, confidentiality, non-repudiation, and rapid restitution of information and information systems that are essential elements of the Defense information infrastructure. (10 U.S.C. § 2224(b)). The program strategy also must include vulnerability and threat assessments for defense and supporting non-defense information infrastructures, joint activities with elements of the national information infrastructure, and coordination with representatives of those national critical infrastructure systems that are essential to DoD operations. (10 U.S.C. § 2224(c)). The program must provide for coordination, as appropriate, with the heads of any relevant federal agency and with representatives of those national critical information infrastructure systems that are essential to the operations of the Department regarding information assurance measures necessary to the protection of these systems. (10 U.S.C. § 2224(d)).

The Defense IA Program also must ensure compliance with federal IA requirements provided in the Federal Information Security Management Act (FISMA). (44 U.S.C. §§ 3541 et seq.). FISMA requires all federal agencies to provide information security protections for information collected or maintained by or on behalf of the agency; and information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency. (44 U.S.C. § 3544(a)(1)(A)). Agencies are expressly required to develop, document, and implement programs to provide information security for information and information systems that support the operations and assets of the agency, including those provided by another agency, contractor, or other source. (44 U.S.C. § 3544(b)).

2. Critical Infrastructure Protection (CIP):

Under Homeland Security Presidential Directive 7 (HSPD-7), "Critical Infrastructure Identification, Prioritization, and Protection," the Department of Homeland Security (DHS) leads the national effort to protect public and private critical infrastructure. (HSPD-7, ¶(7)). This includes coordinating implementation activities between federal agencies, state and local authorities, and the private sector. Regarding cyber security, these efforts are to include analysis, warning, information sharing, vulnerability reduction, mitigation, and aiding national recovery efforts for critical infrastructure information systems. (HSPD-7, ¶(12)).

The Department of Defense is the Sector Specific Agency (SSA) for the Defense Industrial Base (DIB) sector (HSPD-7, ¶(18)(g)), and thus engages with the DIB on a wide range of CIP matters, including but not limited to cyber security. HSPD-7 charges the SSAs to: collaborate with all relevant Federal departments and agencies, State and local governments, and the private sector, including with key persons and entities in their infrastructure sector; conduct or facilitate vulnerability assessments of the sector; and encourage risk management strategies to protect against and mitigate the effects of attacks against critical infrastructure and key resources. (HSPD-7, ¶(19)). More specifically, regarding coordination with the private sector, HSPD-7 provides that DHS and the SSAs "will collaborate with appropriate private sector entities and continue to encourage the development of information sharing and analysis mechanisms [to] identify, prioritize, and coordinate the protection of critical infrastructure and key resources; and to facilitate sharing of information about physical and cyber threats, vulnerabilities, incidents, potential protective measures, and best practices." (HSPD-7, ¶(25)). Within DoD, CIP is implemented by DoDD 3020.40, "DoD Policy and Responsibilities for Critical Infrastructure," January 14, 2010, and DoDI 3020.45, "Defense Critical Infrastructure Program (DCIP) Management" April 21, 2008.

3. Comprehensive National Cybersecurity Initiative:

National Security Presidential Directive (NSPD) 54/Homeland Security Presidential Directive (HSPD) 23, which formalizes the Comprehensive National Cyber Security Initiative (CNCI), directs each Department to improve situational awareness between the Government and private sector regarding the extent and severity of the cyber threat. Under CNCI, the Department of Homeland Security (DHS), in consultation with the heads of other SSAs, including DoD, submitted the "Project 12 Report: Improving Protection of Privately Owned Critical Network Infrastructure Through Public-Private Partnerships." This report recommends implementing real-time cyber situational awareness and promoting public-private cyber information sharing efforts.

g. Summary of DoD information system or electronic collection. Answers to these questions should be consistent with security guidelines for release of information to the public.

(1) Describe the purpose of this DoD information system or electronic collection and briefly describe the types of personal information about individuals collected in the system.

The information systems and information collection activities covered by this PIA are used to support key elements of the Defense Industrial Base (DIB) Cyber Security/Information Assurance (CS/IA) Program (see DoD Instruction (DoDI) 5205.13, "[DIBCS/IA] Activities," January 29, 2010), to protect unclassified DoD information that transits, or resides, on unclassified DIB information systems and networks. This includes support provided by the DIB CS/IA Program Office, the DoD Cyber Crime Center (DC3), the Damage Assessment Management Office (DAMO), and other government stakeholders.

More specifically, this PIA covers a voluntary cyber security information sharing activity between the DoD and DIB companies. In general, DoD provides cyber threat information and information assurance (IA) best practices to DIB companies to help them better protect their unclassified networks to protect DoD unclassified information; and in return, DIB companies report certain types of cyber intrusion incidents to the DoD-DIB Collaborative Information Sharing Environment (DCISE), located at DC3. The DoD analyzes the information reported by the DIB company regarding any such cyber incident, to glean information regarding cyber threats, vulnerabilities, and the development of effective response measures. In addition to this initial reporting and analysis, the DoD and DIB company may pursue, on a voluntary basis, follow-on, more detailed, digital forensics analysis or damage assessments, including sharing of additional electronic media/ files or information regarding the incident or the affected systems, networks, or information. The information sharing arrangements between the DoD and each participating DIB company are memorialized in a standardized bilateral Framework Agreement (FA).

Such DoD-DIB cyber security information sharing practices are under continuous review and improvement, including the development and testing of additional information sharing mechanisms and models. For example, the new DIB Exploratory Cybersecurity Initiative (also known as the "DIB Cyber Pilot"), builds on the existing DIB CS/IA Program and FAs, serving as a short-term proof-of-concept demonstration in which DoD would share cyber threat information and technical information directly with commercial providers of internet, network, and communications services providers. In this sharing model, the commercial service providers (CSPs) enter into a modified version of the FA that authorizes them to use the DoD-provided information to further protect participating DIB company networks. This modified information sharing model allows the DIB companies the option of acquiring such additional cyber security protections from commercial providers, rather than each DIB company independently deploying the information directly on its own networks. This Pilot utilizes all of the incident reporting, forensics analysis, and damage assessment procedures already established under the DIB CS/IA program and FAs, and thus the sharing of PII for the Exploratory Pilot is also covered by this PIA.

Although these DIB CS/IA Program information sharing activities are focused on sharing cyber security related information, the operational implementation of this sharing arrangement involves sharing and managing PII in two supporting ways: (i) for program administration and management purposes, the DIB companies share with DoD the typical business contact information for its personnel that are serving as company points of contact for the program activities or specific cyber incidents; and (ii) although it is not typical or expected, there is always the potential that information provided by a DIB company regarding any specific cyber incident may include PII that is incidental to or embedded within the cyber security information being shared. Each of these circumstances is discussed in more detail below:

1. DIB CS/IA Program Administration and Management:

As part of the administrative management of the DIB CS/IA Program's information sharing activities, each participating DIB company provides basic identifying information for a limited number of its personnel who are authorized to serve as the primary company points of contact (POCs). The information provided for each POC includes routine business contact information (e.g., name, title, organizational unit, business email and phone), plus additional information necessary to verify the individual's authorization to receive classified information or controlled unclassified information (e.g., security clearance, citizenship). This information is required by the DIB CS/IA program office to manage the program and interact with the companies through routine emails, phone calls, and participation in periodic classified meetings. A DIB company that is not yet participating in the Program may also provide POC information to the DIB CS/IA Program office in order to discuss Program application procedures or related information regarding the Program.

In addition to the designation of a limited number of primary POCs for the DIB company's overall participation in the DIB CS/IA Program, additional POC information may be provided in the individual incident reports submitted by the company. In most cases, the DIB companies report incidents using a DIB CS/IA Program standardized Incident Collection Form (ICF), which is submitted as the initial incident report to the DoD-DIB Collaborative Information Sharing Environment (DCISE) at DC3. The ICF includes the basic POC information (e.g., name, organizational unit, business email and phone) for the DIB company representative who is submitting the initial report. The ICF also allows the reporting company to provide the same basic POC information for other company personnel that are knowledgeable about, or otherwise relevant for, the reported incident (e.g., POCs for incident response, technical issues, or the affected business unit). In some cases, a company may elect to report the incident without using the ICF; and companies may report incidents through a variety of communications channels, including email, fax, or by phone, if necessary.

Collecting this type of POC information is the only element of this information sharing activity in which the DIB CS/IA program intentionally collects PII; however, there are other portions of the information sharing activities that present the potential for the DIB companies to provide DoD with PII that is incidental to, or embedded within, other cyber security information being shared—resulting in an inadvertent collection of PII.

2. Cyber Incident Response and Analysis:

Although it is not typical or expected, it is nevertheless possible that a DIB company may voluntarily submit PII to DoD in connection with the initial cyber incident reporting or response activities, or during follow-up digital forensics or damage assessment activities. Accordingly, the Program is designed to provide appropriate handling and safeguards in the event that PII is (inadvertently) collected in these circumstances.

For example, when providing the initial incident report on the ICF, the DIB company provides a description of the cyber incident, including technical and contextual details regarding any or all relevant aspects of the incident. In some cases, the DIB company may determine that PII, or what appears to be PII, is relevant in describing the event (e.g., an individual's name and email address that may be spoofed in connection with an email phishing attempt or an email used as the delivery mechanism for malware). The ICF allows the company to describe the incident in two levels of detail and sensitivity: (i) a fully detailed version that may contain attribution or other sensitive information (e.g., PII) that the company is providing for internal DCISE use; and (ii) an alternative description that provides only such information that the company is authorizing to be released outside the DCISE for cyber security purposes (e.g., as part of an automated "alert" process that immediately forwards only this company pre-approved information to all participating DIB companies). Subsequently, the DCISE also follows up with the DIB company to confirm the nature and extent of information that the DIB company authorizes for release outside the DCISE for cyber security purposes (except in cases when the company has indicated that it does not desire this additional pre-release review).

In addition, the DoD and DIB companies have recognized that, in some cases, after the initial incident report and preliminary investigation, a more complete analysis of the event may be necessary. Accordingly, on a voluntary basis, DIB companies may share additional information about potentially compromised information systems with the DoD for this purpose. This information may include PII or other sensitive information that the DIB company determines is relevant for the analysis, but the DIB companies may elect to limit the nature and extent of any sensitive information to be shared, due to legal, contractual, or other restrictions (e.g., the DIB company determines that it is not authorized to share certain PII or third-party proprietary information with the DoD, even if it would be relevant to the cyber event analysis).

Similarly, as part of the follow-up for each reported incident, the DIB company reviews the potentially compromised systems or networks and reports to DoD regarding the presence of files or information associated with DoD programs, systems, or military applications. When the reported cyber intrusion affects systems containing such DoD information, the DIB companies will preserve and share with DoD the unclassified files on threat-accessed systems that pertain to Government programs, unless there are legal or contractual reasons that preclude sharing (e.g., the images may contain PII or third-party proprietary information that are subject to nondisclosure prohibitions). The DoD's Damage Assessment Management Office (DAMO), an organizational element of the Under Secretary of Defense for Acquisition, Technology and Logistics, reviews the available information to determine whether a more complete damage assessment is warranted.

The short-term DIB Cyber Pilot also utilizes the incident reporting procedures already established for the DIB

CS/IA Program, although it is anticipated that the DIB companies will typically be reporting less detailed information regarding incidents detected by the DIB companies' commercial service providers (CSPs), given the limited proof-of-concept nature of the Pilot and the fact that it was the CSP, rather than the DIB company, that detected the event. DIB companies participating in the voluntary 90-day proof-of-concept pilot notify DC3 of an incident when they determine an incident occurred based on an alert from their commercial service provider. Consistent with the reporting procedures for the existing DIB CS/IA Program, the DIB companies participating in the Pilot will include PII in their incident reporting and follow-up analysis only if the DIB company determines that the PII is relevant and material to the understanding of the technical attributes of the incident, and that there are no legal, contractual, or other restrictions on sharing that PII with the USG. There is no incident reporting from the CSP to the USG under the Pilot, although that CSPs may voluntarily provide the USG with end-of-pilot lessons learned or other general feedback regarding the Pilot activities (e.g., technical or operational issues and solutions arising during the exercise)—none of which will include PII.

These information sharing mechanisms are intended to enhance a participating DIB company's ability to detect and defend against cyber intrusions and other malicious activity occurring on their networks, in order to better protect Defense information. In doing so, the DIB CS/IA Program has developed uniform procedures and safeguards (e.g., set forth in the standardized FAs) designed to ensure that the DIB companies share information with DoD only if it is relevant to the forensics or damage assessment analysis, and only after the DIB company verifies that it is authorized to share the information with the DoD for these purposes.

(2) Briefly describe the privacy risks associated with the PII collected and how these risks are addressed to safeguard privacy.

There are minimal risks associated with the PII collected in connection with the DoD-DIB cyber security information sharing activities under the DIB CS/IA Program. The Program's information sharing activities implement administrative, technical, and electronic protections to ensure compliance with all applicable DoD policies and procedures regarding the collection and handling of PII and other sensitive information, including but not limited to the following:

- DoDD 5400.11, "DoD Privacy Program", May 8, 2007
- DoD 5400.11-R, "Department of Defense Privacy Program", May 14, 2007
- DoDI 5400.16, "DoD Privacy Impact Assessment (PIA) Guidance," February 12, 2009
- DoD CIO memorandum, "Department of Defense (DoD) Guidance on Protecting Personally Identifiable Information (PII)", August 18, 2006
- DA&M memorandum, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information", June 05, 2009
- DoDI 8500.02, "Information Assurance Implementation," February 6, 2003
- DoDI 8510.01, DoD Information Assurance Certification and Accreditation Process (DIACAP)," November 28, 2007
- DoDI 5200.1, "DoD Information Security Program and Protection of Sensitive Compartmented Information," October 9, 2008 (Revised June 13, 2011)
- DoD 5200.1-R, "Information Security Program," January 14, 1997
- DoDI 5015.2, "DoD Records Management Program," March 6, 2000

(These references are publicly available, e.g., at <http://www.dtic.mil/whs/directives/> or http://dpclo.defense.gov/privacy/About_The_Office/policy_guidance.html.)

The Program is also structured around several key elements that are designed to ensure that risks are effectively addressed to safeguard privacy:

- All PII received by the DoD is provided voluntarily by authorized DIB company representatives, subject to mutually agreed upon restrictions (e.g., in the FA);
- The nature of the PII being intentionally collected is limited to ordinary business contact information for DIB company personnel;
- PII is inadvertently collected only if submitted by a DIB company that has determined that the PII is relevant to cyber incident response and analysis activities, and that the PII is authorized to be shared with the DoD for these purposes;
- Once collected, access and use of PII is limited to authorized personnel that need the information for cyber security or other lawful purposes;
- All DIB CS/IA Program and supporting personnel receiving access to the collected PII are required to

undergo training and are subject to appropriate nondisclosure restrictions; and

- The PII is maintained for only so long as necessary for DIB CS/IA Program activities, and is managed and disposed of in accordance with applicable records management requirements.

Additional details regarding these risk mitigations and safeguards are discussed below.

*** Collection of Information:**

The DIB CS/IA information sharing activities covered by this PIA are focused on sharing cyber security related information, and thus the Program seeks to minimize the collection and management of PII except as necessary to support the program. The operational implementation of this sharing arrangement involves sharing and managing PII in two supporting or incidental ways: (i) for program administration and management purposes, the DIB companies share with DoD the typical business contact information for its personnel that are serving as company points of contact for the program activities or specific cyber incidents; and (ii) for cyber incident response and analysis purposes, although it is not typical or expected, there exists the potential that information provided by a DIB company regarding any specific cyber incident may include PII that is incidental to, or embedded in, the information being shared for the cyber security analysis.

As discussed previously, the DIB CS/IA Program intentionally collects PII regarding DIB company POCs only for routine program administration and management purposes. This PII does not involve any particularly sensitive personal information – it is limited to the individual's typical contact information that is routinely shared in the ordinary course of business (e.g., name, title, organizational division, business email and phone), including other information (e.g., security clearance, citizenship) that is necessary to verify the individual's authorization to receive classified or other controlled unclassified information under the program. Any other PII collected under the Program is inadvertently collected, in that it is provided to DoD by a participating DIB company based on that company's determination that the PII is relevant to the incident response and analysis, and that there are no legal, contractual, or other restrictions on sharing that PII with the USG for these purposes.

Additional details on the nature and circumstances of PII collection for these purposes are discussed in more detail in Section 2.g.(1) above.

*** Use and Management of Collected Information:**

The DIB company POC information may not be a particularly sensitive type of PII, it is nevertheless tightly controlled within the DIB CS/IA Program – in the same manner and for the similar purposes, that the Program controls DIB company "attribution information" (i.e., information that identifies a company or its programs, whether directly or indirectly, by the grouping of information that can be traced back to that company). Although the name of a DIB company or its programs, or the basic contact information for the company's POCs, might not ordinarily be considered particularly sensitive, the association of that company or its specific POCs with particular cyber security activities, or with particular cyber security incidents, may be treated as sensitive. Accordingly, the DIB CS/IA Program restricts access to such PII and attribution information only to those authorized personnel who have a need-to-know such information for duties in support of the DIB CS/IA Program, and are subject to strict nondisclosure obligations. For example, all USG personnel and contractors directly supporting the DIB CS/IA Program (including the Program Office, DC3, and DAMO personnel or contractors) who require access to PII or attribution information must sign standardized nondisclosure agreements requiring training and providing strict guidelines on the handling and protecting of that information.

Regarding information provided for incident response and analysis, DC3 will maintain, control, and dispose of all media provided by DIB companies in accordance with established DoD policies and procedures for the handling and safeguarding of PII and other sensitive information, and DC3 also implements specialized handling procedures to maintain its accreditation as a digital and multimedia forensics laboratory. DC3 personnel determine that PII is necessary for subsequent analysis in furtherance of its DIB CS/IA activities before such data is further processed or retained. Information deemed unnecessary for subsequent analysis is purged immediately. In accordance with NARA regulation and 36 CFR §1220-1239, program records are retained for a minimum of three (3) years, and tracking/ticketing system records are retained for a minimum of two (2) years. The media are protected using procedural controls that are the same as, or similar to, those DC3 uses to handle evidence that it processes as part of criminal investigations. Access to electronic media/files that may have PII or other sensitive information, is strictly controlled and limited to those participating in

formal DIB cyber intrusion analyses or damage assessments. The electronic media/files are maintained by the digital and multimedia forensics laboratory—the files and media do not leave DC3, physically or electronically.

The Program's information sharing procedures are designed to ensure that PII and other sensitive information is shared and processed by DoD only after the submitting DIB Company has determined that the information is relevant to cyber intrusion incidents or follow-on forensics or cyber intrusion damage assessment analysis, and that the information has been lawfully collected and is authorized for sharing with the DoD. When sharing electronic images or files with the DoD for forensics or damage assessment activities, the DIB companies will identify the types of sensitive information (e.g., PII, proprietary, export controlled) that may be contained in the shared files. In addition, when the DoD is performing its analysis on the files, it may discover PII (or other sensitive information) that had not been identified by the DIB company when the information was submitted. If this occurs, all investigative work involving that PII ceases, the DIB company is notified that the PII (or sensitive information) was discovered, and the DIB company provides guidance as to the disposition of that information.

*** Dissemination of Information:**

For cyber security purposes, DC3, based on analysis of specific cyber threats, releases threat information containing indicators developed from numerous data sources (e.g., government, DIB companies, open source). DC3 will disseminate cyber threat information that may contain PII only after the information has been reviewed and approved for release, including coordination with the source of the PII. For example, release of cyber threat indicators derived from information provided by government sources are coordinated with key government stakeholders, such as USCYBERCOM and NSA. Similarly, indicators derived from information contained in DIB company incident reporting will be disseminated only after coordination with the reporting company (regardless of whether the indicator contains PII).

When cyber threat information is shared with DIB companies under the Program, the DIB company is required to ensure that unclassified threat information is shared with authorized company personnel that have a need-to-know the information for the company's internal cyber security activities. Typically, the unclassified portion of threat information products may be shared with Company network security personnel. The DIB companies are prohibited from sharing the threat information products outside of the company's U. S. based information systems without specific written Government authorization.

The Director, DC3 (DDC3), or designee, must approve any dissemination of information by DC3 for law enforcement/counter intelligence purposes to support an investigation and prosecution of any individual or organization when the information appears to indicate activities that may violate laws, including those attempting to infiltrate and compromise information on a Company information system. Such dissemination must comply with the Privacy Act and other applicable statutes, regulations, and DoD policies, including those references listed above (section 2.g.(2)).

*** Records Management and Retention of Information:**

The DIB company POC information provided to support the DIB CS/IA administration and management process is maintained only so long as the designated POC(s) continue to represent the participating company for the Program. When the DIB CS/IA program office is notified that a DIB company POC is being replaced, the POC information databases are updated and outdated PII is archived in accordance with records management requirements.

Inadvertently collected PII that may be submitted by DIB companies in connection with incident reporting and response is reviewed by DC3 personnel to determine whether that PII is necessary for subsequent analysis in furtherance of its DIB CS/IA activities before such data is further processed or retained. Information deemed unnecessary for subsequent analysis is purged from DC3 systems. Information determined to be relevant is maintained, controlled, and disposed of when no longer reasonably necessary for intrusion investigation, forensics analysis, and damage assessment activities (or other legal, audit, or operational purposes). The time it takes to complete a cyber intrusion forensics analysis and damage assessment will vary. Some of the assessments will be more complex and require more time than others.

In all cases, the management and disposal of this information will comply with all applicable DoD records management procedures and requirements, and records disposition schedules. In accordance with NARA regulation and 36 CFR §1220-1239, program records are retained for a minimum of three (3) years, and

tracking/ticketing system records are retained for a minimum of two (2) years.

*** Compliance and Oversight Mechanisms:**

The DIB CS/IA baseline program and opt-in pilot have been subject to review by and consultation with the Defense Privacy and Civil Liberties Office (DPCLO). DC3 and DPCLO will work with existing DoD inspection agencies to ensure that adequate privacy and civil liberties oversight mechanisms exist. All DoD information systems used to process and store PII (or any sensitive information) have undergone a mandatory certification and accreditation process to verify that the system provides adequate measures to preserve the authenticity, integrity, availability, and confidentiality of all sensitive information residing or transiting those systems (see DoDI 8010.01). In addition, DC3 undergoes extensive inspection by the American Society of Crime Lab Directors to ensure that DC3 information handling procedures are reliable, valid, and repeatable in accordance with standards necessary for accreditation as a digital forensics laboratory.

*** Additional Considerations:** Will the networks that store or process the PII be monitored? How would participating entities know that their networks are subject to monitoring?

None of these DIB CS/IA activities involve any DoD or USG personnel performing any monitoring of DIB company or other private networks. The DIB companies are responsible for the conduct of any monitoring of their own networks, and for ensuring that there are no legal, contractual, or other restrictions on sharing of PII or any other sensitive information with the DoD. The only PII received by DoD under these activities is PII that is provided directly to DoD by authorized DIB company personnel.

h. With whom will the PII be shared through data exchange, both within your DoD Component and outside your Component (e.g., other DoD Components, Federal Agencies)?
Indicate all that apply.

Within the DoD Component.

Specify.

The DIB CS/IA Program restricts access to PII and attribution information only to those authorized personnel that have a need-to-know such information for duties in support of the DIB CS/IA Program (or other authorized DoD cybersecurity, LE/CI, or other lawful purposes), and that are subject to appropriate nondisclosure obligations. PII inadvertently collected on an ICF or electronic media is maintained at DC3 with strict accountability and need-to-know on those DoD and support contractor personnel having access to the files. All USG personnel and contractors supporting the DIB CS/IA Program (including the Program Office, DC3 and DAMO personnel or contractors supporting the Program) who require access to PII or attribution information must sign standardized nondisclosure agreements requiring training and providing strict guidelines on the handling and protecting of that information.

Other DoD Components.

Specify.

The DIB CS/IA Program restricts access to PII and attribution information only to other authorized DoD Component personnel that are authorized to receive the information under the FA, based on a need-to-know such information for duties in support of the DIB CS/IA Program (or other authorized DoD cybersecurity, LE/CI, or other lawful purposes), and that are subject to appropriate nondisclosure obligations. PII inadvertently collected on an ICF or electronic media is maintained at DC3 with strict accountability and need-to-know on those DoD and support contractor personnel having access to the files. All other DoD Component personnel and contractors directly supporting the DIB CS/IA Program (including the Program Office, DC3 and DAMO personnel or contractors supporting the Program) who require access to PII or attribution information must sign standardized nondisclosure agreements

requiring training and providing strict guidelines on the handling and protecting of that information.

Other Federal Agencies.

Specify.

PII is shared with other federal agency authorized personnel only for cybersecurity purposes (as authorized by the DIB companies under the FA, and following the incident response and follow-on analysis coordination procedures previously discussed), and in support of authorized LE/CI activities (or other lawful purposes). Only such PII as authorized by the company will be released outside of the DoD.

State and Local Agencies.

Specify.

Contractor (Enter name and describe the language in the contract that safeguards PII.)

Specify.

The DIB CS/IA Program restricts access to PII and attribution information only to those authorized support contractor personnel that have a need-to-know such information for duties in support of the DIB CS/IA Program (or other authorized DoD cybersecurity, LE/CI, or other lawful purposes), and that are subject to strict nondisclosure obligations. PII inadvertently collected on an ICF or electronic media is maintained at DC3 with strict accountability and need-to-know on those USG and DoD support contractor personnel having access to the files. All USG personnel and contractors supporting the DIB CS/IA Program (including the Program Office, DC3 and DAMO personnel or contractors supporting the Program) who require access to PII or attribution information must sign standardized nondisclosure agreements requiring training and providing strict guidelines on the handling and protecting of that information. PII that is derived from DIB company submitted information and is included in DC3 threat products will be shared with other DIB companies participating in the DIB CS/IA Program, as authorized under the FA, and following the incident response and follow-on analysis coordination procedures previously discussed.

Other (e.g., commercial providers, colleges).

Specify.

In any other case, DoD would not share the PII except after obtaining the appropriate permission (e.g., from the DIB company or the individual identified by the PII).

i. Do individuals have the opportunity to object to the collection of their PII?

Yes **No**

(1) If "Yes," describe method by which individuals can object to the collection of PII.

When the DIB company POC information is intentionally collected directly from an individual who is being designated as a POC, he/she can object to the collection of PII at that time.

(2) If "No," state the reason why individuals cannot object.

DIB company POC information may also be intentionally collected from a DIB company representative that is

providing contact info for other DIB company POCs, and thus these other POCs do not have the opportunity to object at this point of collection. Providing such routine business POC information to facilitate the DIB CS/IA Program administration and management is agreed upon as part of the DoD-DIB Framework Agreement, and is a routine use of such information for the Program. Participating DIB companies voluntarily provide all such information.

All other PII under this Program is inadvertently collected. DIB companies also voluntarily report network intrusions and compromises of DoD program information. PII is not requested in the reports, however, the DIB company may include relevant PII in the incident reporting and response process.

j. Do individuals have the opportunity to consent to the specific uses of their PII?

Yes No

(1) If "Yes," describe the method by which individuals can give or withhold their consent.

When the DIB company POC information is intentionally collected directly from an individual who is being designated as a POC, he/she is provided the opportunity to consent or not consent to specific uses of PII when they are presented with a Privacy Act Statement.

(2) If "No," state the reason why individuals cannot give or withhold their consent.

DIB company POC information may also be intentionally collected from a DIB company representative that is providing contact info for other DIB company POCs, and thus these other POCs do not have the opportunity to consent or withhold consent for specific uses at the point of collection. Providing such routine business POC information to facilitate the DIB CS/IA Program administration and management is agreed upon as part of the DoD-DIB Framework Agreement, and is a routine use of such information for the Program. Participating DIB companies voluntarily provide all such information.

All other PII under this Program is inadvertently collected. DIB companies also voluntarily report network intrusions and compromises of DoD program information. PII is not requested in the reports, however, the DIB company may include relevant PII in the incident reporting and response process.

k. What information is provided to an individual when asked to provide PII data? Indicate all that apply.

Privacy Act Statement Privacy Advisory
 Other None

Describe each applicable format.

Privacy Act Statement to include the authorities to collect the information; the purpose or purposes for which the information is to be used; the routine uses that will be made of the information; whether providing the information is voluntary or mandatory and the effects on the individual if he or she chooses not to provide the requested information.

EPIC - Electronic Privacy Information Center

EPIC Alert 20.08

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EPIC Alert
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Volume 20.08 April 30, 2013

Published by the
Electronic Privacy Information Center (EPIC)
Washington, D.C.

http://www.epic.org/alert/epic_alert_20.08.html

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- COMMENTS to the TSA: <http://www.epic.org/redirect/TSAcomment/>
- LEARN More: <http://epic.org/TSAcomment/>
- SUPPORT EPIC: <http://www.epic.org/donate/>

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June 3, 2013, Washington DC
with
Senator Rand Paul (R-KY)
Senator Ron Wyden (D-OR)
Pulitzer Prize Winner Martha Mendoza
Consumer Advocate Susan Grant
Privacy Scholar and Advocate David Flaherty

<http://www.epic.org/june3/>

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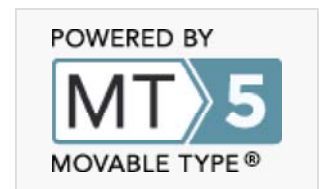
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[1] EPIC Lawsuit Produces Details of Internet Monitoring
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As a result of a Freedom of Information Act lawsuit against the Department of Homeland Security, EPIC has obtained documents that reveal that the US government, defense contractors, and Internet Service Providers are developing new strategies to monitor Internet communications, possibly in violation of the federal wiretap act.

The documents obtained by EPIC reveal that the DOD's Office of General Counsel encouraged defense contractors to adopt language providing expansive consent to government monitoring, including the "monitoring of data and communications in transit; "disclos[ure] for any purpose, including to the Government;" and a statement that users have "'no [reasonable] expectation of privacy' regarding communications or data transiting or stored on the system." The broad consent is, according to DOD slides also obtained under FOIA, "driven by the Wiretap Act and Stored Communications Act." Nevertheless, the documents show that Internet service providers requested immunity in case the surveillance ran afoul of federal law.

The documents obtained by EPIC also cite the National Security Presidential Directive 54 as one source of authority for the CS/IA program. The Directive was issued under President George W. Bush, and granted the National Security Agency broad authority over the security of American computer networks, as well as creating the Comprehensive National Cybersecurity Initiative. EPIC is currently pursuing the release of the Directive in separate FOIA litigation.

CNET: "U.S. gives big, secret push to Internet surveillance: Justice Department agreed to issue "2511 letters" immunizing AT&T and other companies participating in a cybersecurity program from criminal prosecution under the Wiretap Act, according to new documents obtained by the Electronic Privacy Information Center." Apr. 24, 2013.

http://news.cnet.com/8301-13578_3-57581161-38/u.s-gives-big-secret-push-to-internet-surveillance/

EPIC: EPIC v. DHS - Defense Contractor Monitoring
<http://epic.org/foia/dhs/defense-monitoring.html>

DOD: Defense Industrial Base Cybersecurity Activities (May 11, 2012)
<http://www.defense.gov/news/d20120511dib.pdf>

EPIC: FOIA Documents from DOD on Monitoring and Consent (Dec. 9, 2011)
<http://epic.org/privacy/cybersecurity/12-00333-doc-notice-sm.pdf>

Federal Register: Executive Order 13636 (Feb. 19, 2013)
<http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf>

EPIC: EPIC v. NSA - Cybersecurity Authority
http://epic.org/privacy/nsa/epic_v_nsa.html

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[2] Consumer Groups Oppose Delay of New Children's Privacy Rules
=====

EPIC, as part of a group of consumer, privacy, and children's advocates, have written to the Federal Trade Commission to oppose an

industry effort to delay implementation of the new Children's Online Privacy Protection Act (COPPA) rule. The new rule expands the definition of "personal information" to include geolocation information and persistent identifiers (i.e., "cookies"), and prevents third-party advertisers from secretly collecting children's personal information for advertising purposes without parental consent. These new safeguards were developed in response to the FTC's 2012 report, which found that many mobile apps for children conceal data collection practices.

The group's letter indicates that more than two years have passed since the Commission proposed the updates to COPPA. The Commission first set out the revised COPPA rule for comment in September 2011, stating that the agency was "deeply committed to helping to create a safer, more secure online experience for children and . . . ensure[s] that COPPA continues to meet its originally stated goals, even as online technologies, and children's use of such technologies, evolve." The letter also notes that the FTC had provided for three separate rounds of comments before issuing a final rule in December 2012. The effective date was set more than six months in advance in order to give the industry "plenty of time to come into compliance."

In April 2013 two leading industry members submitted a letter to the Commission, requesting an extension for the effective date. Instead of coming into compliance by July 1, 2013 as planned, the industry groups asked the FTC to push back the effective date to December 31, 2013. EPIC's letter urges the FTC not to approve the extension, and to adhere to the agency's stated goals and timelines. The letter states that there is no "compelling reason for giving the industry more time to comply with the law."

EPIC commented in both 2011 and 2012 in support of both the original proposed COPPA rule change and a revised version. During the Commission's first comment period, EPIC stated, "The proposed revisions . . . tak[e] better account of the increased use of mobile devices and the new online information collection ecosystem. By incorporating the [new] changes . . . the Commission can further strengthen the rule and ensure that children's online privacy is adequately protected . . ." EPIC's second set of comments reiterated support for the revisions, but also advised the Commission to better define some new terms, including "(1) 'personal information'; (2) 'operator'; and (3) 'website or online service directed to children.'"

EPIC et al.: Letter to FTC (Apr. 23, 2013)

<http://epic.org/redirect/043013-epic-letter-FTC-coppa.html>

FTC: Report on Mobile Apps for Kids (Dec. 2012)

<http://www.ftc.gov/os/2012/12/121210mobilekidsappreport.pdf>

EPIC: Comments on Proposed COPPA Rule (Dec. 23, 2011)

<http://epic.org/redirect/043013-epic-letter-FTC-coppa.html>

EPIC: Comments on Revised COPPA Rule (Sep. 24, 2012)

<http://epic.org/privacy/kids/EPIC-COPPA-2012-Rule-Rev-Cmts.pdf>

EPIC: Children's Online Privacy

<http://epic.org/privacy/kids/default.html>

EPIC: FTC

<http://epic.org/privacy/internet/ftc/>

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[3] EPIC Files Amicus Brief, Urges Disclosure of Secret Legal Memos
=====

EPIC, joined by seven open-government organizations, has filed a "friend of the court" brief in the case *New York Times Co. v. Department of Justice*, urging a federal appeals court to order the US government to disclose the legal authority for drone strikes. The case centers on whether the Obama Administration is required, under the Freedom of Information Act, to disclose legally binding opinions from the DOJ's Office of Legal Counsel.

Both The New York Times and the ACLU made 2012 FOIA requests to the White House Office of Legal Counsel, the legal interpreter of the Executive Branch, seeking memos outlining the legal justification of the Administration's overseas targeted killing program. The OLC refused to disclose the legal opinions, stating that the opinions were simultaneously classified and merely informal interagency memos.

EPIC's brief argues that these legal opinions cannot be withheld under the FOIA. "By withholding these legal opinions, which direct the actions of the government and impact private parties, the Department is establishing secret law that is antithetical to democratic governance," the brief states. The FOIA allows withholding only properly classified materials. Legal analysis, separated from other factual materials, does not meet the legal requirements for classification, and therefore cannot be withheld under the FOIA; "Facts may threaten national security. But a reasonably segregated legal analysis or statement of law does not," the brief states.

In the past, the brief argues, the disclosure of OLC legal opinions has "promote[d] public debate," facilitated Congressional oversight, and prompted legal reforms. After the OLC memos detailing the use of torture were released, the brief states, Congress debated and enacted the Detainee Treatment Act of 2005, regulating the use of enhanced interrogation techniques.

EPIC et al.: "Friend of the Court" Brief in *NYT v. DOJ* (Apr. 22, 2013)
<http://epic.org/redirect/043013-epic-nyt-doj-amicus.html>

EPIC: *New York Times Co. v. Dep't of Justice*
<http://epic.org/amicus/foia/new-york-times/>

DOJ: Office of Legal Counsel
<http://www.justice.gov/olc/>

EPIC: Open Government
http://epic.org/open_gov/

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[4] EPIC to FAA: Establish Privacy Standards for Drone Use
=====

EPIC has submitted comments to the Federal Aviation Administration, urging the agency to mandate minimum privacy standards for drone operators.

In early 2012, Congress told the FAA to implement a comprehensive plan

to integrate drones into US airspace. Shortly afterwards, EPIC, joined by over 100 other organizations, experts, and members of the public, petitioned the FAA to address privacy issues as part of the drone integration process. EPIC's petition explained that drones pose substantial threats to privacy because "drones greatly increase the capacity for domestic surveillance." The petition included a request for agency action, urging the FAA to conduct notice-and-comment rulemakings on drones' impact on privacy and civil liberties.

In February 2013, the FAA responded to EPIC's petition, announcing that it would "address [privacy issues] through engagement and collaboration with the public." As a result, the FAA published a notice in the Federal Register that included proposed privacy requirements for drone operators. These requirements include the controlled transmission of data from the government operator to the FAA, rules underscoring the importance of complying with existing state and federal privacy laws, and implementation of privacy standards based on Fair Information Practices, or FIPs.

EPIC's new comments recommend that the FAA use Fair Information Practices as the foundation of the agency's proposed privacy standards. The comments explain the significance of FIPs, noting that FIPs outline rights and responsibilities that provide the basis for privacy laws. EPIC wrote, "Not only have FIPs played a significant role in framing privacy laws in the United States, but they have also contributed to development of privacy laws around the world and to the development of important international guidelines for privacy protection."

EPIC's comments also recommend that the FAA maintain a public database of all drone operators, noting, "In order to ensure that drone operators comply with the terms of their authorizations and with the disclosed data collection and minimization practices, the FAA should implement a system of regular, independent audits for drone operators." The comments point out that audits are "a crucial oversight tool for ensuring that behavior comports with the law and licensing requirements."

EPIC: Comments to FAA on Drone Policy (Apr. 23, 2013)
<http://epic.org/privacy/drones/EPIC-Drones-Comments-2013.pdf>

FAA: Request for Comments on Drone Policy (Feb. 22, 2013)
<http://www.regulations.gov/#!documentDetail;D=FAA-2013-0061-0001>

FAA: Announcement on Request for Comments (Feb. 14, 2013)
<https://faaco.faa.gov/index.cfm/announcement/view/13143>

FAA: Letter to EPIC re: Petition (Feb. 14, 2013)
<http://epic.org/privacy/drones/DOT-UAS-Privacy-Issues-Letter.pdf>

EPIC et al: FAA Petition (Feb. 24, 2012)
<http://epic.org/privacy/drones/FAA-553e-Petition-03-08-12.pdf>

112th Congress: Public Law 112-95 (2012)
<http://epic.org/redirect/043013-drone-public-law.html>

EPIC: Domestic Unmanned Aerial Vehicles and Drones
<http://epic.org/privacy/drones/>

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[5] Froomkin, Kaplan, "Spaf," Wu Join EPIC Advisory Board

EPIC has announced four new members of the EPIC Advisory Board: A. Michael Froomkin, Sheila Kaplan, Eugene "Spaf" Spafford, and Tim Wu. The EPIC Advisory Board is a distinguished group of experts in law, technology, and public policy.

A. Michael Froomkin is the Laurie Silvers and Mitchell Rubenstein Distinguished Professor of Law at the University of Miami School of Law. Professor Froomkin writes about and teaches Internet law, administrative law, and e-commerce.

Sheila Kaplan is a student-privacy advocate and founder of Education New York, a nonprofit education publication. Kaplan advocates for state and federal legislation to protect children's privacy and conducts outreach to inform parents of their rights under the Federal Education Rights and Privacy Act.

Eugene Spafford is a professor of Computer Science at Purdue University. A researcher with over 30 years experience in tcomputer security, "Spaf"'s work is at the foundation of technologies related to intrusion detection, firewalls, and whitelisting. Spaf is also the founder and Executive Director of the Center for Education and Research in Information Assurance and Security (CERIAS), the oldest and largest academic multidisciplinary institute devoted to cybersecurity and privacy in the US.

Tim Wu is the Isidor and Seville Sulzacher Professor of Law at Columbia Law School and author of the books "The Master Switch" and "Who Controls the Internet?" Wu's primary research areas are the Internet, media, and communications industries. At Columbia he teaches copyright, communications law and policy, and antitrust.

Joining the EPIC Board of Directors in 2013 are current Advisory Board members David Farber, Joi Ito, and Jeff Jonas.

EPIC: Advisory Board

http://epic.org/epic/advisory_board.html

U. of Miami: A. Michael Froomkin

<http://epic.org/redirect/froomkin-bio.html>

Education New York: Sheila Kaplan

<http://www.educationnewyork.com/about.html>

EPIC: Eugene Spafford

http://epic.org/epic/advisory_board.html#spafford

Columbia U. Law School: Tim Wu

http://www.law.columbia.edu/fac/Tim_Wu

EPIC: Board of Directors

http://epic.org/epic/staff_and_board.html

[6] News in Brief

Public Opposes TSA Nude Body Scanners

Following a 2011 court mandate that the Transportation Security Administration receive public comment on airport body scanners, the public has stated an overwhelming opposition to invasive nude body scanners. The mandate was in response to EPIC's lawsuit, EPIC v. DHS, in which EPIC successfully challenged the TSA's unlawful deployment of airport body scanners. The TSA will accept comments until June 24, 2013. To date, the public has submitted more than 3100 comments noting various problems with the scanners, including privacy violations, potential health risks, and the machines' inability to accurately detect threats. EPIC has also filed appeals in two Freedom of Information Act cases seeking documents related to airport body scanner radiation risks and threat detection software.

DC Appeals Court: Order for TSA on Scanners (Jul. 15, 2011)
http://epic.org/redirect/071911_circuit_opinion_epicvdhs.html

TSA: Opportunity for Public Comment on Scanners
<http://www.regulations.gov/#!docketDetail;D=TSA-2013-0004>

TSA: Background on Body Scanner Commentary
<http://www.regulations.gov/#!documentDetail;D=TSA-2013-0004-0001>

EPIC: FOIA Request on Body Scanner Radiation Risks (Jul. 13, 2010)
http://epic.org/privacy/backscatter/Body_Scanner_Radiation_FOIA.pdf

EPIC: FOIA on Backscatter Threat Detection Software (Jun. 15, 2010)
<http://epic.org/privacy/EPICJune15FOIARequest.PDF>

EPIC: Comment on the TSA Nude Body Scanner Proposal
<http://epic.org/TSAcomment/>

EPIC: EPIC v. TSA (Body Scanner Radiation Risks)
<http://epic.org/redirect/043013-scanner-radiation-risks.html>

EPIC v. TSA - Body Scanner Modifications (ATR)
http://epic.org/privacy/body_scanners/epic_v_tsa.html

EPIC: EPIC v. DHS (Suspension of Body Scanner Program)
http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html

Senate Committee Clears Update to Email Privacy Law

The US Senate Judiciary Committee has approved a bill to update the Electronic Communications Privacy Act, a 1986 law that provides privacy protections for email and other digital communications. The update, sponsored by Senator Patrick Leahy (D-VT) and co-sponsored by Senator Mike Lee (R-UT), would extend protections to communications that reside in "cloud storage." Earlier this month, the US Supreme Court declined to review a decision by the South Carolina Supreme Court, which held that ECPA does not protect emails stored on remote computer servers. EPIC, joined by 18 national organizations, filed a "friend of the court" brief in Jennings v. Broome, urging the Supreme Court to clarify the scope of email privacy protections. In March 2013, EPIC sent a letter to the US House Judiciary Committee, recommending a comprehensive review of the law.

US Senate: Status of ECPA Update (Apr. 25, 2013)
<http://www.govtrack.us/congress/bills/113/s607>

US Senate: Text of ECPA Update (S. 607) (Mar. 19, 2013)
<http://thomas.loc.gov/cgi-bin/query/z?c113:S.607:>

Cornell University: Text of ECPA (1986)
<http://www.law.cornell.edu/uscode/text/18/part-I/chapter-119>

US Supreme Court: Decision on Jennings v. Broome Cert. (Apr. 15, 2013)
http://www.supremecourt.gov/orders/courtorders/041513zor_p86b.pdf

SC Supreme Court: Decision in Jennings (Oct. 10, 2012)
<http://www.sccourts.org/opinions/HTMLFiles/SC/27177.pdf>

EPIC et al.: "Friend of the Court" Brief in Jennings (Feb. 7, 2013)
<http://epic.org/amicus/ecpa/jennings/EPIC-Amicus-Brief.pdf>

EPIC: Letter to US House re: ECPA (Mar. 18, 2013)
<http://epic.org/privacy/ecpa/EPIC-to-HJC-re-ECPA-3-18-2013.pdf>

EPIC: Electronic Communications Privacy Act
<http://epic.org/privacy/ecpa/>

EPIC: Jennings v. Broome
<http://epic.org/amicus/ecpa/jennings/>

EPIC Appeals FOIA Lawsuits Seeking Body Scanner Information

EPIC has filed appeals in two Freedom of Information Act cases, after seeking documents from the Department of Homeland Security and the Transportation Security Administration related to airport body scanners. EPIC filed FOIA requests with the agencies seeking records related to radiation risks from body scanners and to the machines' threat-detection software. The TSA is currently developing formal rules for the use of body scanners in response to a 2011 court order in one of EPIC's previous cases. Airport backscatter machines allow "digital strip searches" of individuals who are not suspected of any crime.

DC Federal Court: Opinion in EPIC v. DHS (Mar. 7, 2013)
https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2010cv1992-20

DC Federal Court: Opinion in EPIC v. TSA (Mar. 7, 2013)
https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv0290-23

EPIC: FOIA Request on Body Scanner Radiation (Jul. 13, 2010)
http://epic.org/privacy/backscatter/Body_Scanner_Radiation_FOIA.pdf

EPIC: FOIA request on Automated Target Recognition Software
<http://epic.org/privacy/EPICJune15FOIARequest.PDF>

EPIC: DC Circuit Opinion on Body Scanners (Jul. 15, 2011)
http://epic.org/redirect/071911_circuit_opinion_epicvdhs.html

EPIC: EPIC v. DHS (Body Scanner Radiation Risks)
<http://epic.org/redirect/043013-scanner-radiation-risks.html>

EPIC: EPIC v. TSA, Body Scanner Automated Target Recognition
http://epic.org/privacy/body_scanners/epic_v_tsa.html

EPIC: EPIC v. DHS (Suspension of Body Scanners)

<http://epic.org/redirect/030113-epic-v-dhs-scan-suspension.html>

White House Releases Unclassified Summary of President's Cyber Directive

The White House has released an unclassified summary of Presidential Policy Directive 20, which sets out the cybersecurity authority of the National Security Agency within the US and, in the process, raises more issues about government surveillance of the Internet. The existence of the Directive was detailed in a story in the Washington Post in 2012, and EPIC immediately pursued the Directive's public release. According to the Obama White House, PPD-20 "established principles and processes for the use of cyber operations so that cyber tools are integrated with the full array of national security tools." EPIC is still pursuing the release of the full document.

The White House: Unclassified Summary of PPD-20 (Jan. 2013)

<http://epic.org/redirect/043013-whitehouse-unclass-ppd-20.html>

The Washington Post: Article on PPD-20 (Nov. 14, 2012)

<http://epic.org/redirect/043013-washpost-article-ppd-20.html>

EPIC: FOIA Request to NSA re: PPD 20 (Nov. 14, 2012)

<http://epic.org/redirect/043013-EPIC-foia-nsa-ppd20.html>

EPIC: FOIA Appeal to NSA re: PPD 20 (Nov. 27, 2012)

<http://epic.org/foia/nsa/NSA-PPD-Appeal.pdf>

EPIC: Cybersecurity Privacy Practical Implications

<http://epic.org/privacy/cybersecurity/>

EPIC: EPIC v. NSA (NSPD 54)

http://epic.org/privacy/nsa/epic_v_nsa.html

House Subcommittee Considers Geolocation Privacy

The US House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations heard testimony April 25 on proposed Geolocation Privacy safeguards for the collection and use of location data generated by mobile phones and other devices. EPIC noted in a recent letter to the House Judiciary Committee, and in testimony before the Maryland House of Delegates and Texas House of Representatives on similar bills, that ECPA does not protect location records. Courts are divided on whether such records are protected by the Fourth Amendment.

US House Judiciary: Hearing on Geolocation Privacy (Apr. 25, 2013)

http://judiciary.house.gov/hearings/113th/hear_04252013.html

GPS.gov: Geolocation Privacy Legislation

<http://www.gps.gov/policy/legislation/gps-act/>

EPIC: Letter to House Judiciary Committee re: ECPA (Mar. 18, 2013)

<http://epic.org/privacy/ecpa/EPIC-to-HJC-re-ECPA-3-18-2013.pdf>

EPIC: Testimony on Location Privacy before MD House (Feb. 26, 2013)

<http://epic.org/redirect/043013-epic-location-testimony-md.html>

EPIC: Testimony on Location Privacy before TX House (Mar. 26, 2013)
<http://epic.org/redirect/043013-epic-location-testimony-md.html>

EPIC: Locational Privacy
http://epic.org/privacy/location_privacy/

EPIC: Electronic Privacy Communications Act (ECPA)
<http://epic.org/privacy/ecpa/>

DHS Releases Revised Privacy Assessment on Internet Monitoring Program

The Department of Homeland Security has released a Privacy Impact Assessment for "Einstein 3 - Accelerated," a government cybersecurity program that monitors Internet traffic, including scanning email destined for .gov networks for malicious attachments and URLs. According to DHS, the basis of the government's authority to perform the monitoring is National Security Presidential Directive 54. EPIC is pursuing FOIA litigation to force the government to release the Directive to the public.

DHS: Privacy Impact Assessment for Einstein 3 (Apr. 19, 2013)
<http://epic.org/redirect/043013-DHS-pia-einstein3.html>

EPIC: FOIA Request to NSA re: Presidential Directive 54 (Feb. 4, 2010)
http://epic.org/foia/NSPD54_complaint.pdf

EPIC: EPIC v. NSA - Cybersecurity Authority
http://epic.org/privacy/nsa/epic_v_nsa.html

Polls Show Little Support for Expanding Government Surveillance

Polls conducted by Fox News and The Washington Post following the Boston Marathon bombings show little public support for changes in the scope of government surveillance. According to Fox News, when respondents were asked, "Would you be willing to give up some of your personal freedom in order to reduce the threat of terrorism?" more said they would not (45%) compared to those who said they would (43%), for the first time since the attacks of Sept. 11, 2001. A Washington Post poll indicated that the public was more concerned (48%) that the government would go too far to investigate terrorism than that it would not go far enough (41%). A Rasmussen Poll conducted of likely voters found that more than half of the respondents (54%) said economic threats were a greater danger to the country than terrorism.

Fox News: Poll on Bombings and Government Surveillance (Apr. 16, 2013)
<http://epic.org/redirect/043013-fox-news-surveillance-poll.html>

The Washington Post: Poll on Bombings/Surveillance (Apr. 17-18, 2013)
<http://epic.org/redirect/043013-washpost-surveillance-poll.html>

Rasmussen Report on Terrorism and Safety (Apr. 17-18, 2013)
<http://epic.org/redirect/043013-rasmussen-terrorism-poll.html>

EPIC: Public Opinion on Privacy
<http://epic.org/privacy/survey/>

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[7] EPIC in the News
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"Surveillance Cameras Sought by Cities After Boston Bombs." Bloomberg New, Apr. 29, 2013.
<http://www.bloomberg.com/news/2013-04-29/surveillance-cameras-sought-by-cities-after-boston-bombs.html>

"DoJ Secretly Granted Immunity to Companies that Participated in Monitoring Program." Wired, Apr. 24, 2013.
<http://www.wired.com/threatlevel/2013/04/immunity-to-internet-providers/>

"US government's use of deep packet inspection raises serious privacy questions." TechWorld, Apr. 24, 2013.
<http://news.techworld.com/security/3444019/dhs-use-of-deep-packet-inspection-technology-in-new-net-security-system-raises-serious-privacy-questions/>

"U.S. gives big, secret push to Internet surveillance." CNet, Apr. 24, 2013.
http://news.cnet.com/8301-13578_3-57581161-38/u.s-gives-big-secret-push-to-internet-surveillance/

"How college students can maintain online privacy." USA Today, Apr. 23, 2013.
<http://www.usatoday.com/story/tech/personal/2013/04/23/college-students-online-privacy-tips/2107313/>

"Speak out now on the TSA's full-body scanners." Chicago Tribune, Apr. 23, 2013.
<http://www.chicagotribune.com/travel/sns-201304230000--tms--traveltrctntt-b20130423-20130423,0,4469728.story>

"Security images spark privacy debate." Financial Times, Apr. 21, 2013.
<http://www.ft.com/cms/s/0/8e41cfa4-aa64-11e2-bc0d-00144feabdc0.html#axzz2R6BvAnCA>

"Now is your chance to tell the TSA what you think of 'nude' full-body scanners." The Verge, Apr. 21, 2013.
<http://www.theverge.com/2013/4/21/4249418/tsa-nude-full-body-scanner-public-comment>

"Surveillance Camera and National Security." CSPAN Video, Apr. 20, 2013.
<http://www.c-spanvideo.org/program/312269-3>

"Invasion Of Privacy? RFID Tracking Kids On School Buses; Privacy Advocates Concerned By 'Attendance Management' Pilot Program In Gordon County, Ga." International Business Times, Apr. 20, 2013.
<http://www.ibtimes.com/invasion-privacy-rfid-tracking-kids-school-buses-privacy-advocates-concerned-attendance-management>

"Rise of Domestic Drones Draws Questions About Privacy, Limiting Use." PBS NewsHour, Apr. 19, 2013.
http://www.pbs.org/newshour/bb/science/jan-june13/drones_04-18.html

"Stores' surveillance cameras can help crack crimes." USA Today, Apr. 19, 2013.

<http://www.usatoday.com/story/money/business/2013/04/18/boston-bombs-retail-cameras-suspects-privacy/2093771/>

"The Navigator: Speak out now on full-body scanners." The Washington Post, Apr. 18, 2013.

http://www.washingtonpost.com/lifestyle/travel/the-navigator-speak-out-now-on-full-body-scanners/2013/04/18/bf52c568-a5ea-11e2-8302-3c7e0ea97057_story.html

"Gov't didn't shut down cell networks in Boston--but it could have." ArsTechnica, Apr. 16, 2013.

<http://arstechnica.com/tech-policy/2013/04/govt-didnt-shut-down-cell-networks-in-boston-but-it-could-have/>

For More EPIC in the News: http://epic.org/news/epic_in_news.html

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[8] Book Review: 'Spam'
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"Spam: A Shadow History of the Internet," Finn Brunton

<http://epic.org/redirect/043013-spam-brunton.html>

"Spam." It's a noun and a verb, a singular and plural entity. Like junk email itself, the word is annoying, clichéd, amorphous - and, in the hands of University of Michigan computer science professor Finn Brunton - made almost elegant in a brief book not only about spam, but also about how early Internet culture inherently bred a predisposition to spam and how the changing dynamics of the Net indirectly fill our bulging junk-mail boxes.

Brunton maintains that there have been "three epochs of spam," corresponding roughly with three distinct phases of Internet development: from the early 1970s to 1995, when the founders of the Internet were "trying to work out acceptable rules, mores, and enforcement tools for online communication"; from 1995 to 2003, beginning with the privatization of networks and ending in the dotcom bust and the passage of the CAN SPAM Act; and from 2003 onward, which has focused on user-created content and tools. In each era, according to Brunton, the nature and technology of spam has been a "shadow" of the Internet's development as a whole - from blaring, undirected ads to search engine manipulation to sophisticated, targeted "phishing" techniques.

Published by MIT Press, "Spam" is fundamentally an academic book, and as a result is peppered with socio-technological terms; fortunately Brunton handles them straightforwardly and unpretentiously. Among the more interesting concepts he introduces is "charivari," or "spontaneous community justice." Spammers, he says, have been located, humiliated and shut down by being "outed" by charivari; unfortunately, he adds, charivari offers "no constructive plan beyond humiliating and shaming the offender, and dies away just as quickly as it flares up," allowing spammers to regroup and begin their dirty work anew.

"Spam," already a short book at just 200 pages of text, could have been even shorter. It's not lugubrious, just sometimes too self-congratulatory in its name-dropping and in the minutiae of Internet culture and development, particularly from the 1970s-1990s. This early history would feel more relevant if more readers had a previous

knowledge of the people or technologies involved, and it's hard not to feel excluded from the first-adopters club. At times "Spam" also seems to veer from the title subject to other forms of online harassment, including bullying and shaming. These are topics worthy of their own books, but in this context cause Brunton's narrative to track a little off-course.

As befits the subject matter, "Spam" is not a cheery read. The behind-the-scenes machinations of creating and disseminating spam are creepily fascinating - this is your opportunity, for example, to learn about the genesis of the Nigerian banking scam - but the schadenfreude of reading about cybercriminals knocking one another out with viruses and occasional physical implements gets old quickly. Equally depressing is Brunton's study of how users are duped by spam and scams again and again; spammers' ability to home in on the latest weakness of online culture continues to be remarkably effective.

Despite the book's shortcomings, "Spam" is filled with information that all Internet users need to know in order to understand our technological adversaries and their unconventional weaponry.

- EC Rosenberg

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EPIC Publications:

"Litigation Under the Federal Open Government Laws 2010," edited by Harry A. Hammitt, Marc Rotenberg, John A. Verdi, Ginger McCall, and Mark S. Zaid (EPIC 2010). Price: \$75.

<http://epic.org/bookstore/foia2010/>

Litigation Under the Federal Open Government Laws is the most comprehensive, authoritative discussion of the federal open access laws. This updated version includes new material regarding President Obama's 2009 memo on Open Government, Attorney General Holder's March 2009 memo on FOIA Guidance, and the new executive order on declassification. The standard reference work includes in-depth analysis of litigation under: the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, and the Government in the Sunshine Act. The fully updated 2010 volume is the 25th edition of the manual that lawyers, journalists and researchers have relied on for more than 25 years.

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"Information Privacy Law: Cases and Materials, Second Edition" Daniel J. Solove, Marc Rotenberg, and Paul Schwartz. (Aspen 2005). Price: \$98.

http://www.epic.org/redirect/aspen_ipl_casebook.html

This clear, comprehensive introduction to the field of information privacy law allows instructors to enliven their teaching of fundamental concepts by addressing both enduring and emerging controversies. The Second Edition addresses numerous rapidly developing areas of privacy law, including: identity theft, government data mining and electronic surveillance law, the Foreign Intelligence Surveillance Act, intelligence sharing, RFID tags, GPS, spyware, web bugs, and more. Information Privacy Law, Second Edition, builds a cohesive foundation for an exciting course in this rapidly evolving area of law.

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"Privacy & Human Rights 2006: An International Survey of Privacy Laws and Developments" (EPIC 2007). Price: \$75.

<http://www.epic.org/phr06/>

This annual report by EPIC and Privacy International provides an overview of key privacy topics and reviews the state of privacy in over 75 countries around the world. The report outlines legal protections, new challenges, and important issues and events relating to privacy. Privacy & Human Rights 2006 is the most comprehensive report on privacy and data protection ever published.

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"The Public Voice WSIS Sourcebook: Perspectives on the World Summit on the Information Society" (EPIC 2004). Price: \$40.

<http://www.epic.org/bookstore/pvsourcebook>

This resource promotes a dialogue on the issues, the outcomes, and the process of the World Summit on the Information Society (WSIS). This reference guide provides the official UN documents, regional and issue-oriented perspectives, and recommendations and proposals for future action, as well as a useful list of resources and contacts for individuals and organizations that wish to become more involved in the WSIS process.

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"The Privacy Law Sourcebook 2004: United States Law, International Law, and Recent Developments," Marc Rotenberg, editor (EPIC 2005). Price: \$40.

<http://www.epic.org/bookstore/pls2004/>

The Privacy Law Sourcebook, which has been called the "Physician's Desk Reference" of the privacy world, is the leading resource for students, attorneys, researchers, and journalists interested in pursuing privacy law in the United States and around the world. It includes the full texts of major privacy laws and directives such as the Fair Credit Reporting Act, the Privacy Act, and the OECD Privacy Guidelines, as well as an up-to-date section on recent developments. New materials include the APEC Privacy Framework, the Video Voyeurism Prevention Act, and the CAN-SPAM Act.

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"Filters and Freedom 2.0: Free Speech Perspectives on Internet Content Controls" (EPIC 2001). Price: \$20.

<http://www.epic.org/bookstore/filters2.0>

A collection of essays, studies, and critiques of Internet content filtering. These papers are instrumental in explaining why filtering threatens free expression.

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EPIC publications and other books on privacy, open government, free

expression, and constitutional values can be ordered at:

EPIC Bookstore <http://www.epic.org/bookstore>

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EPIC also publishes EPIC FOIA Notes, which provides brief summaries of interesting documents obtained from government agencies under the Freedom of Information Act.

Subscribe to EPIC FOIA Notes at:
http://mailman.epic.org/mailman/listinfo/foia_notes

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[9] Upcoming Conferences and Events

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American Library Association's "Choose Privacy Week," 1-7 May 2013.
For More Information: <http://www.alastore.ala.org/detail.aspx?ID=4116>.

"ASAP 6th Annual National Training Conference." Speaker: Ginger McCall, Director, EPIC Open Government Project. 15 May 2013, Arlington, VA. For More Information: <http://www.accesspro.org/programs/trainingconf/2013/index.cfm>.

EPIC Champion of Freedom Awards Dinner. 3 June 2013, Washington, DC. For More Information: <http://epic.org/june3>.

2013 Health Privacy Summit, 5-6 June 2013, Washington, DC. For More Information: <http://www.healthprivacysummit.org/events/2013-health-privacy-summit/event-summary-1bfa9be80d364092aeed1a8803377fa8.aspx>.

22nd Annual Computers, Freedom, & Privacy Conference. 25-26 June 2013, Washington, DC. For More Information: Contact Chris Calabrese at ccalabrese@dcaclu.org.

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Join the Electronic Privacy Information Center on Facebook and Twitter:

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<http://epic.org/facebook>

<http://twitter.com/epicprivacy>

Join us on Twitter for [#privchat](https://twitter.com/privchat), Tuesdays, 11:00am ET.

Start a discussion on privacy. Let us know your thoughts. Stay up to date with EPIC's events. Support EPIC.

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About EPIC
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The Electronic Privacy Information Center is a public interest research center in Washington, DC. It was established in 1994 to focus public attention on emerging privacy issues such as the Clipper Chip, the Digital Telephony proposal, national ID cards, medical record privacy, and the collection and sale of personal information. EPIC publishes the EPIC Alert, pursues Freedom of Information Act litigation, and conducts policy research. For more information, see <http://www.epic.org> or write EPIC, 1718 Connecticut Ave. NW, Suite 200, Washington, DC 20009. +1 202 483 1140 (tel), +1 202 483 1248 (fax).

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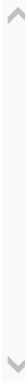
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND)	
ETHICS IN WASHINGTON,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 12-1491 (JDB)
)	
U.S. DEPARTMENT OF JUSTICE)	
)	
Defendant.)	

DECLARATION OF DR. LAURA A. MALOWANE

I, Laura A. Malowane, declare as follows:

1. I am a Vice President of Economists Incorporated, an economic consulting firm in Washington, D.C. I have been employed at Economists Incorporated since 1998. Prior to that I was an economic consultant for Princeton Economics Group and a lecturer in Economics and Statistics at Princeton University, both located in Princeton, NJ. I have testified about economic and statistical issues by declaration, at deposition, before administrative bodies and at trial. I have extensive experience in analyzing and testifying on issues related to the awarding of attorneys' fees.
2. I received my Ph.D. in Economics from Princeton University in 1998 where my areas of specialization were microeconomics and industrial organization. I also earned a Master's degree in Economics from Princeton University in 1995, LL.B. and M.B.A. degrees from York University in 1991, and a Bachelor's degree in Economics from York University in 1987. A copy of my curriculum vitae is attached as Appendix 1.
3. I have been asked by defendant to review the court materials in this matter and to provide my opinion about available survey data and the appropriate attorney rate matrix to use for the calculation of reasonable attorneys' fees.

4. In my opinion the attorney fee matrix issued and updated by the United States Attorneys' Office for the District of Columbia, otherwise known as the "USAO Laffey Matrix," is the appropriate matrix to use for purposes of determining plaintiff's attorneys' fees. I also conclude that, as estimated by the best available data and described below, the prevailing hourly rate in the community for litigation attorneys with similar experience as that of attorneys' plaintiff is between \$390 and \$512. This range is slightly lower than the \$520 rate indicated by the USAO Laffey Matrix and is much lower than the \$789 rate requested by plaintiff.
5. In formulating my opinions I have reviewed the pleadings of both plaintiff and defendant, as well as publicly available data, cases and materials. A full list of the materials I have reviewed is attached as Appendix 2.¹ I reserve the right to revise my opinions based on additional information that is made available to me and to respond to any additional declarations submitted by Plaintiff.

BACKGROUND

6. For many years the United States Attorneys' Office for the District of Columbia ("USAO") has used a specific matrix as a basis for determining reasonable attorneys' fees in litigation claims. This USAO Matrix was first introduced by the District Court for the District of Columbia to determine reasonable attorneys' fees for work performed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354, (D.D.C. 1983), aff'd 746 F.2d 4 (D.C. Cir. 1984) ("*Laffey*"). The attorney fees awarded in that case were for work done primarily in 1981 and 1982.
7. To adjust the attorney rates provided in the *Laffey* case for later years, the USAO looked to the Bureau of Labor Statistics ("BLS") tracking of relevant pricing changes over time. The BLS publishes a monthly Consumer Price Index ("CPI"), which is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The BLS also regularly publishes CPI indexes specific to certain local areas, including one for the Washington-Baltimore area. This index is referred to as the Consumer Price Index for All Urban Consumers for the Washington-Baltimore area ("CPI-Washington"). As suggested by the BLS, local area indexes such as

¹ The materials listed in Appendix 2 are the kinds of facts or data on which economists reasonably rely in forming opinions regarding the calculation of reasonable attorneys' fees for purposes of a fee shifting statute.

this can illustrate and explain the impact of local economic conditions on consumers' experience with price changes.²

8. To determine reasonable attorney rates for periods following the *Laffey* case, the USAO has adjusted the original *Laffey* rates in accordance with changes in the CPI-Washington. The result has been a regularly updated matrix which provides hourly rates, based on years of experience, for attorneys, paralegals and law clerks in the Washington, D.C. area. This table, known as the USAO Laffey Matrix, is presented in Appendix 3.
9. Plaintiff's attorneys in this case propose an alternative table of hourly rates be used, the Salazar Matrix (also known as the LSI Matrix), to calculate compensation for the attorney services rendered. This matrix was introduced in *Salazar v. District of Columbia*, 123 F.Supp.2d 8, 13-14 (D.D.C. 2000). The Salazar Matrix begins with a 1989 template of hourly billing rates for attorney services and then proposes to use a national index, the U.S. City Average of the Consumer Price Index for Legal Services ("CPI-US Legal Services"), to update these hourly billing rates. The CPI-US Legal Services averages out pricing changes for basic, personal legal services in several urban centers in the United States. The specific services tracked by the CPI-US Legal Services are simple, non-commercial, legal services provided to household consumers, such as basic wills, uncontested divorces, powers of attorney, and traffic violations. For each of these pre-defined services, the BLS seeks to measure changes in the price for the entire procedure (otherwise known as a "flat-fee").³ The Salazar Matrix is presented in Appendix 4.
10. Plaintiff's two attorneys in this matter, Anne L. Weismann and Melanie Sloan, each have more than 20 years of experience practicing law. Ms. Weismann has practiced law since 1979 and Ms. Sloan has practiced since 1991.⁴ Both attorneys were at the relevant times in-house counsel for the plaintiff, Citizens for Responsibility and Ethics in Washington (CREW). CREW is located in Washington, DC and per its website currently employs

² <http://www.bls.gov/cpi/cpifaq.htm>

³ Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers. p. 13.

⁴ Plaintiff's Motion, Exhibits A and E.

nine individuals, three of whom are attorneys.⁵ In the Plaintiff's Motion for An Award of Attorneys' Fees and Costs and its supporting exhibits and materials (collectively "Plaintiff's Motion"), CREW seeks to be reimbursed for Ms. Weismann and Ms. Sloan's time using billing rates from the Salazar Matrix. The Salazar Matrix would provide a 2014/2015 per hour fee of \$789 for Ms. Weismann and Ms. Sloan's work. In support of this, plaintiff provides a 2013 declaration in another matter by economist Michael Kavanaugh, incorporating a 1996 declaration by Dr. Kavanaugh.

11. This Court has requested that each party clarify their positions regarding attorneys' fees, especially in light of a recent decision by the United States Court of Appeals on a matter also involving attorneys' fees. As I explain below, survey data indicate that the USAO Laffey Matrix is the appropriate matrix to use to determine reasonable attorney hourly rates in this case. I also show that plaintiff and Mr. Kavanaugh's rationale for use of the Salazar matrix is flawed.

ANALYSIS

I) SURVEY DATA

i) *Eley Decision*

12. On July 10, 2015, a decision was issued by the United States Court of Appeals for the District of Columbia Court in the matter of *Wilma Eley v. District of Columbia*. In that matter the Court examined what a reasonable hourly rate would be for awarding attorneys' fees. Citing earlier decisions, the Court stated that whether an hourly rate is reasonable turns on several components, including the prevailing market rates in the relevant community. The Court further stated that determining the prevailing market rate is inherently difficult and that fee applicants have the burden to produce satisfactory evidence that the requested rates are in line with those prevailing in the community. The evidence submitted by plaintiff Eley in her attorney request consisted of the same Salazar Matrix as the one proposed by plaintiff in the matter at hand. The Court in *Eley* noted that

⁵ Ms. Weismann does not appear to be employed by CREW any longer. www.citizensforethics.org

“absent from her submission, however, is evidence that her requested rates are in line with those prevailing in the community for *similar services*.”⁶ (emphasis in original)

13. In the case at hand, to determine the prevailing rates in the community for similar services it would be ideal to have data reflecting the actual prevailing rates for attorneys in the DC area who perform federal litigation services. To my knowledge such precise data are not available. Data do exist for billing rates of all attorneys in the local community, regardless of area of legal expertise. Data are also available of rates of attorneys nationwide who perform similar services as that of plaintiff’s counsel in this case. Further, data are available to enable these national rates to be adjusted to better reflect rates of those attorneys offering similar services in the local community. Below I discuss in turn each of these data sets and their applications to the case at hand.

ii) Rates Based on Available Survey Data

14. The purpose of using a matrix for determining attorneys’ fees in particular cases is, of course, to approximate the reasonable average hourly rates collected in the local community by attorneys with similar experience working on comparable cases, (i.e. the “market rate”).

15. With this objective in mind, I have reviewed the ALM Legal Intelligence’s 2011 Survey of Law Firm Economics, which provides data of actual average billing rates of attorneys in the Washington, DC area, from law offices of all sizes and types.⁷ Table 1 below compares the 2011 average billing rates of attorneys in the Washington, DC metro area with the rates listed in the Salazar Matrix and the USAO Laffey Matrix for that same year. This table reveals that the USAO Laffey Matrix attorney rates are approximately the same as (or slightly higher or lower than) the overall billing rates of firms in the DC area, while the Salazar Matrix rates are consistently higher than the actual average billing rates of firms in this region.

⁶ *Wilma Eley v. District of Columbia*, 793 F.3d 97, 104 (D.C. Cir. July 10, 2015).

⁷ These data are available for purchase through the firm ALM Legal Intelligence (www.almlegalintel.com). 2011 rates are the most recent billing rates commercially available for firms in the Washington, DC area. As I discuss later, there are 2014 rates that are commercially available for the largest 350 firms in the country.

Table 1			
Washington, DC Billing Rates			
2011			
Years Since Law School	Salazar Matrix¹	USAO Laffey Matrix²	Average Billing Rates (Washington, DC)³
20+ years	\$709	\$475	\$459
11-19	\$589	\$420	\$418
8-10	\$522	\$335	\$338
4-7	\$361	\$275	\$295
1-3	\$294	\$230	\$270

Source: ¹ www.laffeymatrix.com
² http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf
³ ALM Legal Intelligence, Survey of Law Firm Economics, 2011

16. Table 2 shows, in percentage terms, how much greater (or smaller) each of the respective matrices rates are in comparison to actual average billing rates. The USAO Laffey Matrix rates range between 15% lower and 3% higher than actual Washington, DC average billing rates in 2011. By contrast, the Salazar Matrix rates range between 9% and 54% higher than actual average billing rates. For the specific attorneys at issue in this matter, the USAO Laffey Matrix provides a rate that is 3% higher than average local rates, while the Salazar Matrix provides a rate that is 54% higher. Thus, the USAO Laffey Matrix rates better approximate the actual average billing rates of DC area attorneys such as plaintiff's counsel than the estimated rates offered in the Salazar Matrix.

Years Since Law School	Salazar Matrix Greater (Less) Than Actual ^{1,3}	Laffey Matrix Greater (Less) Than Actual ^{2,3}
20+ years	54%	3%
11-19	41%	0%
8-10	54%	-1%
4-7	22%	-7%
1-3	9%	-15%

Source: ¹ www.laffeymatrix.com
² http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf
³ ALM Legal Intelligence, Survey of Law Firm Economics, 2011

17. The rates represented in Tables 1 and 2, which are provided by the Survey of Law Firm Economics, apply to all attorneys in the Washington, DC area, regardless of types of legal services being provided. According to the *Eley* decision, to address an appropriate billing rate for awarding attorneys' fees one should attempt to identify rates prevailing in the community for similar services as the ones provided by the attorneys at issue. To the best of my knowledge there are no survey data that provide actual billing rates for attorneys in the Washington, DC area specifically for the types of services provided by plaintiff's attorneys in this case, i.e. federal litigation services.
18. It is possible, however, to extrapolate from currently available survey data to reasonably estimate actual rates in the Washington, DC area for attorneys providing such litigation services. This is essentially a two-step process; the first step is to identify national billing rates of attorneys providing similar services (here, litigation), and the second step is to adjust these rates to better reflect the rates of attorneys providing such services in the relevant community.
19. Regarding the first step, the 42nd Annual Survey of Law Firm Economics, 2014 Edition ("2014 Survey") provides national billing rates for attorneys in litigation by years of

experience.⁸ These figures are replicated in Table 3 below. This table shows that the 2014 average and median billing rate in this country for an attorney with Ms. Weismann's experience (31 or more years) that is providing litigation services is \$447 and \$430, respectively. The average and median billing rates of a litigation attorney with the same years of experience as Ms. Sloan (21 to 30 years) is \$392 and \$385, respectively.

Years of Experience	Average	Bottom 25%	Median	Top 25%	Top 10%
31 or More	\$447	\$375	\$430	\$513	\$570
21 to 30	\$392	\$320	\$385	\$455	\$513
16 to 20	\$380	\$320	\$365	\$453	\$476
11 to 15	\$359	\$280	\$360	\$425	\$457
8 to 10	\$315	\$269	\$315	\$375	\$394
6 to 7	\$295	\$240	\$313	\$351	\$360
4 to 5	\$267	\$220	\$275	\$315	\$337
2 to 3	\$242	\$203	\$255	\$275	\$285
Under 2	\$235	\$225	\$240	\$245	\$260

Note: Sample Size = 483
Source: The 42nd Annual Survey of Law Firm Economics, 2014, pp. 167.

⁸ The 2014 Survey provides billing rates for the following litigation areas: bankruptcy, collections, commercial/contract, insured defense, employment, environmental, family and domestic law, health care, intellectual property, labor-management, personal injury, products liability, real estate, trusts/estates/probate, workers' compensation, other litigation, and multiple litigation. Since there is no distinct category for federal litigation, I have used data from the category of "other litigation" for purposes of this case. (The 42nd Annual Survey of Law Firm Economics, 2014 Edition, pp. 165-7). The selection of this litigation category is conservative. Of all litigation specialties with individual data, the "other litigation" category provides the 2nd and 3rd highest median billing rates in the "21 to 30" and "31 or more" experience groups, respectively. The highest billing rates of the survey data are in the "bankruptcy" litigation category, which is clearly not the appropriate area of legal specialty in the matter at hand.

20. For step two, I adjust these national rates to better reflect prevailing rates in the local community for litigation services. To do this I derive a geographic inflator based on information provided from the 2014 Survey. The geographic inflator is simply a compilation of attorney rates in a specific geographic area, each divided by a corresponding average national rate for attorneys with similar years of experience. Thus, each calculated geographic inflator represents the amount that national rates should be multiplied by to estimate the corresponding geographic rate. For example, if the billing rate for attorneys with 31 or more years of experience in California is \$500 and the billing rate for attorneys with the same level of experience in the nation is \$400, then the California inflator is $5/4$ or 1.25. This inflator example would indicate that rates for highly experienced attorneys in California are 25% higher than the average national rates for similarly experienced attorneys.
21. The geographic area of the 2014 Survey that includes Washington, DC is called the South Atlantic. This area is defined by the U.S. Census Bureau and includes the states of West Virginia, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, and Florida as well as the District of Columbia.⁹ Appendix 5 provides the attorney billing rates, by years of experience, for this geographic area. Also in this appendix is the derived South Atlantic Inflator, where each number represents the estimated inflator to apply to national rates, by years of experience, to derive a comparable South Atlantic rate. For example, Appendix 5 shows that the South Atlantic Inflator for attorneys with either 21 to 30 or 31 or more years of experience is 1.01. This indicates that rates for these highly experienced attorneys are approximately 1% higher in the South Atlantic than they are for the nation as a whole.
22. The completion of step two is to apply the South Atlantic Inflatons outlined in Appendix 5 to the corresponding national rates of attorneys practicing litigation that are represented in Table 3. This will provide an estimate of the billing rates of litigation attorneys in the South Atlantic, including the Washington, DC area. Table 4 below provides these estimates. The table shows that litigation attorneys with the years of experience of plaintiff's attorneys can expect to bill between \$390 and \$435 in the South Atlantic. Table 4 also provides estimated rates for the highest and lowest paid litigation attorneys. In the South Atlantic an attorney with 31 or more years of experience, who has a billing rate in the top 25% of the geographic area, would be estimated to have an hourly rate of

⁹ The 42nd Annual Survey of Law Firm Economics, 2014, pp. 8 and 12.

\$519. A similarly experienced attorney in the top 10% of all billing rates in the South Atlantic would be estimated to have an hourly rate of \$577. For a litigation attorney in the South Atlantic with 21 to 30 years of experience, the top 25% and top 10% rates are \$461 and \$520, respectively. Notably, the rate of \$789 requested by plaintiff's attorneys is more than \$200 higher than the estimated hourly rates of the top 10% billing litigation attorneys in the South Atlantic.

Years of Experience	Average	Bottom 25%	Median	Top 25%	Top 10%
31 or More	\$452	\$379	\$435	\$519	\$577
21 to 30	\$397	\$324	\$390	\$461	\$520
16 to 20	\$396	\$333	\$380	\$472	\$496
11 to 15	\$362	\$283	\$363	\$429	\$461
8 to 10	\$309	\$264	\$309	\$368	\$387
6 to 7	\$295	\$240	\$313	\$351	\$360
4 to 5	\$256	\$211	\$264	\$302	\$323
2 to 3	\$219	\$184	\$231	\$249	\$258
Under 2	\$235	\$225	\$240	\$245	\$260

Source: The 42nd Annual Survey of Law Firm Economics, 2014, pp. 141, 154, 167; Appendix 5.

23. Step two (the adjusting of national rates to better reflect the rates in the local community) may be done in an alternative way. Rather than creating inflators based on rates in the South Atlantic area as done above, one can create inflators based on rates in highly populated areas of the country such as Washington, DC. In particular, billing rates are provided by the 2014 Survey for attorneys in areas defined by the U.S. Census Bureau as being a geographic component of a metropolitan urbanized area with a population of at least 2.5 million.¹⁰ These billing rates represent hourly fees for attorneys located in the

¹⁰ The U.S. Census Bureau refers to such areas as "Metropolitan Divisions" and it includes such geographic divisions for eleven metropolitan areas in the country, one of which is the Washington-Arlington-Alexandria, DC-VA-MD-WV area which includes the District of Columbia as well as many surrounding counties. The other metropolitan areas that

most densely populated urban areas in the country. Appendix 6 displays the Urban billing rates by years of experience. Also in this Appendix is the Urban Inflator, where each number represents the estimated adjustment to national rates, by years of experience, to derive a comparable urban rate. For example, Appendix 6 shows that the Urban Inflator for attorneys with 31 or more years of experience is 1.19. This indicates that rates for these highly experienced attorneys are approximately 19% higher in the country's most populated urban areas than they are for the nation as a whole. Appendix 6 also shows that rates for attorneys with 21 to 30 years of experience are 13% higher in highly populated urban areas than for the nation as a whole.

24. As in the South Atlantic calculations, the Urban Inflator figures can be applied to the national rates of attorneys practicing litigation (represented in Table 3) to provide an estimate of the billing rates of litigation attorneys in the country's most densely populated urban areas, including the Washington, DC area. Table 5 below provides these estimates. As the table shows, a litigation attorney with the years of experience of plaintiff's attorneys attorney can expect to bill \$435 to \$512 in the nation's most populated urban areas. Litigation attorneys who have 31 or more years of experience and billing rates in the top 25% of urban areas have an estimated billing rate of \$611. The top 10% of all highly experienced litigation attorneys in the nation's most populated urban areas have estimated billing rates of \$679. For a litigation attorney with 21 to 30 years of experience, the top 25% and top 10% rates are \$514 and \$580, respectively. Thus the billing rate of \$789 requested by Plaintiff's attorneys is more than \$100 higher than the absolute highest billing rates of the most experienced litigation attorneys in the country's largest cities.

satisfy the Census's definition of areas that can be divided into smaller divisions are: Boston, Chicago, Dallas, Detroit, Los Angeles, Miami, New York, Philadelphia, San Francisco and Seattle. www.census.gov/population/metro/about/.

Years of Experience	Bottom				
	Average	25%	Median	Top 25%	Top 10%
31 or More	\$532	\$446	\$512	\$611	\$679
21 to 30	\$443	\$362	\$435	\$514	\$580
16 to 20	\$459	\$387	\$441	\$547	\$575
11 to 15	\$431	\$337	\$433	\$511	\$549
8 to 10	\$383	\$327	\$383	\$455	\$478
6 to 7	\$372	\$302	\$394	\$442	\$454
4 to 5	\$334	\$275	\$344	\$394	\$421
2 to 3	\$295	\$247	\$311	\$335	\$347
Under 2	\$297	\$284	\$303	\$309	\$328

Source: The 42nd Annual Survey of Law Firm Economics, 2014, pp. 152, 154, 167; Appendix 6.

25. Table 6 summarizes the median billing rates of litigation attorneys in the South Atlantic, urban areas and the nation as a whole.¹¹ In the highest experience category of 31 or more years, the median billing rates are \$430, \$435 and \$512, for litigation attorneys nationally, in the South Atlantic, and in highly populated urban areas, respectively. For the experience category of 21 to 30 years, the corresponding median billing rates of litigation attorneys are \$385, \$390 and \$435, respectively. These figures are slightly lower than the \$520 rate indicated by the USAO Laffey Matrix, but much lower than the \$789 rate requested by plaintiff.

¹¹ I display the median billing rates, rather than the average rates, since average rates may not be representative of the majority of survey respondents because the sample can be heavily skewed by either very large or very small outlier billing rates.

Years of Experience	National ¹	South Atlantic ²	Urban ³
31 or More	\$430	\$435	\$512
21 to 30	\$385	\$390	\$435
16 to 20	\$365	\$380	\$441
11 to 15	\$360	\$363	\$433
8 to 10	\$315	\$309	\$383
6 to 7	\$313	\$313	\$394
4 to 5	\$275	\$264	\$344
2 to 3	\$255	\$231	\$311
Under 2	\$240	\$240	\$303

Note: South Atlantic and Urban rates are estimates based on actual data.
Source:
¹ Table 3
² Table 4
³ Table 5

iii) Actual Attorney Rates Vary Across Firm Size

26. As discussed above, for experienced attorneys such as the plaintiff's counsel in this case, the Salazar Matrix provides rates that are hundreds of dollars more than the median billing rates of similarly experienced attorneys. There exists a further reason why the Salazar Matrix would provide even greater over-compensation to the plaintiff's attorneys. Law firm billing rates generally differ with the size, region and scope of the firm. Billing rates at a small office, such as that of CREW, are not comparable to those at large multi-office, multinational law firms.¹² Small firms generally do not have the same overhead as larger firms and, as a result, attorneys at small firms generally are able to offer services at lower fees (but not necessarily lower profits) than those at their larger firm

¹² See, for example, Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, National Edition, June 1, 1998; and, 2014 Survey of Law Firm Economics. For a discussion of cases that have recognized that billing rates generally vary by firm size see Memorandum Opinion, *Dick Anthony Heller v. District of Columbia*, December 29, 2011.

counterparts.¹³ Similarly, larger multinational firms may be able to command higher fees due to, among other reasons, an offering of more services, having a better national or international reputation, having the capacity to take on bigger or more complicated matters, or being located in a higher rent and higher profile area of the region. Clients seeking lower cost alternatives to the large firms may seek out attorneys from smaller firms.

27. The role that firm size plays in attorney billing rates was addressed by this Court in 2011 in the matter of *Dick Anthony Heller v. District of Columbia*, Civil Action No. 03-213 (EGS). In that case, I submitted an affidavit regarding attorneys' fees and the opposing expert, Michael Kavanaugh, submitted a declaration in response to my affidavit. In its Memorandum Opinion the Court found it "significant" that Dr. Kavanaugh did not dispute my assertions regarding the impact that firm size may have on an attorneys' hourly rate, nor my statements regarding the ability of small and medium size firms to offer services at lower rates than those attorneys at their larger firm counterparts.¹⁴ For these reasons, the Court stated that it was unwilling to award the high rates suggested by the Salazar Matrix absent specific evidence that those rates are, indeed, the prevailing markets rates for attorneys engaged in federal litigation outside of the District of Columbia's largest law firms.¹⁵
28. Recent survey data show that, for both partners and associates, 2014 attorney billing rates do in fact increase with the number of lawyers at the attorney's law firm. For example, in 2014 the national average rate for an equity partner at a firm with 1 to 9 lawyers was \$300, while the same rate for an equity partner at a firm with over 150 lawyers was \$454. Associate rates reveal similar patterns. In 2014 the national average billing rate for an associate at a firm with 1 to 9 lawyers was \$227, and the same rate for an associate at firm with over 150 lawyers was \$280.¹⁶
29. Indeed, 2014 data indicate that the Salazar Matrix rate that the plaintiff's attorneys are requesting more accurately reflects the billing rate of partners at the largest firms in

13 Some of the overhead that may be higher at larger firms include staff wages, former partner compensation, and occupancy expense.

14 *Dick Anthony Heller v. District of Columbia*, Memorandum Opinion, footnote 12.

15 *Dick Anthony Heller v. District of Columbia*, Memorandum Opinion, page 29.

16 The 42nd Annual Survey of Law Firm Economics, 2014, p. 148.

Washington, DC. The National Law Journal (“NLJ”) 350 Annual Survey is a comprehensive survey that the NLJ performs each year. It encompasses billing rates of the 350 largest firms in the nation, who have offices dispersed throughout the country as well as internationally. For most law firms surveyed, the NLJ provides information on the firm’s number of attorneys, principal or largest office location, and attorney billing rates. Partner and associate attorney billing rates are provided separately, with the minimum, maximum and average rates for each group being shown.

30. I examined the 2014 NLJ survey to gather billing rate data of the nation’s largest firms that have their main office location in Washington, DC. Overall, twelve such firms provided billing data for the survey. These firms range in size from 122 lawyers to 2,313 lawyers. Table 7 compares the 2014 actual billing rates of partners in these twelve largest firms headquartered in Washington, DC with the rates that the plaintiff’s attorneys would receive under the Salazar Matrix. As the table shows, the billing rate of \$789 per hour that plaintiff’s attorneys are requesting is even higher than the average billing rate of partners at the nation’s largest law firms headquartered in the Washington DC area. In fact, eight of the twelve firms surveyed have average partner billing rates that are lower than the plaintiff’s attorneys’ requested rate. Plaintiff’s attorneys requested rate is even higher than the single highest billing rate of *any* partner at the law firm of Akin Gump; a firm with 809 lawyers spread over 22 offices in nine countries.¹⁷ Moreover, Sterne, Kessler, Goldstein & Fox, the smallest Washington, DC firm in the survey of the nation’s largest firms, has 122 lawyers in its sole office in Washington, DC and has an average partner billing rate of \$577; again much smaller than the plaintiff’s attorneys’ requested hourly rate of \$789.¹⁸ Plaintiff’s requested rate simply cannot be justified, even by comparing it to rates charged by the country’s largest, most prestigious firms.

17 <http://www.akingump.com/en/locations/index.html>

18 <http://www.skgf.com/location>

Table 7			
Salazar Matrix Rates v.			
Partner Rates at Largest DC Firms			
Salazar Matrix ¹	Avg. Partner Rate at Largest DC Firms (122-2,313 Lawyers) ²	Single Highest Partner Rate at DC Firm Akin Gump (809 Lawyers) ²	Avg. Partner Rate at DC Firm Sterne, Kessler (122 Lawyers) ²
\$789	\$743	\$785	\$577

Source:
¹ Plaintiff's Motion for an Award of Attorneys' Fees and Costs
² 2014 National Law Journal 350: Annual Survey of Nation's Largest Firms

31. Plaintiff uses a 2012 version of this NLJ largest firms' survey to justify its requested rates by stating that its rates "are consistent with the findings" of this "nationwide sampling of firm billing rates." Plaintiff, however, fails to explain that this "sampling" is of the nation's *largest* law firms and that the four individual firms plaintiff cites as useful comparisons to CREW range in size from 343 to 2,253 attorneys with a median attorney count of 700. Each of these four firms have multiple offices, and three out of the four have international presences in such locations as Hong Kong, Beijing, Berlin, and Abu Dhabi.¹⁹

¹⁹ Plaintiff's Motion, Exhibits A and D, www.hognalovells.com, www.hklaw.com, www.squirepattonboggs.com, www.dicksteinshapiro.com.

iv) Appropriate Use of Attorney Rate Surveys

32. As an expert witness, I have testified in many cases that survey data may be useful for determining the prevailing market rates in the relevant geographic area.²⁰ To this end, I have most commonly made use of data provided by the Survey of Law Firm Economics, such as the 2014 Survey discussed above, since these surveys provide data of attorneys and firms throughout the country, regardless of firm size, and enable one to focus on data of such firms by geographic region.
33. In contrast, the NLJ 350 Annual Survey presented by plaintiff provides billing rates of just the largest 350 firms in the nation. I have consistently testified that the NLJ billing figures can be misleading because they represent the rates for the country's absolutely largest law firms, who generally have between 200 and 4,000 attorneys and commonly have multi-offices and an international presence.²¹ I have also previously testified that the NLJ surveys may be useful in the narrow situation of analyzing billing rates for any of the large firms that participate in that survey.²²
34. To understand the respective usefulness of each of the two surveys, one must recognize the types of firms that participate in each survey and what each survey's data ultimately represent. The NLJ 350 is a survey of only the largest law firms in the country, ranked each year by the number of attorneys at each firm. Such firms generally have multiple offices in multiple countries, and offer the types of services that such large, international firms can such as international mergers, trade disputes and international dispute resolution. The Survey of Law Firm Economics, by contrast, surveys all types of firms in the country, including very small, one-office firms as well as the country's largest law firms that also participate in the NLJ survey. Sampled firms may offer services as diverse as a single plaintiff personal injury matter and a global financial regulation case.

²⁰ See, for example, Affidavit of Dr. Laura A. Malowane, *Beth M. Norden v. G. Wayne Clough, Secretary Smithsonian Institution*, Case No. 05-1232 RMC, and Declaration of Dr. Laura A. Malowane, *Queen Anne's Conservation Association v. United States Department of States, et al.*, Civil Action No. 10-0670 (CKK).

²¹ See for example, Affidavit of Dr. Laura Malowane in *Beth M. Norden v. G. Wayne Clough, Secretary, Smithsonian Institute*, page 13 and Supplemental Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankrazt, et al. v. The United States*, p. 6.

²² Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankrazt, et al. v. The United States*.

35. In a factual situation where one is attempting to understand the billing rates of attorneys at the nation's absolutely largest firms who provide services typical of such firms, the NLJ survey is useful. As stated in the Memorandum Opinion of the *Heller* matter, the NLJ surveys "are based on rates typically charged by practitioners at the largest law firms in the District of Columbia" and they "fail to establish that plaintiff's requested rates [the Salazar Matrix rates] are, in fact, the prevailing rates for attorneys engaged in federal litigation outside of the "big firm" context."²³ For other factual situations where it is desired to understand the median billing rates of *any* size firm and *any* type of attorney service, the Survey of Law Firm Economics is more useful.
36. Consistent with the *Heller* opinion and the inherent differences between the two surveys, I have used the NLJ survey only in cases where the attorneys requesting the fees are part of the actual "big firms" in the survey. Plaintiff baselessly implies that I have "rebutted" my own previous testimony and that my opinion in the *Heller* matter and other cases with similar types of attorneys is somehow superseded by the fact that I submitted another opinion in a subsequent case where different facts necessitated use of a different survey. Specifically, in the matter of *Dorothy L. Biery, et al., and Jerramy and Erin Pankraz, et al. v. The United States*, Civil Action No. 07-693L and 07-675L, I provided testimony that the NLJ survey may be useful when analyzing billing rates for any of the large firms that participate in that survey. In my declaration I stated that to determine whether the actual billing rates of the 135th and 150th largest national firms were consistent with market rates it is useful to look at *similarly sized firms* with their principal office location in Washington, DC.²⁴ [Emphasis added] In that same case I also testified that it is an important factor to consider that The National Law Journal is a survey of the largest firms in the country and it can therefore "be misleading when used as a measure of reasonable rates for attorneys from small, one-office firms."²⁵ Thus I do not claim that one survey or the other is more factually correct, but rather that each survey is useful for different purposes.

23 *Dick Anthony Heller v. District of Columbia*, Memorandum Opinion, pages 24 and 28.

24 Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankraz, et al. v. The United States*, p. 5.

25 Supplemental Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankraz, et al. v. The United States*, p. 6.

II) The CPI-US Legal Services Does Not Reflect the Relevant Services, Geographic Region or Pricing Changes

i) The CPI-US Legal Services Does Not Accurately Capture the Relevant Services or Geographic Region

37. The USAO Laffey Matrix updates its rates annually using the CPI-Washington, a consumer index for the greater Washington, DC area. The Salazar Matrix's rates are updated annually using the CPI-US Legal Services, an index of consumer legal services for cities across the country. It is illogical to conclude that the Salazar Matrix is preferred because it uses a legal services index to update attorney rates, while the USAO Laffey Matrix uses a Washington, DC index to update its rates.

38. When using indices to update prices economists try to use the most specific index available. In this regard, an index that tracks pricing changes for federal litigation services in the Washington, DC area would be ideal. Since such an index is not available, it is necessary to seek a next best alternative, which, as I explain in more detail below, is the CPI-Washington.

39. While the CPI-Washington does not specifically track pricing changes for federal litigation services, it does track overall inflationary trends in the relevant region of greater Washington, DC. By comparison, the CPI-US Legal Services utilized by the Salazar Matrix tracks neither regional inflationary trends, nor supply and demand induced pricing changes of the relevant services.

40. The CPI-US Legal Services is a sub-component of the broader national CPI published by the BLS. The national CPI is a measure of the changes in prices paid by urban consumers for a market basket of consumer goods and services. "Legal services" is one such consumer service in the CPI's market basket, and pricing changes over time for these services are what is being measured in the CPI-US Legal Services used by the Salazar Matrix. Despite the generic title of "Legal Services" used by the BLS, the CPI-US Legal Services does not purport to measure the types of legal services at issue in this matter, or in any case in federal litigation. Instead, the CPI-US Legal Services is based on price movements for basic, personal legal services in several urban centers in the United States. The specific services tracked by the CPI-US Legal Services are simple legal services that

may be used by typical household consumers in a given year, such as basic wills, uncontested divorces, powers of attorney, and traffic violations.²⁶

41. In measuring pricing changes for consumer legal services, the CPI-US Legal Services does not track the forces of supply and demand for federal litigation services. The demand for the types of personal legal services covered by the CPI-US Legal Services come from people who need help with particular kinds of cases (such as uncontested divorce), and the supply of personal legal services comes from lawyers with knowledge of local rules for those kinds of cases. By contrast, the demand for federal litigation comes from individuals or corporations who need help with such intricate issues as public-interest litigation, and the supply of legal services for these cases comes from lawyers with experience in those areas. Because of legal specialization and the skills necessary to supply specific legal services, there is no reason to expect that lawyers who supply federal litigation services also supply basic, personal, legal services.
42. Due to these intricacies in both demand and supply, the CPI-US Legal Services can and should be used only to measure average urban price changes for simple and consumer driven legal services.²⁷ There is no justification for using the CPI-US Legal Services to measure price changes for other products or services such as federal litigation services. But this is exactly how the Salazar Matrix uses the CPI-US Legal Services.
43. Not only does the CPI-US Legal Services not measure pricing changes in the services at issue, it also does not measure pricing changes in the region at issue. The CPI-US Legal

²⁶ The BLS states “The consumer price index program (CPI) calculates price indexes for legal services fees. These price indexes are primarily based on the price movement of the following specific flat-fee legal services. These pre-selected services are non-business related and include: 1. Preparing a brief, 2. Attending a deposition, 3. No fault or uncontested divorce, 4. Prenuptial agreement, 5. Wills and trusts, 6. Living wills, 7. Power of attorney, 8. Driving under the influence (DUI), 9. Traffic Violations, 10. Personal Bankruptcy, 11. Immigration/work visas.” (Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, p. 13.)

²⁷ In fact, the BLS itself makes a distinction in its Producer Price Index (“PPI”) between “Legal Services” and services provided by “Offices of Lawyers.” It further breaks down its “Offices of Lawyers” PPI into sub-indexes for the legal specialties of Corporate, Real Estate, Civil Negligence, Banking and Commercial, Insurance, Wills, Estate Planning and Probate, and Other Legal Services. If the producer pricing changes within each of these law specialties followed similar patterns it would be redundant for the BLS to track the indexes separately. (www.bls.gov/ro3/ppilegal.htm)

Services averages price changes for specific flat-fee services across certain US cities. As I explain below, there is no reason to expect that this average is representative of any particular city, including Washington, DC.

44. Due to the importance of local rules as well as the convenience of the client, basic, consumer legal services tend to be regional in nature. An individual seeking legal assistance for a traffic violation or an uncontested divorce, for example, will most commonly seek a local attorney. There is no reason to believe that an attorney in Chicago, for example, would (or even could) provide these types of services to an individual in Los Angeles, or that an individual consumer in Los Angeles would seek an out-of-state attorney for such personal services.
45. Moreover, the specific components necessary to provide a basic legal service may also differ by region. A no-fault divorce, for example, may require different attorney time and expense commitments in one region versus another because of local laws. Thus the flat-fee charged for such a service (which is what the CPI-US Legal Services measures) may be different by locality simply because the services required are different.
46. Because of the regional nature of personal legal services as well as differences in local legal requirements, consumer legal fees are unlikely to be uniform nationwide. The CPI-US Legal Services, by averaging price changes across many different cities, is simply providing a national urban average. There is no reason to expect that this average appropriately reflects the Washington, DC area or any other particular city.
47. Also of importance is that the purpose of the USAO Laffey Matrix and the Salazar Matrix is to measure reasonable hourly rates of lawyers. The CPI-US Legal Services used by the Salazar Matrix does not measure pricing changes in hourly rates. Instead, the CPI-US Legal Services is “primarily based on the price movements of the specific flat-fee legal services.”²⁸ (Emphasis added) To determine prices for the CPI-US Legal Services, the BLS contacts consumer-oriented attorneys and records prices they charge for a defined “procedure” (such as a basic will). In other words, the CPI-US Legal Services tracks fees for an entire service, not hourly rates that are merely one component of that flat-fee.

²⁸ Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers, p. 13.

48. The flat-fee tracked by the CPI-US Legal Services covers all the time spent to provide the service and may include other charges, such as travel expenses, document and filing fees, and postage costs. A change in local laws, such as requirements to obtain a divorce, may entail a change in the amount of time or expense necessary to render the service. Thus, the flat-fee charged for a specific legal service can change simply because of changes in the expected time and expenses needed to perform the service, rather than because of any change in hourly rates. For these reasons, a flat-fee index such as the CPI-US Legal Services can change at a different rate than hourly prices – even for the exact same type of legal service being performed.²⁹
49. At most law firms, standard hourly billing rates account for the vast majority of gross billings.³⁰ For example, in a 1998 national law survey, only 12% of firms in Washington, DC received more than 10% of their income from flat-fee services.³¹ Put another way, 88% of Washington, DC law firms surveyed received 10% or less of gross billings in the form of flat-fees.
50. A more recent survey of law firms provides similar findings. In a 2009 National Law Journal Survey, firms were asked whether they provide alternatives to hourly billing rates (such as flat-fees) and, if so, what percentage of their revenue the alternative billings represent. For those firms that provide flat-fee and other alternative billings, an average of 11% of their revenue comes from such billings. For firms that provide alternative billings whose main office is in Washington, DC, only 8% of revenue is received through such billings. Since this survey did not separate out flat-fee billings from other alternative billings (such as discount fees) it is not determinable what percentage of these firms' revenue come from flat-fee billings alone. Despite this lack of specific data, it can be said with certainty that Washington, DC law firms that offer flat-fee billings receive at most

²⁹ The BLS states that firms change their hourly rates annually or bi-annually, while flat fees do not change as often. (Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 – Offices of Lawyers., p. 13)

³⁰ Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, National Edition, June 1, 1998, p. xi. This survey was cited in the *Salazar v. District of Columbia* decision.

³¹ Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, p. xi.

8% of their revenue from such billings and, in all likelihood, something much less.³² Of course, Washington, DC law firms that do not offer flat-fee services at all receive 0% of their revenue from such billings.

51. These surveys reveal that hourly billing rates are overwhelmingly more commonplace than flat-fee pricing for attorney services. The CPI-US Legal Services does not accurately capture the relevant services or geographic region at issue and primarily measures price changes in the types of fees a very small minority of law firms charge and from which few law firms derive any significant revenue.

ii) The CPI-US Legal Services Does Not Accurately Capture the Relevant Pricing Changes

52. The inapplicability of the CPI-US Legal Services to the service, region and billing method at issue is apparent when one compares the rate of changes of attorney fees in the Salazar Matrix between 2008 and 2011 and the rate of changes in actual average hourly billing rates in the Washington, DC metro area for the same time period.³³ To do this comparison I use data provided in the annual Survey of Law Firm Economics. Table 8 shows that while the Salazar Matrix rates increased between 2008 and 2011 by approximately 10% for all experience levels, actual average rates in the DC area changed anywhere between a decline of 1.6% and an increase of 6%. By comparison, rates for the USAO Laffey Matrix increased by varying amounts between approximately 6% and 8% during this time period. Thus, although rates in both matrices increased faster than actual average billing rates in Washington, DC, the USAO Laffey Matrix better approximates the changes in these actual rates.³⁴

32 The small number of surveyed firms that cite flat or fixed-fee billing as their only method of alternative billing receive 5% of revenue from such billings. 2009 National Law Journal Billing Survey.

33 2011 rates are the most recent billing rates commercially available for firms in the Washington, DC area.

34 By increasing faster than actual average billing rates, both matrices have the potential to provide rates that over-compensate attorneys. However, since the CPI-Washington better tracks actual changes in prevailing attorney rates in Washington, DC, the USAO Laffey Matrix will have the tendency to overcompensate by a lesser amount than the Salazar Matrix.

Years Since Law School	Salazar Matrix ¹	USAO Laffey Matrix ²	Average Billing Rates (Washington, DC) ³
20+ years	9.9%	8.0%	6.0%
11-19	9.9%	7.7%	-1.6%
8-10	9.9%	6.3%	2.4%
4-7	9.7%	7.8%	5.4%
1-3	9.7%	7.0%	1.9%

Source: ¹ www.laffeymatrix.com
² http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf
³ ALM Legal Intelligence, Survey of Law Firm Economics, 2008 and 2011

53. When using indices to update prices, economists try to use the most specific index available. In this regard, an index that tracks pricing changes for federal litigation services in the Washington, DC area would be ideal. To my knowledge no such index exists. As discussed, the CPI-Washington does not track the relevant services (federal litigation) but does track the relevant area (Washington, DC). However, there exists another index at the Bureau of Labor Statistics that, to my understanding, provides pricing changes for services that are close in nature and complexity to federal litigation. Specifically, the BLS provides a Producer Price Index for offices of lawyers providing civil negligence legal services (“PPI-Civil Negligence”). This index tracks changes of prices received by law firms for civil negligence legal services.

54. Table 9 provides the percentage changes of the PPI-Civil Negligence index over time as compared to the CPI-Washington and the CPI-US Legal Services indexes.³⁵ The figures reveal that, for each time period measured, the CPI-Washington very closely tracks the changes in prices measured by the PPI-Civil Negligence. For example, prices for consumer goods in Washington, DC as measured by the CPI-Washington have increased

³⁵ The BLS does not provide data earlier than 1996 for the PPI-CPI Negligence.

54.7% over the last 18 years, while prices for civil negligence legal services as measured by the PPI-Civil Negligence have increased by an almost identical amount of 54%. By contrast, prices for consumer oriented legal services as measured by the CPI-US Legal Services have increased by 102.7% over the same 18-year period; nearly double the rate of the price of civil negligence legal services.

Year	Number of Years	PPI Civil Negligence	DC CPI	CPI Legal Services
1996	18	54.0%	54.8%	102.7%
1997	17	52.9%	53.6%	94.4%
1998	16	50.2%	51.7%	85.5%
1999	15	46.4%	48.6%	76.9%
2000	14	43.0%	43.9%	68.2%
2001	13	39.2%	40.3%	59.6%
2002	12	35.9%	37.0%	50.9%
2003	11	33.2%	33.3%	43.7%
2004	10	27.0%	29.6%	37.1%
2005	9	22.6%	24.6%	31.7%
2006	8	18.6%	20.2%	27.4%
2007	7	14.0%	16.0%	22.4%
2008	6	10.7%	11.0%	17.6%
2009	5	9.1%	10.8%	14.5%
2010	4	6.9%	8.9%	10.5%
2011	3	4.8%	5.4%	7.1%
2012	2	3.1%	3.1%	5.0%
2013	1	1.6%	1.5%	2.1%
2014	--	--	--	--

Source: <http://www.bls.gov/data/>

55. Since the changes in rates provided by the USAO Laffey Matrix are directly related to the CPI-Washington, Table 9 shows that over the last 18 years the USAO Laffey Matrix rates have increased at nearly the same percentage as the prices of civil negligence legal services. In contrast, the rates provided by the Salazar Matrix, which are directly related to the CPI-US Legal Services, have increased over the last 18 years at nearly double the percentage as the prices of civil negligence legal services. Moreover, in every time period

examined, the USAO Laffey Matrix more closely tracks pricing change of civil negligence legal services than does the Salazar Matrix.

III) Salazar Matrix Does Not Represent Rates of the Vast Majority of Attorneys

56. As discussed above, the Salazar Matrix rates are as high as, or higher than, most partner rates of the Washington, DC firms that are included in the nation's largest 350 firms. Recent data indicate that approximately 128,000 attorneys work in the country's 350 largest law firms.³⁶ According to the American Bar Association, there exist approximately 1.27 million attorneys in the United States. Thus, attorneys at the largest law firms in the country represent less than 10% of nation's total available attorneys.

57. Since the Salazar Matrix rates are similar or higher than fees charged by the absolute largest firms in the country, its rates represent, at most, 10% of the attorneys in the country and likely a much smaller percentage than that.³⁷ As this Court has stated in the *Heller* matter, the requesting party has failed to provide "specific evidence that [the Salazar Matrix] rates are, indeed, the prevailing market rates for attorneys engaged in complex federal litigation outside the District of Columbia's largest law firms."³⁸

58. If indeed the USAO Laffey Matrix did not approximate a reasonable rate for attorneys in federal litigation cases in the Washington, DC area, one would expect to see most attorneys in such matters request of this Court to award rates that are higher than the USAO Laffey Matrix provides. To determine if this is indeed the case, I reviewed decisions by this Court over the last five+ years in which it could be determined what

³⁶ <http://www.law360.com/articles/518950/law360-reveals-400-largest-us-law-firms>

³⁷ The data show that the Salazar Matrix rate that plaintiff's counsel is requesting is higher than eight out of twelve of the country's largest law firms headquartered in Washington, DC. For this reason, the Salazar Matrix likely represents rates at a small fraction of even the largest 350 firms in the country, and thus likely even less than 10% of attorneys in the country.

³⁸ *Dick Anthony Heller v. District of Columbia*, Memorandum Opinion, page 29.

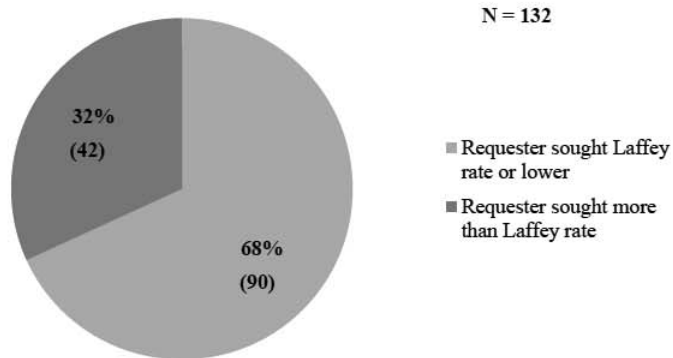
fees the requesting party was asking for, or which Matrix the requesting party was relying on.³⁹

59. Chart 1A reveals that, in cases where the USAO Laffey Matrix rates were identified, 68% of requesters sought rates that were the same as or lower than the USAO Laffey Matrix rates, and just 32% sought rates higher than the USAO Laffey Matrix. I also examined cases where the Salazar Matrix rates, rather than the USAO Laffey Matrix rates, were identified. I did this to ensure that there is no significant difference in the results if one or the other matrix's rates are identified in the case. As shown in Chart 1A, the results are similar regardless of which matrix is identified in the case. For cases where the Salazar Matrix rates were identified, 71% of the requesters sought rates that were lower than those found in the Salazar Matrix, and only 29% requested rates at or above the Salazar Matrix.
60. A review of the cases represented in Chart 1A reveals that one particular attorney, Douglas Tyrka, is the requester in a significant number of the cases. In Chart 1B I remove all cases involving this one attorney in order to accurately reflect which matrix rates all other attorneys are requesting. Chart 1B indicates that, in cases where the USAO Laffey Matrix rates were identified, 82% of all requesters other than this one attorney sought rates that were the same as or lower than the USAO Laffey Matrix Rates. For cases where the Salazar Matrix rates were identified, 85% of the requesters other than Mr. Tyrka sought rates that were lower than those found in the Salazar Matrix.
61. The fact that the vast majority of attorneys requesting this Court to award fees ask for hourly rates that are the same as or lower than the USAO Laffey Matrix indicates that the matrix represents a reasonable average market rate for attorneys in federal litigation cases in the Washington, DC area. Similarly, such a small minority of attorneys requesting rates that are the same as or greater than Salazar Matrix rates indicates that the rates of this matrix are not representative of a reasonable average market rate.

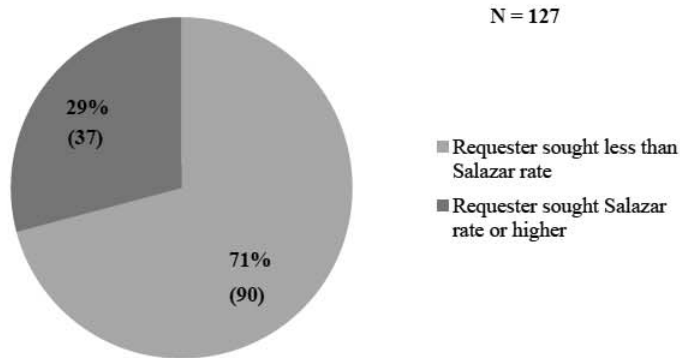
³⁹ In particular, I used LexisNexis to identify cases dated between April 1, 2010 and July 15, 2015 that used the term "attorney fee" and included any of the following additional words or phrases: Legal Services Index, LSI, lodestar, hourly, Laffey, Matrix, Salazar, or enhanced. I reviewed each of these cases and further identified that 132 of these cases had sufficient information to determine the general amount of fees or Matrix rates being requested, the fees or Matrix rates being awarded by the court, or both. A list of the 132 cases can be found in Appendix 7.

Chart 1A
Attorney Fee Requests
U.S. District Court for the District of Columbia
4/1/2010 to 7/15/2015

Cases where USAO Laffey Matrix Rates were identified



Cases where Salazar Matrix Rates were identified

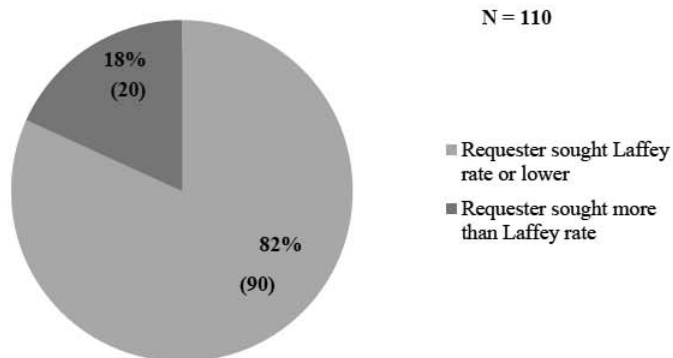


Note: Cases are those identified as relevant among all cases revealed by a LexisNexis search that used the term "attorney fee" and any of the following additional words or phrases: Legal Services Index, LSI, lodestar, hourly, Laffey, matrix, Salazar, or enhanced.

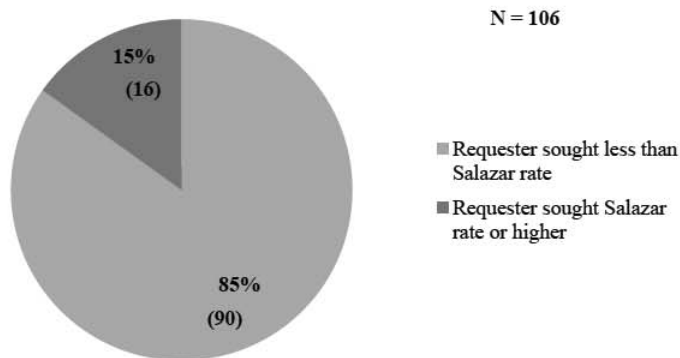
Source: Appendix 7

Chart 1B
Attorney Fee Requests Excluding D. Tyrka
U.S. District Court for the District of Columbia
4/1/2010 to 7/15/2015

Cases where USAO Laffey Matrix Rates were identified



Cases where Salazar Matrix Rates were identified



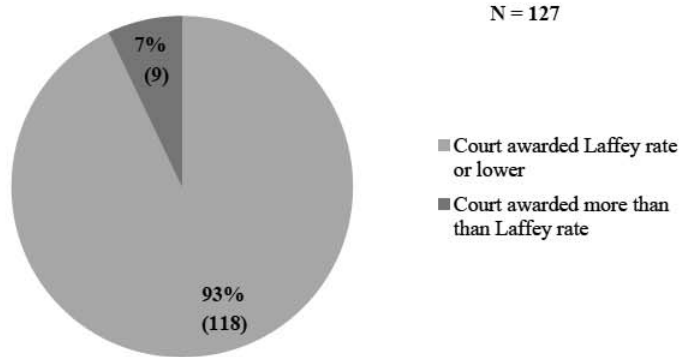
Note: Cases are those identified as relevant among all cases revealed by a LexisNexis search that used the term "attorney fee" and any of the following additional words or phrases: Legal Services Index, LSI, lodestar, hourly, Laffey, matrix, Salazar, or enhanced.

Source: Appendix 7

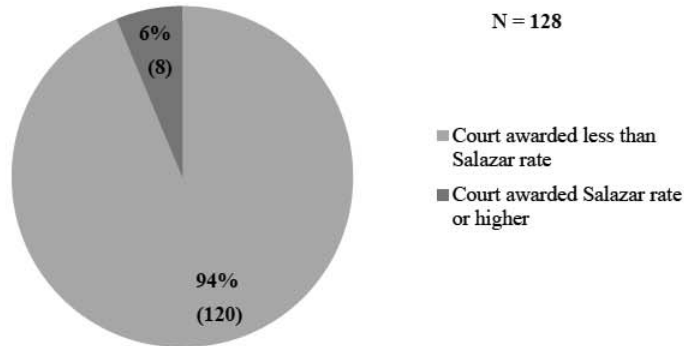
62. I also reviewed these same cases to determine if this Court is awarding fees that are more in line with the USAO Laffey Matrix or the Salazar Matrix. Chart 2A shows that, of the cases where the USAO Laffey Matrix rates were identified, the Court awarded rates in line with or lower than those of the USAO Laffey Matrix 93% of the time, and rates higher than the USAO Laffey Matrix rates just 7% of the time. Similarly, in cases where the Salazar Matrix rates were identified, the Court awarded rates lower than the Salazar Matrix rates in 94% of the cases, and rates the same or higher than those in the Salazar Matrix just 6% of the time. Chart 2B illustrates the same information as 2A, but with the removal of cases involving the one attorney discussed above. The findings in Chart 2B are quite similar to 2A and both show that the Salazar Matrix does not represent the rates of the vast majority of relevant attorneys in Washington, DC and also does not represent the appropriate rate of the plaintiff's attorney at issue.

Chart 2A
Attorney Fees Awarded by Court
U.S. District Court for the District of Columbia
4/1/2010 to 7/15/2015

Cases where USAO Laffey Matrix Rates were identified



Cases where Salazar Matrix Rates were identified

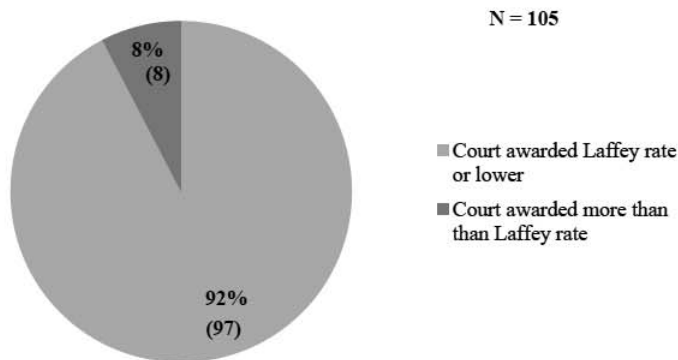


Note: Cases are those identified as relevant among all cases revealed by a LexisNexis search that used the term "attorney fee" and any of the following additional words or phrases: Legal Services Index, LSI, lodestar, hourly, Laffey, matrix, Salazar, or enhanced.

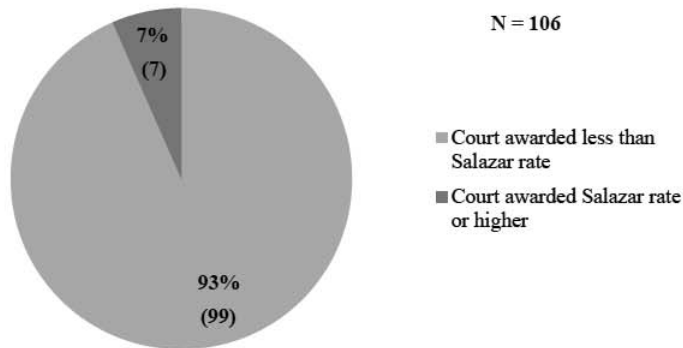
Source: Appendix 7

Chart 2B
Attorney Fees Awarded by Court Excluding D. Tyrka
U.S. District Court for the District of Columbia
4/1/2010 to 7/15/2015

Cases where USAO Laffey Matrix Rates were identified



Cases where Salazar Matrix Rates were identified



Note: Cases are those identified as relevant among all cases revealed by a LexisNexis search that used the term "attorney fee" and any of the following additional words or phrases: Legal Services Index, LSI, lodestar, hourly, Laffey, matrix, Salazar, or enhanced.


Source: Appendix 7

CONCLUSION

63. The USAO Laffey Matrix is a more appropriate matrix to use than the Salazar Matrix for the purposes of determining plaintiff's attorneys' fees. The USAO Laffey Matrix more accurately reflects actual attorney rates in Washington, DC and the rates of the vast majority of attorneys. With the use of the CPI-Washington, the USAO Laffey Matrix and its rates therein, more accurately captures the relevant services and geographic region for attorneys' fees in federal litigation cases in the Washington, DC area. The Salazar Matrix, in contrast, reflects rates charged by attorneys at the absolute largest firms in the country and that represent a very small fraction of attorneys in the country. I also conclude that, as estimated by the best available data, the prevailing hourly rate in the community for litigation attorneys with similar experience as that of plaintiff's attorneys is between \$390 and \$512. This range is slightly lower than the \$520 rate indicated by the USAO Laffey Matrix and is much lower than the \$789 rate requested by plaintiff.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 22, 2015


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Education

Ph.D. Economics, 1998
Princeton University

M.A. Economics, 1995
Princeton University

MBA, 1991
York University, Schulich School of Business

LL.B., 1991
York University, Osgoode Hall Law School

B.A. Economics, 1987
York University

Professional Experience

2005-Present: Vice President, Economists Incorporated

1998-2005: Senior Economist, Economists Incorporated

1997-1998: Lecturer, Princeton University, Woodrow Wilson School of
Public Policy

1994-1997: Senior Economist, Princeton Economics Group

Professional Experience (continued)

- 1992-1993: Law Clerkship, McMillan Binch, Barristers & Solicitors
- 1989: Economic Analyst, Environment Canada, Government of Canada
- 1988: Economic Analyst, Department of Regional Industrial Expansion, Government of Ontario

Articles and Papers

- “Estimating Lost Earnings for a Single Plaintiff,” *Economists Ink*, Spring 2015 (with Benjamin S. Shippen)
- “Wrongful Death Damages and Personal Consumption Offsets,” *Economists Ink*, Winter 2015.
- “E-Commerce Tax Implications of the Marketplace Fairness Act,” *Economists Ink*, Winter 214.
- “Supreme Court Ruling Concerns Antitrust Fines and Evidence of Economic Effects,” *Economists Ink*, Fall 2012.
- “Calculating Awards of Attorney Fees,” *Economists Ink*, Summer 2011.
- “Resale Price Maintenance and the Rule of Reason,” ABA Section of Antitrust Law, *Economics Committee Newsletter*, Volume 10, Number 1, Summer 2010 (with Allison Holt).
- “Assessing Monopolization Claims in the Face of Innovation,” *Economists Ink*, December 2009 (with Barry C. Harris and Matthew B. Wright).
- “Resale Price Maintenance and the Rule of Reason,” *Economists Ink*, Summer 2008.
- “Geographic Market Definition In Markets with Imports: Evolution of Antitrust Agency Analysis,” *The Threshold*, 2007 (with Philip Nelson and Robert Kneuper).
- “Imports and Geographic Market Definition,” *Economists Ink*, Spring 2007.
- “The Deterrence Value of Punitive Damages,” *Economists Ink*, Fall 2001 (with Jonathan Walker).

Articles and Papers (continued)

“Exporters to the U.S. Apparel Industry: The Significance of Geographic Proximity,” *Economists Ink*, Fall 1998.

“Foreign Competition, Domestic Market Power and Antitrust Policy: A Survey and Analysis,” (Princeton University, Spring 1998).

“International Competition, Antitrust Policy and Asymmetric Information: When are Foreign Firms a Sufficient Competitive Discipline?” (Princeton University, Fall 1997).

“Foreign Competition in the U.S. Apparel Industry,” (Princeton University, Spring 1998).

Testimony

Laura J. Makray v. Thomas E. Perez, Secretary of Labor – Provided declaration and supplemental declaration on behalf of defendants regarding rate matrixes to use for assessing attorneys’ fees, United States District Court for the District of Columbia, Civil Action No. 12-0520 (BAH), 2015.

Premium Pet Health v. All American Pet Proteins, et al. - Provided report and rebuttal report on behalf of plaintiff regarding damages and lost profits due to tortious interference, employee misconduct and breaches of loyalty, District Court, Denver County, Colorado, Case Number: 2014cv31356, Div./Ctrm.: 259, 2015.

Citizens for Responsibility and Ethics in Washington v. U.S. Department of Veterans Affairs – Provided declaration on behalf of defendants regarding rate matrixes to use for assessing attorneys’ fees, United States District Court for the District of Columbia, Civil Action No. 08-1481 (PLF), 2015.

Caroline Herron v. Fannie Mae - Provided expert report and deposition testimony on behalf of defendant regarding damages in a wrongful termination claim, United States District Court for the District of Columbia, Civil Action No. 10-943 (RMC), 2015.

Steven Farrell v. Great Eastern Resort Corporation, et al. – Provided report on behalf of plaintiff to address report on behalf of plaintiff to address antitrust and economic issues in the timeshare industry, in the United States District Court for the Western District of Virginia, Harrisonburg Division, No. 5:13 CV 00075, 2013.

Testimony (continued)

Gary Martin v. United States of America – Provided expert report and deposition testimony on behalf of defendant regarding damages in a wrongful death claim, in the United States District Court for the District of New Hampshire, No. 11-CV-593-JL, 2013.

Elizabeth Abel, et al. v. CSX Transportation, et al. – Provided declaration on behalf of defendants regarding punitive damages in a railway accident matter, in the Philadelphia County Court of Common Pleas, No. 000769, 2013.

Fred E. Evans, et al. v. United States, and Edward L. Bright, II et al. v. United States – Provided declaration on behalf of plaintiffs regarding the competitive market rates of attorneys, in the United States Court of Appeals for the Federal Circuit, No. 2010-1303 and No. 2010-1385, 2012.

Cynthia Hyland v. Raytheon Company, Raytheon Technical Services Company, Heidrick & Struggles, Inc., Bryan J. Even, and Laura Miller – Provided report and trial testimony on behalf of defendant regarding damages in retrial of defamation and wrongful termination case, in the Circuit Court for Fairfax County at Law No. 221038.

Michael Akosile v. Armed Forces Retirement Home – Provided report on behalf of defendants with respect to the state of the job market for health care workers, in the United States District Court for the District of Columbia, No. 09-CV-173 (RBW), 2012.

Steven J. Hatfill, M.D., v. John Ashcroft, et al. – Provided report and deposition testimony on behalf of the Department of Justice regarding damages stemming from alleged violation of constitutional rights of an individual labeled as a person of interest in the investigation of the mailing of lethal Anthrax letters in the United States, United States District Court for the District of Columbia, Civ.A. No.03-1793 (RBW).

Beth M. Norden v. G. Wayne Clough, Secretary, Smithsonian Institution – Provided affidavit on behalf of the Smithsonian Institution addressing acceptable methods for assessing attorneys' fees, in the United States District Court for the District of Columbia, Case No. 05-1232 (RMC).

Dorothy L. Biery, et al, and Jerramy and Erin Pankratz, et al., v. The United States – Provided declaration on behalf of plaintiffs regarding the relevant market for attorney fees and the reasonableness of current billing rates, in the United States Court of Federal Claims, No. 07-693L and 07-675L, 2012.

Testimony (continued)

Mohammed Amin Kakeh v. United Planning Organization – Provided affidavit regarding the appropriate method to use to value attorney fees, in the United States District Court for the District of Columbia, No. 1:05-CV-1271 (GK/JMF).

Margaret A. Burnette v. Vangent – Provided expert report on behalf of defendant on the valuation of damages stemming from allegations of sexual discrimination and wrongful termination, in the United States District Court for the Eastern District of Virginia (Alexandria Division), No. 1:10 CV 1079, 2011.

Reginald G. Moore, et al. v. U.S. Department of Homeland Security – Provided declaration on behalf of the Department of Homeland Security regarding appropriate statistical methods in relation to a discrimination matter of Secret Service employees, in the United States District Court for the District of Columbia, Civ. No. 000-953 (RWR/OAR), 2010.

Queen Anne's Conservation Association v. United States Department of State – Provided declaration on behalf of defendant regarding the appropriate use of the Laffey Matrix for the calculation of attorney's fees, in the United States District Court for the District of Columbia, No. 10-0670 (CKK), 2010.

Oscar Salazar, et al. v. District of Columbia, et al. – Provided affidavit on behalf of defendants regarding the appropriate method for determining attorneys' fees, in the United States Court for the District of Columbia, No. 93-452 (GK), 2010.

American Thoracic Society v. American Lung Association – Provided affidavit on behalf of defendant regarding the use of discount rates and consumer price indexes to properly capture the time value of money in present and future income values, in the Superior Court of the District of Columbia, No. 2009 CA 004543 B, 2010.

Dick Anthony Heller v. The District of Columbia – Provided declaration on behalf of defendant in relation to the appropriate methods for valuing attorneys' fees and the usage of the Laffey Matrix, in the United States District Court for the District of Columbia, No. 03-CV-0213-EGS, 2010.

Gist and Herlin Press, et al. v. Jeffery D. Poland and The Pension Service, Inc. - Provided economic analysis and deposition testimony on behalf of plaintiffs regarding damages stemming from erroneous pension funding estimates, in the Superior Court for the Judicial District of Waterbury, No: X10 UWY-CV-05-40101305.

Testimony (continued)

Cynthia Hyland v. Raytheon Company and Raytheon Technical Services Company – Provided report, trial and deposition testimony on behalf of defendant regarding damages in defamation and wrongful termination case, in the U.S. District Court for the Eastern District of Virginia (Alexandria Division), No. 1:04CV1273, 2005; Circuit Court for Fairfax County at Law No. 221038.

Victoria Gray v. American Academy of Achievement – Provided affidavit on behalf of defendants regarding analysis of damages from breach of services contract, Superior Court of the District of Columbia, No. 04ca003012, 2005.

Neurology Services v. Fairfax Medical – Provided affidavit on behalf of defendant regarding economic losses in a breach of contract case, in the Circuit Court for Fairfax County, No. L220451, 2005.

Mario Panayutidis v. Bill Page Imports – Provided report on behalf of defendants regarding damages in a wrongful termination case, in the U.S. District Court for the Eastern District of Virginia (Alexandria Division), No. 1:05CV604, 2005.

Kevin T. Keleghen v. Sears, Roebuck and Co. – Provided affidavit and deposition testimony on analysis of economic losses on behalf of plaintiff in defamation and breach of contract case, Circuit Court of the Nineteenth Judicial Circuit Lake County, Illinois, No. 02L938, 2005.

World Trade Center, Victims Compensation Fund: Raymond Murphy – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Dennis McHugh – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Robert Crawford – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

Testimony (continued)

World Trade Center, Victims Compensation Fund: Thomas Farino – Co-authored written report and provided oral expert testimony before the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: James Corrigan – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a retired New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: John Moran – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a New York firefighter that died on 9/11.

World Trade Center, Victims Compensation Fund: Nathaniel Webb – Co-authored written expert testimony to the Victims Compensation Fund regarding economic losses to the family of a Port Authority police officer that died on 9/11.

Section 201 Steel- Co-authored written expert testimony for the International Trade Commission regarding the financial and economic state of the domestic steel industry, 2001 (No. 201-TA-073).

Lockheed Martin/COMSAT – Co-authored written expert testimony to the Federal Communications Commission regarding an analysis of the competitive impact of a proposed merger in the satellite industry, 1999.

Honors and Awards

Princeton University Full Graduate Fellowship – 1997, 1996, 1995, 1994, 1993
Ontario Graduate Scholarship – 1991, 1990, 1988
York University Business School Dean’s Honor Roll – 1991, 1990, 1988
York University Business School Proctor & Gamble Entrance Scholarship – 1987
York University Scholarship – 1987, 1986, 1985
York University Economics Award – 1987

Selected Consulting Matters

Asbestos and RICO Litigation – Performed damage analysis on behalf of plaintiff in a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 2012.

Selected Consulting Matters (continued)

Sue O'Brien et. al. v. Leegin Creative Leather Products, Inc. – Assistance with liability and damages in resale price maintenance case, in the Eighteenth Judicial District Court, Sedgwick County, Kansas, Civil Department, No. 04CV1688.

Patrick J. Cunningham and Anton N. Zanki v. International Business Machines Corporation – Provided liability and damage analysis on behalf of defendant concerning alleged breach of contract of employee retirement benefits.

Unions and RICO Litigation – Performed damage analysis on behalf of plaintiff regarding contract interference and allegations under the Racketeer Influenced and Corrupt Organizations Act (RICO), 2011.

In Re: Ideal Mortgage Bankers, Ltd. – Performed damage analysis on behalf of defendant in class action case involving alleged violation of the Fair Labor Standards Act, 2008.

Lead Paint Litigation – Provided assistance in several individual cases with the estimation of damages from the use of lead in paints and pigments, 2007.

UPMC Acquisition of Mercy Hospital Assisted in Hart-Scott-Rodino and Pennsylvania Attorney General - Reviewed hospital transaction in Pittsburgh, Pennsylvania, 2007.

Arizona Nursing Services Investigation and Litigation – Economic analysis on behalf of defendants in government investigation and private litigation of alleged monopsony purchasing of temporary nursing services, 2006.

Amazon Study: Taxation of E-commerce - Performed studies on effects of taxation on internet transactions of various sized firms, 2004, 2009, 2012, 2014.

John Jonson, et. al., v. Big Lots Stores, Inc. – Assisted in analysis on behalf of defendant concerning alleged violation of Fair Labor Standards Act, 2008.

In Re: Lockheed Meridian, MS Shooting Incident – Assisted with estimate on behalf of defendant regarding damages, 2006.

In Re: Robin Singh d/b/a Test Masters – Assisted on behalf of plaintiff concerning damages in standardized testing preparation industry, 2007, 2009.

Harrah's Entertainment, Inc./Caesars Entertainment, Inc. Merger – Assisted in Casino Control Commission, State of New Jersey, review of competition related to casino merger, 2005.

Selected Consulting Matters (continued)

Estate of Peter Haskos, et al vs. Lee Jung, M.D. et al - Provided damage analysis for defendant in claim of wrongful death, State of Connecticut Superior Court Judicial District of New Haven, No. CV-01-0448262-5, 2004.

HealthAmerica v. Susquehanna Health System – Provided competition analysis for defendant in claim of monopolization, US District Court for the Middle District of Pennsylvania, No.4:CV-00-1525, 2001.

Alan Glazer et al. v. Dressbarn – Provided estimate of damages for women’s apparel catalog retailer regarding unfair business practices, State of Connecticut Superior Court, No. CV-01-01690755, 2002.

Anderson v. Washington Post – Analysis of economic losses on behalf of defendants in employment discrimination case, US District Court for the District of Columbia, No. 02-0002718, 2002.

DataSafe, Inc. and David F. Muller v. Federal Express Corporation et al. – Provided estimate of damages on behalf of defendants concerning damages to internet security provider from breach of contract, commonwealth of Massachusetts, Middlesex Superior Court, No. 01-2590, 2001.

Ertha Mae Williams v. CSX Transportation, Inc., et al. – Assisted with analysis on behalf of defendants concerning the economics of punitive damages, State of South Carolina, County of Hampton, No. 04-CP-25-267, 2004.

White v. Calomiris – Analysis for defendant concerning damages in wrongful injury case, Superior Court of the District of Columbia, No. 03-1833-mw, 2005.

Legi-Slate Inc. v. Thomson Information Services Inc. – Provided economic support on behalf of plaintiffs concerning damages to on-line content provider from breach of contract, US District Court for the District of Columbia, No. 99-1570, 2000.

Gordon v. Lewistown Hospital – Analysis for defendant in restraint of trade and tying claims of ophthalmologist, in the US District Court for the Middle District of Pennsylvania, No.1: CV99-1100, 2000.

Pineapple Antitrust Litigation – Assisted in analysis of alleged monopolization in pineapple industry, 2003, 2005.

Selected Consulting Matters (continued)

Dow Chemical/Union Carbide Merger – Assisted in Hart-Scott-Rodino review of competition related to chemical merger, 1999-2000.

State of Alabama v. Exxon Corporation – Assisted in the estimation and economics of punitive damages arising from a royalty and lease dispute, 2001.

Roll International Corporation and Paramount Farms, Inc. v. Unilever United States, Inc., et al. – Provided economic support on behalf of defendants regarding business valuation and damages to a snack food manufacturer in a breach of contract and fraudulent misrepresentation suit, 2001.

Ronald O. Lewis v. Booz-Allen & Hamilton, Inc. – Assisted in liability and damage issues concerning a discrimination suit, US District Court for the District of Columbia, No. 1:99CV00713, 2000.

Emad Kowatli, M.D. v. Russell County Medical Center, et al. – Provided damage analysis for defendant in matter of physician's loss of hospital privileges, in the US District Court in the Western District of Virginia, No. 98-142-A, 1999.

Ahold/Pathmark Proposed Acquisition - Assisted in Hart-Scott-Rodino review of competition related to grocery chain acquisition, 2002.

Greenlawn Funeral Home vs. Gobblers Knob Cemetery, et al. Provided economic support concerning claims of monopolization and tying in the cemetery industry, in the US District Court for the Western District of Missouri, Southern Division, No. 01-3258-CV-S-BB, 2002.

Section 201 Steel – Provided expert testimony before the ITC regarding the financial condition of the American steel industry, 2001.

Dr. Michael J. Galvin v. The New York Racing Association, Inc., et al. – Provided economic support on behalf of defendant regarding commercial damages in breach of due process and tortious interference suit, 2000.

Willie Brown, Jr., et al. v. General Motors Corporation, et al. – Performed economic analysis concerning lost NFL player earnings, 1999.

Compuware/Viasoft Proposed Acquisition – Competitive analysis for Compuware's attempted acquisition of Viasoft in the mainframe software industry, 1999.

Selected Consulting Matters (continued)

Transocean/R&B Falcon Proposed Acquisition – Assisted in Hart-Scott-Rodino review of competitive impact of a proposed merger in the drilling rig industry, 2000.

R&D Business Systems et al. v. Xerox Corporation – Provided antitrust consulting for defendants in a class action suit alleging tying and monopolization in the copier and printer industries, 1996.

Re Brand Name Prescription Drug Antitrust Litigation – Assisted in economic analysis for selected defendants regarding Robinson-Patman litigation in prescription drug industry, 1999.

Roanoke Neurosurgeons – Analysis of competitive effect of proposed merger of neurosurgery practices, 2000.

Integrated Payment Systems, Inc. v. Travelers Express Company – Analysis of alleged predatory practices in the money order industry, 1999.

Missouri HMOs – Analysis of product market and competitive effect of proposed merger of HMOs, 2000.

Regional Snacks Acquisitions – Analysis of antitrust implications of an investment group purchasing several salty snack manufacturers, 2000.

Oshkash/McNeilus Acquisition – Assisted in competitive analysis of acquisition in concrete mixer industry, 1999.

Appendix 2

Materials Reviewed

2009 National Law Journal Billing Survey

2014 National Law Journal Billing Survey

2014 National Law Journal 350: Annual Survey of Nation's Largest Firms

ALM Legal Intelligence, Survey of Law Firm Economics, 2008

ALM Legal Intelligence, Survey of Law Firm Economics, 2011

ALM Legal Intelligence, The 42nd Annual Survey of Law Firm Economics, 2014

Partner, Associate & Legal Assistant Billing Rate Survey for Law Firms, National Edition, June 1, 1998

Plaintiff's Motion for an Award of Attorneys' Fees and Costs, with Exhibits

Plaintiff's Memorandum of Points and Authorities in Support of Its Motion for an Award of Attorneys' Fees and Costs

Defendant's Opposition to Plaintiff's Motion for an Award of Attorneys' Fees and Costs, with Exhibits

Reply Memorandum in Support of Plaintiff's Motion for an Award of Attorneys' Fees and Costs, with Exhibits

Court Order Requesting Supplemental Briefings

Dick Anthony Heller v. District of Columbia, Civil Action No. 03-213, Memorandum Opinion

Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankrazt, et al. v. The United States*

Supplemental Declaration of Dr. Laura A. Malowane, *Dorothy L. Biery, et al., and Jerramy and Erin Pankrazt, et al. v. The United States*

Affidavit of Dr. Laura Malowane in *Beth M. Norden v. G. Wayne Clough, Secretary, Smithsonian Institute*

Declaration of Dr. Laura A. Malowane, *Queen Anne's Conservation Association v. United States Department of States, et al.*, Civil Action No. 10-0670.

Wilma Eley v. District of Columbia, No. 1:11-cv-00309, (D.C.Cir., July 10, 2015)

CREW v. United States DOJ, Civil Action No. 1:11-CV-00374, (D.D.C., February 11, 2015)

www.laffeymatrix.com

http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf

http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf

<http://www.law360.com/articles/518950/law360-reveals-400-largest-us-law-firms>

www.almlegalintel.com

www.bls.gov/ro3/ppilegal.htm

www.bls.gov/data/

<http://www.bls.gov/cpi/cpifaq.htm>

Bureau of Labor Statistics, Industry Synopsis: NAICS 541110 - Offices of Lawyers

www.census.gov/population/metro/about/

www.citizensforethics.org

<http://www.akingump.com/en/locations/index.html>

<http://www.skgf.com/location>

www.almlegalintel.com

www.hognalovells.com

www.hklaw.com

www.dicksteinshapiro.com

www.squirepattonboggs.com

Cases outlined in Appendix 7

Appendix 3

USAO Laffey Matrix

LAFFEY MATRIX – 2014-2015

Years (Rate for June 1 – May 31, based on prior year's CPI-U)

Experience	14-15
20+ years	520
11-19 years	460
8-10 years	370
4-7 years	300
1-3 years	255
Paralegals & Law Clerks	150

Explanatory Notes:

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.*, 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412(b) (Equal Access to Justice Act). The matrix does **not** apply to cases in which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).
2. This matrix is based on the hourly rates allowed in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The various "brackets" in the column headed "Experience" refer to the years following the attorney's graduation from law school, and are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). Thus, the "1-3 years" bracket is generally applicable to attorneys in their first, second, and third years after graduation from law school, and the "4-7 years" bracket generally becomes applicable on the third anniversary of the attorney's graduation (*i.e.*, at the beginning of the fourth year following law school). *See Laffey*, 572 F. Supp. at 371; *but cf. EPIC v. Dep't of Homeland Sec.*, No. 11-2261, ___ F. Supp. 2d ___, 2013 WL 6047561, *6-*7 (D.D.C. Nov. 15, 2013) (attorney not admitted to bar compensated at "Paralegals & Law Clerks" rate); *EPIC v. Dep't of Homeland Sec.*, 982 F. Supp.2d 56, 60-61 (D.D.C. 2013) (same).
3. The hourly rates approved in *Laffey* were for work done principally in 1981-82. The matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.
4. Use of an updated Laffey Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of

prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Most lower federal courts in the District of Columbia have relied on the United States Attorney's Office Matrix, rather than the so-called "Updated Laffey Matrix," as the "benchmark for reasonable fees" in this jurisdiction. *Miller v. Holzmann*, 575 F. Supp. 2d 2, 18 n.29 (D.D.C. 2008) (quoting *Pleasants v. Ridge*, 424 F. Supp. 2d 67, 71 n.2 (D.D.C. 2006)); see, e.g., *Berke v. Bureau of Prisons*, 942 F. Supp. 2d 71, 77 (D.D.C. 2013); *Heller v. District of Columbia*, 832 F. Supp. 2d 32, 40-49 (D.D.C. 2011); *American Lands Alliance v. Norton*, 525 F. Supp. 2d 135, 150 (D.D.C. 2007). But see *Salazar v. District of Columbia*, 123 F. Supp. 2d 8, 14-15 (D.D.C. 2000). The United States Attorney's Office does not use the "Updated Laffey Matrix" to determine whether fee awards under fee shifting statutes are reasonable.

Appendix 4

Salazar Matrix

matrix

LAFFEY MATRIX

- History
- Case Law
- Expert Opinions
- See the Matrix**
- Contact us
- Home
- Links

Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has

matrix

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been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

** "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.*

*** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.*

Appendix 5

South Atlantic Rates and Multiplier			
All Areas of Law			
2014			
Years of Experience	South Atlantic Median¹	National Median²	South Atlantic Multiplier
31 or More	\$425	\$420	1.01
21 to 30	\$390	\$385	1.01
16 to 20	\$375	\$360	1.04
11 to 15	\$315	\$312	1.01
8 to 10	\$275	\$280	0.98
6 to 7	\$250	\$250	1.00
4 to 5	\$230	\$240	0.96
2 to 3	\$195	\$215	0.91
Under 2	\$190	\$190	1.00

Note:
¹Sample Size = 2,010
²Sample Size = 6,907
Source: The 42nd Annual Survey of Law Firm Economics, 2014, pp. 141, 154.

Appendix 6

Urban Rates and Multiplier All Areas of Law 2014			
Years of Experience	Urban Median¹	National Median²	Urban Multiplier
31 or More	\$500	\$420	1.19
21 to 30	\$435	\$385	1.13
16 to 20	\$435	\$360	1.21
11 to 15	\$375	\$312	1.20
8 to 10	\$340	\$280	1.21
6 to 7	\$315	\$250	1.26
4 to 5	\$300	\$240	1.25
2 to 3	\$262	\$215	1.22
Under 2	\$240	\$190	1.26

Note:
¹Sample Size = 1,262
²Sample Size = 6,907
Source: The 42nd Annual Survey of Law Firm Economics, 2014, p. 152, 154.

U.S. District Court for the District of Columbia, 4/1/2010 to 7/15/2015							
Case	Date	Judge	Req USAO	Req Sal	Crt USAO	Crt Sal	Case Type
<i>A.B. by Holmes-Ramsey v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 346058 *8 (D.D.C. 2014)	ABJ	1/31/2014	x		x		IDEA
<i>A.S. v. District of Columbia</i> , 842 F. Supp. 2d 40, 48 (D.D.C. 2012)	BJR	2/1/2012	x		x		IDEA
<i>ACLU v. DHS</i> , 810 F. Supp. 2d 267, 277 (D.D.C. 2011) (Walton, J.)	RBW	9/15/2011	x		x		FOIA
<i>Act Now to Stop War and End Racism Coalition v. District of Columbia</i> , 286 F.R.D. 145, 153 (D.D.C. 2012)	RCL	11/19/2012	x		x		sanction litigation
<i>Affinity Financial Corp. v. AARP Financial, Inc.</i> , No. 10-2055-RMU, 2011 WL 4738546 *2 & n.3 (D.D.C. Oct. 7, 2011)	RMU	10/7/2011	x		x		contract
<i>Alvarez v. Keystone Plus Construction Corp.</i> , --- F.R.D. ---, 2014 WL 1400846 *10 (D.D.C. 2014)	KBJ	4/11/2014	x		x		FLSA
<i>Am. Immigration Council v. United States Department of Homeland Security</i> , (D.D.C. 2015)	JEB	3/10/2015		x		<	FOIA
<i>Arthur v. District of Columbia, No.</i> , 2015 WL 3413457 *4 & n.7 (D.D.C. May 28, 2015)	5/28/2015	RC	<		<		IDEA
<i>Azamar v. Stern</i> , 278 F.R.D. 23, 25 (D.D.C. 2011)	12/19/2011	JDB	x		x		sanction discovery
<i>B.D. v. District of Columbia</i> , (D.D.C. 2014)	12/3/2014	RJL	<		<		IDEA
<i>B.R. ex rel. Rempson v. District of Columbia</i> , 802 F. Supp. 2d 153, 164 (D.D.C. 2011)	8/12/2011	RMU	<		<		IDEA
<i>Baker v. D.C. Public Schools</i> , 815 F. Supp. 2d 102, 112-13 (D.D.C. 2011)	9/30/2011	RMU		x		x	IDEA
<i>Baker v. D.C. Public Schools</i> , 823 F. Supp. 2d 1, 8-9 (D.D.C. 2011)	9/30/2011	RMU		x		x	IDEA
<i>Baylor v. Mitchell Rubenstein & Assocs., P.C.</i> , (D. D.C. 2015)	1/6/2015	ABJ	x		x		FDCPA
<i>Beck v. Test Masters Educ. Services, Inc.</i> , 289 F.R.D. 374, 383-84 (D.D.C. 2013)	3/1/2013	JDB	< and >		<=		consumer
<i>Berke v. Bureau of Prisons</i> , 942 F. Supp. 2d 71, 77 (D.D.C. 2013)	4/29/2013	ESH		x	x		Rehabilitation Act
<i>Blackman v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 351174 *5 (D.D.C. July 17, 2014)	7/17/2014	PLF	x		<		IDEA
<i>Blackman v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 4257769 *4 (D.D.C. Aug. 29, 2014)	8/29/2014	PLF	x		x		IDEA
<i>Blackman v. District of Columbia</i> , No. 97-1629-PLF, 2014 WL 2927571 (D.D.C. June 27, 2014)	6/27/2014	PLF	x		<		IDEA
<i>Bode & Greiner, LLP v. Knight</i> , --- F. Supp. 2d ---, 2014 WL 1199361 *8 (D.D.C. 2014)	3/25/2014	DAR	x		x		contract
<i>Bradshaw v. District of Columbia</i> , No. 11-1558-ABJ, 2012 WL 2803401 *2 (D.D.C. July 10, 2012)	7/10/2012	ABJ	x		x		FLSA
<i>Bridges Public Charter School v. Barrie</i> , 796 F. Supp. 2d 39, 50 (D.D.C. 2011)	7/11/2011	ABJ	<		<		IDEA
<i>Briggs v. District of Columbia</i> , --- F. Supp. 3d ---, 2014 WL 5860358 (D.D.C. Nov. 12, 2014) (awarding 3/4 USAO Laffey rates)	11/12/2014	RC	x		<		IDEA
<i>Briggs v. District of Columbia</i> , --- F. Supp. 3d ---, 2015 WL 1811973 *3 (D.D.C. Apr. 21, 2015)	4/21/2015	RC	x		<		IDEA
<i>Brighthaupt v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 1365506 *2-3 (D.D.C. 2014)	4/2/2014	JMF	<		<		IDEA

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Case	Date	Judge	Req USAO	Req Sal	Crt USAO	Crt Sal	Case Type
<i>Brown v. District of Columbia</i> , No. 13-1560-KBJ/DAR, 2014 WL 4212619 *2 n.2 (D.D.C. Aug. 7, 2014)	8/7/2014	DAR	x		0		IDEA
<i>Brown v. District of Columbia</i> , No. 14-1405-RC, 2015 WL 690928 *2 (D.D.C. February 19, 2015)	2/19/2015	RC	x		<		IDEA
<i>Bucher v. District of Columbia</i> , 777 F. Supp. 69, 75 (D.D.C. 2011)	4/11/2011	GK	<		<		IDEA
<i>Capital City Public Charter School v. Gambale</i> , --- F. Supp. 2d ---, 2014 WL 1100366*15-16 (D.D.C. 2014)	3/20/2014	RMC	<		<		IDEA
<i>Carter v. District of Columbia</i> , 894 F. Supp. 2d 46, 52, 54 (D.D.C. 2012)	9/30/2012	RLW	<		<		IDEA
<i>Clay v. District of Columbia</i> , No. 09-1612, 2014 WL 322017.	1/28/2014	DAR	x		x		IDEA
<i>Coates v. District of Columbia</i> , (D.D.C. 2015)	2/3/2015	RMC	x		<		IDEA
<i>Cousins v. District of Columbia</i> , No. 11-0172-AK, 2012 WL 1439033 (D.D.C. Apr. 26, 2012) (rejecting request for Salazar rates and awarding 3/4 USAO Laffey rates)	4/26/2012	AK		x	<		IDEA
<i>Cox v. District of Columbia</i> , 754 F. Supp. 2d 66, 76-77 (D.D.C. 2010)	12/9/2010	GK	<		<		IDEA
<i>Crawford v. District of Columbia</i> , No. 11-0174-AK, 2012 WL 1438985 (D.D.C. Apr. 26, 2012) (rejecting request for Salazar rates and awarding 3/4 USAO Laffey rates)	4/26/2012	AK		x	<		IDEA
<i>CREW v. DHS</i> , No. 08-1046-JDB, 2010 WL 8971920 *1 n.1 (D.D.C. Apr. 21, 2010)	4/21/2010	JDB	x		x		FOIA
<i>CREW v. DOJ</i> , 825 F. Supp. 2d 226, 229 & n.2 (D.D.C. 2011)	11/21/2011	JEB	x		x		FOIA
<i>CREW v. FEC</i> , No. 11-0951 (D.D.C. 2014)	9/5/2014	CKK	x	x	x		FOIA
<i>CREW v. DOJ</i> , No. 11-0754 (D.D.C. 2014)	8/4/2014	GK		x		x	FOIA
<i>CREW v. DOJ</i> , No. 11-1021 (D.D.C. 2014)	11/24/2014	JEB		x		x	FOIA
<i>CREW v. DOJ</i> , No. 11-0374 (D.D.C. 2015)	2/11/2015	CRC		x		<	FOIA
<i>Davis v. District of Columbia Child & Family Services Agency</i> , --- F.R.D. ---, 2014 WL 2507921 *10 (D.D.C. 2013)	6/4/2014	RC	x		x		sanction discovery
<i>Davis v. District of Columbia</i> , --- F. Supp. 3d ---, 2014 WL 5293594 *8, 9 (D.D.C. Oct. 16, 2014)	10/16/2014	AK	x		<		IDEA
<i>Davis v. District of Columbia</i> , 864 F. Supp. 2d 110, 116-17, 119 (D.D.C. 2012)	5/23/2012	AK		x	<		IDEA
<i>DeLa Cruz v. District of Columbia</i> , (D.D.C. 2015)	3/2/2015	AK	x		<		IDEA
<i>Devore v. District of Columbia</i> , (D.D.C. 2015)	3/31/2015	ABJ	x		x		IDEA
<i>Dickens v. Friendship-Edison PCS</i> , 724 F. Supp. 113, 119 (D.D.C. 2010)	7/21/2010	AK	x		x		IDEA
<i>Dicks v. District of Columbia</i> , No. 14-1626 (RJL), 2015 WL 37015212 *2 (D.D.C. June 15, 2015)	6/15/2015	RJL	<		<		IDEA
<i>Dorsey v. Jacobson Holma PLLC</i> , 851 F. Supp. 2d 13, 18-19 (D.D.C. 2012)	3/30/2012	RMC	<		<		ERISA
<i>Douglas v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 4359192 *4 (D.D.C. Sep. 4, 2014)	9/4/2014	PLF	x		<		IDEA
<i>Driscoll v. George Washington Univ.</i> , --- F. Supp. 2d ---, 2014 WL 4197556 *9 (D.D.C. July 17, 2014)	7/17/2014	ESH	>		x		FLSA
<i>Elec. Privacy Info. Ctr. v. FBI</i> , 993 F. Supp. 2d 42	3/28/2013	CKK	x		x		FOIA
<i>Eley v. District of Columbia</i> , 999 F. Supp. 2d 137, 150 (D.D.C. 2013), reversed 793 F.3d 97 (D.C. Cir. 2015)	11/20/2013	BAH		x		x	IDEA
<i>Embassy of Fed. Republic of Nigeria v. Ugwuonye</i> , 297 F.R.D. 4, 15 (D.D.C. 2013) (Rothstein, J.)	7/24/2013	BJR		x	x		contract
<i>EPIC v. DHS</i> , 811 F. Supp. 2d 216, 236 (D.D.C. 2011) (Urbina, J.)	9/12/2011	RMU	x		x		FOIA
<i>EPIC v. DHS</i> , 982 F. Supp. 2d 56, 61, 64 (D.D.C. 2013)	10/15/2013	RCL	x		x		FOIA

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Case	Date	Judge	Req USAO	Req Sal	Crt USAO	Crt Sal	Case Type
<i>EPIC v. DHS</i> , 999 F. Supp 2d 61, 70, 72 (D.D.C. 2013)	11/15/2013	JDB	x		x		FOIA
<i>EPIC v. DOT</i> , 982 F. Supp 2d 53, 55 (D.D.C. 2013)	10/15/2013	RCL	x		x		FOIA
<i>EPIC v. FBI</i> , --- F. Supp. 3d ---, 2014 WL 5713859 *7 n.10 (D.D.C. Nov. 5, 2014)	11/5/2014	TSC	x		x		FOIA
<i>F.S. v. District of Columbia</i> , --- F. Supp. 3d ---, 2014 WL 4923025 *2 (D.D.C. Oct. 2, 2014)	10/2/2014	EGS	x		<		IDEA fees
<i>Fanning v. Angus Corp.</i> , 939 F. Supp. 2d 23, 26 (D.D.C. 2013)	4/16/2013	CKK	<		<		ERISA
<i>Fanning v. Wegco, Inc.</i> , 5 F. Supp. 3d 1, 6 (D.D.C. 2013)	11/21/2013	BJR	<		<		ERISA
<i>Fisher v. District of Columbia</i> , 880 F. Supp. 2d 149, 154-55 & n.4 (D.D.C. 2012)	7/31/2012	RCL		x	x		IDEA
<i>Flores v. District of Columbia</i> , 858 F. Supp. 2d 95, 100, 102 (D.D.C. 2012)	5/4/2012	AK		x	<		IDEA
<i>Fonville v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 1427780 *11 (D.D.C. 2014)	4/14/2014	EGS	x		x		sanction discovery
<i>Friendship Edison Public Charter School Collegiate Campus v. Nesbit</i> , 752 F. Supp. 2d 1, 7 (D.D.C. 2010)	10/28/2010	JMF	<		<		IDEA
<i>Gardill v. District of Columbia</i> , 930 F. Supp. 2d 35, 44-45 (D.D.C. 2013)	3/13/2013	RWR	x		<=		IDEA
<i>Garvin v. District of Columbia</i> , 851 F. Supp. 2d 101, 107 (D.D.C. 2012)	3/30/2012	RBW	<		<		IDEA
<i>Garvin v. District of Columbia</i> , 910 F. Supp. 2d 135, 139 (D.D.C. 2012).	12/19/2012	RBW	<		<		IDEA - fees
<i>Gorman v. District of Columbia</i> , No. 11-0150-AK, 2012 WL 1438977 (D.D.C. Apr. 26, 2012)	4/26/2012	AK		x	<		IDEA
<i>Gray v. District of Columbia</i> , 779 F. Supp. 2d 68, 73 (D.D.C. 2011)	4/26/2011	GK	>		<		IDEA
<i>Green v. D.C. (D.D.C. 2015)</i>	4/13/2015	APM	x		x		IDEA
<i>Hajjar-Nejad v. GW Univ.</i> , No. 10-0626-CKK/JMF, 2013 WL 2635190 *2 (D.D.C. 2013)	6/12/2013	JMF	<		<		sanction discovery
<i>Hall v. CIA, No. 04-0814 (RCL), Mem. Op. at 11 (D.D.C. July 14, 2015)</i>	7/14/2015	RCL	x		x		FOIA
<i>Harvey v. Mohammed</i> , 951 F. Supp. 2d 47, 54 (D.D.C. 2013) (Lamberth, J.)	6/26/2013	RCL	x		x		1983
<i>Hawkins v. Potomac Lighthouse Public School Charter</i> , --- F. Supp. 2d ---, 2014 WL 715121 *3 n.4 (D.D.C.), <i>aff'g in pertinent part</i> , 2014 WL 185948 *5-6 (D.D.C. Jan. 17, 2014).	2/25/2014	GK	x		<		IDEA
<i>Hayes v. D.C. Public Schools</i> , 815 F. Supp. 2d 134, 142-43 (D.D.C. 2011)	9/30/2011	RMU		x	x		IDEA
<i>Haywood v. District of Columbia</i> , No. 12-1722-BJR, 2014 WL 5211437 *6-7 (D.D.C. Aug. 23, 2013)	8/3/2013	BJR	<		<		IDEA
<i>Heller v. District of Columbia</i> , 832 F. Supp. 2d 32, 41-42 (D.D.C. 2011)	12/29/2011	EGS		x	x		const.
<i>Huntley v. District of Columbia</i> , 860 F. Supp. 2d 53, 60-61 (D.D.C. 2012)	5/17/2012	AK		x	<		IDEA
<i>Huntley v. District of Columbia</i> , No. 11-0157-AK, 2012 WL 1569553 *4, 6 (D.D.C. May 3, 2012)	5/3/2012	AK		x	<		IDEA
<i>Irving v. D.C. Public Schools</i> , 815 F. Supp. 2d 119, 128-29 (D.D.C. 2011)	9/30/2011	RMU		x	x		IDEA
<i>Jay v. District of Columbia</i> , (D.D.C. 2014)	12/3/2014	RBW	x		<		IDEA
<i>Johnson v. District of Columbia</i> , 850 F. Supp. 2d 74, 77 (D.D.C. 2012)	3/20/2012	JMF	<		<		IDEA

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Case	Date	Judge	Req USAO	Req Sal	Crt USAO	Crt Sal	Case Type
<i>Johnson v. District of Columbia</i> , No. 11-0494-JMF, 2012 WL 5900792 *4 (D.D.C. Nov. 21, 2012)	11/21/2012	JMF	<		<		IDEA
<i>Jones v. District of Columbia</i> , ---F. Supp. 3d---, 2015 WL 298557 *4 (D.D.C. May 20, 2015)	5/20/2015	TSC	x		x		Removal
<i>Jones v. District of Columbia</i> , 859 F. Supp. 2d 149, 153, 156 (D.D.C. 2012)	5/14/2012	AK		x	<		IDEA
<i>Jones v. District of Columbia</i> , No. 11-0168-AK, 2012 WL 1664231 *3, 5 (D.D.C. May 11, 2012)	5/11/2012	AK		x	<		IDEA
<i>Judicial Watch v. DOJ</i> , 878 F. Supp. 2d 225, 239 (D.D.C. 2012)	7/23/2012	RBW	x		x		FOIA
<i>Judicial Watch, Inc. v. DOJ</i> , 774 F. Supp. 2d 225, 232 (D.D.C. 2011)	3/31/2011	HHK	x		x		FOIA
<i>Laborers' Internat'l Union of N. America v. Brand Energy Servs.</i> , 746 F. Supp. 2d 121, 125-26 (D.D.C. 2010)	10/25/2010	RMC	<		<		labor
<i>Mafa v. Clean House, Inc.</i> , No. 12-0040-ESH, 2012 WL 1450181 (D.D.C. Apr. 26, 2012)	4/26/2012	ESH	x		x		FLSA
<i>McAllister v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 2921020 *3 (D.D.C. June 27, 2014) (denying reconsideration motion based on <i>Eley</i>); 2014 WL 901512 (D.D.C. Mar. 6, 2014) (denying motion for fees)	6/27/2014	RC		x	x		IDEA
<i>McClam v. District of Columbia</i> , 808 F. Supp. 2d 184, 188 (D.D.C. 2011)	9/6/2011	RMC	<		<		IDEA
<i>McKesson Corp. v. Islamic Republic of Iran</i> , 935 F. Supp. 2d 34, 40-42 (D.D.C. 2013)	3/27/2013	RJL	>		>		property
<i>McNeil v. Options Public Charter School</i> , No. 12-0529-EGS/DAR, 2013 WL 791199 (Mar. 1, 2013)	3/1/2013	DAR	x		<		IDEA
<i>Means v. District of Columbia</i> , 999 F. Supp. 2d 128, 136 (D.D.C. 2013)	11/20/2013	RC	<		<		IDEA fees
<i>Medina v. District of Columbia</i> , 864 F. Supp. 2d 13 (D.D.C. 2012)	4/23/2012	JMF	x		x		1983
<i>Moss v. District of Columbia</i> , No. 11-0994-JEB, 2012 WL 4510682 (D.D.C. July 12, 2012)	7/12/2012	JEB	x		<		IDEA
<i>Negley v. FBI</i> , 818 F. Supp. 2d 69, 78 (D.D.C. 2011) (Kessler, J.)	10/11/2011	GK	x		x		FOIA
<i>Parks v. District of Columbia</i> , 895 F. Supp. 2d 124, 130-31 (D.D.C. 2012)	9/28/2012	RWR	<		<		IDEA
<i>Petway v. District of Columbia</i> , 858 F. Supp. 2d 70, 75, 78 (D.D.C. 2012)	5/2/2012	AK		x	<		IDEA
<i>Queen Anne's Conservation Ass'n v. Dep't of State</i> , 800 F. Supp. 2d 195, 200-01 (D.D.C. 2011)	8/3/2011	DAR		x	x		FOIA
<i>Robertson v. Cartinhour</i> , 883 F. Supp. 2d 121, 131 n.32 (D.D.C. 2012)	8/10/2012	ESH	<		<		sanction litigation
<i>Robinson v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 3702853 *4, 6 (D.D.C. 2014)	7/28/2014	BAH	x		x		IDEA
<i>Rooths v. District of Columbia</i> , 802 F. Supp. 2d 56, 61 (D.D.C. 2011)	8/9/2011	PLF		x	x		IDEA
<i>Salazar v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 1118352 (D.D.C. 2014).	3/21/2014	GK		x		x	medicaid class
<i>Salazar v. District of Columbia</i> , --- F. Supp. 2d ---, 2014 WL 342084 (D.D.C. 2014) (amended mem. op.)	1/30/2013	GK		x		x	medicaid class action
<i>Salazar v. District of Columbia</i> , 750 F. Supp. 2d 70 (D.D.C. 2011)	1/4/2011	GK		x		x	medicaid class action
<i>Salmeron v. D.C.</i> , (D.D.C. 20015)	1/9/2015	RBW	>		x		IDEA
<i>Santamaria v. District of Columbia</i> , 875 F. Supp. 2d 12, 20-21 (D.D.C. 2012)	7/12/2012	RC	x		<		IDEA

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Case	Date	Judge	Req USAO	Req Sal	Crt USAO	Crt Sal	Case Type
<i>Scott v. District of Columbia</i> , No. 11-0165-AK, 2012 WL 1633207 *3, 5 (D.D.C. May 9, 2012)	5/9/2012	AK		x	<		IDEA
<i>Smith v. Imagine Hope Community Public Charter School</i> , 934 F. Supp. 2d 132, 134-35 (D.D.C. 2013)	3/29/2013	DAR	x		0		IDEA
<i>Staton v. District of Columbia</i> , No. 13-0773-ABJ/DAR, 2014 WL 2700894 (D.D.C. June 11, 2014)	6/11/2014	ABJ	x		<		IDEA
<i>Sweatt v. DC</i> , No. 14-1133 (D.D.C. 2015)	3/15/2015	ABJ	x		<		IDEA
<i>Sykes v. District of Columbia</i> , 870 F. Supp. 2d 86, 94-96 (D.D.C. 2012)	6/18/2012	AK		x	<		IDEA
<i>Thomas v. District of Columbia</i> , 908 F. Supp. 2d 233, 243 (D.D.C. 2012)	12/17/2012	BAH		x	x		IDEA
<i>Turley v. District of Columbia</i> , (D. D. C. 2015)	1/21/2015	AK	x		<		IDEA
<i>United States v. Dynamic Visions, Inc.</i> , (D.D.C. 2015)	1/23/2015	CKK	x		x		FCA
<i>Ventura v. Bebo Foods, Inc.</i> , 738 F. Supp. 2d 8, 34 (D.D.C. 2010)	12/3/2010	RCL	<		<		FLSA
<i>Wallace v. District of Columbia</i> , --- F. Supp. 2d ---, 2012 WL 1744692 *3-6 (D.D.C. May 16, 2012)	5/16/2012	AK		x	<		IDEA
<i>Wilhite v. District of Columbia</i> , --- F. Supp. 3d ---, 2015 WL 3827135 *7 (D.D.C. June 22, 2015)	6/22/2015	AK	x		<		IDEA
<i>Wilson v. District of Columbia</i> , 777 F. Supp. 2d 123, 127 (D.D.C. 2011)	4/14/2011	JEB	<		0		IDEA
<i>Winston & Strawn LLP v. FDIC</i> , 841 F. Supp. 2d 225, 227-28 (D.D.C. 2012)	1/27/2012	RCL	x		x		taxes in FDIC reversion
<i>Winston & Strawn LLP v. FDIC</i> , 894 F. Supp. 2d 115, 129-30 (D.D.C. 2012)	10/2/2012	RCL	>		x		FDIC
<i>Wood v. District of Columbia</i> , --- F. Supp. 3d ---, 2014 WL 5438409 *8 (D.D.C. Oct. 27, 2014)	10/27/2014	DAR	x		<		IDEA
<i>Wood v. District of Columbia</i> , 864 F. Supp. 2d 82, 90, 92 (D.D.C. 2012)	5/22/2012	AK		x	<		IDEA
<i>Wright v. District of Columbia</i> , 883 F. Supp. 2d 132, 135 (D.D.C. 2012)	8/10/2012	AK	x		<		IDEA fees
<i>Wright v. District of Columbia</i> , No. 11-0384-AK, 2012 WL 79015 (D.D.C. Jan. 11, 2012)	1/11/2012	AK	<		<		IDEA
<i>Young v. District of Columbia</i> , 869 F. Supp. 2d 1, 5, 7 (D.D.C. 2012)	5/11/2012	AK		x	<		IDEA
<i>Young v. District of Columbia</i> , 870 F. Supp. 2d 1, n.1, 4-5, 8 (D.D.C. 2012)	4/26/2012	AK		x	<		IDEA
<i>Young v. District of Columbia</i> , 893 F. Supp. 2d 125, 131 (D.D.C. 2012)	9/28/2012	ABJ	x		x		IDEA