

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD G. CONVERTINO,
420 7TH Street, N.W.
Washington, D.C. 20004

Plaintiff,

v.

Civil Action No.

UNITED STATES DEPARTMENT
OF JUSTICE,
9th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20530

HON. JOHN ASHCROFT,
United States Attorney General
10th & Constitution Ave., N.W.
Washington, D.C. 20530

COMPLAINT

JEFFREY G. COLLINS
United States Attorney
Eastern District of Michigan
211 West Fort Street
Detroit, MI 48226

JURY TRIAL DEMANDED

JONATHAN TUKEL
First Assistant United States Attorney
Eastern District of Michigan
211 West Fort Street
Detroit, MI 48226

ALAN GERSHEL
Chief, Criminal Division
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street
Detroit, MI 48226

and

H. MARSHALL JARRETT,)
 Office of Professional Responsibility)
 U.S. Department of Justice)
 20 Massachusetts Ave., N.W.)
 Washington, DC 20530)
)
 Defendants.)
 _____)

This is a Complaint seeking relief and damages against Defendant, United States Department of Justice (“DOJ”), for violations of the Privacy Act, 5 U.S.C. § 552a. This is also an action for injunctive relief under the First Amendment of the U.S. Constitution, the Lloyd-LaFollette Act and the Administrative Procedure Act ("APA"), to enjoin the above-named Defendants from depriving Plaintiff and other similarly situated employees of the DOJ of their Constitutional and statutory rights. Plaintiff requests a trial by jury on all claims where permitted by law.

JURISDICTION AND VENUE

1. This court has jurisdiction over plaintiffs’ claims pursuant the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and the Privacy Act of 1974, 5 U.S.C. § 552a(g), the First Amendment of the United States Constitution, the Lloyd-LaFollette Act, 5 U.S.C. § 7211, and pursuant to 28 U.S.C. §§ 1331, 1343, 1346, 1361, and 1367.
2. Venue is proper in this District pursuant to the Privacy Act, 5 U.S.C. § 552a(g)(5), and pursuant to the United States Code of Judicial Procedure, 28 U.S.C. § 1391.

PARTIES

3. Plaintiff, Richard G. Convertino, is employed by the Defendant DOJ, and is a citizen of the United States.
4. Defendant DOJ is an agency of the United States Government whose address is 9th Street and Pennsylvania Ave., NW, Washington, D.C. 20530, and Defendant DOJ is an executive agency within the meaning of the Privacy Act and the APA.
5. Defendant John Ashcroft is the Attorney General of the United States in Washington, D.C. Defendant Ashcroft is being sued in his official capacity as the agency head of Defendant DOJ and its components.
6. Defendant Jeffrey G. Collins is employed by the Defendant DOJ as the United States Attorney of the Eastern District of Michigan, and he is being sued in his official capacity.
7. Defendant Jonathan Tukul is employed by the Defendant DOJ as the First Assistant United States Attorney of the Eastern District of Michigan, and he is being sued in his official capacity.
8. Defendant Alan Gershel is employed by the Defendant DOJ as the Chief of the Criminal Division, United States Attorney's Office for the Eastern District of Michigan, and he is being sued in his official capacity.
9. Defendant H. Marshall Jarret is employed by the United States Department of Justice as the Counsel for the DOJ Office of Professional Responsibility ("OPR") in Washington, D.C. Defendant Jarret is being sued in his official capacity as head of the DOJ OPR, which is a component of Defendant DOJ.

FACTS

10. Plaintiff has served as an attorney for the United States since February 1989, and is currently employed as an Assistant United States Attorney (AUSA) in the Eastern District of Michigan (Detroit) by Defendant DOJ.
11. Plaintiff has worked for approximately 14 years for Defendant DOJ and, prior to the Privacy Act violations alleged herein, established an exemplary record as a highly-skilled, effective and experienced trial attorney for Defendant DOJ.
12. From as far back as 1990, and continuing to the present, Plaintiff has routinely achieved an overall performance rating level of “Outstanding” and “Substantially Exceeds Expectations” of the Defendant DOJ as determined annually by his supervisors when compared to his peers. Further, according to Defendant DOJ’s internal personnel records, Plaintiff’s “performance clearly demonstrates a level of achievement which exceeds to an exceptional degree established element standards [as set forth by Defendant DOJ].”
13. Plaintiff received numerous commendations for his exemplary work on numerous cases, including commendation letters from the United States Attorneys General, the Director of the FBI, and U.S. Attorneys, among many others. He was awarded *Special Achievement Award for Superior Performance* for Outstanding trial performance by Assistant Attorney General, Robert S Mueller, III, and a commendation from Attorney General William Barr “outstanding contribution to the successful prosecution of BCCI.” He also received two *Director’s Award(s) for Superior Performance as an Assistant United States Attorney*, five *Special Achievement Awards for Special Acts of Service to the Department*, an award

from the Royal Canadian Mounted Police for *Outstanding Services*, four *Special Commendation Awards*, numerous cash awards for meritorious achievement and was nominated by former Assistant Attorney General Mueller for the “John Marshall Award for Trial Litigation.”

14. Plaintiff was selected to represent the United States in programs developed by the U.S. Department of State and the DOJ to provide training to international law enforcement agencies and prosecutors in Kazakstan, Bulgaria and Albania on transnational organized crime.
15. Prior to the leaks at issue in this case, Plaintiff had an exceptional reputation within the law enforcement community as an exceptionally competent, dedicated and highly professional prosecutor. For example, former FBI Director Louis Freeh issued numerous personal commendations to Plaintiff, in which he stated, “Your diligence, perseverance and leadership contributed immeasurably to the favorable outcome” of a major criminal RICO case. After Plaintiff obtained the conviction of Detroit La Cosa Nostra members, the FBI Director wrote, “I want to commend your all-out commitment to bringing the defendants to justice, which could be seen from your willingness to endure the hardship of being separated from your family for extended periods. Also, meriting special recognition is your outstanding performance in the courtroom while chairing the prosecutive team. The jury’s decision to find both defendants guilty can certainly be attributed to your superb efforts, in which you have every right to be proud.”

16. In a handwritten personal note to Plaintiff, Attorney General Janet Reno wrote:
“Congratulations for the great work done under your leadership . . . You are an example for other districts! . . . I am deeply grateful for the work that you and your colleagues do to make a difference in the lives of so many.”
17. Plaintiff’s performance reviews consistently rated him in the highest rating category and he was regularly praised for his exceptional trial skills. As stated in his most recent review, “quite simply, Rick is one of the best trial attorneys in this Office. His courtroom presence, preparation and willingness to put in 18 hour days make him an exceptional trial attorney. In fact, there is no one for whom I would feel more comfortable with in a major trial. Most importantly, Rick feels that all trials are major. His preparation is outstanding.”
18. Confidential personnel records, including but not limited to those records relating to the U.S. Department of Justice Office of Professional Responsibility (OPR), pertaining to Plaintiff and other employees are required to be maintained by Defendant DOJ within one or more Privacy Act system of records.
19. Defendant DOJ is required to maintain and safeguard confidential personnel records, including but not limited to records relating to the OPR pertaining to Plaintiff and other employees by, *inter alia*, storing them in locked desks, metal filing cabinets or in a secured room, with access limited to those whose official duties require access, and to provide for additional safeguarding procedures such as the use of sign-out sheets and restrictions on the number of employees who are able to access records.

20. Defendant DOJ knowingly, intentionally and willfully, disclosed and failed to properly maintain and safeguard confidential personnel records, including but not limited to records relating to the OPR pertaining to Plaintiff, and leaked those confidential records knowingly, intentionally, willfully and with an improper motive and purpose.
21. Defendants have violated Plaintiff's rights under the First Amendment of the United States Constitution and the Lloyd-LaFollette Act. Defendants knowingly disclosed false and/or misleading information about Plaintiff to the press in retaliation for the Plaintiff's exercise of rights under the First Amendment and the Lloyd-LaFollette Act in violation of Plaintiff's constitutional and statutory rights.
22. The improper releases of information concerning Plaintiff caused the Plaintiff significant harm, including physical injury, emotional distress and a loss of professional reputation.
23. The improper releases of information concerning Plaintiff have caused a chilling effect on Plaintiff's exercise of his constitutionally protected rights, and the exercise of constitutionally protected rights of other similarly situated DOJ employees.

COUNT I

(Violations of Plaintiff's Rights Under the APA, the First Amendment and the Lloyd-LaFollette Act)

24. Incorporate by referencing paragraphs 1 through 23, inclusive, and all allegations contained therein.
25. From on or about September 17, 2001, until on or about September 4, 2003, Plaintiff was the lead prosecuting attorney on United States v. Koubriti.

26. From on or about March 18, 2003, to June 3, 2003, Plaintiff and co-counsel AUSA Keith E. Corbett, Chief, Organized Crime Strike Force, tried the case United States v. Koubriti and defendants therein, Karim Koubriti, Ahmed Hannan, Abdel-Ilha Elmardoudi, and Farouk Ali-Haimoud, in the Eastern District of Michigan (Detroit) before the Honorable Gerald E. Rosen.
27. United States v. Koubriti was the first jury trial, and to this date the only one, that charged terrorism-related offenses since September 11, 2001. Defendants Koubriti and Elmardoudi were convicted of terrorism-related offenses; defendant Hannan was convicted of charges stemming from document fraud; and defendant Ali-Haimoud was acquitted of all charges.
28. The Government presented approximately one thousand (1,000) exhibits and approximately 50 witnesses.
29. From in or about September 17, 2001, and up to approximately January 2003, Plaintiff was assigned one Special Agent of the FBI to work on the first terrorism case that proceeded to trial in the United States following September 11, 2001. Despite repeated attempts to gain additional resources, Plaintiff and the case agent handled almost all matters including, but not limited to; the intake of voluminous discovery materials from several judicial districts and abroad; the maintenance, recordation and dissemination of discovery materials; grand jury proceedings; drafting and returning indictments; legal research, motions and hearings for four defendants; continued investigation of the terrorism related matters while non-terrorism related charges were pending and trial was

scheduled; witness identification, grand jury preparation and evidence review. The special agent assigned to the case and Plaintiff were simultaneously conducting an ongoing grand jury investigation toward a superceding indictment of the defendants while preparing for trial of the same defendants on previously charged violations. Accordingly, for more than one year, one special agent and one Assistant United States Attorney, Plaintiff herein, were tasked with and responsible for, discovery related matters, to include but were not limited to, requesting, receiving, collecting, cataloging, analyzing, organizing, and reproducing materials from at least seven judicial districts across the United States and from foreign services abroad; coordinating with other law enforcement agencies and departments, to include foreign law enforcement entities and military representatives, procuring interpreters, and translators, interviewing countless witnesses and following up with leads and checks; coordinating and disseminating information to various investigative agencies and services; meeting with experts, including academicians and terrorist experts, both nationally and internationally, on issues as diverse as tradecraft to Islam and over all case management.

30. In or about October 2002, AUSA Keith Corbett began assisting Plaintiff in all phases of litigation.
31. Since in or about 2002, and continuing until present, Plaintiff and co-counsel have been vocal and consistent with supervisors and officials within the Defendant DOJ about the lack of support and cooperation, lack of effective assistance, lack of resources and intra-departmental infighting that plagued and hindered the terrorism investigation and

prosecution of United States v. Koubriti and other terrorism cases. These concerns directly related to the ability of the United States to effectively utilize the criminal justice system as a component in the “war on terrorism.”

32. Local prosecutors assigned to terror-related cases are in the “front line” in the war on terror. Given their knowledge of the local community and their daily working relationship with local law enforcement, these prosecutors, including Plaintiff, can provide a significant contribution to the national security.
33. Local law enforcement sources, for which Plaintiff and other similarly situated prosecutors would supervise and/or coordinate, would obtain information highly relevant to the war on terror from local sources who have international contacts. In Detroit, such information was in fact obtained by Plaintiff concerning international terror related activities, and Plaintiff did pass this information on to the appropriate intelligence agencies.
34. Plaintiff’s and co-counsel’s strong criticisms of the conduct of DOJ Washington, D.C. were well known within the U.S. Attorney’s Office in Detroit and the Terrorism and Violent Crimes Section of the DOJ and were elevated to a level as high as the Deputy Attorney General.
35. A senior official in DOJ’s Terrorism and Violent Crimes Section informed Plaintiff that press reports concerning DOJ’s “orchestrated nationwide enforcement program” concerning the war on terror were not accurate, but that the Department was “enjoying” media “speculation” on this matter. The note further stated that the “press gives us more

credit than we deserve.” Indeed, Plaintiff had complained to the Department that DOJ Washington had continuously placed “perception” over “reality” to the serious detriment of the war on terror.

36. On February 26, 2003, an e-mail sent to Defendant Collins by another lawyer in the U.S. Attorney’s Office (“Detroit”), identified some of the gross mismanagement which was negatively impacting the ability of the United States to obtain convictions in a major terrorist case:

. . . . The actions of Barry Sabin and his minions to insinuate themselves into this trial are, nothing more than a self-serving effort to justify the existence of his unit. They have rendered no assistance and, are in my judgement, adversely impacting on both trial prep and trial strategy . . .

37. In late August 2003, Plaintiff was contacted by an investigator for the Senate Finance Committee staff who was aware Plaintiff had tried the Koubriti case. The investigator sought general information and background on the links between terrorism and identity fraud from the Plaintiff. In addition, the investigator told the Plaintiff that he had read the trial transcript of Government witness, Youseff Hmimssa, in United States v. Koubriti, and requested access to interview Mr. Hmimssa. The investigator sought to gain further insight, and share with the full Senate Finance Committee, the information and knowledge imparted by Mr. Hmimssa to prevent certain methods of identity fraud to better protect the public.

38. This call from the investigator in late August 2003, was the first contact Plaintiff ever had with any representative, in any capacity, from the legislative branch of the United States Government.
39. Following the call from the investigator in late August 2003, Plaintiff immediately notified Mr. Hmimssa's attorney of the request and then asked Special Agents of the Federal Bureau of Investigation (FBI) to assist in arranging for an interview of Mr. Hmimssa by the investigator from the Senate Finance Committee staff.
40. On or about August 28, 2003, two investigators from the Senate Finance Committee staff traveled to Detroit and met briefly with AUSA Corbett and Plaintiff and received a general briefing of the facts in United States v. Koubriti by the case agents.
41. On or about August 29, 2003, the investigators from the Senate Finance Committee staff and an FBI agent interviewed Mr. Hmimssa about various forms and methods of creating identity fraud.
42. On or about September 2, 2003, at approximately 3:30 p.m., Plaintiff was contacted by an investigator from the Senate Finance Committee staff who informed Plaintiff that Senator Charles E. Grassley, Chairman of the Senate Finance Committee, requested Mr. Hmimssa's testimony before the Senate Finance Committee at a hearing scheduled for September 9, 2003. The investigator from the Senate Finance Committee staff also told Plaintiff that Senator Grassley wanted Plaintiff to testify at the same hearing about the factual background of United States v. Koubriti to place context to Mr. Hmimssa's testimony. Plaintiff informed the investigator from the Senate Finance Committee staff

that it was extremely unlikely that either he or Mr. Hmimssa would be able to testify, but that Plaintiff would forward the request to his superiors.

43. On or about September 2, 2003, at approximately 3:42 p.m., and immediately after getting off the phone with the investigator from the Senate Finance Committee staff, Plaintiff sent an e-mail to then First Assistant United States Attorney Alan Gershel, and informed Defendant Gershel of the request of Senator Grassley, made through the investigator from the Senate Finance Committee staff, “that the Senator wants Hmimssa to testify before his sub-committee” on September 9, 2003. The e-mail also notified Defendant Gershel that the investigator from the Senate Finance Committee staff requested that Plaintiff testify along with Mr. Hmimssa. The Plaintiff asked Defendant Gershel for guidance in the e-mail and also notified Defendant Gershel that the investigator from the Senate Finance Committee staff wanted Plaintiff “to contact them today and let them know if DOJ has a problem with this.”
44. On or about September 2, 2003, at approximately 5:08 p.m., Defendant Gershel forwarded the Plaintiff’s e-mail to David Nahmias, Special Counsel to the Assistant Attorney General, and Barry Sabin, Chief, Terrorism and Violent Crime Section, and said “we need some guidance on this issue.”
45. On or about September 3, 2003, Plaintiff was contacted at his residence by Defendant Gershel, who requested that Plaintiff contact David Nahmias at DOJ in Washington, D.C., to discuss the request by the investigator from the Senate Finance Committee staff

directly. Plaintiff immediately contacted David Nahmias at DOJ in Washington, D.C. at the number given to Plaintiff by Defendant Gershel.

46. On or about September 3, 2003, Plaintiff spoke with David Nahmias as directed by Defendant Gershel. Plaintiff informed Mr. Nahmias about the previous contacts with the investigator from the Senate Finance Committee staff and the meeting that the investigator had with Mr. Hmimssa on August 29, 2003. Plaintiff informed Mr. Nahmias that the purpose of the interview with Mr. Hmimssa was for the Senate Finance Committee to obtain information on the method and means of acquiring fraudulent identity documents.
47. Mr. Nahmias told the Plaintiff that the Senate staffers knew that they should not have contacted the Plaintiff directly and that the Senate staffers are well aware that they must go through the DOJ Office of Legislative Affairs in order to talk to DOJ personnel. Plaintiff responded that he was unaware of the contact protocol and wanted to be responsive and helpful to any inquiry of identity fraud and terrorism. Mr. Nahmias then informed the Plaintiff that the Chairman of the Senate Finance Committee, Senator Charles E. Grassley, was not "our friend" and "hates the FBI." Mr. Nahmias went on to say that Senator Grassley was a "problem" since the Senator had currently placed a hold on certain Judicial nominees. The Plaintiff told Mr. Nahmias that he was completely unaware of any of the issues discussed by Mr. Namias regarding Senator Grassley. Plaintiff told Mr. Namias that he knew very little about Senator Grassley and reiterated to Mr. Namias that the extent of his involvement was the brief contact that he (Plaintiff) had

with the investigator from the Senate Finance Committee staff regarding Mr. Hmimssa and Mr. Hmimssa's knowledge of identity fraud and its relationship to terrorism. Mr. Nahmias instructed the Plaintiff to contact the investigator from the Senate Finance Committee staff and inform the investigator that the matter regarding testimony would be referred to the Office of Legislative Affairs.

48. On or about September 3, 2003, Plaintiff contacted the investigator from the Senate Finance Committee staff as instructed by Mr. Nahmias and informed the investigator that the matter regarding the testimony of Mr. Hmimssa and the Plaintiff was referred by the DOJ to the Office of Legislative Affairs for disposition. The investigator told the Plaintiff that it was still the intent of the Committee to seek the testimony of Mr. Hmimssa and the Plaintiff.
49. On September 4, 2003, Plaintiff was informed that the Plaintiff and AUSA Keith E. Corbett, Chief of the Organized Crime Strike Force, were removed from the United States v. Koubriti case by Defendant Gershel as a direct result and consequence of the Plaintiff's and AUSA Corbett's contacts with the investigators from the Senate Finance Committee staff. AUSA Eric Straus (Eastern District of Michigan-Detroit) was assigned to replace AUSA Corbett and Plaintiff as lead counsel in United States v. Koubriti, by Defendants Collins and Gershel.
50. On September 4, 2003, Plaintiff received a telephone call from an investigator with the Senate Finance Committee who asked Plaintiff if Plaintiff was aware of the position of Defendant DOJ regarding the requested testimony of Youseff Hmimssa and Plaintiff.

Plaintiff informed the investigator that Plaintiff was not aware of anything further regarding the requested testimony, but told the investigator that he (Plaintiff) and AUSA Corbett were removed from the United States v. Koubriti case because of contact that Plaintiff and AUSA Corbett had with the Senate Finance Committee investigators.

51. Upon information and belief, on or about September 4, 2003, Senator Charles E. Grassley placed a phone call to Defendant United States Attorney General John Ashcroft and spoke directly with Defendant Attorney General Ashcroft about his displeasure with Defendant DOJ over the removal of the two AUSAs who prosecuted United States v. Koubriti.
52. On or about September 5, 2003, Plaintiff was first informed by an AUSA that on the previous evening, Senator Charles E. Grassley had spoken directly with Defendant Attorney General John Ashcroft and as a result, Plaintiff was told he was now in jeopardy of losing his job as an AUSA.
53. On September 5, 2003, throughout the morning, Plaintiff attempted to reach Defendant Gershel at the United States Attorney's Office to seek clarification on the removal of the Plaintiff and AUSA Corbett from the case and to seek guidance on the requested testimony of Plaintiff and Mr. Hmimssa by the Senate Finance Committee. On the third unsuccessful attempt to reach Defendant Gershel by phone, Plaintiff overheard Defendant Gershel in the background tell the person who answered the phone that he (Gershel) refused to speak with the Plaintiff.

54. On or about September 5, 2003, Defendant Gershel asked an individual to obtain the notes taken by the investigator for the Senate Finance Committee during the interview of Mr. Hmimssa on August 29, 2003, and instructed the individual not to disclose to anyone that the individual turned over the notes of the investigator for the Senate Finance Committee to Defendant Gershel. Defendant Gershel then forwarded the notes to individuals at Defendant DOJ.
55. On September 5, 2003, in the early afternoon, the Plaintiff again attempted to reach Defendant Gershel to seek clarification on the removal of the Plaintiff and AUSA Corbett from the case and to seek guidance on the requested testimony of Plaintiff and Mr. Hmimssa. The Plaintiff was informed that Defendant Gershel was golfing and Plaintiff asked if he could be reached on his cell phone. The Plaintiff was told that Defendant Gershel's cell phone was not working.
56. On September 5, 2003, in the early afternoon, the Plaintiff attempted to reach Defendant Collins to seek clarification on the removal of the Plaintiff and AUSA Corbett from the case and to seek guidance on the requested testimony of Plaintiff and Mr. Hmimssa before the Senate Finance Committee. Plaintiff was unsuccessful in his attempts to speak with Defendant Collins and left a message. Plaintiff did not receive a return call from either Defendant Gershel or Defendant Collins and accordingly, was without guidance from the Defendant DOJ on the requested testimony of Plaintiff and Mr. Hmimssa before the Senate Finance Committee.

57. On September 5, 2003, in the early afternoon, the Plaintiff was informed by another AUSA that Defendant Collins planned to testify at the hearing before the Senate Finance Committee on September 9, 2003, and that Defendant Collins needed to be informed of the defendants and facts in the case of United States v. Koubriti. Plaintiff assisted in the collection of documents and information required to brief the United States Attorney in preparation for his testimony.
58. On September 5, 2003, Plaintiff was informed by another AUSA that Defendant Gershel stated that Defendant DOJ was worried that if Plaintiff were to testify, Plaintiff would go “off the reservation” and share in a public forum the Plaintiff’s strong opinions on the difficulties encountered with the way the Koubriti terrorism case and other terrorism cases were hindered by Defendant DOJ.
59. Upon information and belief, on September 5, 2003, an investigator from the Senate Finance Committee attempted to reach Defendant Collins, throughout the day to discuss the possibility of Defendant Collins testifying before the Senate Finance Committee on September 9, 2003, following a request by the DOJ.
60. Upon information and belief, on September 5, 2003, Defendant Collins did not return any of the investigator’s telephone calls, said investigator having left his office at 8:30 p.m., awaiting a return call from Defendant Collins.
61. On September 6, 2003, in the evening, plaintiff was contacted by the investigator from the Senate Finance Committee who informed Plaintiff that he (the investigator) attempted to reach Defendant Collins on September 5, 2003, to discuss the possible testimony of

Defendant Collins before the Finance Committee on September 9, 2003 as requested by the DOJ. The investigator said that Defendant Collins did not return his calls and that a subpoena may be forthcoming for the Plaintiff to testify.

62. On September 6, 2003, in the evening, Plaintiff contacted AUSA Corbett and informed AUSA Corbett of the call from the investigator and the possibility of the Plaintiff being subpoenaed. AUSA Corbett told the Plaintiff to contact him if Plaintiff was served a subpoena.
63. On September 7, 2003, at approximately 7:00 p.m., Plaintiff received a phone call from a Special Agent notifying Plaintiff that he will be served a subpoena to testify before the Senate Finance Committee on September 9, 2003.
64. On September 7, 2003, at approximately 8:00 p.m., Plaintiff was served a subpoena at his residence by two Special Agents. Attached to the subpoena were instructions and flight arrangements for a flight to Washington, D.C., on the morning of September 8, 2003, said arrangements having been made by staffers from the Senate Finance Committee.
65. On September 7, 2003, at approximately 8:15 p.m., Plaintiff contacted his direct supervisor, AUSA Corbett, and informed AUSA Corbett that he (Plaintiff) was served a subpoena to appear and testify before the Senate Finance Committee. AUSA Corbett informed the Plaintiff the he (AUSA Corbett) would contact Defendant Gershel for guidance and then call Plaintiff after AUSA Corbett spoke to Defendant Gershel.

66. On September 7, 2003, at approximately 10:15 p.m., AUSA Corbett contacted Plaintiff and informed Plaintiff the he (AUSA Corbett) was unsuccessful in his attempts to reach Defendant Gershel.
67. On September 8, 2003, at approximately 8:30 a.m., Plaintiff left for the Detroit Metropolitan Airport to catch the prearranged flight to Washington, D.C.
68. On September 8, 2003 at 12:01 p.m., with knowledge that Plaintiff had already left for Washington, D.C. pursuant to subpoena, Plaintiff was sent an e-mail by Defendant Collins instructing him who to contact at DOJ when “contacted by a Congressional staffer or office to testify on any matter.”
69. On September 8, 2003, Plaintiff contacted Defendant DOJ immediately upon landing at the airport and left a message at the office of the contact person from the Office of Legislative Affairs. Said contact person was not at her desk at the time of Plaintiff’s call and Plaintiff left a message.
70. On September 8, 2003, Plaintiff met with representatives from Defendant DOJ in the Hart Senate Office Building and told Defendant DOJ representatives that if Plaintiff were to testify, Plaintiff intended to give a brief summary and overview of the facts in United States v. Koubriti. Plaintiff attempted to reassure Defendant DOJ representatives that he (Plaintiff) had no intention of “going off the reservation.”
71. At no time after service of the subpoena on September 7, 2003, of the Plaintiff and prior to his appearance before the Senate Finance Committee on September 9, 2003, did

Defendant DOJ make any effort to quash the subpoena or give Plaintiff guidance on how to proceed in responding to the request for Plaintiff's testimony or the Subpoena .

72. On September 9, 2003, Plaintiff testified for approximately six minutes before the Senate Finance Committee and outlined a brief summary and overview of the facts in United States v. Koubriti. Plaintiff was made aware that Defendant DOJ took great exception to references by Senator Grassley that Plaintiff is a "model public servant and as far as I'm concerned you should be hailed as a hero." Senator Grassley also praised the Defendant DOJ in his introductory remarks for DOJ's accomplishments in gaining the first terrorism convictions at trial since September 11, 2001. In addition, Senior Democrat and Ranking Member, Senator Max Baucus said in his remarks, "I commend Mr. Convertino for all of his work. I think you've done a great job... and I associate myself with your remarks regarding Mr. Convertino."
73. On September 10, 2003, at approximately 10:03 a.m., Plaintiff e-mailed Defendant Gershel regarding the removal of AUSA Corbett and Plaintiff from the Koubriti case and Plaintiff reiterated to Defendant Gershel that "I attempted to reach you three times on Friday [i.e. before the Senate testimony] and left messages that it was important that I speak with you. None of those calls were returned."
74. In fact, Plaintiff had attempted to obtain guidance from Defendants regarding his Senate testimony, but Defendants had refused to respond to his call.

75. On September 10, 2003, at approximately 10:34 a.m., Defendant Gershel responded to Plaintiff's e-mail regarding the lack of guidance he was provided by DOJ, by informing Plaintiff that "I am not going to respond to you in an e-mail. I was out Friday."
76. On or about September 15, 2003, Plaintiff was informed that Defendant Gershel, had ridiculed Plaintiff for being referred to by Senator Grassley as a "hero" and accused the Plaintiff of preparing and writing Senator Grassley's and Senior Democrat and Ranking Member, Senator Max Baucus' introductory remarks at the September 9, 2003 hearing on terrorism and identity fraud.
77. On or about September 15, 2003, Plaintiff was informed that Defendants Gershel and Collins, planned to reassign Plaintiff from his position as an Assistant United States Attorney in the Organized Crime Strike Force to a newly created position of full time "Duty AUSA," said position being created specifically for Plaintiff and would require Plaintiff to handle exceedingly simple and mundane assignments of arraignments, initial appearances, pre-trial diversions and other routine tasks on a full time and daily basis. Defendant Gershel admitted to another individual that the goal of said reassignment was to force Plaintiff to quit his position as an Assistant United States Attorney.
78. Defendants were of the inaccurate belief that Plaintiff had extensive contacts with representatives of the legislative branch, and accused Plaintiff of having these contacts to, among others, reporters from the *Detroit Free Press/News*.
79. Defendants leaked information contained in sealed court records in violation of the Sealing Order entered by the Court, to the *Detroit Free Press/News* in an attempt to

demonstrate that Plaintiff had extensive contacts with the Senate Finance Committee for approximately two months prior to August 2003. Defendant DOJ is now proceeding to unseal said court records in an effort to mitigate Defendant's previous violations of the Sealing Order and to attempt to discredit Plaintiff.

80. In a January 17, 2004 article in the *Detroit Free Press/News* Defendants released the name of a confidential informant ("CI") and violated a District Court's Sealing Order related to the sentencing hearing of this CI. The sole motive for violating the Court's Order was to leak to the news media information Defendants believed would discredit Plaintiff's constitutionally protected contacts with members of the United States Senate by alleging that Plaintiff had lied about his contacts with the Senate.

81. In relevant part, the *Detroit Free Press/News* article stated:

At [the CI's] closed-door sentencing in July 2003, officials said, Convertino justified his request for a lenient sentence by telling [the judge] that [the CI] had turned his life around and provided invaluable assistance in the terrorism investigation. [The CI told the judge] that Convertino also had asked him to testify before Congress – an indication that Convertino had been working with Grassley's committee at least two months before Convertino said he was subpoenaed at the last minute to testify.

82. Defendants wilfully violated a court sealing order and wilfully released the identity and information about a CI in retaliation for Plaintiff's contacts with the legislative branch of government.

83. Defendants' "theory" that the confidential and sealed statements of a CI demonstrated that Plaintiff had far more extensive contacts with the Senate than Plaintiff had admitted is baseless, inaccurate, misleading and categorically untrue.

84. Prior to the illegal leak to the *Detroit Free Press/News* of information contained in a sealed court proceeding, and the illegal leak to the *Detroit Free Press/News* of the identity of a CI, Defendants had relied upon the sealed sentencing transcript to attack the credibility of Plaintiff internally within DOJ.
85. On October 10, 2003 Defendants Tukul and Gershel met with Plaintiff and questioned Plaintiff about the CI's statement made in the sealed sentencing hearing. Plaintiff fully explained the background and circumstances of the comment and explained how that comment was not related in any manner to contacts Plaintiff had with representatives of the legislative branch. Defendants Tukul and Gershel summarily accused the Plaintiff of lying and failed to attempt to confirm Plaintiff's truthful explanation of the background and circumstances of the comment.
86. Defendant DOJ commenced "leaking" information in violation of Federal law and the Privacy Act, and Defendants knowingly leaked to the news media information about Plaintiff that was false and/or misleading, in order to discredit Plaintiff.
87. Defendants' ongoing conduct, including, but not limited to the intended reassignment and illegal leaks of information related to Plaintiff, violates the First Amendment of the United States Constitution and the Lloyd-LaFollette Act, and has had a chilling effect on Plaintiff and other similarly situated DOJ employees' rights to engage in First Amendment protected speech and speech protected by the Lloyd-LaFollette Act.

88. Defendants' ongoing conduct violates Federal law which protects any Federal employee's right under 5 U.S.C. § 7211 to "furnish information" to "either House or Congress, or a committee or Member thereof."
89. Plaintiff and other similarly situated Defendant DOJ employees, fear retaliation if they should engage in speech protected under the First Amendment and the Lloyd-LaFollette Act.
90. As a direct and proximate result of Defendants' actions and illegal conduct, this Court should declare that Defendants have violated Plaintiff's statutory and constitutional rights and the Defendants should be enjoined from denying Plaintiff's rights under the APA, the First Amendment and the Lloyd-LaFollette Act.

COUNT II
(Violations of the Privacy Act by Defendant DOJ)

91. Incorporate by referencing paragraphs 1 through 90, inclusive, and all allegations contained therein.
92. Defendant DOJ maintains confidential personnel records related to Plaintiff within one or more systems of records protected under the Privacy Act.
93. In or about September 2003, Plaintiff was informed by several individuals that confidential personnel matters directly related to Plaintiff had been or were being initiated by Defendants, including Collins, Tukel, and Gershel.

94. The personnel matters related to Plaintiff were being widely disseminated orally and by e-mail to persons employed by Defendants and to persons who had no “need to know” the information contained in these so-called confidential personnel matters.
95. In a memorandum a member of the trial team sought to clarify certain issues and wrote;
- I have been advised by Jonathan Tukul that the truth concerning my conduct and that of Richard Convertino during the terrorism trial has little meaning I have not yet become so cynical as to believe the truth to be irrelevant, although I am getting closer to that point.
96. On October 7, 2003, Plaintiff and AUSA Corbett were notified by Defendant Collins that “the office has undertaken a review of cases handled by” the Plaintiff and that the Plaintiff and AUSA Corbett would be required to meet with Defendants Tukul and Gershel in separate interviews.
97. On October 9, 2003, Plaintiff requested the names of the cases that Defendants Tukul and Gershel wished to discuss in order to “allow us to conduct the review in a professional and businesslike manner.” Defendant Tukul, in an e-mail to Plaintiff, refused to provide the names of the cases in advance of the meeting.
98. In October 2003, Plaintiff met three times with Defendants Gershel and Tukul to answer questions about previous cases. Before each of these meetings, Plaintiff requested that he be able to have a supervisor present during the meeting. Plaintiff was denied this right each time.
99. On October 16, 2003, Plaintiff wrote a memorandum to Defendant Gershel that said in part:

It is apparent to me that your “investigation” is another effort in a series of reprisals against me ... as a result of my testimony before the Senate Finance Committee. In addition, I cannot trust you to accurately represent verbal conversations that we had, or to refrain from discussing your issues with me inappropriately with my office colleagues.

100. As early as October 2003, Defendant DOJ disseminated confidential personnel records/information about Plaintiff, including but not limited to records relating to the U.S. Department of Justice Office of Professional Responsibility (OPR), to others within and outside of the U.S. Attorney’s Office in Detroit, whose official duties do not require access to Plaintiff’s personnel records, including other Assistant U.S. Attorneys, federal law enforcement officers, and non-government attorneys.
101. In November 2003, a Detroit area defense attorney stated to a Federal law enforcement agent that he (defense attorney) was aware of the existence of an OPR investigation against Plaintiff.
102. The Federal law enforcement agent identified above reported his conversation with the defense attorney to Plaintiff. This was the first time Plaintiff learned that an OPR investigation related to Plaintiff had been opened.
103. On December 2, 2003, at approximately 9:37 a.m., Plaintiff sent an e-mail to Defendant Tukul asking for confirmation that OPR referrals were made against Plaintiff and that a copy of these referrals be provided to Plaintiff. Plaintiff never received a response from Defendant Tukul.
104. On December 2, 2003, at approximately 5:30 p.m., Plaintiff received a sealed manilla envelope that contained a letter, signed by Defendant Collins and addressed to Plaintiff,

informing Plaintiff that the OPR “has initiated an investigation into allegations that you engaged in various acts of professional misconduct.” Plaintiff was required to sign a receipt acknowledging that Plaintiff had received the letter. Plaintiff was ordered not contact witnesses, thereby preventing Plaintiff from effectively defending himself against the false and misleading nature of the allegations.

105. The allegations contained in the letter received by Plaintiff on December 2, 2003, is not the complete referral sent to OPR by Defendants Collins, Tukel and Gershel. The letter received by Plaintiff on December 2, 2003, includes allegations that are vague and general in nature, and not substantiated by names, dates, documents or facts. Plaintiff has repeatedly asked for and been refused a copy of the referral sent to OPR by Defendants Collins, Tukel and Gershel, that further details the allegations against Plaintiff.
106. The allegations set forth in the December 2, 2003 letter were untrue, misleading, inflammatory, inaccurate and false. Defendants knew, or should have known, that the allegations set forth in the letter were false, misleading, inaccurate and/or incomplete.
107. Defendants knew that “leaking” the contents of the December 2nd letter and/or the referral would have a devastating impact on Plaintiff’s career within DOJ and would ruin his well-established national reputation as a top notch prosecutor.
108. None of the allegations were made contemporaneous to the events alleged and were only raised after Defendant DOJ began its retaliatory actions against Plaintiff.

109. In December 2003, a Detroit area reporter notified Plaintiff that he had been informed of the OPR referral, and informed Plaintiff that he (the reporter) had received e-mails with specific information about the confidential informant referred to therein.

110. On January 14, 2004, Plaintiff and his attorney notified the U.S. Department of Justice Office of Professional Responsibility about their concerns that Defendant DOJ and its officials, agents or employees were releasing the existence of the OPR referral and/or investigation and its contents to members of the media and others with improper motives and purposes.

111. On January 16, 2004, at approximately 11:50 a.m., David Ashenfelter, a Detroit Free Press staff writer, contacted Plaintiff and left the following 21 second message:

Hey Rick, Dave Ashenfelter calling from the Free Press. I'm doing a story tomorrow about the OPR investigation, and I'm going into some detail about what the OPR is looking at, um and I want to give you an opportunity to talk about it. I'm at 3132234490. Thanks.

112. On January 16, 2004, at approximately 12:30 p.m., in a telephone conversation with Mr. Ashenfelter, the *Free Press* reporter asked questioned which demonstrated that he had been provided with a complete and un-edited version of the OPR referral. The reporter had information of a highly confidential nature about Plaintiff, including information what was clearly illegally "leaked."

113. Not only was the reporter fully familiar with the confidential OPR proceeding against Plaintiff, the reporter had apparently been provided a copy of the December 2, 2003 OPR letter to Plaintiff. This letter had contained the name and detailed information about a

highly effective CI. The reporter, by having access to the OPR letter or its full contents, learned of the identity of this CI.

114. On January 16, 2004, at approximately 12:30 p.m., in a telephone conversation with Mr. Ashenfelter, Plaintiff and attorney William Sullivan informed Mr. Ashenfelter that the allegations in the OPR letter were false and misleading and that Plaintiff had information, witnesses and documentation to disprove the allegations which they intended to present to the proper venue and not the media. Further, Plaintiff and attorney Sullivan emphatically stated that any story disseminated in the press media or other media regarding the OPR allegations would cause irreparable damage to Plaintiff's professional and personal reputation, even when proved untrue. Base upon the conversation with the reporter, it was clear to Plaintiff and attorney William Sullivan that the story was already written; that Defendant DOJ had found their desired and willing conduit; that the call for comment by Plaintiff was merely perfunctory, and that publication was immanent.
115. On January 16, 2004, in the same telephone conversation referred to above with Mr. Ashenfelter, Mr. Ashenfelter informed Plaintiff and attorney William Sullivan that Mr. Ashenfelter and the Detroit Free Press planned to publicly list the name of an opened confidential informant (CI) for the FBI. Plaintiff and attorney William Sullivan strongly denounced the use of the CI's name and the public disclosure of the CI for fear that the CI and/or his family would be placed in harms way and their lives seriously endangered. In addition, Plaintiff also told Mr. Ashenfelter that public disclosure of the CI may negatively

impact ongoing investigations or intelligence collection and was, at best, reckless, dangerous and wholly without regard for the safety and well-being of another.

116. The identity of the CI was contained in a document which was part of a system of records related to Plaintiff. The release of the CI's name would not only harm the CI - and place the CI at risk of being killed - it would also destroy Plaintiff's reputation within the law enforcement community and render it difficult, if not impossible, for Plaintiff to work in the future with CI's. Additionally, the publication of the CI's identity would fundamentally destroy the professional relationship between the CI and Plaintiff, inasmuch as the Plaintiff's promises of complete confidentiality to the CI would be violated.
117. Plaintiff pleaded with the reporter not to release the identity of the CI. The reporter responded that it was an "editorial decision."
118. On January 17, 2004, an article written by Mr. Ashenfelter, titled "*Terror case prosecutor is probed on conduct*" was published in the Detroit News/Detroit Free Press and subsequently, picked up by other news agencies, both nationally and internationally, including television and internet sites. The article cites as its sources "Department officials" or "officials" repeatedly throughout the article. Further, the article demonstrated that the "officials," knew their actions regarding the leak to be unlawful, as they "spoke on condition of anonymity, **fearing repercussions.**" (Emphasis added). The first two paragraphs of the article read as follows:

The U.S. Justice Department is investigating possible misconduct by the lead prosecutor in last year's terrorism trial in Detroit, a development that could force a new trial.

Department officials told the Free Press this week that U.S. Attorney Jeffrey Collins requested the investigation in November after discovering possible ethical violations involving the prosecutor, Assistant U.S. Attorney Richard Convertino. The inquiry is being conducted by the Justice Department's Office of Professional Responsibility (OPR), according to the officials, who spoke on condition of anonymity, fearing repercussions.

119. On January 17, 2004, the article written by Mr. Ashenfelter, titled "*Terror case prosecutor is probed on conduct*" as published in the *Detroit News/Detroit Free Press*, contained detailed information regarding an OPR referral on Plaintiff as well as the name of a confidential informant.
120. Upon learning that the *Detroit News/Detroit Free Press* intended to publish the name of the CI, Plaintiff took immediate steps to protect the CI. Because the publication of the name of the CI placed the CI's life in immediate danger, Plaintiff was forced to take extraordinary steps in order to assist the CI. Plaintiff immediately informed the CI of the leak of his identity and of the publication of the CI's name in the following day's newspaper. The CI immediately left his home and was forced to reside in undisclosed locations until the CI fled from the United States to another country at the first available opportunity.
121. As a result of Defendants causing the name of the CI to be published, Plaintiff's relationship with the CI was destroyed. The numerous benefits the United States may have gained from being a CI were lost, and the CI's life was placed in extreme danger. Plaintiff's promises of confidentiality to the CI were broken by the Defendants. The CI

now feels a deep sense of betrayal, is extremely hostile to Plaintiff and the United States and has made several threats of retaliation since he left the United States.

122. The release of the CI's identity violated the Privacy Act. It is also illegal under other laws of the United States for Defendants to have exposed the CI's identity.
123. On January 23, 2004, the CI was forced to flee from the United States due to the illegal disclosure of his identity, leaving behind possessions and property.
124. Based on the illegal leak of information from documents within a system of records directly related to Plaintiff, the identity of a CI was published not only in the local Detroit media, but was also published nationally and internationally, both in various newspapers and on the World Wide Web.
125. The release of the CI's identity caused irreparable harm to the national security of the United States; interfered with the ability of the United States to obtain information from the CI about current and future terrorist activities; interfered with the ability of the United States to recruit other CI's; directly harmed the United States' "War on Terrorism," and irreparably harmed Plaintiff's reputation with the CI and other potential CI's.
126. At no time, since the willful, knowing, intentional and unlawful leaks of confidential Privacy Act-protected information about Plaintiff were disseminated and printed, have any representatives from Defendant DOJ, publically denounced the leak, which irreparably and wrongfully damaged the reputation of the Plaintiff and placed the life of a confidential informant and his family in grave danger.

127. On or about February 9, 2004, Plaintiff was informed that Defendant Gershel told another individual that there were only three individuals in the United States Attorney's Office in Detroit that had access to the OPR referral initiated by Defendant Collins.
128. Defendant DOJ did not properly maintain or safeguard confidential personnel records pertaining to Plaintiff by, *inter alia*: failing to store them in a secure manner; failing to restrict access to Plaintiff's confidential personnel records only to those whose official duties require access; failing to use sign-out sheets; and failing to restrict the number of employees who are able to access records.
129. At various times since October 2003, through the present, confidential personnel records/information pertaining to Plaintiff, including but not limited to the contents of the OPR referral, were wrongfully disclosed or made available to others by Defendant DOJ without Plaintiff's consent or authorization.
130. There is information contained within the aforementioned confidential personnel records pertaining to Plaintiff that is either negative, derogatory, sensitive or highly personal in nature and which would reasonably result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom such information is maintained if the security and confidentiality of such records were not maintained or safeguarded, or if such records were disclosed.
131. The aforementioned confidential personnel records pertaining to Plaintiff, including the information contained in them and any derivative information, are maintained in the

Privacy Act system of records and are protected from unauthorized disclosure under the Privacy Act, as amended, 5 U.S.C. § 552b.

132. Defendant DOJ, through its officials, agents and/or employees, intentionally and/or willfully disclosed and/or made available to others the contents of records maintained in one or more Privacy Act systems of records pertaining to Plaintiff, including but not limited to the contents of the OPR referral on Plaintiff, in contravention of Defendant DOJ's own regulations and internal policies, and in violation of federal regulations and in violation of the Privacy Act of 1974, as amended, 5 U.S.C. § 552a(b).
133. Defendant DOJ, through its officials, agents and/or employees, intentionally and/or willfully disclosed and/or made available to others the contents of records maintained in the Privacy Act system of records pertaining to Plaintiff, without any official need or any official purpose.
134. Defendant DOJ's violations of the Privacy Act with respect to Plaintiff's confidential personnel records, include but are not limited to releasing the contents of the OPR referral on Plaintiff.
135. Defendant DOJ never made any effort to assure the accuracy, completeness, timeliness or relevance of the aforementioned allegations about Plaintiff prior to their referral and disclosure in violation of the Privacy Act, 5 U.S.C. § 552a(e)(6).
136. Defendant DOJ has violated the Privacy Act, 5 U.S.C. § 552a(e)(7), by maintaining records describing how plaintiff exercises rights guaranteed by the First Amendment.

137. Defendant DOJ violated 5 U.S.C. § 552a(e)(9) by intentionally and willfully failing to establish rules of conduct for persons involved in the design, development, operation or maintenance of any system of records, or in maintaining any record, and Defendant DOJ failed to instruct each person who was involved in the handling of confidential personnel records pertaining to Plaintiff with respect to such rules and the penalties for non-compliance.
138. Defendant DOJ violated 5 U.S.C. § 552a(e)(10) by intentionally and willfully failing to establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of Plaintiff's confidential personnel records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to Plaintiff.
139. Defendant DOJ violated the Privacy Act, 5 U.S.C. § 552a(c), by failing to keep an accounting, which necessarily includes a record of the date, nature and purpose of the disclosure, as well as the name and address of the person to whom each such disclosure was made, of any of the aforementioned unauthorized disclosures about Plaintiff.
140. Defendant DOJ's violations of the Privacy Act with respect to Plaintiff's confidential personnel records are ongoing and continuing.
141. As a direct and proximate result of each of the violations of the Privacy Act of 1974 by Defendant DOJ, intentional and willful disclosures and releases of the contents of records maintained in the Privacy Act system of records pertaining to Plaintiff have occurred and sensitive personal information about Plaintiff has been released to third parties. Such

disclosures and releases by Defendant DOJ without Plaintiff's authorization constitute a violation of Plaintiff's rights under the Privacy Act of 1974, as amended, and is the direct and proximate cause of the damages described below.

142. As a direct and proximate cause of each of the intentional and willful violations of the Privacy Act of 1974 by Defendant DOJ, the Plaintiff has suffered an "adverse effect," as defined in 5 U.S.C. § 552a(g)(1)(D), including but not limited to direct and indirect injury to Plaintiff's reputation, embarrassment, humiliation, anxiety, physical upset, emotional upset, mental anguish, physical pain and physical suffering, and damage to career and his professional reputation and out-of-pocket pecuniary losses as well as inconvenience and unfairness and fear of further violations by Defendant DOJ of Plaintiff's privacy rights.
143. As a direct and proximate cause of each of the intentional and willful violations of the Privacy Act of 1974 by Defendant DOJ, the Plaintiff has suffered damages, including but not limited to, actual pecuniary damages and actual non-pecuniary damages in the form of direct and indirect injury to Plaintiff's reputation, embarrassment, humiliation, anxiety, physical upset, emotional upset, mental anguish, physical pain and physical suffering, and damage to career and his professional reputation. Plaintiff's damages are ongoing and continuing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief from this Court, as follows:

- (a) Award Plaintiff damages, subject to proof and in an amount to be determined at trial,

for violating Plaintiff's rights under the Privacy Act, including but not limited to actual, compensatory damages for, *inter alia*, harm to reputation and embarrassment and humiliation, physical injury, as well as for damage to Plaintiff's career;

(b) Award Plaintiff damages in an amount not less than \$1,000 for each and every violation of the Privacy Act;

(c) Injunctive relief in accordance with the First Amendment and the Lloyd-LaFollette Act;

(d) Order preliminary and permanent injunctive relief and declaratory relief as appropriate;

(e) Award Plaintiff his costs and reasonable attorney fees;

(f) Award Plaintiff his costs and reasonable attorneys' fees in this action pursuant to the Equal Access to Justice Act; and

(g) Grant such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Respectfully submitted,

_____/s/_____
Stephen M. Kohn, D.C. Bar No. 411513

_____/s/_____
David K. Colapinto, D.C. Bar No. 416390

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Dated: February 13, 2004