
**A Report To Congress
From The
U.S. Office Of Special Counsel
Fiscal Year 1990**



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Section 1218 of Title 5 of the United States Code

The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

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The Special Counsel

Honorable J. Danforth Quayle
President of the Senate
Washington, D.C. 20510

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit the Annual Report to Congress from the Office of Special Counsel (OSC) for Fiscal Year (FY) 1990, in accordance with 5 U.S.C. § 1218. As is customary, a copy of this report will also be sent to each member of Congress.

The period covered by this report is the first full year in which the OSC has operated pursuant to the Whistleblower Protection Act (WPA) of 1989. This has been a year of significant accomplishment in our protection of federal employees and the merit system from prohibited personnel practices; in our interpretation and enforcement of the Hatch Act; and our receipt and disposition of employee disclosures of wrongdoing in the federal government.

During FY 1990, the OSC experienced a 31 percent increase in the number of new matters received as compared to the prior fiscal year. These new matters included a 106 percent increase in the number of allegations received from federal employees that personnel actions had been taken because of their whistleblowing activities. The OSC initiated twice as many field investigations of matters in FY 1990 as in the previous fiscal year, 67 percent of which concerned allegations of whistleblower reprisal. Yet, with minimal increases in staff and budget resources over FY 1989, the OSC initiated and obtained more corrective actions on behalf of federal employees than at any other time in its history, and more than twice as many as in the previous fiscal year. The majority of these corrective actions involved federal employees who had been victimized for making whistleblower disclosures. This record demonstrates effectively the OSC's commitment to investigate vigorously allegations of prohibited personnel practices, especially reprisal for whistleblowing, and to seek corrective and disciplinary actions when appropriate.

The Special Counsel

Honorable J. Danforth Quayle
Honorable Thomas S. Foley
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In addition to the fulfillment of its statutory mission, the OSC continued its active program to educate federal employees and managers about prohibited personnel practices, and other matters within the investigative jurisdiction of this agency. This program was originally instituted in FY 1989 to make employees aware of the changes to the Civil Service Reform Act occasioned by the enactment of the WPA. Apart from the goal of ensuring that federal employees are fully aware of their rights and responsibilities, this educational effort is also intended to reduce the incidence of prohibited personnel practices, and other violations, through a greater awareness of the law. The most prominent of these efforts in FY 1990 was my participation, as well as that of OSC senior staff, in 48 programs and conferences throughout the United States, including federal employee union workshops, seminars sponsored by the Office of Personnel Management, programs sponsored by the Merit Systems Protection Board, agency workshops, and speeches to groups having an interest in federal personnel and fraud matters.

I am proud of the accomplishments reflected in this Annual Report, and the dedication of OSC personnel which made these accomplishments possible. You may be assured of my continuing efforts to exercise the full powers of my office to assure the protection of the rights of federal employees, and the integrity of merit system safeguards for those employees.

With respect,



Mary F. Wieseman
Special Counsel

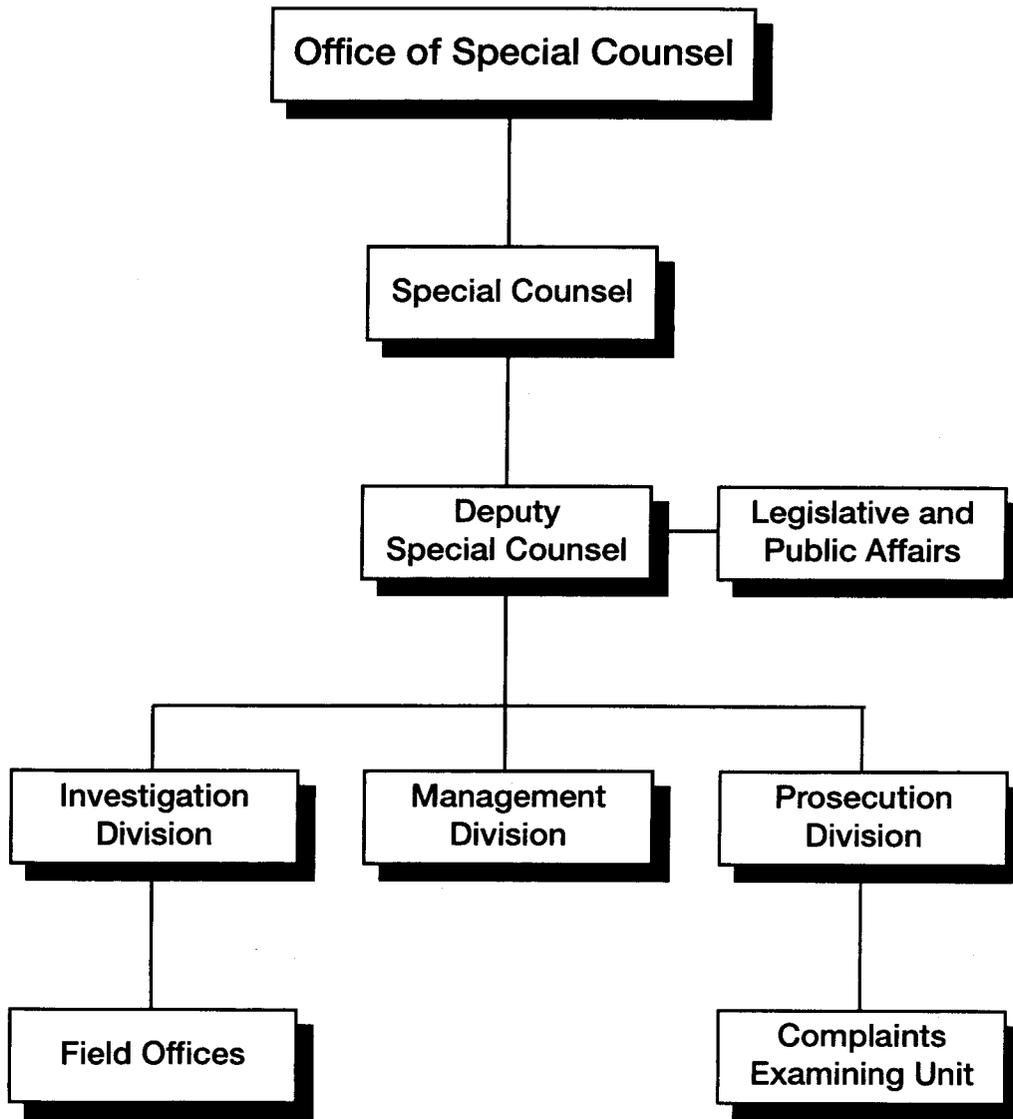


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Introduction

Mission of the Office of Special Counsel

The Office of the Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. The Civil Service Reform Act (CSRA) of 1978, which came into effect on January 11, 1979, enlarged its functions and powers. The office operated as the autonomous investigative and prosecutive arm of the Merit Systems Protection Board (MSPB) until 1989. In March of 1989, the Congress passed the Whistleblower Protection Act (WPA) of 1989, which became effective on July 9, 1989. The WPA converted the Office of the Special Counsel into an independent agency within the Executive Branch, separate and apart from the MSPB, and renamed it the Office of Special Counsel (OSC). Under the new law, the OSC kept its basic investigative and prosecutive functions, and its role in litigating cases before the MSPB.

The WPA substantially amended the CSRA to enhance protections against reprisal for those employees who disclose wrongdoing in the federal government, and the ability of the OSC to enforce those protections. Under the CSRA, as amended, the principal responsibilities of the OSC continue to be --

- the investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. §2302(b),¹ and other activities prohibited by civil service law, rule or regulation, and the initiation of corrective and disciplinary actions when such remedial actions are warranted;
- the interpretation and enforcement of the Hatch Act provisions on political activity in Chapters 15 and 73; and
- the provision of a secure channel through which federal employees may make disclosures of information evidencing violations of law, rule or regulation, gross waste of funds, gross mismanagement, abuse of authority, or a substantial and specific danger to public health or safety, without disclosure of the employee's identity (except with the employee's consent) and without fear of retaliation.

OSC Policy

In furtherance of the merit system principles specified in the CSRA, the OSC's principal responsibility has been and continues to be the receipt and investigation of complaints of alleged prohibited personnel practices, especially reprisal for whistleblowing. Although allegations of reprisal for whistleblowing are few relative to the millions of federal

¹ All statutory references to chapters and sections that follow in this report will be to title 5 of the United States Code, unless otherwise indicated.

civilian employees, the OSC regards *any* reprisal for whistleblowing as unacceptable. Accordingly, the OSC's priorities are --

- to treat allegations of reprisal for whistleblowing as its highest priority;
- to review allegations of reprisal for whistleblowing intensively for any feasible remedial or preventive action, whether by means of stays, corrective actions, or disciplinary actions; and
- to use every opportunity to make a public record of the OSC's aggressive pursuit of corrective action (especially in whistleblower reprisal cases), both to encourage other whistleblowers, and to affirm the emphasis given to corrective actions by the OSC.

Shared Responsibility for Protecting Whistleblowers

As the General Accounting Office noted in its 1985 report on the OSC's handling of reprisal allegations, the adequacy of whistleblower protections should not be viewed solely by reference to the matters handled by the OSC. Responsibility for establishing and maintaining a climate in which employee disclosures of waste, fraud or abuse are supported, and in which reprisals for such disclosures are not tolerated, is shared by the government as a whole -- including the President, the Congress, agency heads, managers and supervisors, appellate systems, and the Inspectors General.

For example, §2302(c) makes the head of each federal agency responsible for the prevention of prohibited personnel practices (including reprisals for whistleblowing), and for compliance with and enforcement of civil service laws, rules and regulations. The same responsibility devolves by law on federal supervisors exercising delegated personnel authorities. The Inspectors General share a responsibility with the OSC under §7 of the Inspector General Act of 1978 (5 U.S.C. App.) for the protection of employees in their agencies who provide information evidencing violations of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety.

Overview of OSC Operations

Budget and Staffing

During Fiscal Year (FY) 1990, the OSC operated with a budget of \$5.107 million, after absorbing a reduction of \$35,000 pursuant to the Gramm-Rudman-Hollings Act. The agency's full-time equivalency (FTE) personnel ceiling was 86. This represented a budget increase of 2.1 percent, and an increase of 6.2 percent in the FTE personnel ceiling, over FY 1989.

Procedures

The Complaints Examining Unit (CEU) in the OSC Prosecution Division initially analyzes all allegations of prohibited personnel practices, other activities prohibited by civil service law, rule or regulation, and Hatch Act violations received by the agency. The CEU contacts complainants to ensure that the nature of and basis for the allegation is clearly understood, and conducts further inquiry to the extent necessary to determine whether the allegation warrants further investigation.

If the CEU cannot determine the proper disposition of a complaint, through the initial examination process, it refers the matter to the Investigation Division for more extensive investigation. If the CEU determines that an allegation is not within the OSC's investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the Investigation Division's Disclosure Unit reviews that information for possible transmittal to the agency head concerned. The OSC does not disclose the identity of the employee without the employee's consent.

The Prosecution Division reviews completed field investigations to determine whether the inquiry has established any violation of law, rule or regulation, and whether the matter warrants corrective or disciplinary action, or both. If so, OSC personnel may discuss the matter with the agency concerned in order to obtain an early resolution of the matter. Otherwise, the Special Counsel may refer the matter in writing to the agency head under §1214(b)(2)(A) with a recommendation for corrective action. If an agency declines to take corrective action, the Special Counsel may request the MSPB to consider the matter under §1214(b)(2)(B), and the MSPB may order any corrective action it deems appropriate. During FY 1990, cooperation by agencies in effecting corrective actions sought by the OSC rendered it unnecessary to request the MSPB to order corrective action. If the Special Counsel determines that an apparent violation warrants disciplinary action, the OSC files charges against the offending employee under §1215(a) and prosecutes the case before the MSPB. Finally, if an investigation discloses a violation of any law, rule or regulation not otherwise within the enforcement authority of the OSC, the Special Counsel sends a report on the OSC's findings to the agency head concerned under §1214(e) for certification of any

action taken on the matter. The OSC reports evidence of any possible criminal violations identified during an investigation to the Department of Justice pursuant to §1214(d).

At any time during an investigation, the OSC may seek a stay of any personnel action if the available evidence provides reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. The OSC may obtain a stay upon direct request to the agency concerned, or by filing a request for a stay with the MSPB under §1214(b)(1). Also, the Special Counsel may, pursuant to §1212(c), intervene as a matter of right or otherwise participate in any proceeding before the MSPB, except that the Special Counsel may not intervene in a proceeding brought under §1221 or §7701 without the consent of the individual initiating the proceeding.

Investigation of Allegations

At the beginning of FY 1990 (October 1, 1989), the OSC had 342 matters pending initial review and inquiry, and 64 matters under field investigation.

Nature of Allegations Received During FY 1990

During FY 1990, the OSC received 1,623 new matters, containing 2,588 separate allegations. Abuses of merit staffing requirements or procedures accounted for 19.5 percent of the total allegations received during FY 1990, making it the most frequently cited claim of a prohibited personnel practice. The next largest category of allegations (also 19.5 percent) claimed reprisal for whistleblowing. The third largest category of allegations was discrimination based on race, color, sex, national origin, religion, age or handicapping condition. Employees cited one or more of these forms of discrimination in 15.7 percent of the allegations received by the OSC during this reporting period. The OSC normally defers action on such complaints to the discrimination complaint procedures established in the agencies under the regulations of the Equal Employment Opportunity Commission (EEOC) in order not to duplicate or bypass those procedures.

A complete breakdown of the nature of all allegations received by the OSC during FY 1990 appears in Table 1 on page 10.

Disposition of Matters

During FY 1990 --

- The CEU closed 1,268 matters (including matters carried over from FY 1989) on the basis of initial review and inquiry, satisfactory resolution of an employee's complaint during the initial review process, or a determination that there was insufficient basis for further OSC action;
- 181 matters were referred by the CEU for field investigation; and
- 103 matters received by the OSC (including 62 matters referred by the CEU) were assigned for additional review for possible referral to the agency concerned as a whistleblower disclosure.

The OSC carried over the remaining matters for further action in FY 1991. A breakdown of the nature of allegations referred for field investigation appears in Table 2 on page 12.

Results of FY 1990 Investigations

The OSC completed 137 field investigations during FY 1990 (including investigations carried over from FY 1989), and 108 investigations awaited completion at the end of the year. Of completed field investigations (including investigations completed in FY 1989), 130 matters were closed following legal review by the Prosecution Division. Legal reviews and decisions as to final disposition in the remaining investigative matters had not been completed at the end of the fiscal year. During FY 1990, the OSC --

- obtained corrective actions or favorable dispositions in 43 matters;²
- initiated corrective actions in eight additional matters which were pending at the end of FY 1990;
- filed disciplinary action complaints in 12 matters, including 11 non-Hatch Act matters and one Hatch Act matter;
- secured 19 stays of personnel actions from the MSPB in nine matters; and
- obtained nine stays of personnel actions through direct request to the agencies concerned in seven matters.

During FY 1990, the MSPB issued 16 Final Decisions, and the MSPB Chief Administrative Law Judge (CALJ) issued eight Recommended Decisions in OSC cases. These Final and Recommended Decisions resulted from complaints for disciplinary action filed by the OSC in FY 1990 and prior fiscal years. The OSC prevailed in all of these decisions.

Corrective Actions

The following is a representative sample of corrective actions obtained by the OSC during FY 1990:

- The OSC initiated an investigation into a complaint from an employee who alleged that her removal was in retaliation for a letter of complaint to agency officials, and for her cooperation in an internal investigation of an agency official. The OSC's investigation confirmed her allegations. At the OSC's request, the agency agreed to reinstate the complainant, reassign her to another office agreeable to her;

² "Corrective actions or favorable dispositions" include (1) those actions taken by an agency pursuant to a written request for corrective action by the Special Counsel; (2) actions taken by an agency at the request of the OSC as a settlement of a prohibited personnel practice complaint in advance of a written request for corrective action by the Special Counsel; or (3) actions taken by an agency with knowledge of a pending OSC investigation, which satisfactorily resolve those matters under inquiry by the OSC.

restore all accumulated leave, retirement benefits, back pay, and grade retention; and purge all references to the removal from her official personnel file. The OSC also authorized the agency to take disciplinary action against the responsible agency official.

- The OSC investigated an allegation by an employee that he received a one-day suspension, a lowered mid-year performance review, and an involuntary reassignment as a result of protected activity. The employee's protected activity included a grievance about his mid-year review, and disclosures of mismanagement of compensatory time and other abuses to the military base Inspector General. The OSC's investigation produced evidence that the complainant's reassignment was because of his protected disclosures. The OSC succeeded in obtaining corrective action for the employee consisting of a reassignment to a new position agreeable to him with retained pay and enhanced promotion potential. The agency also agreed to rescind two letters of counselling and to upgrade the employee's performance evaluation. The agency involved issued a written counselling memorandum to the responsible supervisor for the commission of prohibited personnel practices.

- The OSC reviewed a complaint from an employee alleging that his removal was being proposed for filing a grievance, and complaints of racial discrimination and reprisal. As a result of the OSC's preliminary investigation, the agency agreed to settle the matter by retroactively promoting the employee from a GS-9 to a GS-10 level, with within-grade increases and upgraded performance evaluations. The agency also agreed to rescind the proposed removal action, and pay the employee a two percent differential for his retirement at age 52 in lieu of acceptance of a directed geographic reassignment. The employee agreed to this settlement of his complaint, valued at more than \$70,000.

- The OSC investigated an allegation that an agency failed to promote an employee because of his disclosures that a supervisor had accepted illegal gratuities. The OSC investigation confirmed the allegation, and, at the OSC's request, the agency agreed to promote the employee retroactively, with back pay and benefits, and to issue a letter of reprimand to the official responsible for the non-promotion.

- The OSC closed one matter referred by an agency Office of Inspector General (OIG) because no personnel action had occurred in connection with an employee reported to have made protected disclosures. Shortly thereafter, the OIG reported that the agency had proposed personnel actions against the employee. In consultation with the OSC, the OIG conducted an investigation in the second matter, as a result of which the agency agreed to raise the employee's performance evaluation, and to rescind a proposed disciplinary action. The agency also initiated disciplinary action against the responsible officials for their retaliatory actions.

- The OSC investigated allegations that an employee received a notice of an involuntary geographic reassignment, a lowered performance evaluation, and a material change in duties because of disclosures of misconduct to an agency's OIG. The investigation confirmed the employee's allegations. At the OSC's request, the

agency restored the employee to his former duties, and upgraded his performance evaluation. The proposed reassignment had already been rescinded at the time of the OSC request.

- The OSC reviewed several personnel actions which were alleged to have occurred because of disclosures to an agency OIG. Specifically, a supervisory employee alleged that he had been demoted to a non-supervisory position as the result of a position reclassification; that he had received a lowered performance evaluation; and that he had been threatened with adverse personnel actions if he continued to make disclosures to the OIG. The OSC's investigation established a link between the employee's lowered performance evaluation and his protected disclosures; however, the investigation found that his demotion was mandated by Office of Personnel Management regulations and would have been taken regardless of those disclosures. At the OSC's request, the agency agreed to upgrade the employee's performance evaluation.

Disciplinary Actions

The following is a representative sample of disciplinary actions filed by the OSC before the MSPB during FY 1990:

- In its first disciplinary action case under the WPA, the OSC prosecuted a regional personnel director for threatening personnel actions against a subordinate employee who had made disclosures of serious improprieties and violations of law by the personnel director to the agency's regional Inspector General. Specifically, the personnel director threatened the employee with a geographic reassignment, and a lowered performance appraisal. The OSC's intervention in this matter after a referral by the agency Inspector General's office ensured that these threatened actions did not occur. The CALJ held an administrative hearing on April 24, 1990, and he issued a Recommended Decision on August 9, 1990. The CALJ sustained the OSC's charges, and recommended that the official be demoted two grades to a non-supervisory position for a minimum period of three years. A final decision by the MSPB was pending at the end of FY 1990.

- The OSC charged a District Director and two subordinate officials with taking retaliatory actions against employees who had written letters to Members of Congress which criticized a proposed reorganization, and which also cited mismanagement and violations of law in the use of appropriated funds. Many of the employees later received lowered performance appraisals, and one employee was subjected to a proposed geographic reassignment. The OSC and the two subordinate officials entered into a settlement agreement in which one official agreed to a one-grade demotion to a non-supervisory position, and the other agreed to accept a 45-day suspension. The OSC agreed to dismiss the complaint against these officials after imposition of these disciplinary actions by their agencies. An administrative hearing before the CALJ is scheduled in FY 1991 on the charges against the District

Director. The OSC continued negotiations with the agency to obtain corrective actions for the victims of the reprisal.

- The OSC charged that a high-ranking regional official willfully interfered in a selection process in an effort to thwart an employee's requested reassignment because of the employee's testimony before a committee of the Congress about falsified inspection reports by her supervisors. Trial of this case was held before the CALJ on May 10, 1990. A Recommended Decision had not been issued by the CALJ at the end of FY 1990.

- The OSC accused an agency official of recommending the proposed removal of a probationary employee in retaliation for his disclosures that his office was not in compliance with smoking regulations. At the OSC's request, the agency stayed and ultimately cancelled the proposed removal. The OSC tried the case against the employee who recommended the removal in May, 1990. The CALJ had not issued a Recommended Decision at the end of FY 1990.

Table 1
ALLEGATIONS CONTAINED IN MATTERS RECEIVED
DURING FY 1990

<i>Nature of Allegation</i>	<i>Number of Allegations</i>
Abuse of merit staffing requirements or procedures, primarily the alleged granting of unauthorized preference or advantage, or solicitation or consideration of unauthorized recommendations, deception or obstruction of the right to compete, and attempts to secure withdrawal from competition [§§2302(b)(2), (4), (5) and (6)]	505
Reprisal for whistleblowing [§2302(b)(8)]	504
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition [§2302(b)(1)(A)-(D)]	407
Allegations which did not cite or suggest any prohibited personnel practice or prohibited activity ³	252
Reprisal for exercise of a right of appeal [§2302(b)(9)]	249
Violation of a law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a danger to public health or safety [§1213(c) or §1213(g)] ⁴	166
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	125
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	98

³ Although these types of allegations may not, on their face, indicate the existence of any matter within the OSC's investigative jurisdiction, follow-up contact is made with the individual to ascertain the exact nature of the allegation, and to determine whether there is any basis for further OSC action.

⁴ These types of allegations are treated as whistleblower allegations which may be referred to the agency concerned under § 1213(c) or § 1213(g) for agency review. Nevertheless, if the allegation concerns an employment matter, the OSC carefully reviews it to determine whether the matter may be treated as an allegation of a prohibited personnel practice or other prohibited activity within its investigative jurisdiction. If so, the OSC investigates the matter.

Discrimination on the basis of non-job related conduct [§2302(b)(10)]	71
Violation of the Hatch Act by a federal employee [§1216(a)(1)]	60
Other activities allegedly prohibited by civil service law, rule or regulation [§1216(a)(4)]	54
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	52
Arbitrary or capricious withholding of information requested under the Freedom of Information Act [§1216(a)(3)]	27
Discrimination on the basis of marital status or political affiliation [§2302(b)(1)(E)]	17
Coercion of political activity [§2302(b)(3)]	1
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Total	2,588 ⁵

⁵ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually received by the OSC (1,623).

Table 2
ALLEGATIONS CONTAINED IN MATTERS REFERRED FOR FIELD
INVESTIGATION DURING FY 1990

<i>Nature of Allegation</i>	<i>Number of Allegations</i>
Reprisal for whistleblowing [§2302(b)(8)]	120
Reprisal for exercise of an appeal right [§2302(b)(9)]	43
Unauthorized preference or advantage granted to improve or injure the prospect of employment of any person [§2302(b)(6)]	27
Deception or obstruction of the right to compete for employment [§2302(b)(4)]	19
Discrimination on the basis of race, color, sex, national origin, religion, age or handicapping condition [§2302(b)(1)(A)-(D)] ⁶	11
Violation of a law, rule or regulation implementing or concerning a merit system principle [§2302(b)(11)]	10
Violation of the Hatch Act by a state or local government employee [§1216(a)(2)]	7
Discrimination on the basis of conduct not related to job performance [§2302(b)(10)]	6
Appointment, promotion, or advocating the appointment or promotion of a relative [§2302(b)(7)]	6
Securement of withdrawal from competition [§2302(b)(5)]	5
Other activity prohibited by civil service law, rule or regulation [§1216(a)(4)]	3

⁶ Allegations of discrimination are normally deferred to the established discrimination complaint procedures. Nevertheless, other prohibited personnel practices alleged in addition to discrimination may be investigated by the OSC without addressing the deferred allegation of discrimination.

Violation of the Hatch Act by a federal employee [§1216(a)(1)]	2
Violation of the Freedom of Information Act [§1216(a)(3)]	2
Discrimination on the basis of marital status [§2302(b)(1)(E)]	1
	<hr/>
Total	262 ⁷

⁷ Each matter may contain more than one allegation. Thus, this total exceeds the total number of matters actually referred for field investigation (181).

Hatch Act Matters

During FY 1990, the OSC received 149 new matters alleging violations of the Hatch Act, and initiated field investigations in nine matters. As a result of the OSC inquiries into these matters (including those carried over from FY 1989) the OSC --

- filed a complaint seeking disciplinary action against one federal employee;
- concluded in 32 other matters that violations had occurred, but were not sufficiently egregious to warrant prosecution;
- found no violation and closed 74 matters; and
- carried the remaining matters over to FY 1991 for completion of review.

As reported previously, the OSC filed complaints with the MSPB in FY 1988, charging eight employees of the Niagara Frontier Transportation Authority (NFTA) in Buffalo, New York, with engaging in a scheme of political coercion. The OSC also charged NFTA Chairman Raymond F. Gallagher with running for public office in a partisan election. Specifically, the OSC complaints, in *Special Counsel v. Gallagher et al.*, accused Gallagher and seven subordinates of directly or indirectly coercing, attempting to coerce, commanding or advising other NFTA employees to contribute money or services to various candidates for elective office, and to a political party. During FY 1989, the OSC tried the cases against Gallagher and two other respondents before the CALJ. The CALJ issued a Recommended Decision on July 14, 1989, sustaining the OSC's charges against the respondents and recommending their removal from their positions with NFTA. The MSPB issued a final decision in FY 1990 approving the Recommended Decision, and ordering the removal of the respondents from their positions. The OSC had obtained favorable settlements of charges against four other respondents prior to hearing, and moved to dismiss the charges against one respondent based on a lack of jurisdiction.

Apart from investigating and prosecuting alleged violations of the Hatch Act, a vital component of the OSC's statutory responsibility is the issuance of advisory opinions to federal, state and local government employees on Hatch Act questions. During FY 1990, the OSC's Hatch Act Unit issued 165 written advisory opinions, and provided 840 advisory opinions orally in response to telephone inquiries.

Whistleblower Disclosures

In addition to its investigative and prosecutive missions, and pursuant to §1213(a), the OSC provides a safe channel through which federal employees may disclose information evidencing a violation of law, rule or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a specific and substantial danger to public health or safety.

Upon receipt of such information from a federal employee, the Special Counsel is required by §1213(c) to transmit the information to the head of the agency concerned if the Special Counsel determines that there is a substantial likelihood that the information discloses the kinds of wrongdoing described in the statute. The OSC will not divulge the identity of an employee who provided the information unless he or she consents. The agency head is then required to conduct an investigation and submit a report to the Special Counsel on the findings of the investigation. The Special Counsel sends the agency report, with any comments provided by the employee who made the disclosure, and any comments or recommendations by the Special Counsel, to the President, the congressional committees having jurisdiction over the agency, and the Comptroller General.

The Special Counsel may determine, after review of information received from an employee, that there is not a substantial likelihood that the information discloses the type of wrongdoing described in §1213(a). In such cases, the Special Counsel may, under §1213(g), require the agency head to review the matter and inform the Special Counsel in writing of what action has been or is being taken thereon (for transmittal to the employee).

The OSC is not authorized to investigate allegations of the kind described in §1213(a). Nevertheless, complainants often include information which may be covered by §1213(a) with their allegations of other prohibited activities within the OSC's investigative jurisdiction. The CEU identifies disclosures that may qualify for statutory referral to an agency in its initial review of complaints. The CEU refers any such disclosures to the Investigation Division's Disclosure Unit for further review and follow-up with the complainant as needed to confirm the facts and issues involved. After completion of its review, the OSC decides whether to (1) transmit the information developed to the agency concerned under §1213(c) or §1213(g); (2) refer the matter to the agency Inspector General or comparable office for any appropriate action; or (3) close the matter without further action.

During FY 1990, the OSC received and considered 103 matters for possible referral to the agency concerned under §1213(c) or §1213(g). Of these 103 matters, and 23 matters carried over from FY 1989, the OSC --

- referred seven disclosures for investigation and a report under §1213(c);
- referred 17 disclosures for a report of actions taken or to be taken thereon under §1213(g);
- referred 26 disclosures to the agency Inspector General;

- closed 59 matters due to lack of sufficient basis for further action; and
- carried the remaining matters over to FY 1991 for completion of review.

Results of Referrals

At the beginning of FY 1990, one agency report received during FY 1989 awaited final OSC review. During FY 1990, the OSC received an additional 18 reports from agencies to which statutory referrals had been made during FY 1989 and FY 1990. At the close of FY 1990, one agency report awaited OSC review and final action. OSC review of agency reports disclosed the following results from statutory referrals --

Section 1213(c) Referrals:

Allegation substantiated in whole or in part:	0
Allegation not substantiated:	1 (100%)

Section 1213(g) Referrals:

Allegation substantiated in whole or in part:	9 (53%)
Allegation not substantiated:	8 (47%)

In the nine cases in which allegations were substantiated, the agencies reported the following corrective actions, with more than one action in some cases:

Agency regulations or practices changed:	6
Disciplinary action taken:	1
Evidence of a criminal violation referred to the Attorney General:	2
Other:	2

Legislation

Hatch Act

During FY 1989, Congress acted on legislation to amend the federal Hatch Act. The House of Representatives passed H.R. 20, without hearings, on April 17, 1989. On July 25, 1989, the Senate Committee on Governmental Affairs held hearings on S. 135, at which the Special Counsel testified. In her testimony, the Special Counsel expressed serious reservations about the bill's fundamental recasting of the Hatch Act, a law which has served to preserve important public values as much as it has served to protect most government employees from partisan political influences on public service. She suggested that the proposed legislation could result in the politicization of the federal civil service. She also expressed the view that even with the strongest of controls against coercion of political activity by government employees, it seemed unrealistic to believe that federal employees would be oblivious to the advantages of political partisanship when competing for promotions or other employment benefits with politically active employees. Her testimony noted that it would be very difficult to regulate the climate that could arise based upon the unspoken belief that political conformity is the route to advancement and security. She warned that it could lead to subtle, self-imposed pressures on employees to conform, or appear to conform, to whatever political tendency would assure greater job security. The Committee reported S. 135 to the full Senate on July 26, 1989, with a recommendation that the bill be passed. Both H.R. 20 and S. 135 were pending in the Senate at the end of FY 1989.

The Senate took up consideration of S. 135 during FY 1990. Following debate, the Senate passed H.R. 20, as amended by the text of S. 135, on May 10, 1990. The House of Representatives concurred in the Senate amendments to H.R. 20, and the legislation was presented to the President. On June 15, 1990, President Bush vetoed the legislation. In his veto message, the President said that he was obligated to disapprove H.R. 20 in order "to protect Federal employees from political pressure and [to] preserve the impartial, evenhanded conduct of Government business." Noting that the Hatch Act, enacted in 1939, had served "as a bulwark against political coercion," President Bush added: "I am firmly convinced that any appreciable lessening of the current protections afforded to Federal civil servants by the Hatch Act will lead to the repoliticization of the civil service and of the programs it administers. We cannot afford, in the final decade of this century, to embark on a retreat into the very worst aspects of public administration from the last century." The Senate sustained the President's veto of H.R. 20 on June 21, 1990.

Further Information

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