

**NOMINATIONS OF ALAN C. KESSLER AND CAROL  
WALLER POPE**

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**HEARING**

BEFORE THE  
COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF ALAN C. KESSLER, OF PENNSYLVANIA, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE, AND CAROL WALLER POPE, OF WASHINGTON, DC, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

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MARCH 30, 2000  
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**NOMINATIONS OF ALAN C. KESSLER AND  
CAROL WALLER POPE**

**THURSDAY, MARCH 30, 2000**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Thad Cochran presiding.

Present: Senators Cochran and Stevens.

Senator COCHRAN [presiding.] The Committee will please come to order.

Today we are pleased to have a hearing on the nominations of Alan Kessler to be Governor of the U.S. Postal Service and Carol Waller Pope to be a Member of the Federal Labor Relations Authority.

Mr. Kessler is nominated to serve a 9-year term as a Governor of the U.S. Postal Service, and Ms. Pope is nominated to serve a 5-year term as a Member of the Federal Labor Relations Authority.

We welcome you both as well as those who have come to introduce you to the Committee this morning.

At this point, I am going to recognize the senior Senator from Delaware—well, he is the senior Senator present from Delaware—Mr. Biden, my good friend, and then, Rick Santorum, the distinguished Senator from Pennsylvania, who are both here to introduce Mr. Kessler.

Senator COCHRAN. Senator Biden.

**TESTIMONY OF THE HON. JOSEPH R. BIDEN, JR., A U.S.  
SENATOR FROM THE STATE OF DELAWARE**

Senator BIDEN. Well, thank you very much, Mr. Chairman.

As your colleague who is among the most senior of senior Senators from Alaska knows, I am the second-most senior junior Senator in the United States, trumped only by Strom Thurmond's seniority over Senator Hollings. But I am happy and have been satisfied in that position for a long time, and I am honored to serve with Bill Roth and to serve, "under" Bill Roth.

Mr. Chairman and Senator Stevens, I have the honor of introducing Alan Kessler, who is accompanied by his wife Gail and his parents, Alan and Jo, who reside in my home State of Delaware. I know you might ask, "Why is a Senator from Delaware speaking on behalf of a resident of Philadelphia?" Well, aside from Alan being a native of my State, as most of you know, the geographic distance between my home town of Wilmington, Delaware and

Philadelphia is only a few short miles, and because of this, as Senator Specter and Senator Santorum both know, I sometimes get involved in matters that I maybe should not be involved in in Pennsylvania, and they sometimes get involved in matters to help me in my State of Delaware. So it has been a cooperative arrangement which I have enjoyed.

I have known Alan Kessler for about 10 years, Mr. Chairman, and aside from being an all-around good guy and native Delawarean, he is a graduate of my alma mater as well. He went on to earn his juris doctorate from the University of Maryland Law School.

Alan has been extremely involved in the Philadelphia community. He was a Township Commissioner in Lower Merion Township, which is about as big as my entire State in population, literally and not figuratively, from 1988 through 1999. In 1992, Alan was co-chair of the Mayor's Transition Committee for Philadelphia Mayor Ed Rendell, and he is a past member of the Philadelphia City Planning Commission.

In addition, in 1994, he was appointed by the President to serve as Vice Chairman of the Presidential Congressional Commission on Risk Assessment and Risk Management, and served in that post until 1998.

Currently, he is not only a member of the Executive Committee of Philadelphia 2000, but also a member of both the Executive Committee of Central Philadelphia Development Corporation and the Board of Directors of the Philadelphia Industrial Development Corporation.

And, as if all this were not enough, he has been appointed by the Pennsylvania Supreme Court to serve as chairman of the Continuing Legal Education Board.

Finally, Mr. Chairman, Alan is also somewhat of a legend in the Philadelphia legal community due to the superb legal skills that he has brought to some of the area's most notable legal cases. He has represented clients ranging from major corporations to local government, and he understands the value of public service as well as the bottom line. This is an important and unique function that he will bring, I think, to the Postal Service Commission, which has a duty to serve all of us at a low rate.

Alan is someone whom I know many residents of the Philadelphia area have a great deal of respect and admiration for, and I have every confidence that the savvy and talent that he brings will make him an excellent addition to the Postal Service Board of Governors. Why he would want the job is beyond my comprehension, but I am glad he does. Nine years sounded like a sentence you were reading out. But it is, as we all know, an incredibly important responsibility; it is something that the public has come to take for granted as if it is automatic. As a matter of fact, with the experience of the four of us in here, I think we could probably all agree that the public still thinks we somehow control all aspects of the Postal Service when in fact we control very little of it. And that is why I think it is so important that we pick people who we believe will be able to bring professional credentials to that responsibility, which will make one of the largest operations in the world function

well and at the lowest possible cost to the consumer—in this case, our constituents.

There is more to say about Alan, but I will leave that to others. Let me just suggest that I think this is a first-rate, serious, professional nominee, and I want to thank—not that it is my position to do so, and it may sound somewhat gratuitous and I do not mean it that way—I want to thank Senator Santorum for the way in which he has shepherded this along, and I thank him for allowing me to go first.

I yield the floor.

Senator COCHRAN. Thank you very much, Senator Biden.  
Senator Santorum.

**TESTIMONY OF HON. RICK SANTORUM, A U.S. SENATOR FROM  
THE STATE OF PENNSYLVANIA**

Senator SANTORUM. Thank you, Mr. Chairman.

I always defer to my senior colleagues, and certainly, to the very distinguished and terrific Member from Delaware, thank you for being here for Alan and for supporting the nomination.

I support the nomination, and I will not go through all the details. I think Joe covered them very adequately. Just let me comment on a couple of them.

First, I think Joe's mention of understanding the bottom line is very important. In Alan's work at one of the most distinguished law firms in Philadelphia, Wolf Block—a major law firm and an incredibly significant player in Philadelphia—he has represented small companies, he has represented entrepreneurs, he has represented larger companies, all in the area of defense. Working with those companies, I think he has a great understanding of that bottom line and an understanding of business and how business works and how it works efficiently and best, and that understanding from that perspective coupled with, as I know the Senator from Mississippi understands, that legal background, which is important to understand the intricacies of how to deal with a variety of issues that are going to come before the Postal Commission, I think are very, very important.

Second, he has experience in the public sector. He is an elected township commissioner. As Joe mentioned, Lower Merion Township is one of the fastest-growing townships in Pennsylvania. It abuts the City of Philadelphia. It is huge, it is diverse, and it is a very complex political dynamic there, and he represents that area as a commissioner, has held that commission, and again, I think understands the responsibility of public service in that regard as well as the other appointments that he has had. He has also run for elected office.

So I think Alan brings a very good breadth of experience, of background, and of education that could be very helpful to this commission.

As I commented earlier, the Postal Commission is probably the least partisan commission I can think of, and someone who has a good, solid background and understanding of business and a bottom line, who has an understanding of the complexities of law that you are going to have to deal with, plus the understanding of public service, I think is very well-suited for that.

So I heartily recommend him, and I want to thank you, Mr. Chairman, in particular for your willingness to move forward expeditiously with this hearing. You did so above and beyond the call of duty, and I just want to thank you personally for your great generosity in moving this nomination and this hearing expeditiously. It is very much appreciated.

I also want to thank Senator Thompson for his work in getting through the interviewing process and helping that along the way.

So, thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Senator Santorum, for your eloquent statement as well. Thank you both.

I am going to now turn to Eleanor Holmes Norton, the Delegate from the District of Columbia to the U.S. House of Representatives, to introduce Carol Waller Pope.

**TESTIMONY OF HON. ELEANOR HOLMES NORTON, A  
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Chairman Cochran.

It is a special pleasure for me to introduce Carol Waller Pope, a distinguished citizen of this city who has earned her reputation in the very agency to which she has been nominated to be a member, the Federal Labor Relations Authority.

It is particularly gratifying to see a young lawyer work so hard and move up the ranks, after having spent virtually her entire career at the agency and having served with such distinction that the President of the United States would indeed name her a member of the Authority, itself.

As you are aware, this agency deals in a rarified and specialized branch of labor law and labor management relations. So, it is particularly helpful to have a member who has spent virtually her entire career there and has encyclopedic knowledge of the Authority and of the field.

Ms. Pope is particularly well-qualified by professional reputation, by educational background and experience, and by her demonstrated deep understanding of Federal labor-management relations.

She is also well-qualified by virtue of her law degree from Northeastern University Law School, her B.A. from Simmons College on whose board she serves, and the additional courses on industrial and labor relations she has taken at the Cornell University.

It is with great pride that I recommend her to you and believe that her distinguished career speaks for itself as to why she was nominated.

Thank you very much, Mr. Chairman.

Senator COCHRAN. Thank you, Ms. Norton, for your presence here this morning and for your introduction of our nominee.

Before we proceed further, I recognize the attendance of our distinguished colleague Senator Stevens from Alaska and will yield to him for any opening comments that he might desire to make.

**OPENING STATEMENT OF SENATOR STEVENS**

Senator STEVENS. This is a hard meeting for me, Mr. Chairman. I am one of the coauthors of the Postal Reform Bill that led to the creation of the Board of Governors.

I am disturbed to learn that if Mr. Kessler is confirmed, there will be three members from Pennsylvania out of nine, and as a matter of fact, a fourth was born in Pennsylvania. That was supposed to be a national board that represents the entire United States, and I am just going to have to reserve my judgment on whether or not this is a proper thing to do, to have four members who are supposed to guide the Postmaster General and guide the operations of this enormous entity all coming from the same State.

Thank you very much.

Senator COCHRAN. Thank you, Senator.

The rules of the Committee on Governmental Affairs require that an inquiry be conducted into the experience, qualifications, suitability and integrity of persons who are nominated to serve in offices that are within the jurisdiction of the Committee on Governmental Affairs.

The Committee has received from the nominees all of the information that we were required to obtain. In addition, the nominees have responded in writing to pre-hearing questions submitted by the Committee concerning issues relevant to the office to which they have been nominated.

We have received copies of the nominees' biographical information and responses to questions that have been submitted to them. These will be placed in the record as part of this hearing and are available upon request.

The financial statements are available for inspection by the public in the Committee office.

The staff of the Committee have reviewed all of this information and in addition have examined the Financial Disclosure Reports submitted by the Office of Government Ethics.

The Committee's Ranking Member and I have reviewed the FBI Background Investigation Reports.

The Committee rules require that all nominees be under oath while testifying before the Committee on matters relating to their suitability for office, including the policies and programs that the nominees will pursue if confirmed. So at this point, I will ask you both to stand and raise your right hand to take the oath.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KESSLER. I do.

Ms. POPE. I do.

Senator COCHRAN. Please be seated.

I am going to allow each of you to make any statement or comments that you would like to make and to introduce any family members who are accompanying you. I met Mr. Kessler's parents and wife before the hearing began.

Mr. Kessler, I am going to recognize you first to introduce your family and make any opening statement that you would like to before the Committee.

**TESTIMONY OF ALAN C. KESSLER,<sup>1</sup> OF PENNSYLVANIA, TO BE  
A GOVERNOR OF THE U.S. POSTAL SERVICE**

Mr. KESSLER. Thank you, Mr. Chairman, and let me also thank Senator Stevens, members of the staff, and other distinguished guests here today.

First, Mr. Chairman, although Senators Biden and Santorum had to run to other business, I would like to say that I am extremely honored and grateful to both of them for having taken the time out of the very important business that they conduct on behalf of the citizens of our great country and from the extraordinary demands on their schedules to introduce me this morning.

I am particularly thankful to both of them for the support that I have received from such prominent members of this great legislative body.

Mr. Chairman, I would like to introduce my wife Gail, who is sitting right behind me, as well as my parents, Jo and Al Kessler, and also introduce although they are not here today my children, Stacy, Mark, and Dan, who could not be with us because of school, although I am sure that if they had known they might have had a choice, they would have loved to use this hearing or, for that matter, anything else to get out of a day of school.

I am truly humbled and deeply honored to be before you today on the matter of my outstanding nomination to serve as a Governor of the U.S. Postal Service. I do thank you, Mr. Chairman, as Senator Santorum said, for having scheduled this hearing and having scheduled it so expeditiously, as well as to the members of the staff of both the Committee and Subcommittee.

As Senator Santorum and Senator Biden related to you, while my career has spanned over 20 years as a practicing lawyer, I have been involved for almost as long in some form of public service. From my first appointment in 1983, almost 17 years ago, by the then Mayor of Philadelphia to a board position overseeing building regulations to my subsequent appointments by two successive mayors to a number of other city board positions, including the city's License and Inspection Review Board, the City Planning Commission, Philadelphia Industrial Development Corporation and Central Philadelphia Development Corporation, I have dedicated a significant part of my career to serving the city in which I have lived and practiced my profession.

I have also served, as Senators Santorum and Biden discussed, as an elected official in a suburban township with a population of approximately 58,000 residents and as such have dealt with a full spectrum of issues facing local governments, including budgetary and fiscal issues, public safety, public works, land development, and recreation matters. By the way, in that office, I dealt with a potential closing and relocation of a Postal Service facility.

I have been appointed by the Pennsylvania Supreme Court to chair its Continuing Legal Education Committee, which oversees mandatory continuing legal education for all Pennsylvania lawyers.

Finally, during the period 1994–1998, I served as vice chair of the Presidential Congressional Commission on Risk Assessment

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<sup>1</sup>Mr. Kessler's Responses to Biographical Information Questionnaire and Pre-Hearing Questions appear in the Appendix on pages 15 and 40 respectively.

and Risk Management, a bipartisan commission that consisted of Presidential appointees as well as appointees of the Senate Majority Leader, Senator Minority Leader, Speaker of the House, and others. The Commission held hearings; it issued two reports to the White House and to Congress on the issues of risk assessment and risk management. In connection with that effort, I might add, I had the opportunity to work with both Senate and House committee staffers.

I very much enjoyed my service on that commission, as I have in all other areas of public service in which I have been engaged for almost 20 years. After we completed the Risk Commission's work, I indicated a desire to perform additional service on a part-time board or commission at the Federal level.

I expressed my interest in particular in the U.S. Postal Service because of some very important projects in which it had been involved in my city. I have also been very interested in the future of the Postal Service because of the increased competition that it will face and does face as a result of developing communications technology. This decade therefore will witness a critical challenge to an American institution—part of our national fabric—which has engendered over the years such a high degree of confidence and trust from our citizens.

I am intrigued by and very interested in helping the Postal Service meet this great challenge.

As a business lawyer, I have represented a number of different business interests, including real estate developers, major corporations as well as entrepreneurial companies. I have been involved not only in the courtroom, but in negotiations and counseling, in an effort to achieve goals while utilizing alternative methods to resolve disputes.

I believe that the cumulative experience that I have gained through my practice of law and through my public service will enhance my effectiveness on the Board of Governors of the U.S. Postal Service.

I had the very interesting and thought-provoking experience of appearing before Committee staff a few weeks ago to address a number of issues facing the Postal Service. While I have much to learn, I do believe that I have the basic background and a fundamental appreciation of those issues.

I look forward to the great challenges presented by these issues and to making what I hope will be a very worthwhile and lasting contribution to the business of the U.S. Postal Service.

Once again, I would like to thank you, Mr. Chairman, as well as Senator Stevens and the other distinguished Members of this Committee and Subcommittee, and staff members, for providing me with a hearing on my nomination.

I thank Senators Santorum and Biden for honoring me today with their very gracious introductions, and Senator Specter, who could not be with us today but who sent his chief of staff to be with me.

I understand I have taken enough time. It is Carol's turn to offer an introduction. But after that, I would be delighted to attempt to answer any questions that you might have.

Senator COCHRAN. Thank you, Mr. Kessler.

Ms. Pope, we are happy to have you with us this morning. We welcome you and invite you to make any opening statement and to introduce any members of your family or other guests that you would like to at this point.

Please proceed.

**TESTIMONY OF CAROL WALLER POPE,<sup>1</sup> OF WASHINGTON, DC,  
TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AU-  
THORITY**

Ms. POPE. Thank you, Mr. Chairman.

I would like to recognize initially my sister, Lynda Butler from Philadelphia, who is here representing all of my family—my elderly mother and sisters in Pittsburgh who could not be here today.

I would also like to recognize members of my extended District of Columbia family—Donna Ramos Johnson and Langdon Johnson.

It is important that I recognize Don Wasserman, Chairman of the FLRA, and Dale Cabinuss, a Member of the FLRA, who are present today. Unfortunately, member Phyllis Segal and the Federal Services Impasses Panel Chair Bonnie Castrey were unable to attend.

Also, my boss, the FLRA General Counsel, Joseph Swerdzewski, could not be here today, but he is ably represented by members of his staff who are also my colleagues in the Office of the General Counsel.

Thank you, Mr. Chairman, for holding this hearing, and I would like to thank Congresswoman Norton for her kind words on my behalf and for her support.

I would also like to thank all of the Committee staff for their work and for their meaningful assistance in their review of my nomination and the scheduling of this hearing.

I am humbled that President Clinton has nominated me to be a Member of the Federal Labor Relations Authority, an agency that I have worked in for over 20 years as a career civil servant.

The mission of the FLRA, to exercise leadership in promoting stable, constructive labor-management relationships that contribute to a more effective and efficient government, reaches to the heart of the workings of our democracy. That mission has been the cornerstone of my professional life. If confirmed by the Senate, I will work with my colleagues to ensure that the FLRA fulfills its mission by adjudicating disputes fairly, impartially, and expeditiously; also by producing quality legal decisions that enhance the stability of Federal sector labor relations.

Just as important, I will work with my colleagues to ensure that the FLRA continues its leadership role in assisting labor and management in collaboratively resolving their disputes.

I greatly appreciate the trust and confidence that President Clinton has placed in me, and if confirmed, I pledge to discharge my duties to the best of my ability.

Mr. Chairman, I thank you for the opportunity to appear today. Senator COCHRAN. Thank you, Ms. Pope.

<sup>1</sup>Ms. Pope's Biographical Information Questionnaire and Pre-Hearing Questions appear in the Appendix on pages 61 and 71 respectively.

We welcome all of the family members and guests who are here today.

We have some standard questions that are required of us under our rules and customs to ask of all nominees. I am going to go through those at this time and then add a couple of my own.

Is there anything that you are aware of in your background that might present a conflict of interest with the duties and the office to which you have been nominated, Mr. Kessler?

Mr. KESSLER. Mr. Chairman, the answer to that is no, or at least I am not aware of any. We have made full disclosures in terms of my financial holdings and my client list. I did receive an opinion from the ethics officers of the Postal Service who reviewed that and sent a 2-page letter indicating that she saw no conflict at this time.

Senator COCHRAN. Thank you. Ms. Pope.

Ms. POPE. No, Senator.

Senator COCHRAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. KESSLER. No, I do not, Senator.

Ms. POPE. No, Senator.

Senator COCHRAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly-constituted committee of Congress if you are confirmed?

Mr. KESSLER. Yes, Mr. Chairman.

Ms. POPE. Yes, Senator.

Senator COCHRAN. Let me ask you, Mr. Kessler, there are several issues that are confronting the Postal Service right now, and as Chairman of the Subcommittee that has jurisdiction over that area of the Committee's responsibilities, I am planning to look into a couple of them with some hearings and discussions with those who are responsible and interested in the issues.

One is the extent to which the Postal Service should be permitted, or is authorized by law, to get outside what would normally be considered the traditional scope of handling the mail. For example, in electronic communications, there are some suggestions that the Postal Service is going to embark on some new ways of handling communications, and there is a question about whether this is unfair competition with existing private enterprise activities in this area.

Do you have any thoughts or suggestions along this line about that issue?

Mr. KESSLER. Mr. Chairman, I certainly hope to the extent my nomination comes out of Committee and is voted on that I will learn a lot more than I know now, as I have indicated. But I do believe that it is clear that the Postal Service does face a great challenge over the next several years. The Postmaster General has indicated that several billion dollars of revenues are at risk because of increased competition from electronic mail, and I think that if the Postal Service is going to meet those challenges, it is going to have to be innovative and creative in terms of keeping abreast with the internet. It has done that to a certain extent with PC Postage and other initiatives.

There is an issue, as the Chairman raised, with the fact that the Postal Service, some say, has an unfair advantage, but on the other hand, just as it does have some advantages, it also has disadvantages. It does not have the ability to increase rates the same way enjoyed by the private sector. The rate process presently takes probably in excess of 10 months. The Postal Service, as we all know, has a universal service mandate. It is not a mandate that the private sector has.

So there are advantages and disadvantages. I do agree that it is a significant issue and one that I would very much like to study and analyze in greater detail, but I do think that the Postal Service is going to have to move into the 21st Century, including through internet and electronic measures, if it is going to hope to compete and not, as the Postmaster General said, see a significant diminution in its revenues.

Senator COCHRAN. One of the challenges of the Postal Service is dealing with the employee unions and other groups that are competing for higher wages, salaries, working conditions, and all the rest. To what extent does your background equip you to deal with the issues of labor and management relations that you would bring to this job?

Mr. KESSLER. Mr. Chairman, maybe I ought to defer to my colleague, Ms. Pope, and let her answer that question. But I have experience—I am not a labor lawyer, but I have general experience. When our past mayor took over in Philadelphia in 1992, the City of Philadelphia was on the brink of financial bankruptcy, and it was a matter of bringing the unions in—and I had some role in that—and labor and getting them to buy into the future of the city; and if that meant making sacrifices in some ways, there was no alternative.

I have had that same experience in behalf of my township, Lower Merion Township, as we have seen, at least during the 1990's, our revenue sources dried up and an absolute reluctance to increase taxes, and that meant considering new initiatives like privatization that we did not ultimately embark upon but that I felt we had an obligation and a duty to explore fully, and we did. In fact, we even went out with an RFP to look into privatization in some areas.

So I think I have the experience to do that. I think that part of the trick with labor—and I do not mean to say it is a trick—is good communication and trust in getting labor to buy into the future. When the Postmaster General says that there is a significant potential decline in mail and therefore in revenues, it seems to me that that is something that labor needs to have a seat at the table on but needs to understand the challenges of the future if it in turn wants to have a future.

Senator COCHRAN. Thank you.

Ms. Pope, one of the responsibilities of the Federal Labor Relations Authority is to promote stability; that was something you acknowledged in your statement, and with a 20-year history of working with the agency, you are quite familiar with that.

What do you see as one of the influences or some of the influences that you could bring to the challenge of promoting stability and dependability of excellence in performance of those who work for the Federal Government?

Ms. POPE. Labor relations is the cornerstone, if you will, of an effective government, and in my view, the role of the Federal Labor Relations Authority in delivering and deciding issues that affect labor-management relations promotes stability. Our 20-year history in issuing decisions that clarify the statute, identify the parties—labor’s and management’s rights and responsibilities under the statute, promotes stability.

Currently, our work in alternative dispute resolution and attempting to assist the parties in developing more collaborative relationships also operates to promote stability in Federal sector labor relations.

Senator COCHRAN. Are there any suggestions that you could give to the legislative committee that has jurisdiction over this area of the law for reform or changes that would make the relationship between the government and its employees more stable and more productive?

Ms. POPE. There are issues and areas that I am not prepared to speak about today with respect to legislative reform, particularly the scope of bargaining. In my view and in my role as a civil servant and as a member of the Federal Labor Relations Authority staff, we have attempted to educate the parties about the statute and its requirements in an effort to promote stability.

Senator COCHRAN. Thank you.

Senator Akaka has joined us. He is the Ranking Member of our Subcommittee and my good friend from Hawaii.

Senator Akaka, I would be happy to yield to you for any comments or questions you have of our nominees.

#### **OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. Thank you very much, Mr. Chairman. You are a good friend and very kind to me, and I want to thank you for having this hearing, which is very important to all of us.

Mr. Kessler, I want to express my appreciation for your interest in serving the public as a member of the Board of Postal Governors; and to you, Ms. Pope, on your desire to serve the agency which you have called home for 20 years, as a member of the National Labor Relations Authority.

You have both led exciting legal careers, as I read—one outside the Federal Government, the other within the Federal Government—and I am pleased to welcome both of you here today.

My questions are very brief, Mr. Kessler. I would like to know how you will help protect universal service. I ask that question because I understand that the workload of the Postal Service is changing, and we expect that, given that there will be a projected decline in mail volume by 2003. I am interested in how you would handle this.

Mr. KESSLER. Senator, I would love to say that I have specific measures in mind to address it, but at this point, I do not, other than to say as I did discuss earlier, that I understand that that is probably the greatest challenge facing the Postal Service, and I do think it probably requires a combination of factors one of which is potentially—and again, I preface this by saying that I am learning and obviously hope to learn a lot more—but one of the things that probably needs to happen—and I understand there was or may be

legislative initiatives—is allowing the Postal Service to increase its rates somewhat more quickly and expeditiously than it is able to now, 10, 11, or 12 months is a long time in today's world, when private companies can react on a daily if not even quicker basis.

That is not to say that the method, the procedure in place right now is a bad one and that there should not be an opportunity for stakeholders to be heard on rate increases or, hopefully, rate decreases. It just means that is something that maybe can be shortened and improved.

The Chairman asked me about whether the Postal Service should get involved in electronic mail initiatives, the internet. It has over the last several years in some respect, with postage stamp PC postage. I think the Postal Service needs to stay within its traditional area of services and not go beyond those services, but nonetheless I think it needs to update those services and be able to compete. It has got to be able to compete, and all the things that I have discussed today I think are important in that respect, including the need to bring labor into the mix, the need to continue to automate and to spend the money that has been spent over the last couple of years on automation. And in that respect, I believe automation alone has saved the Postal Service over the last year or two over \$208 million.

So I think that a combination of all those things has to be in place to allow the Postal Service to effectively compete over the next decade.

Senator AKAKA. Well, as you know, it will really demand some creative thinking as to how the Postal Service is going to deal with the decline in the mail load it receives. And as you point out, with the new technologies that are coming out, even those of us in Congress have to alter the way we work now that we have computers instead of filing cabinets. So our staffs and the Members have to shift in the way we do things here, and we find that we are doing more than we did before.

Ms. POPE, as the ranking member on the Federal Services Subcommittee, I am always interested in labor-management relations. Given your service of 20 years on the FLRA, I would be very interested in hearing your thoughts on the issue of labor-management relations.

Ms. POPE. We are in a period of some change in Federal labor relations, 5 years ago, starting to embark on a collaborative effort to have labor and management work together outside traditional litigation and adversarial means. A lot of progress has been made in the last 5 years, and a lot has happened in my 20-year career with respect to the development of the law in Federal sector labor relations.

There is a lot of promise and expectations, if you will, on the part of both sides, labor and management, as we move forward and further develop areas of the law and look to cement, collaboration and nonadversarial methods of dispute resolution, all to promote a more effective and efficient government.

Senator AKAKA. As you know, labor issues and problems have changed over a period of time and will continue to change. I was interested in what you thought you would be facing, and I thank you for your comments.

Mr. Chairman, thank you very much.

Senator COCHRAN. Thank you, Senator Akaka. We appreciate your participation in the hearing.

Again let me welcome and commend those who have been nominated for these important responsibilities in our Federal Government. We appreciate your cooperation with our Committee.

We have no further questions at this time, although Senators have an opportunity to submit written questions if they so choose, and we hope you will respond to any that are submitted in a timely fashion. The record will remain open for those questions and also any statements that Senators might want to put in the record.

That concludes the hearing. We stand adjourned.

[Whereupon, at 10:41 a.m., the Committee was adjourned.]



# APPENDIX

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

ALAN C. KESSLER

### A. Biographical Information

1. Name: (Include any former names used.)  
Alan C. Kessler
2. Position to which nominated:  
U.S. Postal Service Board of Governors
3. Date of nomination:  
September 28, 1999
4. Address: (List current place of residence and office addresses.)  
-----
5. Date and place of birth:  
September 16, 1950 - Washington, DC
6. Marital status: (Include maiden name of wife or husband's name.)  
Married; Gail Elaine Strauss
7. Names and ages of children:  
-----
8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.  
University of Maryland School of Law, 1972-1975 (J.D. with Honors - 1975)  
University of Delaware, Newark, DE, 1968-1972 (B.A. with Honors - 1972)  
Pierre S. Dupont High School, Wilmington, DE, 1965-1968 (High School Diploma - 1968)
9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)  
Wolf, Block, Schorr and Solis-Cohen LLP, 1650 Arch Street, 22nd Floor, Philadelphia, PA 19103-2097; Employed From: June 21, 1999 to Present Date; Nature of Work: Partner - Class Action, Antitrust, Securities and Commercial Litigation; Buchanan Ingersoll PC, Eleven Penn Center, 1835 Market Street, 14th Floor, Philadelphia, PA 19103; Employed From: 1991 to June 18, 1999; Nature of Work: Partner - Class Action, Antitrust, Securities and Commercial Litigation; Chair of Litigation, Philadelphia Office; and - PLEASE SEE ATTACHED RESUME (Exhibit "A"), FOR ADDITIONAL EMPLOYMENT INFORMATION.

DSB-667035.1

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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10. **Government Experience:**

Philadelphia Industrial Development Corporation, Board of Directors (1999-Present);  
 Supreme Court of Pennsylvania Continuing Legal Education Board (1998-Present);  
 Vice Chair, Presidential/Congressional Commission on Risk Assessment and Risk  
 Management, Washington, D.C. (1994-Present);  
 Presidential Personnel Office, Old Executive Office Building, Washington, D.C. (Volunteer,  
 1993);  
 Member, Presidential Transition Team, Washington, D.C. (1992-1993);  
 Township Commissioner, Board of Commissioners, Lower Merion Township (Elected  
 November, 1987; sworn-in January 1988; Re-Elected November, 1991 and  
 November, 1995);  
 Co-Chair, Mayor's Transition Committee, City of Philadelphia (Mayor-Elect Ed Rendell,  
 1991-1992);  
 Member, Philadelphia City Planning Commission (appointed by Mayor Ed Rendell, 1992);  
 Chairman, Board of License and Inspection Review, City of Philadelphia appointed by  
 Mayor W. Wilson Goode, 1984-1991);  
 Chairman, Board of Building Standards, City of Philadelphia (appointed by Mayor William  
 Green, 1983; reappointed by Mayor W. Wilson Goode, 1984);  
 Mayor's Task Force on the Homeless (1989-Present);  
 Mayor's Committee on Special Services District (1989-1991).

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Wolf, Block, Schorr and Solis-Cohen LLP, Partner (1999-Present)  
 Philadelphia Industrial Development Corporation, Board Member (1999-Present)  
 Supreme Court of Pennsylvania Continuing Legal Education Board (1998-Present)  
 Buchanan Ingersoll Professional Corporation, Shareholder (1991-1999)  
 Mesirov Gelman Jaffe Cramer & Jamieson, Partner (1981-1991)  
 421 Willow Corp., Limited Partner (1996-Present)  
 Central Philadelphia Development Corporation, Board of Directors (1989-Present)  
 Executive Committee, Philadelphia 2000, (1997-Present)

In addition, to the extent that a representative or consultant of any company is deemed to include an attorney, I am attaching a list of clients which should be substantially complete for at least the last five (5) years (1993 to present) as Exhibit "D".

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

**Public Service** - Supreme Court of Pennsylvania Continuing Legal Education Board (1998-Present); Board Member of Philadelphia Industrial Development Corporation (1999-Present); Vice Chair, Presidential/Congressional Commission on Risk Assessment and Risk Management, Washington, D.C. (1994-Present); Presidential Personnel Office, Old Executive Office Building, Washington, D.C. (1993); Member, Presidential Transition Team, Washington, D.C. (1992-1993); Township Commissioner, Board of Commissioners, Lower

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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Merion Township (elected November, 1987; sworn-in January 1988; re-elected November, 1991 and November, 1995); Co-Chair, Mayor's Transition Committee, City of Philadelphia (Mayor-elect Ed Rendell, 1991-1992); Member, Philadelphia City Planning Commission (appointed by Mayor Ed Rendell, 1992); Member, Executive Committee, Philadelphia 2000 (1997-Present); Chairman, Board of License and Inspection Review, City of Philadelphia appointed by Mayor W. Wilson Goode, 1984-1991); Chairman, Board of Building Standards, City of Philadelphia (appointed by Mayor William Green, 1983; reappointed by Mayor W. Wilson Goode, 1984); Mayor's Task Force on the Homeless (1989-Present); Mayor's Committee on Special Services District (1989-1991).

**Quasi Public Service and Civic** - Executive Committee, Board of Directors, Central Philadelphia Development Corporation (1989-Present); Local Legislation Committee, Greater Philadelphia Chamber of Commerce; Board of Advisors, Public Interest Law Center of Philadelphia (1992-Present); Board of Directors, Support Center for Child Advocates (1983-1992); Board of Directors, Jewish Employment Vocational Services (1989-1996); Board of Directors, Anti-Defamation League (1996-Present); Board of Directors, Indian Creek Neighbors Association (1986-Present).

**Professional Associations** - American Bar Association; Antitrust Section (ABA); Section of Corporations, Banking and Business Law (ABA); Pennsylvania Bar Association; Philadelphia Bar Association; Executive Board of the Young Lawyer's Section of the Philadelphia Bar Association (elected 1981-December, 1984); Chairman, City Policy Committee of the Philadelphia Bar Association (Special Appointment by Chancellor in 1985 and 1987); Philadelphia Police Study Task Force, Philadelphia Bar Association (1988-1989); Legislative Liaison Committee of the Philadelphia Bar Association; Member, American Arbitration Association; Vice Chair, Large Firm Management Committee, Philadelphia Bar Association (1998); Supreme Court of Pennsylvania Continuing Legal Education Board (1998-Present).

**Other Organizations** - Radnor Valley Country Club; Temple Beth Hillel, Beth El

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Township Commissioner, Board of Commissioners, Lower Merion Township (1987-Present)  
 Managing Trustee, Democratic National Committee (1992-1997)

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Managing Trustee, Democratic National Committee (1992-1997)  
 Special Counsel, Democratic City Committee of Philadelphia (1980-1984)  
 Finance Committee, Democratic City Committee of Philadelphia (1980-1984)  
 Co-Chair, Pennsylvania, Gore for President Campaign (1988)  
 National Finance Board, Clinton/Gore Campaign (1996)  
 National Finance Committee, Clinton/Gore Campaign (1992)

In addition, I have provided limited services to or have been involved in a number of election committees during the last ten (10) years, but am unable to recollect all of those committees, which include Rendell '95, Rendell '91, Bobby Casey for Auditor General, Hoeffel for

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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Congress, Mondale for Governor, Williams for State Representative, Clinton/Gore '96, Clinton/Gore '92, Friends of Mark Singel, Casey for Governor, Democratic National Committee, Braxton for Congress, Murphy for Mayor, Goode for Mayor, Weinberg for Mayor, Street for Mayor, Foglietta for Congress, Fattah for Congress, Brady for Congress, Borski for Congress, numerous State Senate, State Representatives, City Council and judicial races. In addition, I participated in the Buchanan Ingersoll Political Action Committees, Committee for Effective State Government and Committee for Effective Federal Government. As a contributor to and member of these Committees, these Committees made numerous contributions to numerous candidates and Committees of both parties, including but not limited to, Santorum for U.S. Senate, Specter for U.S. Senate, Ridge for Governor, Dole/Kemp and several other national and state Republican candidates and committees as well as numerous Democratic candidates and committees, such as Rendell '95, Clinton/Gore '96, Bobby Casey for Auditor General, etc. I participated in these contributions and approved them.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

1994 direct contributions of \$1,650.00, which included \$750.00 to Marjorie Margolis Mezvinsky. Have searched but do not have records of the remaining individual contributions for that year. In addition, contributed approximately \$1,800.00 to the Political Action Committees of my then law firm, Buchanan Ingersoll Committee for Effective State Government and Committee for Effective Federal Government. 1995 individual contributions of \$2,000.00, including \$1,000.00 to Clinton/Gore '96. Have searched but have not been able to find records of the remaining individual contributions. In addition, made contribution of approximately \$1,800.00 to Political Action Committees of my then law firm. 1996 individual contributions as follows: Braxton for Congress \$500.00, Hoeffel for Congress \$500.00, Rendell '95 \$1,000.00, Democratic National Committee \$1,000.00, Williams for State House \$500.00 and approximately \$1,800.00 to the Political Action Committees of my then law firm. 1997 individual contributions of \$1,550.00, including \$1,000.00 to Philadelphia Victory Fund '97, \$200.00 Murphy for Mayor, \$50.00 cash in for Alderman and approximately \$2,000.00 to the Political Action Committees of my then law firm. 1998 individual contributions to Hoeffel for Congress \$500.00, Mondale for Governor \$250.00, Williams for State Representative \$250.00 and \$2,358.00 to the Political Action Committee of my then law firm.

As noted, in each of these years, I made contributions to Buchanan Ingersoll Political Action Committees, Committee for Effective State Government and Committee for Effective Federal Government. As a contributor to and member of these Committees, these Committees made numerous contributions to numerous candidates and Committees of both parties, including but not limited to, Santorum for U.S. Senate, Specter for U.S. Senate, Ridge for Governor, Dole/Kemp and several other national and state Republican candidates and committees as well as numerous Democratic candidates and committees, such as Rendell '95, Clinton/Gore '96, Bobby Casey for Auditor General, etc. I participated in these contributions and approved them.

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 ALAN C. KESSLER  
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14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

University of Maryland School of Law - Graduated with Honors; Moot Court Board (National Competition).  
 University of Delaware - Graduated with Honors; Omicron Delta Kapa - National Leadership Honor Society; President of Senior Class; President of Sophomore Class; Vice-President of Freshman Class; President's (of the University) Advisory Council; Speaker at Commencement, 1972.

Who's Who in the World, 19th Edition (1991-1992)  
 Who's Who in American Law, 5th and 6th Editions (1987-1988)  
 Who's Who in America, 48th, 49th & 53rd Editions (1993, 1996, 1999)  
 Leukemia Society of America, The First Celebrity Waiters (1991)  
 City Council Resolution, City of Wilmington, Delaware, (1987)  
 Philadelphia Bar Association, Certificate of Recognition (1985 and 1987)  
 Certificate of Recognition, Young Lawyer's Section  
 Executive Committee, Philadelphia Bar Association (1984)  
 Outstanding Adult Volunteer, Pennsylvania District 27, Little League Baseball (1998)  
 Pennsylvania State Association of Township Commissioners Award for Dedicated Service as a Township Commissioner (1999)

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

"Framework for Environmental Health Risk Management", Volume 1, The Presidential/Congressional Commission on Risk Assessment and Risk Management (1997);  
 "Risk Assessment and Risk Management in Regulatory Decision-Making", Volume II, The Presidential/Congressional Commission on Risk Assessment and Risk Management (1997);  
 "Boulder Clouds Cable Reception", Volume VI, No. 2, Pennsylvania Law Journal-Reporter (January 10, 1983);  
 "Future of Philadelphia Cable TV Systems Remains Uncertain", Volume 188, No. 8, Legal Intelligencer (January 12, 1983)

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:

ALAN C. KESSLER

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16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Although I have delivered speeches on a variety of topics, including those relating to government, (for example speeches as a local elected official as a Lower Merion Township Commissioner, and as Vice Chair of the Presidential/Congressional Commission on Risk Assessment and Risk Management), I do not have copies of those speeches nor are they directly related to the United States Postal Service.

17. **Selection:**

(a) **Do you know why you were chosen for this nomination by the President?**

During the period 1994-1998 I served as Vice Chair on the Presidential/Congressional Commission on Risk Assessment and Risk Management, a Commission that consisted of Presidential appointees as well as appointees by the Senate Majority Leader, Senate Minority Leader, Speaker of the House and others, which ultimately issued well received reports in two volumes to the White House and to the Congress. I very much enjoyed my service on that Commission and indicated a desire for additional public service on a part time board or commission. I expressed my interest in particular in the U.S. Postal Service because of the high visibility of projects in which it has been involved in the City of Philadelphia. I have also been very interested in the future of the Postal Service because of the increased competition that it faces as a result of developing communications technology. I believe that because of my broad background as a business attorney and a local public official, including public service on a bipartisan federal commission as well as a number of city boards and commissions, the White House believed that I was well qualified for this position.

(b) **What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?**

In my practice as a business lawyer, I have represented a number of different business interests, including real estate developers and major corporations as well as entrepreneurial companies. I have been involved not only in the courtroom but in negotiations and counseling in an effort to achieve goals while often utilizing alternative methods at resolving disputes. I have served as a local elected official in a township with a population of approximately 58,000 residents and have dealt with the full spectrum of issues facing local governments including budgetary and fiscal issues, public safety, public works, land development and recreation matters. I have served at the federal level as Vice Chairman of a bipartisan commission which held hearings and then issued two volumes of reports to both the White House and the Congress on the issues of Risk Assessment and Risk Management. In connection with that effort, I worked with both House and Senate Committee staffers and assisted in the preparation and delivery of testimony before both. I have served on a number of boards and commissions of the City of Philadelphia including the Board of Licenses and Inspection Review, Board of Building Standards, Planning Commission and the Philadelphia Industrial Development Corporation, the City's economic development arm. Finally, I was appointed by the Pennsylvania Supreme Court to serve on its Continuing Legal Education Committee which oversees mandatory continuing legal education for all Pennsylvania lawyers.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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I believe that the cumulative experience that I have gained through my practice of law, local government service, federal government service on the Risk Commission and City governmental board experience affirmatively qualifies me for service on the Board of Governors of the United States Postal Service. In addition, as the Chair of a local commission on filling judicial vacancies, I have had an opportunity to work with and develop very good working relationships with the offices of both of the United States Senators from Pennsylvania, United States Senator Rick Santorum and United States Senator Arlen Specter.

#### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate.  
 Since this is a part-time Board position, I plan to maintain my current position as a partner in the law firm of Wolf, Block, Schorr and Solis-Cohen and therefore, will not sever my connections.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.  
 Since this is a part-time Board position, I plan to maintain my current position as a partner in the law firm of Wolf, Block, Schorr and Solis-Cohen and therefore, will continue my outside employment.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?  
 Since this is a part-time Board position, I plan to maintain my current position as a partner in the law firm of Wolf, Block, Schorr and Solis-Cohen during the period of my service.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?  
 Since this is a part-time Board position, I plan to maintain my current position as a partner in the law firm of Wolf, Block, Schorr and Solis-Cohen and no one has made a commitment to otherwise employ my services after I leave this part-time Board position.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

I expect to serve out my full term.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

To the extent that my Profit Sharing/401K Plans with my prior employers are determined to be "deferred compensation agreements," they are as follows:

- (i) Mesirov Gelman Jaffe Cramer & Jamieson (Profit Sharing/401K) - Vanguard Group - -----
- (ii) Buchanan Ingersoll PC (Profit Sharing/401K) - National City Bank of Pennsylvania - -----

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I am presently unable to identify investments, obligations, liabilities or other relationships which present an actual or potential conflict of interest with the position to which I have been nominated. Nonetheless, I have attached a copy of investments (Exhibit "B"), and of clients which should be substantially complete for at least the last five (5) years (1993 to present), as (Exhibit "D"). Moreover, I received a copy of a letter dated October 13, 1999 from Wendy A. Hocking, Alternate Designated Agency Ethics Official, Chief Counsel, Ethics and Federal Requirements Civil Practice Section Law Department of the United States Postal Service directed to Mr. Steven D. Potts, Director of U.S. Office of Government Ethics in which Ms. Hocking states that she had reviewed and certified the Public Financial Disclosure Report (SF-278) which I had submitted and "that there are no unresolved conflicts of interest with the duties of this office [Governor of the United States Postal Service] under the statutes, executive orders, and regulations applicable to the Governors of the United States Postal Service." She further states that "with respect to his enclosed SF-278 Form, Mr. Kessler reports investment interest in certain entities that may be affected by the Postal Service. In general, this would not be a cause of concern for a Governor" for the reasons that she goes on to enumerate. Ms. Hocking concludes "none of the companies in whom Mr. Kessler has reported an interest uses the mail in so central or substantial way that a real or apparent conflict is created." "In conclusion, I see no probability of a conflict arising from Mr. Kessler's association with any of the companies listed on his Financial Disclosure Report." I have attached a copy of that letter here: as Exhibit "C".

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I am presently unable to identify any business relationship, dealing or financial transaction which I have had during the last ten years which present an actual conflict of interest or possible conflict of interest in the position to which I have been nominated. Nonetheless, I have attached a copy of investments as (Exhibit "B"), and of clients which should be substantially complete for at least the last five (5) years (1993 to present) as (Exhibit "D"). Moreover, I received a copy of a letter dated October 13, 1999 from Wendy A. Hocking, Alternate Designated Agency Ethics Official, Chief Counsel, Ethics and Federal Requirements Civil Practice Section Law Department of the United States Postal Service directed to Mr. Steven D. Potts, Director of U.S. Office of Government Ethics in which Ms. Hocking states that she had reviewed and certified the Public Financial Disclosure Report (SF-278) which I had submitted and "that there are no unresolved conflicts of interest with the duties of this office [Governor of the United States Postal Service] under the statutes, executive orders, and regulations applicable to the Governors of the United States Postal Service." She further states that "with respect to his enclosed SF-278 Form, Mr. Kessler reports investment interest in certain entities that may be affected by the Postal Service. In general, this would not be a cause of concern for Governor" for the reasons that she goes on to enumerate. Ms. Hocking concludes "none of the companies in whom Mr. Kessler has reported an interest uses the mail in so central or substantial way that a real or apparent conflict is created." "In conclusion, I see no probability of a conflict arising from Mr. Kessler's association with any of the companies listed on his Financial Disclosure Report." I have attached a copy of that letter hereto as Exhibit "C".

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None, that I can recall, other than local laws as an elected Township Commissioner of the Township of Lower Merion, Pennsylvania.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

To the extent that any potential conflict of interest develops, I will either sell my interest in any investment and/or terminate my relationship and/or disclose any such potential conflict of interest and recuse myself from any involvement in the postal service matter which may create that conflict, and create a "Chinese wall" around anyone involved on such a matter. Finally, I will continually confer with the Agency's ethics officials and utilize their conflict of interest checking system.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
 ALAN C. KESSLER  
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## D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.
3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

## E. FINANCIAL DATA

Financial Data - On file with the Committee on Governmental Affairs.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES:  
ALAN C. KESSLER

AFFIDAVIT

ALAN C. KESSLER being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 28<sup>TH</sup> day of October, 19 99

Maureen P. McAleer  
Notary Public

NOTARIAL SEAL  
MAUREEN P. McALEER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires March 31, 2001

## EXHIBIT "A"

ALAN CRAIG KESSLER

PERSONAL

Date of Birth: September 16, 1950; Washington, D.C.  
 Marital Status: Married  
 Children: -----  
 Health: Excellent

PROFESSIONAL

	<u>From - To</u>	<u>Nature of Work</u>
Wolf, Block, Schorr and Solis-Cohen LLP 1650 Arch Street - 22nd Floor Philadelphia, PA 19103-2097	6/21/99-Present	Partner: Class Action, Antitrust, Securities and Commercial Litigation
Buchanan Ingersoll Professional Corporation Eleven Penn Center 1835 Market Street, 14th Floor Philadelphia, PA 19103	1991-6/18/99	Partner: Class Action, Antitrust, Securities and Commercial Litigation; Chair of Litigation, Philadelphia Office
Township Commissioner Township of Lower Merion County of Montgomery 75 East Lancaster Avenue Ardmore, PA 19097	1987-Present	Population approximately 57,000
Mesirov, Gelman, Jaffe, Cramer & Jamieson 1735 Market Street Philadelphia, PA 19103	1981-1991	Partner: Class Action, Antitrust, Securities and Commercial Litigation; Firm Executive Committee (1989-1991)
Berger & Montague, P.C. 1622 Locust Street Philadelphia, PA 19103	1977-1981	Associate: Antitrust and Commercial Litigation

## EXHIBIT "A"

	<u>From - To</u>	<u>Nature of Work</u>
Dilworth, Paxson, Kalish, Levy & Kauffman 1735 Market Street Philadelphia, PA 19103	1975-1977	Associate: Litigation Department
The Institute for Paralegal Training The Mulberry Atrium Building 2133 Arch Street Philadelphia, PA 19103	1978-1996	Instructor: Antitrust Litigation
Sherbow, Shea & Doyle Baltimore, MD	1974	Law Clerk
County of New Castle, Delaware Department of Parks and Recreation	1972-1973	Recreation Supervisor

**EXPERIENCE**

I have substantial experience in the defense and litigation of toxic tort class action claims in both federal and state court. I have represented a Fortune 500, construction product and chemical manufacturer in the defense of claims brought in one of the largest class actions ever filed, *In re Asbestos School Litigation*, U.S.D.C., E.D. Pa., Master File No. 83-0268. This toxic tort class action, brought on behalf of more than 35,000 plaintiffs, sought damages estimated in the billions of dollars, as well as equitable relief.

Further, I have represented the same manufacturer in a nationwide class action suit brought on behalf of all building owners who lease or sublease their properties to federal agencies, *Prince George Center v. U.S. Gypsum Company, et al.*, Phila. County Court of Common Pleas, May Term, 1986, No. 5388. The latter case likewise sought damages and injunctive relief arising from the purported need to remove asbestos-containing construction products from the plaintiffs' buildings and involved claims related to approximately 100,000 properties. Finally, I was involved in the defense of class claims brought against this client on behalf of all colleges and universities across the country, *Central Wesleyan College v. W.R. Grace & Co., et al.*, U.S.D.C., D.S.C., C.A. No. 2:87-1860-2, and in a statewide class action brought on all Michigan school districts, *Board of Education of the School District of the City of Detroit, et al. v. The Celotex Corporation*, C.A. No. 84-42634 NP, Michigan Circuit Court, Wayne County (MI).

I also defended such claims in federal and state court brought by individual property owners in cases frequently involving 200-300 buildings, as for example, *Catasagua Area School District v.*

## EXHIBIT "A"

*Raymark Industries, Inc.*, U.S.D.C., E.D. Pa. No. 85-3743 and *Trustees of the University of Pennsylvania v. W.R. Grace & Co., et al.*, Philadelphia County Court of Common Pleas, October Term, 1985, No. 2497.

I was privileged to be included as a member of a national committee composed of seven selected law firms and responsible for coordination and direction of litigation in more than 150 cases, both class actions and individual lawsuits, brought in forums across the country arising from claims brought for abatement of asbestos-containing building products. Due to my extensive background in class action litigation, I was selected to serve on the class action subcommittee of this group, which was charged with the responsibility of overseeing class litigation in both nationwide and statewide classes of building owners.

I was involved in a class action brought by Philadelphia businesses against the owners of a Center City high-rise building following a catastrophic fire resulting in severe financial losses to surrounding businesses and property owners. *LegXpress, Inc., et al. v. The Equitable Life Assurance Society of the United States, et al.*, U.S.D.C., E.D. Pa., C.A. No. 91-2227.

I am representing the housing authority of a major city in the defense of a class action brought on behalf of approximately 100,000 public housing residents against various governmental agencies and lead paint manufacturers which seeks more than \$30 Million in damages as well as injunctive relief, arising from the alleged presence of lead-based paint in over 5,000 public housing residences. *Harold and Evangeline Hurt, et al. v. Philadelphia Housing Authority, et al.*, U.S.D.C., E.D. Pa., C.A. No. 91-4746. Similarly, I am representing the public housing authority of a suburban county in another class action brought on behalf of Section 8 tenants against that housing authority for injunctive and declaratory relief arising from the alleged presence of lead-based paint in Section 8 housing.

I am representing the Department of Human Services of a major city in a class action involving the provision of child welfare services.

I also have extensive experience in both the successful defense and prosecution of major antitrust and securities class action suits in the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the Southern District of New York, the District of Maryland, the Northern District of Georgia, the Southern District of Florida, the Western District of Tennessee and the Southern District of Texas. These cases include *In re Craftmatic Securities Litigation*, U.S.D.C., E.D. Pa., Master File No. 88-4530; *In re O'Brien Energy Systems, Securities Litigation*, U.S.D.C., E.D. Pa., Master File No. 89-8089; *In re Corrugated Container Antitrust Litigation*, U.S.D.C., S.D. Tex., MDL No. 310; and *In re Fine Paper Antitrust Litigation*, U.S.D.C., E.D. Pa., MDL No. 323. I am currently representing a major securities brokerage firm in state securities litigation in which the lower court's dismissal of the complaint was affirmed first by the Superior Court and recently by the Supreme Court.

**EXHIBIT "A"**

Most significantly, I have been recognized in class federal class action litigation to be "highly qualified and an expert in this type of litigation." *In re Craftmatic Securities Litigation*, U.S.D.C., E.D. Pa., Master File No. 88-4530, *See also In re O'Brien Energy Systems Securities Litigation*, U.S.D.C., E.D. Pa., Master File No. 89-8089.

Additional antitrust activity includes counseling and representation of a major women's designer sportswear manufacturer in the antitrust area of distribution; independent "networkers" of sporting events; manufacturer of well-known watches; soda and beer distributors; and franchisees in numerous industries, including the hotel and food industries.

My securities activity also includes representation of public companies in class action securities litigation involving the Securities Act of 1933, the Securities Exchange Act of 1934, SEC Rules 3b-6, 10b-5, 14a-9 and 174.

Also significant experience in election law proceedings. This has included representation of the candidacies of numerous candidates in federal, state and local elections.

Other legal activity includes negotiations and drafting of contracts in various entertainment law matters and government relations activities for clients.

In addition, typical clients include small closely-held entrepreneurial companies, closely-held public companies, Fortune 100 companies, real estate developers, real estate management companies, health care providers, entertainment industry company, franchisors, franchisees, electronics companies, consumer product companies, municipal authorities, the Commonwealth of Pennsylvania, the City of Philadelphia, Philadelphia Authorities and other governmental agencies.

Who's Who in the World, 10th Edition (1991-1992)  
Who's Who in American Law, 5th and 6th Editions (1987-1988)  
Who's Who in America, 48th and 49th Editions (1993, 1996)  
Who's Who in America, 53rd Edition (1999)

**PUBLIC SERVICE**

Board Member of Philadelphia Industrial Development Corporation (1999-Present)

Supreme Court of Pennsylvania Continuing Legal Education Board (1998-Present)

Vice Chair, Presidential/Congressional Commission on Risk Assessment and Risk Management, Washington, D.C. (1994-1998)

Presidential Personnel Office, Old Executive Office Building, Washington, D.C. (1993)

**EXHIBIT "A"**

Member, Presidential Transition Team, Washington, D.C. (President-elect Bill Clinton and Vice President-elect Al Gore, 1992-1993)

Township Commissioner, Board of Commissioners, Lower Merion Township (elected November, 1987; sworn-in January 1988; re-elected November, 1991 and November, 1995)

Co-Chair, Mayor's Transition Committee, City of Philadelphia (Mayor-elect Ed Rendell, 1991-1992)

Member, Philadelphia City Planning Commission (appointed by Mayor Ed Rendell, 1992)

Member, Executive Committee, Philadelphia 2000 (1997-Present)

Chairman, Board of License and Inspection Review, City of Philadelphia appointed by Mayor W. Wilson Goode, 1984-1991)

Chairman, Board of Building Standards, City of Philadelphia (appointed by Mayor William Green, 1983; reappointed by Mayor W. Wilson Goode, 1984)

Mayor's Task Force on the Homeless (1989-Present)

Mayor's Committee on Special Services District (1989-1991)

**QUASI PUBLIC SERVICE, CIVIC AND POLITICAL**

Board of Directors, Philadelphia Industrial Development Corporation (City's economic development agency) (1999-Present)

Executive Committee, Board of Directors, Central Philadelphia Development Corporation (CPDC) (1989-Present)

Local Legislation Committee, Greater Philadelphia Chamber of Commerce

Managing Trustee, Democratic National Committee (1992-1997)

Special Counsel, Democratic City Committee of Philadelphia (1980-1984)

Finance Committee, Democratic City Committee of Philadelphia (1980-1984)

Co-Chair, Pennsylvania, Gore for President Campaign (1988)

EXHIBIT "A"

National Finance Board, Clinton/Gore Campaign (1996)  
National Finance Committee, Clinton/Gore Campaign (1992)  
Co-Chair, Pennsylvania, Gore Vice Presidential Campaign (1992)  
Board of Advisors, Public Interest Law Center of Philadelphia (1992-Present)  
Board of Directors, Support Center for Child Advocates (1983-1992)  
Board of Directors, Jewish Employment Vocational Services (1989-1996)  
Board of Directors, Anti-Defamation League (1996-Present)  
Outstanding Adult Volunteer, Pennsylvania District 27  
Little League Baseball, 1998  
Board of Directors, Indian Creek Neighbors Association (1986-Present)  
Vice President and Board of Directors, South Street Neighbors Association (1981-1986)  
President and Board of Directors, Randolph Court Association (1978-1986)  
Vice President and Board of Directors, Park Towne Place Association (1977-1979)

**PROFESSIONAL ASSOCIATIONS**

American Bar Association  
Antitrust Section (ABA)  
Section of Corporations, Banking and Business Law (ABA)  
Pennsylvania Bar Association  
Philadelphia Bar Association  
Member, American Arbitration Association  
Board Member, Supreme Court of Pennsylvania Continuing Legal Education Board  
(Appointment by Supreme Court of Pennsylvania) (1998-Present)  
Chair, Committee for the Prompt Filling of Federal Judicial Vacancies,  
Philadelphia Bar Association (1998-Present)  
Vice Chair, Large Firm Management Committee, Philadelphia Bar Association (1998)  
Charter Member, Hamilton Circle, Philadelphia Bar Foundation  
Legislative Liaison Committee of the Philadelphia Bar Association  
Philadelphia Police Study Task Force, Philadelphia Bar Association (1988-1989)  
Chairman, City Policy Committee of the Philadelphia Bar Association

EXHIBIT "A"

(Special Appointment by Chancellor in 1985 and 1987)  
Executive Board of the Young Lawyer's Section of the Philadelphia Bar Association  
(elected 1981-December, 1984)

ADMISSIONS

Bar of the Supreme Court of the Commonwealth of Pennsylvania (1975)  
United States District Court for the Eastern District of Pennsylvania (1975)  
Northern District of Georgia  
Western District of Tennessee  
United States Court of Appeals for the Third Circuit (1984)

ARTICLES/PUBLICATIONS

"Framework for Environmental Health Risk Management", Volume 1, The Presidential/  
Congressional Commission on Risk Assessment and Risk Management (1997)

"Risk Assessment and Risk Management in Regulatory Decision-Making", Volume II, The  
Presidential/Congressional Commission on Risk Assessment and Risk Management (1997)

"Boulder Clouds Cable Reception", Volume VI, No. 2, Pennsylvania Law Journal-Reporter  
(January 10, 1983)

"Future of Philadelphia Cable TV Systems Remains Uncertain", Volume 188, No. 8, Legal  
Intelligencer (January 12, 1983)

SPEAKING APPEARANCES

A wide variety of appearances to discuss municipal, governmental and political issues, antitrust  
issues, community and civic issues (1980-present)

CLUBS

The Racquet Club of Philadelphia  
The Society Hill Club  
Radnor Valley Country Club  
Temple Beth Hillel, Beth El

## EXHIBIT "A"

EDUCATION

University of Maryland School of Law, 1975

Degree: J.D. with Honors  
 Rank: Upper 15%  
 Activities: Moot Court Board (National Competition)

University of Delaware, Newark, Delaware, 1972

Degree: B.A. with Honors  
 Rank: Upper 11% (3.4 Cumulative; Deans List, six semesters)

Course of Study: Major: Political Science (3.55)  
 Minor: Economics, English

Activities: President of Senior Class  
 President of Sophomore Class  
 Vice President of Freshman Class  
 President's Advisory Council (of the University)  
 Speaker at Commencement, 1972  
 Soccer Team  
 Intramural Sports

Organizations and Fraternities: Omicron Delta Kappa - National Leadership Honor Society  
 Political Science Club  
 Student Government Association  
 Sigma Nu Fraternity

Preparatory:

Pierre S. Dupont High School, Wilmington, Delaware, 1968

Rank: Upper 10%,  
 National Honor Society

Activities: Athletic Key Winner  
 Varsity Baseball  
 Varsity Soccer

## M E M O R A N D U M

TO: File  
FROM: Joel M. Sweet  
DATE: September 13, 1999  
SUBJECT: Litigation Background

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Following is information about litigation in which Alan C. Kessler, Esquire, was a named party.

1. Ronald Coruzzi and John O'Brien v. Buchanan Ingersoll, PC, et al., No. 2214, June Term 1996 (Court of Common Pleas, Philadelphia Co.)

In this suit, Ronald Coruzzi and John O'Brien alleged that Buchanan Ingersoll, PC, and attorneys Alan Kessler and Pam McCallum (collectively, "Buchanan"), wrongfully used the civil litigation process when they represented the Commonwealth of Pennsylvania in litigation against Coruzzi and O'Brien.

The underlying litigation related to the insolvency of World Life Insurance. Buchanan was counsel to the Pennsylvania Insurance Commissioner, in its capacity as a statutory liquidator of World Life. According to Coruzzi and O'Brien, Buchanan wrongfully identified a defendant business entity as a partnership and Coruzzi and O'Brien as partners of the partnership. Coruzzi and O'Brien also alleged that Buchanan defamed them and falsely accused them of causing fraudulent conveyances. In fact, based upon information obtained during discovery in the underlying litigation, Buchanan voluntarily withdrew the allegedly defected complaint that had been filed against Coruzzi and O'Brien, and then filed a second complaint against them that included allegations to pierce the corporate veil behind which Coruzzi and O'Brien sought refuge from liability.

Coruzzi and O'Brien filed their complaint against Buchanan June 19, 1996. On August 30, 1996, the defendants filed preliminary objections. On October 29, 1996, the court sustained Buchanan's preliminary objections and the complaint was dismissed. On October 17, 1997, the Superior Court affirmed the dismissal of the complaint. Finally, on May 5, 1998, the Pennsylvania Supreme Court declined to hear Coruzzi and O'Brien's appeal.

2. Laden v. City of Philadelphia, et al., Civil Action No. 92-0697 (E.D. Pa. 1992)

In this case, Alan Kessler was sued in his capacity as a member of the City of Philadelphia's Licenses and Inspections Review Board.

Plaintiff Laden, who represented himself in this action, alleged that the defendants violated his Constitutionally protected rights when he was denied an application for a firearms permit. Named as defendants were the City of Philadelphia, all of the members of the Licenses and Inspections Review Board, several attorneys for the City, and "all City of Philadelphia employees". In an unpublished Opinion, United States District Court Judge Gawthrop held that the Immunity Doctrine barred suit against all of the members of the Licenses and Inspections Review Board, along with all of the other governmental defendants. The case was dismissed.

3. Midnight Sessions, Ltd. (t/a After Midnight) v. The City of Philadelphia, et al., Civil Action Nos. 91-1055 and 91-1140 (E.D. Pa.)

Again, in this case, Alan Kessler was sued in his capacity as a member of Philadelphia's Licenses and Inspections Review Board. The description of this case is from the decision reported at 945 F. 2d 667 (3d Cir. 1991).

This case involved the actions of Philadelphia's Department of Licenses and Inspections ("L&I") and its Review Board in connection with two privately owned businesses, After Midnight and Down South, which had overlapping ownership. In summary, the plaintiffs had developed and had begun to operate After Midnight, a 2,700 plus capacity 24-hour dance hall and roller rink, in a residential neighborhood of Philadelphia. Plaintiffs opened After Midnight without having obtained the required licenses. L&I cited After Midnight for operating without a license. It also denied its application for a dance hall license on the basis of "Police Disapproval – Objection of neighbors." This denial was followed by several unsuccessful or ultimately withdrawn appeals to the Review Board and the Court of Common Pleas, as well as reapplication for the required licenses. Eventually, the Review Board ordered L&I to grant After Midnight a dance hall license. After Midnight operated for six months before going out of business. Plaintiff Down South was also denied a dance hall license because of community disapproval, was ordered closed due to code violations.

In their suit, After Midnight and Down South alleged violations of: (1) civil rights in connection with a purportedly unconstitutional taking without just compensation; (2) procedural and substantive due process rights; (3) RICO (against one defendants – not Alan Kessler); and (4) the Constitution's equal protection clause as a result of intentional race discrimination. After a jury trial, the trial court entered judgment in favor of the defendants on the equal protection (racial discrimination) claim and the RICO claim and

entered judgment for the plaintiffs on their procedural and substantive due process claims and their taking claims.

On review, the Court of Appeals for the Third Circuit reversed the trial court (in part) and held that the trial court erred when it denied the defendants' motion for summary judgment and motion for judgment notwithstanding the verdict on the procedural and substantive due process claims of Down South, and the procedural due process claim of After Midnight. Specifically, the Court of Appeals held that (1) the trial court should have granted the defendants' motion for summary judgment on the issue of taking of property without just compensation because the licenses were not "taken", but rather were simply not issued, and the alleged diminution on value of the property did not deprive plaintiffs of a viable use for the property; (2) that the plaintiffs did not have a protected interest in a dance hall license; (3) that the plaintiffs were not denied procedural due process under the City's dance hall licensing procedure; and, (4) that the trial court obfuscated its instruction to the jury concerning whether the City's dance hall licensing scheme was rationally related to a legitimate government interest. The last issue was remanded to the district court for a trial to determine whether the City's scheme was rationally related to a legitimate government interest or whether the City's actions in denying the license was improperly motivated. At that point the case was directed at the City and not the named individuals, but the case settled in 1994.

4. CSC Enterprises v. Goode et al., No. 1129, December Term, 1989, (Court of Common Pleas, Philadelphia Co.)

This is another case in which Alan Kessler was sued in his capacity as a member of the Licenses and Inspections Review Board.

This case concerned an appeal of a decision of the Licenses and Inspections Review Board. The record is scant. The action was initiated on December 7, 1989, with the filing of a Notice of Appeal. On December 13, 1989, an Order was entered requiring the defendants to show cause why superedeas should not be granted to the petitioner from the action of the Review Board. On August 2, 1990, CSC Enterprises filed a Praecipe to mark the action withdrawn.

5. Mesirov, Iaffe, et al. v. Joseph M. Melton, No. 6889, July Term, 1985 (Court of Common Pleas, Philadelphia Co.)

In this case, Alan Kessler was a plaintiff along with at least thirty-three (33) other partners of the Mesirov, Gelman law firm. According to the case docket, the litigation was initiated by the filing of a Praecipe on August 2, 1985. A Complaint and Summons was filed on September 9, 1985. The case was settled on November 26, 1985.

The only document available from the Court concerning this case was an Order to Settle, Discontinue and End. There is not further information about this case available from public sources.

6. Alan C. and Gail E. Kessler v. Mannington Mills, Inc., et al., (C.C.P., Philadelphia County, February Term, 1998, No. 3068)

This was a claim against the manufacturer of a flooring product as well as the installer of that flooring product for defective flooring and/or defective installation. In turn, the contractor sued plaintiffs for amounts alleged to be owed for the installation. In an arbitration proceeding, the arbitration panel ruled that the installer and manufacturer each owed one-half of the amount due for the defective flooring product and defective installation and that against those amounts, the plaintiffs, in turn, owed the contractor for some portion of the installation charges.

7. Kenneth E. Davis, et al. v. Richard Glanton, et al., (C.C.P., Montgomery County, No. 96-03920)

This was an action brought by Lower Merion Township Commissioners in their individual capacities for defamation against Richard Glanton arising out of comments that he made to the media regarding Lower Merion Township Commissioners. The matter was settled by the payment of a substantial sum by Mr. Glanton.

8. Barns Foundation and Richard A. Glanton v. Township of Lower Merion, Lower Merion Board of Commissioners, et al., (United States District Court for the Eastern District of Pennsylvania, Docket No. 96-CV-0372)

In this action, plaintiffs claimed under Section 1983 that the reason they did not receive certain zoning and other approvals was because of discrimination. Defendants vigorously denied these frivolous claims and immediately moved for summary judgment. The Court granted summary judgment, dismissing the case, and counsel fees were awarded against the plaintiffs.

**SUPPLEMENTED PAGES  
BIOGRAPHICAL AND FINANCIAL  
INFORMATION REQUESTED OF NOMINEES**

ALAN C. KESSLER

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Township Commissioner, Board of Commissioners, Lower Merion Township (1987-Present)  
Managing Trustee, Democratic National Committee (1992-1997)

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Managing Trustee, Democratic National Committee (1992-1997)  
Special Counsel, Democratic City Committee of Philadelphia (1980-1984)  
Finance Committee, Democratic City Committee of Philadelphia (1980-1984)  
Co-Chair, Pennsylvania, Gore for President Campaign (1988)  
National Finance Board, Clinton/Gore Campaign (1996)  
National Finance Committee, Clinton/Gore Campaign (1992)  
A National Finance Vice Chair of Gore 2000 (1999-Present)

In addition, I have provided limited services to or have been involved in a number of election committees during the last ten (10) years, but am unable to recollect all of those committees, which include Rendell '95, Rendell '91, Bobby Casey for Auditor General, Hoeffel for Congress, Mondale for Governor, Williams for State Representative, Clinton/Gore '96, Clinton/Gore '92, Friends of Mark Singel, Casey for Governor, Democratic National Committee, Braxton for Congress, Murphy for Mayor, Goode for Mayor, Weinberg for Mayor, Street for Mayor, Foglietta for Congress, Fattah for Congress, Brady for Congress, Borski for Congress, numerous State Senate, State Representatives, City Council and judicial races. In addition, I participated in the Buchanan Ingersoll Political Action Committees, Committee for Effective State Government and Committee for Effective Federal Government. As a contributor to and member of these Committees, these Committees made numerous contributions to numerous candidates and Committees of both parties, including but not limited to, Santorum for U.S. Senate, Specter for U.S. Senate, Ridge for Governor, Dole/Kemp and several other national and state Republican candidates and committees as well as numerous Democratic candidates and committees, such as Rendell '95, Clinton/Gore '96, Bobby Casey for Auditor General, etc. I participated in these contributions and approved them.

**SUPPLEMENTED PAGES: Biographical And Financial Information Requested of  
Nominees: Alan C. Kessler**

(c) Itemize all political contributions to any individual, campaign organization, political party; political action committee, or similar entity of \$50 or more for the past 5 years.

1994 direct contributions of \$1,650.00, which included \$750.00 to Marjorie Margolis Mezvinsky. Have searched but do not have records of the remaining individual contributions for that year. In addition, contributed approximately \$1,800.00 to the Political Action Committees of my then law firm, Buchanan Ingersoll Committee for Effective State Government and Committee for Effective Federal Government. 1995 individual contributions of \$2,000.00, including \$1,000.00 to Clinton/Gore '96. Have searched but have not been able to find records of the remaining individual contributions. In addition, made contribution of approximately \$1,800.00 to Political Action Committees of my then law firm. 1996 individual contributions as follows: Braxton for Congress \$500.00, Hoeffel for Congress \$500.00, Rendell '95 \$1,000.00, Democratic National Committee \$1,000.00, Williams for State House \$500.00 and approximately \$1,800.00 to the Political Action Committees of my then law firm. 1997 individual contributions of \$1,550.00, including \$1,000.00 to Philadelphia Victory Fund '97, \$200.00 Murphy for Mayor, \$50.00 cash in for Alderman and approximately \$2,000.00 to the Political Action Committees of my then law firm. 1998 individual contributions to Hoeffel for Congress \$500.00, Mondale for Governor \$250.00, Williams for State Representative \$250.00 and \$2,358.00 to the Political Action Committee of my then law firm. 1999 individual contributions to Street for Mayor \$1,500, Street for Mayor \$1,000, Hoeffel for Congress \$1000, Schwartz for Senate, \$500, HRC Exploratory Committee \$1,000, Schwartz for Senate \$500, Gore 2000 \$1,000, Gore 2000 \$1,000 (wife, Gail) and \$1,191.63 to the Political Action Committee of my then law firm.

As noted, in each of these years, I made contributions to Buchanan Ingersoll Political Action Committees, Committee for Effective State Government and Committee for Effective Federal Government. As a contributor to and member of these Committees, these Committees made numerous contributions to numerous candidates and Committees of both parties, including but not limited to, Santorum for U.S. Senate, Specter for U.S. Senate, Ridge for Governor, Dole/Kemp and several other national and state Republican candidates and committees as well as numerous Democratic candidates and committees, such as Rendell '95, Clinton/Gore '96, Bobby Casey for Auditor General, etc. I participated in these contributions and approved them.

**QUESTIONS FOR THE NOMINATION OF MR. ALAN C. KESSLER  
TO THE POSTAL SERVICE BOARD OF GOVERNORS**

1. **How do you view the role of a Governor of the Postal Service? What would you highlight from your experience that will enhance your effectiveness in this role?**

I view the role of a Governor of the Postal Service as being similar to the role of a Director on the Board of Directors of a corporation. Thus, the role of a board member is to provide management and policy directives, long range planning, oversight and overview to the Postal Service and to the Postmaster General. It also offers advice to the staff of the Postal Service. In addition, the Board reviews and approves operating budgets as well as capital funding. Finally, the Board determines Postal rates and has the responsibility to select the Postmaster General.

In my practice as a business lawyer, I have represented a number of different business interests, including real estate developers and major corporations as well as entrepreneurial companies. I have been involved not only in the courtroom but in negotiations and counseling in an effort to achieve goals while often utilizing alternative methods at resolving disputes. I have served as a local elected official in a township with a population of approximately 58,000 residents and have dealt with the full spectrum of issues facing local governments including budgetary and fiscal issues, public safety, public works, land development and recreation matters. I have served at the federal level as Vice Chairman of a bipartisan commission which held hearings and then issued two volumes of reports to both the White House and the Congress on the issues of Risk Assessment and Risk Management. In connection with that effort, I worked with both

House and Senate Committee staffers and assisted in the preparation and delivery of testimony before both. I have served on a number of boards and commissions of the City of Philadelphia including the Board of Licenses and Inspection Review, Board of Building Standards, Planning Commission and the Philadelphia Industrial Development Corporation, the City's economic development arm. Finally, I was appointed by the Pennsylvania Supreme Court to chair its Continuing Legal Education Committee which oversees mandatory continuing legal education for all Pennsylvania lawyers.

I believe that the cumulative experience that I have gained through my practice of law, local government service, federal government service on the Risk Commission and City governmental board experience will enhance my effectiveness on the Board of Governors of the United States Postal Service.

2. **What would be your priorities as a Governor?**

I would see my overriding priority as insuring that as a member of the United States Postal Service Board of Governor, efficient, effective and economical postal services are provided to the public. It is imperative that the Postal Service continue to maintain the confidence of the public that it will handle and deliver the mail in a timely, efficient and reliable manner. To achieve these objectives, the Postal Service has to be able to compete in the highly competitive marketplace of the Twenty-First Century. Its workforce must take pride in their positions and be ready to compete with their counterparts in the private sector. Specifically, in the face of potentially declining volumes as the use of electronic mail and alternatives increase, preparing to meet and

meeting this competition, would appear to be the greatest priority and challenge facing the Postal Service.

3. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of conflict of interest?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policies and operations at this time, I am presently unaware of any issues on which I will have to recuse or disqualify myself because of a conflict of interest or appearance of conflict of interest. However, obviously to the extent any such issues should arise in the future because of my client representations, my interests or otherwise, I would not hesitate to recuse or disqualify myself or take such other actions as may be deemed appropriate.

4. **A biography obtained from your law firm's Internet site during October and November 1999 lists you as serving as national finance vice chair of Gore 2000, Vice President Gore's presidential campaign. The initial Committee questionnaire to which you responded on October 28, 1999 requested that you list all political affiliations and activities (question #13). Your response did not list this position. Please explain the discrepancy.**

This omission was purely unintentional, and I had absolutely no intention of not disclosing this post or of my involvement with Gore 2000. I apologize sincerely to the Committee and would like to explain more fully. Thus, I received the initial committee questionnaire on Monday afternoon, October 25, 1999. Because it was so late in the Senate session with a potential recess looming within days, I worked almost nonstop to accumulate, compile and review a tremendous amount of information in such matters as

financial disclosures, business interests and client information to be able to formulate my answers and return them promptly to the committee. In fact, my responses to the initial questionnaire consisting of 27 single-spaced, typed pages of information, as well as numerous exhibits in a velobound packet one inch thick, were express mailed back to the committee on October 28, 1999, just three days after I received the questionnaire. With respect to personal background information, I relied to some extent on a personal resume which, by the way, was incorporated in my responses as Exhibit "A," which did not list this post. In addition, I also relied primarily on information during the previous three or five reportable years, which also did not include this post.

However, I did list several posts in my responses to number 13 involving the current Vice-President and had every reason to expect and believe that my involvement with Gore 2000 would be known, and had absolutely no interest in not disclosing that involvement.

Further, this is largely an honorary, non-formal post which I, myself, sometimes noted in connection primarily with certain Pennsylvania campaign finance activities. There was no campaign announcement or release, no formal designation, and no formal responsibilities.

Finally, I am enclosing supplemented pages of my biographical and financial information which has been amended to include this post.

5. **If you do hold this position as national finance vice chair for Gore 2000, please describe in full your responsibilities. If confirmed, do you plan to continue in this position?**

As noted in the answer to No. 4, there is no campaign designation nor formal responsibilities for this honorary post. However, along with another individual, I have been leading and overseeing fundraising efforts for Gore 2000 in Pennsylvania, and I have referred, on occasion, to that post primarily in connection with those efforts. While I intend to continue those efforts, I consider service on the Board of Governors to be such a high honor and privilege that I am willing to relinquish this informal post, if this committee believes that it would be appropriate for me to do so.

6. **The statute states that Governors are chosen to represent the public interest generally. How do you intend to represent the various stakeholders' interests in postal-related matters?**

The Board of Governors is responsible overall to the public for its actions and the manner in which the Postal Service operates. While it must be an independent body, it must be responsive to various stakeholders' interest in postal-related matters. As an elected Township Commissioner, and in other public and quasi-public posts, I have significant experience in being responsive to various stakeholders and in dealing with often competing interests. I am confident I will be able to do so in the context of the United States Postal Service.

Role of the USPS in a Competitive Market

7. **Recently, the Board of Governors announced that it was halting the Postal Service's involvement in remittance processing because the Board decided it was "inappropriate for the Postal Service to compete with private sector remittance processors." Do you agree with the Board's decision? What basis or criteria do you believe the Board should use to determine what activities outside of traditional postal services would not be "appropriate" for the Postal Service to be involved in?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. However, based on information which I have seen, I would agree with the decision made by the Board. I would think in establishing any new service there should be a logical connection or relationship with the traditional services currently provided by the Postal Service.

8. **The Postal Service also recently announced that it was conducting a pilot program with the U.S. Treasury Department and KeyCorp to place automated teller machines in post office lobbies in six areas that are under-served by the banking industry. The pilot will also study the potential for distributing government benefits such as Social Security payments via the ATMs before deciding whether to expand the program nationwide. Do you believe that this is an appropriate role for the Postal Service? Should the Service be competing with banks in this area when the Board of Governors recently decided that the Service should not compete in remittance processing? Should the Postal Service provide services to under-served areas that banks are avoiding?**

I do in this particular instance. As I understand it, the ATMs would be operated by private sector contractors. It would appear that the alliance between Treasury and a private sector contractor could further the Postal Service's universal service mandate in helping to provide a service in an area underserved by the banking community.

9. **Concerns have also been raised about whether the Postal Service has an unfair competitive advantage over private delivery firms since it is not required to pay taxes. If the Service plans to compete with private delivery firms in providing services related to e-commerce, should the Service be taxed for these services similar to private delivery firms?**

This is an interesting but difficult issue on which I am not prepared to give a firm answer at this time. If I were confirmed onto the Postal Board, this is an issue I would want to research and fully analyze. I am aware of some of the comments made by competitors. I also know the postal rate making process is a rather lengthy process and that rates are basically set with the mandate that the Postal Service break-even over the long-term. It would appear, therefore, that the Postal Service might face competitive disadvantages of its own. It would also appear that competitors such as FedEx and UPS have done quite well over the years competing with the Postal Service.

10. **Some concerns have been raised about whether it is appropriate for the Postal Service to offer new non-postal products and services. What are your views regarding whether it is appropriate for the Postal Service to offer non-postal products and services that compete with private sector companies?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. I would want to know the circumstances under which such products and services would warrant Postal Service competition with the private sector. I suspect there could be some instances where the Postal Service would be exploiting some of its intellectual property interests through new stamp issues and other postal related

activities, but I might have some difficulty with products beyond these without some substantial justification as to how they relate to core Postal Service business activities.

Performance Issues

11. **What main challenges does the Postal Service face as it enters a new millennium? How should the Board of Governors work with postal management to address these challenges? What would be your top priorities?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. However, it would appear that as the Postal Service enters the Twenty-First Century, the projection by the Postal Service, recently testified to by the Postmaster General that its first-class mail volumes could decline significantly as the use of electronic mail increases, placing billions of dollars in revenues at risk, is probably the most significant challenge facing the Postal Service. This is precisely the type of challenge the Board of Governors must address and I am confident that as a member of the Board we could work with postal management to address this and other related issues such as automation and labor force. At this time, without more background in Postal Service policy, planning and operations, it is extremely difficult to offer specific proposals. I look forward to working to analyze and address these challenges.

12. **Although in recent years the Postal Service has made over \$5 billion in net revenues, some anticipate that this strong performance may not be sustained due to increased competition. What approach should the Postal Service take to maintain its viability and competitiveness?**

See my previous Answer to No. 11. I would add only, that the Postal Service must be open to creative and innovative measures, even if they depart from past practices, to meet challenges from new technology and competitive forces.

13. **How proactive should the Board be in identifying areas for cutting costs and improving efficiency in postal operations?**

I believe that it is a quintessential function of a Board to be proactive in identifying areas for cutting costs and improving efficiency in postal operations. The Board of Governors must review and analyze potential cost cutting areas and determine which ones to adopt and set policy direction in these areas. It should then monitor the implementation of any such initiatives. Once again, in these highly competitive times, the Board of Governors cannot afford to be a reactionary body but must be in the forefront by adopting cost cutting and efficiency measures.

14. **While the Postal Service has invested heavily in automating mail processing, labor costs continue to consume almost 80% of total expenses. To what extent do you believe it is possible for the Postal Service to achieve its goal of substituting capital for labor?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. However, I am sure there are new efficiencies, resulting in savings through the deployment of automation equipment. Yet, the Postal Service with its universal service mandate and six-day a week delivery appears still to be a very labor-intensive organization. I would expect there may be opportunities to reduce labor costs

through automation but I would need to have more information before making a judgment on the overall impact of automation on the Postal Service.

15. **The Postal Service is required to report to Congress annually on its plans and performance related to its major goals. This information is vital to congressional oversight. However, some concerns have been raised about the integrity of some of the data used to measure performance. For example, in West Virginia last year, postal employees were found to have undermined the integrity of the data on overnight deliveries. What can the Board of Governors do to help ensure the integrity of performance data?**

I understand that the Board of Governors has an oversight role under the Postal Reorganization Act and I believe that data integrity is an integral part of that oversight responsibility. I would expect this to be a high priority of the Board, as it would be with most any corporate board in America. Reviews of financial and operational performance are an integral part of that oversight.

16. **The Postal Service recently announced that it would be opening three new Postal Service international mail processing plants starting in early 2000. Total international mail volume decreased by 4.4 percent from 1996 to 1997 and decreased again 5.5 percent from 1997 to 1998. Given this performance, do you believe that construction of new facilities is appropriate?**

While it is somewhat difficult for me to opine fully on this question at this time, because the Postal Service is expected to provide international services as a part of its universal service mandate and because I presently am unaware of the reason for volume declines, I do not know whether the new plants might actually help increase volumes. With a highly competitive market here and abroad, improved processing plants may be necessary. Nonetheless, this is an issue of concern that needs to be fully analyzed and reviewed.

17. **The Postmaster General stated in recent testimony that the Postal Service projects that its First-Class Mail volumes could decline over the next five years as the use of electronic alternatives increases, placing nearly \$17 billion in revenues at risk. What should the Postal Service be doing now to prepare for potentially significant decreases in First-Class Mail volumes?**

As I have already indicated, in response to question number 11, in my limited experience and based upon my limited knowledge of postal service operations at this time, this would appear to be the greatest challenge facing the continued viability and existence of the Postal Service. For further elaboration, please refer to my answers to questions 11. and 12.

18. **The Mailer's Technical Advisory Group suggested that the Postal Service establish a set of service standards for specific classes of mail and that the standards, performance goals, and performance be measured and reported regularly, with timely updates included on the USPS Web site. Do you agree with this suggestion? Should the Board ask the Service to put its service performance information on its Web site?**

This appears to be a reasonable suggestion. I also understand the Postal Service currently has certain types of mail and service being measured by outside independent organizations and that those results are generally available to the public. I can only assume this is in addition to what is already being done and I would like to know whether there is any work in progress in this regard and why, unless proprietary information could be an issue, the Postal Service would choose not to adopt these suggestions. I would also be interested in whether private sector competitors make their standards public.

Postal Rates

19. **At a recent conference of magazine executives, members voiced their concerns about the upcoming rate case for proposed postal rate increases. Several of the Postal Service's main customers have voiced concerns about the Service's continuing rate increases. Can the Service continue to operate by regularly increasing rates and remain competitive? What alternatives should the Service be considering?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult for me to comment upon postal rate increases at this time. Without more experience and knowledge of the processes of setting postage rates and competing fiscal concerns, it is extremely difficult to address possible alternatives. However, I readily acknowledge that with increasing competition and the rising use of electronic alternatives, it would at least appear that the Postal Service will have an extremely difficult time remaining competitive unless it considers and implements revenue and service alternatives to increasing rates.

20. **Several Board members have expressed concern that the current rate-making process is too restrictive and limits the Postal Service's ability to quickly adjust postage rates in a highly competitive and changing marketplace. What are your thoughts on this issue?**

I am aware of the fact that postal rate making is a rather long process and that, it may be necessary to have such a process to protect the interests of the variety of customers the Service serves. However, in competitive areas where competitors have the ability to change rates quickly, more pricing freedom may well be warranted. I understand there is legislation pending in the House that focuses on this very issue.

21. **Questions have been raised about the need for another rate increase given the Postal Service's record profits over the last several years. What are your views with respect to the need and timing of rate increases?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult for me to comment on this question. However, notwithstanding my limited experience and background on Postal Service matters, generally speaking I do believe that the need and timing of rate increases is an extraordinarily important issue to be determined in light of a number of factors, which must certainly include any report of record profits. However, the fact that record profits have been recognized over a few years, does not necessarily dictate that because of other factors, including labor costs, increased competition and investment in new technology, rate increases are not necessary. Once again, it is the product of a delicate balancing which takes into consideration a number of factors. At times, it may be more a matter of communicating how and why, even in light of record profits, an increase might be necessary.

**Reform Issues**

22. **Do you view the Postal Service as fundamentally operating more like a private sector business or more like a federal agency? Are changes needed to redirect the Service? If so, what are they?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. I see the U. S. Postal Service as a quasi-government agency operating more like a business. With regard to changes, it is somewhat premature for me

to comment on the possible need for any. This is obviously any important issue which I would like to fully study and review.

23. **What are your views on the extent to which change is needed in the laws and regulations that govern the Postal Service? In what areas do you believe that such reform may be needed?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult for me to comment on this question. Without having more information and direct experience in postal service matters, it is extremely difficult for me to express what change, if any, is necessary in the laws and regulations that govern the Postal Service, or those, if any, in which reform may be necessary.

24. **Recently, some foreign postal administrations, such as the one in Germany, have been acquiring interests in private sector delivery firms in other countries including the U.S. As you know, the Postal Service is prohibited from engaging in similar arrangements. Some have suggested that if the U.S. Postal Service is to remain competitive in the global marketplace, Congress should remove such prohibitions. What are your views with regard to this suggestion?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to answer this question at this time. However, quite obviously if foreign administrations are acquiring private sector delivery services here in the U.S., from the standpoint of competition, this would be a concern -- one that needs to be carefully analyzed. I would be very interested in learning more about this should my nomination be confirmed.

Personnel-Related Issues

25. **Another major postal issue has been the need to improve labor-management relations within the Postal Service. What can the Board of Governors do to encourage and facilitate greater cooperation between postal management and labor unions?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult to comment on this question. It would be my hope and expectation that the Board of Governors and its labor unions particularly in the face of highly increased competition and changing technology will work together with a common objective of bringing about extraordinary high level, reliable service to the public in a fiscally prudent manner. As in any other area, labor-management relations will work best if there is mutual respect by both management and unions for each other. This respect is often heightened and strengthened through on going communications between the parties. This emphasis on communication and upon mutual respect between labor and management must flow from and be a recognized priority of the Board of Governors.

26. **Concerns have been raised regarding diversity within the Postal Service, particularly in the composition of top executives and in contracting practices. What role do you see for the Board of Governors in addressing these concerns?**

Notwithstanding my limited experience and knowledge in Postal Service policy and operations, I would expect the Board of Governors to be at the very forefront in setting strong policy directives regarding the need for diversity within the Postal Service particularly in the composition of top executives and contracting practices, and in

vigorously and actively monitoring staff compliance with that policy. This is precisely the type of issue in which a Board should be actively engaged.

27. **Another major issue has been violence in the Postal Service. How can the Board of Governors support efforts to mitigate this problem?**

Violence in the workplace is not merely a Postal Service problem but as we all know has spread well beyond the workplace. I view this as a critical problem and one I am advised the Postal Service is attempting to address through intervention teams and an independent study headed up by Joseph Califano. I would suspect the Board is following management's efforts to reduce any known causes for such incidents as well as awaiting the results of the independent study as to what other measures may be necessary to prevent future occurrences. I would expect and hope that the Board is and will be actively involved on this important issue.

28. **The Postal Service has recently become subject to Occupational Safety and Health Act (OSHA) workplace safety laws in the same manner as other employers. How can the Board of Governors ensure compliance with this law and encourage efforts to improve the safety of the workplace?**

I am somewhat familiar with Occupational Safety and Health (OSHA) laws, and understand that while the Postal Service was subject to those laws in advance of the Postal Employees' Safety Enhancement Act of 1998, it was not subject to fines for violations of those laws as is now the case. I believe the Board, in its oversight and policy role, can have a significant impact by insuring that postal management provides safe working conditions for its employees.

29. **In the most recent round of collective bargaining negotiations, the Postal Service and three of its unions had success in reaching a negotiated agreement. However, the contract reached with National Association of Letter Carriers was the product of an arbitrator's award which increased base salaries for letter carriers. At a hearing held by the House postal subcommittee in October, the Postmaster General testified that this award will cost the Postal Service "billions." What are your views of the current statutory structure which requires binding arbitration when the parties fail to reach a negotiated settlement?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult to comment on this question. However, to the extent that the recently completed binding arbitration process resulted in an award which will in fact have a significant financial impact upon the Postal Service, the continued viability of the Postal Service in light of heightened competition would appear to mandate that the current statutory structure requiring arbitration be seriously reviewed and evaluated at least with respect to the binding nature of arbitration.

**E-Commerce and the Internet**

30. **The Postmaster General has suggested a role for the Postal Service in e-commerce that would include providing a unique e-mail address to every physical address in the nation. Some have raised concerns about a single federal agency handling this function. Do you believe that the Service should play such a role?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to fully answer this question at this time. However, I found the suggestion by the Postmaster General rather interesting. I would suspect that with its current universal service mandate and its access to every mail receptacle the Service would possibly have a means to do something similar with a mailbox on the Internet. In addition, if electronic bill services

gain acceptance over the next few years, this could have a negative impact on the postal system. Again, this an area I would need to learn more about before I felt comfortable taking any kind of position on what might be the appropriate role for the Postal Service in e-commerce.

31. **The Postal Service has offered to take over management and administration of Internet addresses ending in “.us”. The National Telecommunications and Information Administration (NTIA), an agency of the Commerce Department, is currently overseeing the process of delegating the management of Internet addresses. Some have raised concerns about whether the Postal Service has the expertise or the infrastructure to have a role in managing the Internet. Should the Postal Service have a role in the management and administration of Internet addresses ending in “.us” or should the NTIA delegate this process to the private sector?**

I simply do not know enough about this and therefore I am not prepared to respond to this question at this time. As indicated in my response to the previous question, this is a complex area that is still emerging and I would have to know far more about the concept and the Postal Service's capabilities.

**Preparations for Year 2000**

32. **A critical issue for the Postal Service this year is whether its systems are ready for the year 2000. How should the Board of Governors ensure that the Postal Service is prepared and has adequate contingency plans in the event that problems arise?**

I understand this has been a Board agenda item at each of its monthly meetings over the past year and had been under close review by the Board's Audit Committee even earlier. This is a concern in the private sector as well as in government and I would expect the Postal Service Board adopted a plan and implemented appropriate Y2K measures.

33. **A major issue frequently raised by our constituents relates to the Postal Service's decisions on locating, relocating or closing post offices. Some are concerned that the Postal Service does not adequately involve affected communities in the decision-making process. What are your views on this issue?**

Notwithstanding my limited experience and knowledge of postal service matters, as a result of my experience as a township commissioner and in other public and quasi-public matters, I believe it is imperative to involve affected communities in the decision-making process regarding locating, relocating or closing post offices. In fact, I have been involved in this issue in our local community. While it is not always possible to do everything that the community desires, it is extremely important that they at least be part of the process and have an opportunity to provide their input and at least come away with the view that their concerns are being heard and considered. Local communities are an important constituency which this board must serve.

34. **The Postal Service currently has a moratorium on post office closings. Do you believe that this moratorium should be continued? How should the Service balance its mandate to provide universal access to postal services while also recognizing that about half of all post offices do not take in sufficient revenues to cover their expenses?**

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is somewhat difficult for me to opine on this question at this time. I am not familiar as to what the Postal Service takes into consideration when deciding whether or not to close post offices. I would think that the Postal Service's universal service mandate factors heavily in any post offices closing decisions, even where such post offices do not generate sufficient revenues to cover

expenses. On the other hand, I also acknowledge, that with increasing competition, this is a very serious issue which needs to be addressed. While I can only assume that the moratorium has been carefully reviewed by the Service, it is a rather dramatic action. An alternative ad hoc review should be re-evaluated by the Board.

#### Inspector General

35. **Current law provides that the Inspector General of the Postal Service is appointed by the Governors. However, legislation has been introduced in the House and Senate proposing to transfer this appointment authority to the President. The Postal Service Office of Inspector General is the fourth largest in the federal government and proponents of these legislative initiatives believe the operation of this office is more akin to those of the large departments and agencies whose Inspectors General are presidentially-appointed. What are your thoughts on elevating the appointment of the Postal Service Inspector General to a presidential appointment?**

I am not familiar enough with the subject including any proposed legislation regarding the Inspector General of the Postal Service. I would need to study this in greater depth and review the legislation before commenting fully. However, I should add that as a result of my positions as a board member of various City boards and agencies, I am aware of the City's Inspector General, and I have no objection to the notion of an Inspector General. In fact, I believe that Inspector Generals generally play an important role in assuring confidence in the integrity of government and the governmental process.

#### Semi-postal Stamps

36. **Semi-postal stamps are special stamps bearing a surcharge over the normal postage rate. The Postal Service currently offers for sale the "Breast Cancer Research" stamp. This stamp was mandated by P.L. 105-41 and directs the Postal Service to issue a special postage stamp at a rate not to exceed 25 percent of the price of the first-class stamp, with the additional revenues, less administrative costs, being**

contributed to the National Institutes of Health and the Department of Defense for breast cancer research. Interest has been shown by Senators to direct the Postal Service to offer additional semi-postal stamps as ways of raising funds for charitable purposes. For instance, the Governmental Affairs Committee reported in July 1999, the "Look, Listen and Live Stamp Act" to allow postal customers to voluntarily contribute to funding for highway-rail grade crossing safety through the purchase of semi-postal stamps. Additionally, interest has been shown to extend the authorization of the "Breast Cancer Research" stamp which is set to expire in July 2000. What are your views regarding the Postal Service offering semi-postal stamps?

Based upon my somewhat limited experience, knowledge and understanding of Postal Service policy and operations at this time, it is extremely difficult to comment on this question. Notwithstanding my limited experience and knowledge on postal service matters, semi-postal stamps, particularly those authorizing breast cancer research appear to be an excellent concept. Obviously, the financial impact of semi-postal stamps must be measured to be determined whether it adds to or detracts from the Service's bottom line, particularly in light of increased competition the Service faces from the private sector. In addition, while on a limited basis the public might support more "expensive" postage, it might be less inclined to do so on a more regular basis. Once again, conceptually it would appear to be an excellent concept which with appropriate limitations would help charitable causes and promote invaluable good will with the public.

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

## A. Biographical Information

1. **Name: (Include any former names used.)**  

Carol Waller Pope; Carol W. Pope; Carol A. Waller
2. **Position to which nominated:**  

Member, Federal Labor Relations Authority
3. **Date of nomination:**  

November 10, 1999
4. **Address: (List current place of residence and office addresses.)**  

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5. **Date and place of birth:**  

August 21, 1952; Pittsburgh, PA
6. **Marital status: (Include maiden name of wife or husband's name.)**  

Divorced
7. **Names and ages of children:**  

None
8. **Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.**  

Northeastern University School of Law, Boston, MA - 9/1975 to 5/1978. Juris Doctor awarded 5/1978.  
Simmons College, Boston, MA - 9/1970 - 5/1974 - B.A., Psychology and Education awarded 5/1974.  
Westinghouse Junior and Senior High School, Pittsburgh, PA; 1964 - 1970. Diploma
9. **Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)**  

See Attachment #1
10. **Government Experience:**  

Federal Labor Relations Authority, Boston, MA and Washington, D.C.  
February 1980 to present  
  
U.S. Department of Labor, Washington, D.C. January 1979 to February 1980.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
- See Attachment #2
12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.
- Member, Bar of the Commonwealth of Massachusetts; United States Court of Appeals for the First and Fifth Circuits, and the Supreme Court of the United States. Simmons College Alumnae Association; NAACP.
13. **Political affiliations and activities:**
- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.
- None
- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
- Volunteer, 1996 Clinton/Gore Reelection Campaign
- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.
- \$100.00 - 1996 Clinton/Gore Reelection Campaign  
\$250.00 - Gore 2000 Campaign
14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.
- See, Attachment #3
15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.
- Article in Journal entitled, *Careers and the Minority Lawyer*, Spring 1999.  
A copy of the article is attached as Attachment #4.
16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.
- Graduation Speech, Office of Personnel Management, Federal Executive Institute, Charlottesville, VA - August 1997. - Copy attached as Attachment #5

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

It is my belief that President Clinton selected me for this nomination because of my expertise and experience in Federal sector labor law and labor relations. As Member, I will have statutory responsibility to administer the Federal Service Labor-Management Relations Statute (Statute) and provide leadership in establishing policies and guidance relating to matters under the Statute. I possess the requisite combination of knowledge of the law and its application, litigation experience, managerial experience, and problem-solving skills that make me well qualified to serve as Member.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

See Attachment # 6

**B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate.

My current employer, the Office of the General Counsel is a component of the FLRA. If confirmed by the Senate, my only association with the Office of the General Counsel will be in the role of issuing decisions on their cases.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

None

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

I will resolve any potential conflicts by ending the activity and severing any relationships that present a real or perceived conflict of interest. If confirmed, I will not enter into any business or other relationship which could involve a potential conflict of interest. Throughout my tenure, if confirmed, I will seek and follow the guidance of the Agency's Designated Ethics Officer regarding all ethical matters.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.  

No.
  
2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.  

No.
  
3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.  

Yes. I was the plaintiff in a divorce action in the Superior Court, Family Division, Washington, DC. My uncontested divorce petition was granted on December 15, 1998.
  
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?  

No.
  
5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination  

Favorable consideration should be given to the fact that as an African-American woman, my nomination, if confirmed will add diversity to the current composition of the Authority and to the government-wide leadership of Federal employment related agencies. Currently, the Federal civilian non-postal workforce is approximately 45% female and 30% minority, of which 17% is African-American.

E. FINANCIAL DATA

Financial Data - On file with the Committee on Governmental Affairs.

AFFADAVIT

Carol Waller Pope being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 23<sup>rd</sup> day of November, 1999

Malena Brown  
Notary Public

**My Commission Expires August 14, 2003**

**ATTACHMENT #1 - Part A, Biographical Information, Question #9:**

**Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Assistant General Counsel for Appeals. Office of the General Counsel,  
Federal Labor Relations Authority,  
607 14<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20424  
October 1998 to present.

Director of Appeals and Special Programs. Office of the General Counsel,  
Federal Labor Relations Authority, 607 14<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20424  
June 1996 to October 1998.

Executive Assistant to the General Counsel. Office of the General Counsel,  
Federal Labor Relations Authority, 607 14<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20424  
July 1994 to June 1996.

Attorney, Boston Regional Office, Federal Labor Relations Authority,  
99 Summer Street, Suite 1500, Boston, MA 02110  
February 1980 to July 1994.

Attorney, U.S. Department of Labor, Office of the Solicitor, Employee Benefits Division,  
200 Constitution Avenue, NW, Washington, D.C. 20210  
January 1979 to February 1980.

Job Developer, New Careers in Mental Health Program, Boston University School of Medicine,  
Boston, MA  
June 1974 to August 1975

**Attachment #2, Part A, Biographical Information, Question #11:**

**Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Simmons College Board of Trustees, (Educational Institution), Member. 1998 - present

Simmons College Alumnae Association, (Educational Institution), former President and current Member, Board of Directors.

Simmons College Editorial Board, *Abifazi Journal*, Scholarly Journal published by Simmons College.

Madison Park Development Corporation (Non-profit community housing). Member, Board of Directors.

Lower Roxbury Community Corporation (Non-profit community housing). Member, Board of Directors.

Madison Park Housing Corporation (Non-profit community housing). Member, Board of Directors.

Madison Park Economic Development Corporation (Non-profit community housing). Member, Board of Directors.

**Attachment #3, Part A, Biographical Information, Question #14:**

**Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Graduation Speaker, "Leadership for a Democratic Society" Training Course 1997

Special Achievement Award, Federal Labor Relations Authority, 1981, 1984, 1985, 1987 1994, 1995,

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1989  
Performance Award, 1998, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

**Attachment #6, Part A Biographical Information , Question #17(b)**

What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

For the past nineteen years I have worked at the Federal Labor Relations Authority (FLRA) in positions of increasing responsibility involving the administration of the Federal Service Labor-Management Relations Statute. (Statute) As a result, I have practical experience gained during my Regional Office tenure, as an Attorney working with federal union agency representatives in applying the decisions issued by the three person body commonly referred to as the "Authority" to their real life workplace disputes. Also, I worked directly with the parties to educate them regarding their statutory rights and obligations in an effort to seek meaning resolution of pending disputes without resorting to costly litigation avoid future disputes.

In addition, in the performance of the prosecutorial responsibilities of the Office of the General Counsel, I gained litigation experience in the litigation of cases presented at the Regional Office level which involved novel issues of law that the Authority had yet to consider and render a decision. In that regard, I along with other long-term FLRA employees contributed to the development of the case law and elucidation of the Statute in a manner which now provides for stability in the Federal government workplace. Notwithstanding my prosecutorial role, I developed a reputation among both union and management representatives as being thorough and fair in the discharge of my duties.

I have experience in the administration and management of the FLRA. In the last five years while working in the Headquarters Office of the General Counsel, I have had an opportunity to develop expertise in the area of policy development, program management, strategic planning and, alternative dispute resolution and facilitation.

My management skills have been further developed in the discharge of my volunteer responsibilities as a member of the Board of Trustees at Simmons College. In that role, I have oversight and fiduciary responsibility for a small university composed of an undergraduate college, and five graduate schools with a \$65 million budget, \$145 million endowment and 700 employees. I have similar responsibilities in my Board of Directors capacity for a non-profit housing development corporation.

In addition, my ability to clarify issues and work within a group to build consensus was considered favorably in my selection for this nomination.

In sum, I believe that I was selected for nomination because I possess the requisite knowledge, skills, abilities and experience to ably perform the duties of Member.

**Pre-hearing Questionnaire for  
Carol Waller Pope to be a Member  
Of the Federal Labor Relations Authority**

1. **How do you view the role of a Member of the Federal Labor Relations Authority? What would you highlight from your experience that will enhance your effectiveness in this role?**

Answer:

The role of a Member, consistent with §7105 of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. 7101, *et seq.*, is to serve as a part of a quasi-judicial body known as the Authority to adjudicate disputes arising under the Statute. 1/ A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.

My effectiveness in the role of Member will be enhanced by my experience as a career FLRA employee. My work for twenty years as an employee of the Office of the General Counsel in the Boston Regional Office and in the National Office has provided me with the experience of working directly with labor and management representatives who must interpret and pragmatically apply Authority case decisions to their disputes. I have worked to assist the parties in the joint resolution of disputes and, when necessary, to litigate novel and complex legal issues that have contributed to the FLRA's development of the law. My experience, which provides knowledge of the law, an understanding of the importance of the Authority's mission, and a valuable perspective of the parties' application of the law, will further enhance the Authority's adjudication of disputes.

Additionally, in the performance of my duties as Assistant General Counsel for Appeals in the Office of the General Counsel's National Office, I have gained experience in caseload management; policy development; regulatory review and revision; and strategic planning implementation and evaluation at both the component and agency-wide level. This experience has enabled me to develop skills in team-building and consensus decision-making that will enhance my effectiveness as a Member.

In sum, my knowledge of the law and first hand experience in working with labor and management representatives, coupled with my policy-making experience, will enable me to contribute to the effective operation of the FLRA.

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1/ In my responses I have used the term "Authority" to refer to the component of the FLRA that consists of the three Members, who perform an adjudicatory and policy guidance role. I have used the term FLRA to refer to the entire agency, which is composed of the Authority, the Office of the General Counsel and the Federal Service Impasses Panel.

2. **What would be your priorities as a Member of the FLRA?**

Answer:

My highest priority would be to issue timely and well reasoned legal decisions which effectuate the purposes of the Statute and give clear understanding to the law. This priority is consistent with the FLRA's strategic goal of timely dispute resolution as well as the results of the FLRA's 1998 Customer Survey wherein respondents indicated a need for more timely decisions.

If confirmed, I would work with the other Members toward the objective of defining appropriate timeliness standards for the disposition of the pending caseload. In so doing, it is my belief that the Authority will focus on both the reduction of its inventory of older cases and pro-actively manage its incoming caseload so that current cases do not turn into "older" cases. In addition to prioritizing the timely issuance of case decisions, I would seek to consistently maintain a high level of quality of the decisions to ensure that FLRA customers understand the legal doctrines and their application.

An additional priority, if confirmed, would be to work with FLRA Presidential appointees, career managers and employee leadership to develop additional initiatives in furtherance of the strategic goal "to develop the FLRA's human resources to ensure a continually improving, highly effective and efficient organization." Training of newly hired professional staff of the Authority in the principles of legal reasoning and writing, coupled with exposure to working directly with FLRA customers in one of the other FLRA components, will provide an opportunity to develop a greater understanding of customers' needs. Training initiatives have already begun to develop FLRA senior staff for increased leadership roles and future management opportunities. New training and development initiatives should also include enhancement of the skills of support staff in areas which provide for career development and contribute to accomplishment of the FLRA mission. Key to fulfilling the mission of the FLRA is not only knowledge of the law, but an understanding of how and why labor-management disputes arise; how the parties can succeed in joint problem-solving; and how the parties can effectively use third party adversarial processes, such as adjudication before the FLRA.

3. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of conflict of interest?**

Answer:

The appeals cases which I currently review in my role as Assistant General Counsel for Appeals are appeals of decisions of Regional Directors of the Office of the General Counsel not to issue complaints in unfair labor practice charges. In accordance with section

2423.11(g) of the FLRA's Rules and Regulations, the decision of the General Counsel to dismiss the charge is final and thus not appealable to the Authority. Less than 5% of the approximately 500 appeals cases that I review annually are remanded to the Regional Directors for further action. Of that 5%, there is the possibility that a very small number of these cases may ultimately come before the Authority for decision during my tenure as a Member, if confirmed. I would recuse myself from all such cases.

If confirmed as a Member, in the event any potential conflict of interest arises, I will apply the standards of recusal as applied by the Federal Courts and consult with the FLRA Designated Agency Ethics Officer to ensure compliance with all applicable rules, regulations and guidance from the Office of Government Ethics.

4. **In your view, what are the major challenges facing the FLRA? What do you plan to do, specifically, to address these challenges?**

Answer:

The major challenges facing the FLRA are:

- Improving the timeliness and enhancing the quality of Authority decisions to ensure stability in Federal sector labor relations.
- Meeting the demand of FLRA customers for education, training, facilitation and intervention services to foster successful labor-management relationships and joint problem-solving; and,
- Providing clear and understandable decisions to address ongoing Federal Government reorganizations and realignments, particularly in the Department of Defense, which present complex representation issues for resolution and can have a destabilizing effect on labor-management relationships.

I would address these challenges by working with the other Members to continually balance the need for sound and timely legal decisions, with the need to commit resources to fostering collaborative approaches to resolve disputes.

For example, beginning in 1995, the FLRA has trained its employees in interest-based problem-solving, mediation, alternative dispute resolution, conflict resolution, facilitation techniques and effective communication. The FLRA has also developed and delivered internal training programs on substantive case law, litigation skills, and investigatory and case processing techniques to develop new employees and enhance the skills of senior employees. Training has also been conducted for FLRA employees and FLRA customers on the revised negotiability, unfair labor practice and representation regulations to provide

a greater understanding of case processing procedures and the use of alternative dispute resolution opportunities set forth in the regulations.

If confirmed, I will continue the outreach and training initiatives of the current FLRA Presidentially-appointed leadership. Enhancing the skills employees need to perform their jobs effectively will improve the timeliness and quality of Authority decisions. These challenges can also be addressed by enhancing the skills and statutory knowledge of FLRA customers.

**5. What is your assessment of the current state of Federal labor-management relations?**

Answer:

Federal labor-management relations is in a state of continual change. Change, to the extent that it represents the ongoing evolution of the Authority's decisional body of law to elucidate and clarify the Statute, is appropriate. However, change in legal doctrines and their application to workplace disputes is often discomfoting to FLRA customers who want to continue to live by the old legal rules and tests that are most familiar.

Change is also evident within those agencies and unions that are embracing collaborative relationships. Some have experienced mixed results. Unclear expectations as to the outcomes of a collaborative labor-management relationship; confusion about roles in a collaborative environment; and confusion regarding how collaborative relationships co-exist with traditional rights-based relationships typify the current state of Federal sector labor-management relations in many organizations.

As documented by the work of the National Partnership Council, some collaborative labor-management relationships have succeeded in reducing the cost of adversarial labor-management relations. However, for some, the changes have been too slow and uneven, and for others, the pace of change in their relationship has been too fast.

The FLRA has recognized and addressed these changes. Beginning in 1995, the FLRA has systematically revised its regulations to redefine how cases are processed, incorporate alternative dispute resolution processes (ADR), create more user friendly processes, ease the procedural burdens on the parties to reduce the costs of litigation and expedite resolution of claims, and most importantly, to narrow and sharpen the legal and factual issues in dispute.

I believe that the FLRA should continue to work with both labor and management to reduce the costs of adversarial labor-management relations and to ensure an effective and efficient Government consistent with Congressional intent as expressed in the Statute.

6. **FLRA's strategic plan lists four goals for the agency:**

- To consistently provide high quality services that timely resolve disputes in the Federal labor-management relations community;**
- To effectively use and promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict in the Federal labor-management relations community;**
- To maintain FLRA's internal systems and processes to support a continually improving, highly effective and efficient organization with the flexibility to meet program needs; and**
- To develop FLRA's human resources to ensure a continually improving, highly effective and efficient organization with the flexibility to meet program needs.**

**What is your assessment of how well FLRA is meeting each of these goals? Assuming that more progress is appropriate for the goals, what more do you believe FLRA should do in relation to each goal? What role do you see for yourself in helping FLRA achieve these goals?**

**Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.**

Answer:

The FLRA's Annual Performance Goals Report indicates that there has been considerable progress over the last three years in meeting the goals set forth in the strategic plan. All FLRA components established case processing time targets and/or productivity goals in support of the quality and timeliness objectives of Goal #1. Over the last three years, each component has reduced its backlog of pending cases and/or reduced the median age of cases processed.

The Authority's Annual Performance Goals address "timeliness" in the issuance of decisions by targeting the older cases in its inventory. For FY 1999, the Authority set a Performance Goal of reducing by 20% the number of cases pending decision over one year. In FY 1997, when this goal was set, the Authority had a pending backlog of 60 cases pending decision over 365 days old. In FY 1998 the backlog was reduced to 48 cases and at the end of FY 1999, the Authority had reduced the backlog of cases pending decision over 365 days to 15 cases, which met its goal. Notwithstanding the progress in achieving the goal, if confirmed, I will continue to work toward elimination of the inventory of older case to ensure the timeliness of Authority decisions.

The Authority's FY 2000 and FY 2001 Annual Performance Goals provide for continued reduction of the older cases in its inventory. The FY 2000 performance goal seeks to "ensure that no more than 10% of cases pending are over 270 days old." Beginning in FY 1999, the target age of an "older" case incrementally decreases from one year to nine months to six months in FY 2001. These goals, coupled with the additional FY 2000 goal of issuing at least 216 merit decisions, provide a mechanism to reduce the backlog of older cases, and ensure that all other pending cases are addressed in a timely manner.

In furtherance of the objectives of Goal #2, the FLRA has provided extensive training, facilitation and intervention services to customers to promote alternative methods of dispute resolution and avoidance. In FY 1999, 269 outreach services were provided to over 14,000 participants and 1,387 case related intervention sessions were conducted. Also, the FLRA's systematic revision of the unfair labor practice case, representation and negotiability case processing regulations to incorporate alternative dispute resolution processes support this goal and provide a mechanism for the parties to seek FLRA training and facilitation services in order to resolve disputes before formal charges are filed. I believe that the FLRA has made a great deal of progress toward meeting this goal and if confirmed, I would continue to emphasize the use of innovative dispute resolution techniques to promote more efficient Government operations.

Goal #3's objective to maintain the FLRA's internal systems and processes has resulted in the development and implementation of case tracking systems to meet data collection needs and life cycle plans to maintain, service and upgrade the electronic infrastructure. Since implementation of the strategic plan, the FLRA has timely and successfully replaced desktop and laptop computers, Regional Office servers, word processing software and communication software. Most importantly, electronic research capabilities have been improved to enable FLRA employees full access to electronic legal research tools needed to achieve a high level of quality in Authority decisions. Additionally, the FLRA's Internet web site now provides customers access to FLRA decisions, policy guidance, case handling manuals and case filing checklists to enhance their knowledge of the law and FLRA processes. If confirmed, I will seek to provide FLRA customers with improved electronic access to FLRA decisions, policy guidance and case processing manuals.

Goal #4 achievements include training of FLRA employees in interest-based problem-solving, alternative dispute resolution design, litigation skills and unfair labor practice investigatory and case processing practices. In addition, performance management initiatives include the integration of the FLRA's organizational goals in individual performance plans. Individual development plans and leadership development training programs have been developed and implemented. If confirmed, I will continue the FLRA's initiative to enhance the skills of its employees in order to better assist labor and management representatives in the resolution of their disputes in a non-adversarial manner.

In order to appropriately determine what if any additional actions and initiatives should be developed to continue achievement of the strategic plan goals, a strategic plan review and assessment must be conducted. An agency-wide strategic plan review is being scheduled for FY 2000. At that time, if confirmed, I would play an active role in critically assessing the FLRA's progress and determining what additional initiatives and resources are needed to continue progress towards achievement of the goals. Of particular interest will be the question of what additional initiatives will reduce the older inventory of cases and further improve the timeliness of Authority decisions. As set forth above in response to Question #2, additional progress in reducing the age of the Authority's inventory of cases and issuing more timely decisions is a priority.

I do not have any recommendations for additional goals at this time. I anticipate that the FY 2000 strategic plan review will include an assessment of whether the stated goals are in need of revision to guide the FLRA in effective administration of the Statute. Also, the strategic plan review will provide an opportunity to determine whether sufficient mechanisms are in place to provide for ongoing evaluation and assessment of the effectiveness of the strategic plan.

7. **The FLRA recently reported that the Authority had reduced its inventory of cases awaiting merits decisions for more than one year by more than half during fiscal year (FY) 1999. Do you believe the FLRA caseload has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to address the backlog issue?**

Answer:

The Authority's progress towards reducing its inventory of cases pending decision over one year old has been significant. As noted above, in FY 1997, when this goal was set, the Authority had a pending backlog of 60 cases pending decision over 365 days old. In FY 1998 the backlog was reduced to 48 cases and, at the end of FY 1999, the Authority had reduced the backlog of cases pending decision over 365 days to 15 cases. To the extent that the caseload inventory continues to include such cases that are over one year old, I would work toward eliminating them from the Authority's case inventory, if confirmed.

The Authority has already taken actions to address the backlog. As stated above in response to Question # 6, the Authority's FY 2000 Annual Performance Goal appropriately prioritizes continued reduction of cases over 270 days old pending decision to no more than 10% of inventory. If confirmed, I would continue the actions the current Members have taken to reassess internal work processes in order to identify ways to expedite decision-making and ensure accomplishment of this Performance Goal. In addition, I would continue and, where appropriate, increase the Authority's use of expedited arbitration decisions in those cases

where the exceptions filed to an arbitration decision do not present arguments based on established grounds for review.

8. **The FLRA also reported that it had reduced its case processing time during FY 1999. Do you believe the case processing time has been reduced sufficiently, or are further steps necessary? If more needs to be done, what specific actions do you think are needed to address the issue?**

Answer:

As stated above in response to Question #2 and Question #7, if confirmed, I will prioritize the goal of reducing case processing times to further reduce the inventory of older cases. Initially, I would work with the other Members and management staff to assess the current internal case processing mechanisms to determine their effectiveness in ensuring timely issuance of decisions. If confirmed, I would explore the possibility of increased screening of cases at the time they are received to determine which cases present legal issues that should be prioritized and, which of any cases can be expedited because they are procedurally defective. Additionally, I would continue the use of expedited determinations in arbitration cases that do not meet the established grounds for review. I would also review the data related to the outcomes of the FLRA's ADR efforts in the processing of negotiability cases to determine if the new regulations have been implemented in a manner that facilitates more timely disposition of these cases.

9. **The FLRA addresses a variety of cases, such as unfair labor practice complaints, negotiability issues and representation cases. Do you believe there should be different case processing timeliness goals for different types of cases? If so, what do you believe those goals should be, or do you believe FLRA should undertake a systematic effort to set case processing timeliness goals for various types of cases?**

Answer:

If confirmed, I would seek to review historical data for each type of case to determine case processing times. After review, I would consider the appropriateness of setting case processing time targets for different types of cases. However, in my experience, each case, regardless of type of case, is different. Some cases present complicated factual records and some do not. Some cases present complex and novel legal issues, whereas other cases present legal issues that are well settled by Authority case law. Thus, rather than setting different case processing times based on whether the case is an unfair labor practice, negotiability or representation case, I would seek to work with the other Members to establish a screening process as stated above in response to Question #8, to identify the issues presented in each case and determine the level of review that is required to reach disposition. Resources can then be directed in a manner that meets the needs of each case.

By reviewing cases in this manner, as is currently done in the review of arbitration awards, all cases could be processed in a more timely manner.

10. **What is your view of Alternative Dispute Resolution? Is ADR a useful tool? Is there a danger that ADR could lead to undue pressure to reach settlements and that, as a consequence, some settlements would favor one party more than the other? If so, what steps are appropriate to guard against such an outcome while preserving the value of this technique for resolving workplace disputes?**

Answer:

ADR is a useful tool. If used effectively, ADR resolves the parties' underlying dispute and also fosters improved labor-management relationships. For example, the FLRA introduced a voluntary ADR mechanism known as the settlement judge program to facilitate the resolution of cases pending before the Office of Administrative Law Judges for hearing and decision. Prior to the settlement judge program, 21% of unfair labor practice complaints were settled prior to decision at the eleventh hour at the "courthouse steps." In FY 1999, the percentage of such last-minute "courthouse steps" settlements had declined sharply to less than 2% of cases settled. Through the settlement judge program, cases are settling earlier in the process. As a result, the FLRA and affected agencies and unions are saving the costs of protracted litigation and minimizing the negative impact adversarial litigation has on the labor-management relationship. The integration of ADR processes in the revised unfair labor practice, negotiability and representation case regulations will further enhance the usefulness of this tool.

Participation in all of the FLRA's ADR processes is completely voluntary. There should be no undue pressure applied to the parties to resolve their disputes. A party may have a perception of undue external pressure in those instances where they are not certain that the terms of the settlement agreement resolves the parties' real dispute; or a party's decision to settle a case is based on a lack of confidence in the validity of its case; or the representative is unprepared to proceed to litigation in a timely manner. FLRA employees who assist the parties in resolving their disputes advise parties that they should not agree to a settlement if it does not satisfy their interests. Additional steps that can be employed to guard against undue pressure include: the use of surveys of participants in the ADR process, a review and assessment of settlement rates achieved through ADR processes, and increased education of the parties.

The use of an ADR process to reach resolution of a dispute increases the likelihood that the settlement resolves the parties' underlying dispute and lessens the likelihood that the settlement agreement unduly favors one party. Settlements reached through an ADR process generally resolve the parties' underlying dispute. In my experience, it is more likely that settlements reached through the traditional means of power based positional bargaining may

favor one party more than the other, because the interests of both parties are often not fully identified and met in the settlement process.

The success of ADR processes is dependent upon the parties' skills in joint problem-solving techniques. Training and education in the skills needed to effectively practice ADR, such as interest-based problem-solving, are the best tools to guard against dissatisfaction with the outcomes. To ensure continued success of ADR, labor and management also have to commit resources to training and education to achieve a greater understanding of statutory rights and obligations to avoid disputes. As stated above in response to Question #6, the FLRA has committed resources to training its employees in the skills needed to assist the parties in the facilitation and resolution of disputes.

Additionally, as the parties gain experience in the use of ADR, they can increase the likelihood of a successful outcome by understanding which disputes can and should be resolved through an ADR or joint problem-solving approach, and which disputes are best resolved through a traditional third party appeal process. In this way, ADR will be used not just an alternative to resolving disputes through traditional arbitration or litigation, but rather as a method of dispute resolution best suited to achieving constructive labor-management relations.

11. **The number of cases before the FLRA has steadily declined since fiscal year 1991. To what do you attribute this decline?**

Answer:

There does not appear to be a single reason for the decline in the number of cases filed before the FLRA. Anecdotally, some agencies have reported that their partnership activities pursuant to Executive Order 12871, and increased facilitation and training services provided by the FLRA, have lessened the adversarial nature of their labor-management relationships. As a result, the parties are using joint problem-solving techniques and pre-decisional involvement to resolve some of the issues that previously would have resulted in the filing of grievances and unfair labor practice charges. Comparatively, as case filings have decreased, ADR service delivery by the FLRA has increased. Fewer filings of unfair labor practice charges at the Regional Office level have resulted in fewer unfair labor practice complaints before the Authority.

Also, in the last few years significant decisions issued by the Authority on such issues as the statutory right to information and the duty to bargain regarding matters that are covered by a collective bargaining agreement, have resulted in the filing of fewer cases.

12. **In October 1999, the President issued a memorandum reaffirming his Executive Order 12871 on labor-management partnerships. That memorandum addresses, in part, the Administration's concerns that federal managers are not following the order's directive to bargain over permissive issues set forth in 5 U.S.C. 7106(b)(1). This provision of the law allows, but does not require, negotiating the numbers, types, and grades of employees or positions assigned to an organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work. How has FLRA responded to this order? How does the order impact on matters coming before the Authority, particularly those matters involving the negotiability of (b)(1) issues?**

Answer:

The FLRA has responded to Executive Order 12871 in the following ways:

The Chair of the FLRA serves on the National Partnership Council, which is charged with advising the President; supporting the creation of labor-management partnerships; and collecting and disseminating information to provide guidance on partnership efforts.

The FLRA has provided facilitation, intervention, training and education services to labor and management representatives in order to assist them in the development, maintenance and evaluation of collaborative labor-management relationships. As noted above, in FY 1999, the FLRA provided 269 training, facilitation and relationship building sessions and conducted 1,387 case related intervention services in an effort to promote alternative dispute resolution and foster improved labor-management relationships. The FLRA's outreach activities, at both the national and regional levels, include: 1) statutory training; 2) principles of pre-decisional involvement; 3) interest-based problem-solving skills training; and, 4) facilitation and intervention services. These activities are not only in support of Executive Order 12871, but are consistent with the FLRA's strategic goal to promote alternative methods of dispute resolution and avoidance to reduce the costs of conflict as discussed above in response to Question #6, and the Congress' expressed intent that the provisions of the Statute should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Executive Order 12871 has not changed the FLRA's mission to enforce the Statute, which includes §7106, commonly referred to as the "management rights" clause. In that regard, since enactment of the Statute in 1978, the negotiability of §7106 (b)(1) subjects has been, and will continue to be, a subject of litigation. Authority doctrinal analysis will continue to be developed through the case law to further define the standards that should be used in determining what matters are permissive subjects of bargaining at the election of the agency under §7106(b)(1); and, whether proposals are negotiable procedures under §7106(b)(2) or appropriate arrangements under §7106(b)(3) of the Statute. The Executive Order and

President Clinton's Reaffirmation Memorandum did not in any way expand the Authority's responsibilities for administration and enforcement of the Statute.

Since issuance of Executive Order 12871, unfair labor practice charges seeking to enforce Executive Order bargaining over §7106(b)(1) subjects have been presented to the Authority for decision. In a series of cases including, U.S. Department of Commerce, Patent and Trademark Office, 54 FLRA 360 (1998), *aff'd*, 179 F.3d 946 (D.C. Cir.1999), the Authority determined that Section 2(d) of Executive Order 12871 does not constitute an election under the Statute to bargain over section 7106(b)(1) subjects.

13. **Describe your vision of what the relationship should be between the FLRA and the Office of Personnel Management, the Merit Systems Protection Board, and the Office of Special Counsel. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?**

Answer:

Congress has established each of these agencies with a distinct statutory mission in the area of Federal sector employee and labor relations. I do not know of any statutorily mandated relationship between the FLRA, the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB) or the Office of Special Counsel (OSC), except that the Authority, pursuant to §7105(i) of the Statute, may request from the Director of Office of Personnel Management an advisory opinion concerning the interpretation of OPM regulations. Also, pursuant to Executive Order 12871, the Chair of the FLRA and the Director of OPM serve as members of the National Partnership Council. However, it is my belief that the FLRA in its administration of the Statute must operate independently of both the OPM and the MSPB. Employees of both OPM and MSPB are subject to the Statute that is administered by the FLRA. Accordingly, OPM and MSPB could become parties to cases adjudicated by the Authority.

On occasion, the OSC and the FLRA may have dealings with the same parties over similar issues. For example, the OSC, which has responsibility for investigating and prosecuting prohibited personnel practices before the MSPB, may review a case involving allegations that the prohibited personnel practice is based on union activity protected by the Statute. It is my understanding that the OSC has a policy of deferring to the FLRA for a determination on those issues within the jurisdiction of the FLRA. Thereafter, the OSC will make an independent determination on the prohibited personnel practice allegations.

I would endorse any communications between the OSC and the FLRA regarding statutorily permitted information sharing to ensure effective and efficient accomplishment of the respective missions. In my current role as an employee of the Office of the General Counsel,

I am aware that the OSC and the Office of the General Counsel have participated in joint Town Hall meetings and statutory training initiatives to educate labor and management representatives about the law and mission of the respective agencies.

14. **In January 1999, the FLRA General Counsel issued a memorandum providing guidance on how to apply the requirements of the federal service labor management relations statute to equal employment opportunity (EEO) complaints and to bargaining over EEO matters. This was a first-time articulation of how the federal service labor management relations statute could apply to the management of agencies' EEO complaint programs, and the Equal Employment Opportunity Commission (EEOC). EEOC, which this past July issued revised federal sector complaint processing regulations, has taken exception to some of this policy. What are your views of the applicability of the federal service labor management relations statute vis-à-vis EEOC's governance of federal sector EEO complaint processing? What are your views on how the policy disagreements between FLRA and EEOC could be resolved?**

Answer:

On January 26, 1999, General Counsel Joe Swerdzewski of the FLRA issued a Memorandum to Regional Directors of the Office of the General Counsel entitled, "Guidance on Applying the Requirements of the Federal Service Labor-Management Relations Statute to Processing Equal Employment Opportunity (EEO) Complaints and Bargaining over Equal Employment Opportunity Matters." As stated in the Guidance, the Guidance reflects the views of the General Counsel of the FLRA and does not constitute an interpretation by the three-member Authority.

The issuance of the Guidance does not interfere with the EEOC's governance of Federal sector EEO complaint processing. In the discharge of the FLRA's statutory mission, EEO regulatory matters may be subject to interpretation and application in a case before the FLRA, in the same manner as the regulations of OPM, General Services Administration or any other Federal agency, as discussed above in response to Question #13.

The Guidance is largely a recitation of the past twenty years of case law issued by the Authority. The Guidance discusses legal principles regarding the rights and obligations of management, unions and employees under the Statute as applied to the processing of EEO matters. In that regard, the Guidance discusses the legal issues regarding union representation during meetings between employees and management officials in the processing of EEO complaints; the statutory duty of an agency to provide a union with EEO related information; official time for processing EEO complaints; the duty and scope of bargaining over conditions of employment matters related to EEO; a union's duty of fair

representation when representing an employee in an EEO claim; and, current Authority case law addressing these statutory rights.

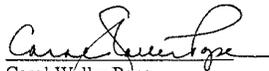
If confirmed as a Member of the Authority, I will adjudicate cases on these statutory issues with the recognition that the mission of the EEOC and the mission of the FLRA are extremely important. I will act, along with the other Members, to decide these issues as they are presented in future cases consistent with the policies and principles of the Statute.

I have no knowledge of any policy differences between EEOC and the FLRA. Therefore, I am unable to respond to how any such differences may be resolved. However, if the EEOC or any other Federal agency has a differing legal theory regarding the application of the Statute in a negotiability, representation or unfair labor practice case before the Authority, the Authority will resolve the dispute through the issuance of a case decision and order. Any person aggrieved by a final order of the Authority may request judicial review in the United States Court of Appeals.

**15. What improvements, if any, do you believe should be made to the Federal labor relations statutes?**

Answer:

I do not have any recommendations for improvements to the Statute at this time. If I am confirmed as a Member, I would recommend that the Authority continue to fulfill its statutory mission to establish policies and guidance relating to matters under the Statute by taking actions to identify opportunities for regulatory reform and/or rulemaking that will operate to effectuate the purposes and policies of the Statute.

  
Carol Waller Pope

Dated: January 31, 2000