

**A Report To Congress  
From The  
Office Of The Special Counsel  
Fiscal Year 1988**



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*Section 1206(m) of Title 5 of the United States Code*

“(m) 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 Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate.”

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OFFICE OF SPECIAL COUNSEL



The Special Counsel

1120 Vermont Avenue, N.W., Suite 1100  
Washington, D.C. 20005

Honorable Dan Quayle  
President of the Senate  
and  
Honorable Thomas S. Foley  
Speaker of the House of Representatives

Dear Mr. President and Mr. Speaker:

I respectfully submit the Fiscal Year 1988 annual report on the activities of the Office of the Special Counsel (OSC) to the Congress in accordance with the Civil Service Reform Act of 1978, Section 1206(m) of Title 5 of the United States Code. As is customary, a copy of this report will be forwarded to each member of Congress.

This report covers the activities of the office during the second full-year I have been privileged to serve as the Special Counsel. As my report for Fiscal Year 1987 indicated, we have established an efficient and effective organizational structure and a staff of dedicated, experienced professionals. The continuing dedication to mission and professionalism of the staff is reflected in the OSC accomplishments I am pleased to report for Fiscal Year 1988.

This report highlights the activities of the office relating to the protection of whistleblowers, as well as the substantive nature of the matters dealt with by the OSC. I believe that this report reflects a record of significant achievements in the protection of federal employee rights within the framework of current law.

I am grateful for the opportunity to assist in carrying out the President's commitment to integrity and efficiency in government. My efforts will continue to be directed to aiding in the attainment of that goal by exercising the full powers of my office to assure the protection of the rights of federal employees and the integrity of the federal merit system.

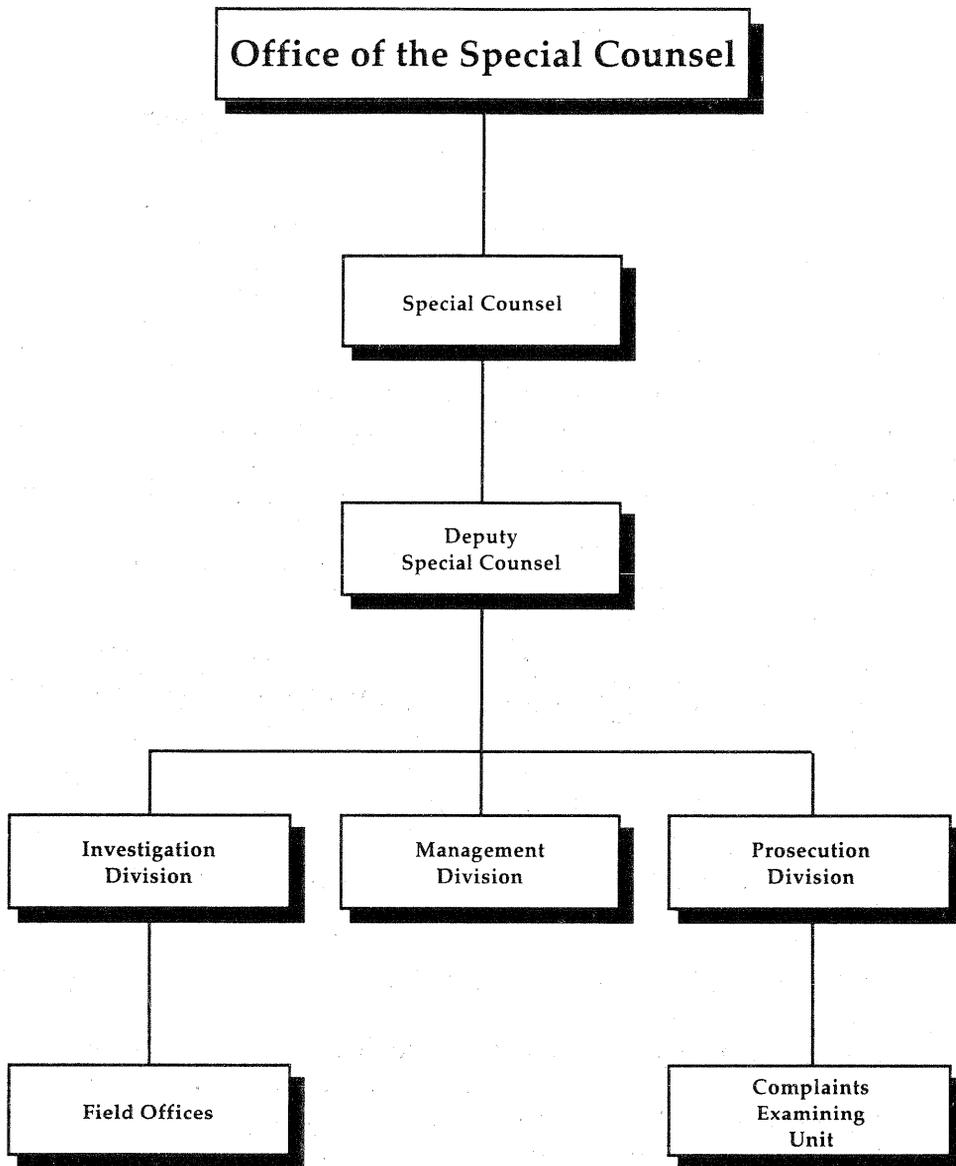
With respect,

A handwritten signature in cursive script, reading "Mary F. Wieseman".

Mary F. Wieseman  
Special Counsel

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# Executive Summary

## Introduction

This report, submitted pursuant to Section 1206(m) of Title 5 of the United States Code, chronicles the activities of the Office of the Special Counsel (OSC) during Fiscal Year (FY) 1988. It is the OSC's tenth Report to the Congress since the establishment of the office in 1979. This summary provides an overview of this OSC report on its investigation and prosecution of prohibited personnel practices, enforcement of the Hatch Act, and disposition of whistleblower disclosures during FY 1988.

## Policy and Priorities

The principal responsibility of the OSC is to investigate allegations of prohibited personnel practices and to initiate corrective and disciplinary actions when warranted. Of the 11 prohibited personnel practices defined by the Civil Service Reform Act (CSRA) of 1978, the OSC's highest priority is the investigation of allegations of reprisal for whistleblowing, and the initiation of appropriate remedial and disciplinary actions.

## Budget and Staff

During FY 1988, the OSC operated with a budget of \$4.673 million and a full-time equivalency (FTE) personnel ceiling of 76. This was a reduction of almost 10% in the FTE level from FY 1987.

## Investigation of Complaints and Allegations

At the beginning of FY 1988, the OSC had 305 matters pending initial review and preliminary inquiry, and 97 matters under full investigation. During FY 1988, the office received 1330 new allegations and complaints.

Complainants alleged reprisal for whistleblowing in 273 (20.5%) of the new matters received by the OSC, making it the most frequently alleged prohibited personnel practice. The next most frequently-alleged prohibited personnel practice was discrimination based on race, color, sex, national origin, religion, age, or handicapping condition. Complainants alleged discrimination in 240 (18.0%) of the new matters received during the reporting period. The third largest category of complaints, 205 (15.4%), concerned alleged abuse of merit staffing requirements or procedures. Complainants alleged reprisal for exercise of an appeal right in the fourth largest category of complaints, 80 (6.0%). The fifth largest category of complaints, 80 (6.0%), subject to OSC investigation consisted of alleged Hatch Act violations by Federal, State or local government employees.

During FY 1988 —

- 1115 matters were closed on the basis of initial review, preliminary 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;
- 183 matters were assigned for full investigation; and
- 120 matters were assigned for additional review for possible referral to the agency concerned as a whistleblower disclosure under 5 U.S.C. §1206(b).

Of the 183 matters assigned for full investigation, 79 (43.2%) involved an allegation of reprisal for whistleblowing.

During FY 1988, the OSC completed 120 full investigations and carried over 160 investigations into FY 1989. Of the 120 investigations completed, 78 were closed as investigative matters, and 42 investigations awaited legal review and determination of final disposition at the end of FY 1988.

## Corrective, Disciplinary and Other Actions

During FY 1988, the OSC —

- obtained 3 formal corrective actions;
- obtained 30 other corrective actions and dispositions<sup>1</sup>;
- obtained 8 stays of personnel actions;
- initiated 11 disciplinary actions, including 10 Hatch Act cases and one non-Hatch Act case;
- referred 6 violations of law, rule or regulation to agency heads under 5 U.S.C. §1206(c)(3).

## Hatch Act Enforcement

During FY 1988, the OSC received 80 new allegations of Hatch Act violations and initiated full investigations into 11 alleged violations. As a result of the review and investigation of these complaints and those carried over from FY 1987, the OSC —

- filed complaints seeking disciplinary actions against one federal employee and 10 local government employees.
- established that violations had occurred which were not sufficiently egregious to warrant prosecution in 17 cases.
- found no violation and closed matters in 46 cases.

For the second time since its establishment in 1979, the OSC filed charges against government employees for coercing political contributions from subordinates in violation of Hatch Act provisions applicable to State and local government employees.

## Whistleblower Disclosures

During FY 1988, the OSC received and reviewed 120 disclosures of information by

<sup>1</sup> "Other Corrective Actions and Dispositions" include those actions taken by an agency at the request of the OSC as a settlement of a prohibited personnel practice complaint in advance of a formal OSC determination and request for corrective action; or actions taken by an agency with knowledge of a pending OSC investigation, which favorably resolve the matters under inquiry by OSC. The dispositions represented in this category are those which were actually obtained in FY 1988, and include some resulting from corrective action requests which were initiated in FY 1987. This category does not include corrective actions which were requested by OSC in FY 1988, but not obtained prior to the close of the fiscal year.

federal employees for possible referral to the agency concerned under 5 U.S.C. §1206(b) as disclosures of information evidencing a violation of law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Of these 120 new matters, plus six matters carried over from FY 1987, the OSC —

- referred 14 matters under 5 U.S.C. §§1206(b)(3) and (4), and required that the agency head investigate the matter and report the investigative findings and the actions taken thereon;
- referred 32 matters under 5 U.S.C. §§1206(b)(2) and (7), and required the agency to report the action taken or to be taken on the referral;
- referred 49 matters to the agency Inspector General;
- closed 25 matters for lack of sufficient basis for further action;
- carried 6 matters over to FY 1989 for completion of review.

Agency reports received during FY 1988 produced the following results from the statutory referrals —

### Section 1206(b)(3) referrals

Allegation substantiated in	
whole or in part . . . . .	8 (67%)
Allegation not substantiated.	4 (33%)

In the eight 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 . . . . .	3
Disciplinary action taken . . .	1
Evidence of a criminal violation referred to the Attorney General . . . . .	1
Other . . . . .	6
No further action taken . . . . .	1

### Section 1206(b)(2) referrals

Allegation substantiated in	
whole or in part . . . . .	19 (59%)
Allegation not substantiated.	13 (41%)

In the 19 cases in which allegations were substantiated, the agencies reported the fol-

lowing corrective actions, with more than one action in some cases —	
Agency regulations or practices changed .....	6
Disciplinary action taken ...	3

Evidence of a criminal violation referred to the Attorney General .....	1
Other .....	11
No further action taken .....	1

# Introduction

## OSC Mission

The Office of the Special Counsel (OSC) was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. The Civil Service Reform Act (CSRA) of 1978 (5 U.S.C. §§1204-1208), which came into effect on January 11, 1979, enlarged its functions and powers.

The OSC is an independent investigative and prosecutorial agency, which litigates before the Merit Systems Protection Board (MSPB). Both protect employees and the integrity of the merit system by uncovering abuses of merit system principles, correcting agency actions which constitute or result in prohibited personnel practices or otherwise infringe on certain employee rights, and disciplining employees who violate certain civil service laws, rules or regulations. As an agency, the OSC is independent of the MSPB operationally and administratively.

The primary responsibilities of the OSC are —

1. to investigate allegations of certain activities prohibited by civil service law, rule or regulation, primarily allegations of prohibited personnel practices defined by law at 5 U.S.C. §2302(b)<sup>1</sup> (including reprisal for whistleblowing), and to initiate corrective and disciplinary actions when such remedial actions are warranted;
2. to provide a secure channel through which disclosures of information evidencing violations of law, rule or regula-

- tion (such as fraud), gross waste of funds, mismanagement, abuse of authority, or a substantial and specific danger to public health or safety may be made without disclosure of the employee's identity (except with the employee's consent) and without fear of retaliation; and
3. to enforce the provisions of the Hatch Act in Chapters 15 and 73.

## OSC Policy

The principal responsibility of the OSC has been and continues to be the receipt and investigation of complaints of alleged prohibited personnel practices in furtherance of the nine merit system principles defined by the CSRA. Of the 11 personnel practices prohibited by the CSRA, the highest priority of the OSC is the investigation of allegations of reprisal for whistleblowing. Although it has not been demonstrated that such reprisals are an endemic problem of massive proportions in the federal service, the OSC believes that *any* reprisal for whistleblowing is intolerable. Accordingly, the OSC's priorities are —

1. to treat allegations of reprisal for whistleblowing as its highest priority;
2. 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
3. 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.

<sup>1</sup> 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.

## Shared Responsibility for Protecting Whistleblowers

As the General Accounting Office (GAO) 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, since 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 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 Section 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, mismanagement, gross waste, abuse of authority, or dangers to public health or safety. Again, according to the GAO, a comprehensive evaluation of the system of whistleblower protections needs to take into account the roles performed by these institutions in the protection of whistleblowers.

As for the OSC, the office operates at all times within the framework of the CSRA, as interpreted and applied by the MSPB and the courts. It is the same law and legal framework that applies to claims of reprisal raised by employees in appeals of adverse actions before the MSPB and in the courts, and the OSC has seen no evidence that its dispositions of allegations of reprisal are significantly different from outcomes achieved by employees in those tribunals.

Based on its review of a sample of reprisal allegations contained in OSC files closed over a two-year period, the GAO confirmed that the OSC's evaluation of and action upon reprisal allegations was reasonable, appropriate and in accordance with the law, and that the complainants in its sample did not fall victim to lack of investigatory effort by the OSC. Since that report by the GAO, the OSC has given particularly close scrutiny to all allegations of reprisal for whistleblowing.

## Overview of OSC Operations

### Budget and Staffing

During FY 1988, the OSC operated with a budget of \$4.673 million and a full-time equivalency (FTE) personnel ceiling of 76. While the budget and staff ceiling for the office remained relatively constant from FY 1982 through FY 1987, the number of permanent employees on board was gradually reduced during FY 1987 through attrition in order for the office to be able to reach this reduced personnel ceiling of 76 FTE (a 9.5% reduction) in FY 1988.

### Procedures

The Complaints Examining Unit (CEU) of the OSC's Prosecution Division initially analyzes all allegations of prohibited personnel practices and other activities prohibited by civil service law, rule or regulation (except allegations of Hatch Act violations) received by the office. The CEU attempts to contact complainants to assure that the nature of and basis for the allegation is clearly understood, and conducts further inquiry to the extent necessary to determine whether further investigation is warranted. Preliminary review and inquiry may be sufficient to establish that there is insufficient basis for further OSC action on the matter, or to otherwise resolve the matter, or to resolve the matter without further investi-

gative or prosecutive action. For example, the CEU's preliminary inquiry to an agency concerning a disputed personnel action may cause the agency to review its own action, to discover and acknowledge that it erred and to agree to appropriate remedial action which would moot further OSC action in the matter.

If proper disposition of a matter cannot be achieved through the initial examination process, the CEU refers it to the Investigation Division for more extensive investigation. If it is determined that an allegation is not within OSC's own investigative jurisdiction, but that information contained in the complaint may constitute a whistleblower disclosure, the OSC Investigation Division's Disclosure Unit reviews the matter for possible transmittal (without disclosing the identity of the employee source absent an employee's consent) to the agency head concerned under §1206(b)(2).

The Prosecution Division reviews completed investigations to determine whether any violation of law, rule or regulation has been established and whether corrective and/or disciplinary action is warranted. If corrective action is indicated, OSC personnel may discuss the matter with the agency concerned in order to obtain early resolution of the matter. Otherwise, the Special Counsel may send the matter to the agency head under §1206(c)(1)(A) with a formal recommendation for corrective action. If an agency declines to take corrective action on the basis of a formal referral under §1206(c)(1), the Special Counsel may request the MSPB to consider the matter under §1206(c)(1)(B), and the MSPB may order any corrective action it deems appropriate. During FY 1988, cooperation by agencies generally 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 disciplinary action is warranted, the OSC files charges against the offending employee under §1206(g) and prosecutes the case before the MSPB pursuant to §1207. 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 §1206(c)(3) for certification of any action taken on the matter. Likewise, the OSC forwards evidence of any possible criminal violations identified during an investigation to the Department of Justice.

At any time during an investigation, the OSC may seek a stay of any personnel action if the available evidence shows 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 either through direct request to the agency concerned, or by filing a request with the MSPB under §1208. Also, the Special Counsel may (under §1206(i)) intervene as a matter of right or otherwise participate in any proceeding before the MSPB. Therefore, the OSC may intervene in a complainant's appeal before the MSPB while investigating an allegation concerning or related to the same matter.

## Investigation of Allegations

At the beginning of FY 1988 (October 1, 1987) the OSC had 305 matters pending initial review and preliminary inquiry, and 97 matters under full investigation.

### Nature of Allegations Received During FY 1988

During FY 1988, the OSC received 1330 new allegations and complaints. Complainants alleged reprisal for whistleblowing in 273 (20.5%) of the complaints, making it the most frequently cited claim of a prohibited personnel practice.

The next most frequently alleged prohibited personnel practice was discrimination based on race, color, sex, national origin, religion, age, or handicapping condition. Employees alleged one or more of these

forms of discrimination in 240 (18.0%) of the complaints filed with the office 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. The third largest category of complaints, 205 (15.4%), con-

cerned alleged abuse of merit staffing requirements or procedures. Alleged reprisal for exercise of an appeal right was the next largest category of complaints (80 or 06.0%) as well as complaints of alleged Hatch Act violations by Federal, State or local government employees (80 or 06.0%).

A more complete breakdown of the nature of all complaints received by the OSC during FY 1988 is given in Table 1.

**Table 1.**  
**TYPES OF COMPLAINTS RECEIVED DURING FY 1988 UNDER 5 U.S.C. §1206**

<i>Nature of Initial Allegation</i> <sup>1</sup>	<i>Number of Complaints</i>	<i>Nature of Initial Allegation</i> <sup>1</sup>	<i>Number of Complaints</i>
Alleged reprisal for whistleblowing (§2302(b)(8))	273 (20.5%)	Alleged violation of a law, rule or regulation implementing or concerning a merit system principle (§2302(b)(11))	67 (05.0%)
Alleged discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition (§2302(b)(1)(A)-(D))	240 (18.0%)	Allegations of other activities allegedly prohibited by civil service law, rule, or regulation (§1206(e)(1)(D))	50 (03.8%)
Alleged 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))	205 (15.4%)	Alleged Hatch Act violation by a Federal employee (§1206(e)(1)(A))	40 (03.0%)
Allegations which did not cite or suggest any prohibited personnel practice or other prohibited activity. <sup>2</sup>	159 (11.9%)	Alleged discrimination on the basis of non-job related conduct (§2302(b)(10))	23 (01.7%)
Alleged violation of law, rule or regulation, or mismanagement, waste of funds, abuse of authority, or a danger to public health or safety (§1206(b)(2) <sup>3</sup>	112 (08.4%)	Alleged Hatch Act violation by a State or local employee (§1206(e)(1)(B))	40 (03.0%)
Alleged reprisal for exercise of a right of appeal (§2302(b)(9))	80 (06.0%)	Alleged nepotism (§2302(b)(7))	19 (01.4%)
		Alleged discrimination on the basis of marital status or political affiliation (§2302(b)(1)(E))	3 (0.2%)
		Alleged arbitrary or capricious withholding of information requested under the Freedom of Information Act (§1206(e)(1)(C))	19 (01.4%)
		<b>Total</b>	<b>1330 (100%)</b>

<sup>1</sup> Based on a review of the complainant's initial submission and determination of what appears to be the complainant's *primary* complaint. Complainants frequently allege more than one prohibited personnel practice or other prohibited activity. Moreover, the nature of the allegation often changes upon further OSC follow-up with the complainant.

<sup>2</sup> Although these types of complaints may not, on their face, indicate the existence of any matter within OSC's investigative jurisdiction, follow-up contact is always made with the complainant to ascertain the exact nature of the complaint and to deter-

mine whether there is any basis for further OSC action.

<sup>3</sup> These types of allegations are treated as "whistleblowing" allegations which may be referred to the agency concerned under §1206(b)(2) for agency consideration. However, if the allegation concerns an employment matter, it is carefully scrutinized to determine whether the matter may be treated as an allegation of a prohibited personnel practice or other prohibited activity within OSC's investigative jurisdiction. If a basis for OSC investigation is found, the matter is investigated by OSC and not referred to the agency concerned.

# Disposition of Allegations

During FY 1988 —

- 1115 investigative matters (including 197 matters carried over FY 1987 and 73 Hatch Act matters) were closed on the basis of initial review, preliminary 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;

- 183 were assigned for full investigation; and
- 114 were assigned for additional review for possible referral to the agency concerned as a whistleblowing disclosure under §1206(b)(2).

The office carried over the remaining matters for completion of OSC review in FY 1989. A breakdown of the types of matters assigned for full investigation is given in Table 2.

**Table 2.**  
**NATURE OF ALLEGATIONS CONTAINED IN MATTERS REFERRED FOR FULL INVESTIGATION DURING FY 1988**

<i>Nature of Allegations</i>	<i>Number of Matters<sup>1</sup></i>	<i>Nature of Allegations</i>	<i>Number of Matters<sup>1</sup></i>
Reprisal for whistleblowing (§2302(b)(8))	79	Appointment, promotion, or advocating the appointment or promotion of a relative (§2302(b)(7))	7
Unauthorized preference or advantage granted to improve or injure the prospect of employment of any person (§2302(b)(6))	45	Other activity prohibited by civil service law, rule or regulation (§1206(e)(1)(D))	17
Reprisal for exercising an appeal right (§2302(b)(9))	48	Violation of the Hatch Act by a State or local government employee (§1206(e)(1)(B))	5
Discrimination on the basis of race, color, sex, national origin, religion, age, or handicapping condition (§2302(b)(1)(A)-(D)) <sup>2</sup>	30	Violation of the Freedom of Information Act (§1206(e)(1)(C))	0
Violation of a law, rule or regulation implementing or concerning a merit system principle (§2302(b)(11))	26	Violation of the Standards of Conduct regulations (§1206(e)(1)(D))	4
Discrimination on the basis of conduct not related to job performance (§2302(b)(10))	9	Unauthorized solicitation or consideration of a recommendation concerning a person for a personnel action (§2302(b)(2))	2
Deception or obstruction of the right to compete for employment (§2302(b)(4))	16	Securement of withdrawal from competition (§2302(b)(5))	5
Violation of the Hatch Act by a federal employee (§1206(e)(1)(A))	7	No prohibited personnel practice alleged	1

<sup>1</sup> The number of types of allegations contained in the matters referred for investigation exceeds the total number of matters referred for investigation (183) since each matter may contain more than one kind of allegation.

<sup>2</sup> Allegations of discrimination are normally deferred to the established discrimination complaint procedures. However, other prohibited personnel practices alleged in conjunction with an allegation of discrimination may be investigated without addressing the discrimination issue.

## Results of FY 1988 Investigations

The OSC completed 120 full investigations during FY 1988 (including 97 investigations carried over from FY 1987); 59 investigations (including 16 carried over from FY 1987) awaited completion at the end of the year. Of the 120 investigations completed, 78 matters were closed as investigative matters and 42 matters were pending legal review and a decision as to final disposition at the end of the fiscal year. Of the 78 investigations closed during FY 1988, the OSC —

- initiated disciplinary action in 11 cases;
- sought or obtained corrective action in 33 cases;
- intervened in an employee appeal before the MPSB in one case;
- identified Hatch Act violations in four cases, but declined prosecution;
- referred apparent violations of law, rule or regulation not within OSC jurisdiction to agency heads under §1206(c)(3) in two cases; and
- found insufficient bases for corrective or disciplinary action in 82 matters.

Additionally, in matters pending final disposition, the OSC secured a formal 15-day stay of an employee's removal in one case, and a 30-day stay of a second employee's removal in another case.

The remedial actions initiated or taken during FY 1988, as a result of investigations conducted before and during FY 1988, are described in more detail in the next section.

## Corrective, Disciplinary and Other Actions

Pursuant to the OSC's receipt of prohibited personnel practice allegations, formal and other corrective actions and dispositions, disciplinary actions, stays, and other follow-up actions occurred during FY 1988

as a result of the initial examination of complaints and investigations conducted before and during FY 1988. These actions consisted of —

- 3 formal corrective actions;
- 30 other corrective actions and dispositions<sup>1</sup>;
- 8 stays of personnel actions;
- 11 disciplinary actions, including 10 Hatch Act cases and one non-Hatch Act case;
- 6 referrals of violations of law, rule or regulation to agency heads under §1206(c)(3).

The following is a representative sample of actions undertaken by the OSC during FY 1988.

### Corrective Actions

- An employee alleged reprisal for expressing his views on perceived discrimination in his agency, in violation of his first amendment rights. The complainant was suspended for 10 days after a local newspaper quoted his remarks. On the basis of his complaint, and the investigation, OSC petitioned MSPB for a stay, which was granted in May 1988, and extended in June. OSC then requested and obtained corrective action from the agency, which rescinded the employee's suspension, with full back pay and benefits.
- A complainant alleged that his probationary appointment as a police officer had been terminated in reprisal for disclosures of wrongdoing by supervisory personnel. Based upon evidence developed during the OSC investigation and an audit by the agency Inspector General, OSC formally reported the findings and recommendations in a letter to the head of the agency.

<sup>1</sup> "Other Corrective Actions and Dispositions" include those actions taken by an agency at the request of the OSC as a settlement of a prohibited personnel practice complaint in advance of a formal OSC determination and request for corrective action; or actions taken by an agency with knowledge of a pending OSC investigation, which favorably resolve the matters under inquiry by OSC. The dispositions represented in this category are those which were actually obtained in FY 1988, and include some resulting from corrective action requests which were initiated in FY 1987. This category does not include corrective actions which were requested by OSC in FY 1988, but not obtained prior to the close of the fiscal year.

The Administrator reversed the complainant's firing and the complainant was reinstated with full back pay.

- A complainant disclosed violations of law and regulation to his supervisor. After the disclosures, the supervisor changed the complainant's position description and removed his supervisory duties. In July 1988, the complainant received a notice of abolishment of his position due to a reduction-in-force (RIF). The OSC investigation showed that his superiors knew of the complainant's disclosures, and that the proposed actions were retaliatory. OSC requested a stay of the RIF on August 15, 1988. On August 26, 1988, the agency agreed to stay the complainant's separation, and was considering action whereby the complainant may receive specialized training, thereby negating the need for a RIF.
- OSC received a complaint from an agency Inspector General on behalf of an employee. The employee alleged that an agency official solicited sexual favors in exchange for employment, sexually harassed others in the office, and retaliated against her for rebuffing his sexual advances. An OSC investigation supported these allegations. Based on the OSC's findings, the agency reported that action would be taken to suspend the official without pay for 30 days and to downgrade him two grades to a nonsupervisory position.

## Disciplinary Actions

- *Special Counsel v. Gallagher*. On September 6, 1988, the OSC filed a complaint for disciplinary action against eight employees of the Niagra Frontier Transportation Authority (NFTA), an agency of the State of New York. The Chairman of the NFTA, Raymond F. Gallagher, was charged with running for public office in a partisan election. OSC charged Gallagher and seven subordinates with directly or indirectly coercing, attempting to coerce, commanding or advising other NFTA employees to contribute money and/or labor to various

candidates for elective office or to a political party. The MSPB had not yet set a hearing date in this matter by the end of FY 1988.

- *Special Counsel v. Purnell, Fela and Johnson*. On October 9, 1986, the OSC filed a complaint charging Janet B. Purnell, the executive director of the Akron Metropolitan Housing Authority (AMHA), Herbert Johnson, Sr., AMHA's labor relations manager, and Frank J. Fela, a former AMHA personnel management administrator, with violating the Hatch Act by coercing subordinate employees to either buy or sell tickets to political events. Purnell was also charged with coercing subordinate employees to telephone registered voters and encourage them to support the candidacy of a mayoral candidate in a partisan election. On October 28, 1987, the Administrative Law Judge (ALJ) issued a recommended decision finding that preponderant evidence supported the charges against Purnell, Johnson and Fela. The ALJ recommended that they be removed from their positions. Purnell, Johnson and Fela filed exceptions to the ALJ's recommended decision. Purnell and Johnson resigned from their AMHA positions in April 1988. On June 24, 1988, the MSPB issued an opinion and order substantially adopting the ALJ's determinations. The MSPB modified the penalties against Purnell and Johnson, ordering that they be debarred from employment with an Ohio state or local agency for a period of 18 months. The MSPB ordered that Fela be removed from his current position with the City of Cuyahoga Falls. Fela subsequently resigned from his position with Cuyahoga Falls.
- *Special Counsel v. Zimmerman and Pouy*. In February 1985, the OSC charged Dennis L. Zimmerman, a supervisory operations research analyst, and Michael Pouy, an operations research analyst, employed by the Defense Logistics Agency with religious discrimination against a Jewish employee. Zimmerman was also charged

with taking reprisal against the employee for exercising his appeal rights. The ALJ issued a recommended decision on February 13, 1986, finding that preponderant evidence supported the charges against both Zimmerman and Pouy. The ALJ recommended that the MSPB remove Zimmerman from federal service, and demote Pouy three grades to a GS-11 position for a period of three years as well as fine him \$1000. On March 16, 1988, the MSPB issued an opinion and order adopting the ALJ's legal findings and modifying the penalties recommended against Zimmerman and Pouy. Because Zimmerman had resigned from federal service while the MSPB's final decision was pending, the MSPB ordered that he be debarred from federal service for a period of five years. The MSPB also reduced Pouy's demotion to that of only one grade level, from a GS-14 position to a GS-13 position for a period of three years.

## Intervention

*Douglas C. Charnock, Jr. v. Department of Treasury.* An employee alleged that his agency had coerced him into retiring on the basis of a handicapping condition. He claimed that a management official threatened removal if he did not report to work in spite of previously submitted medical documentation that he was unable to perform his job. He further alleged that the agency refused to accept any additional medical statements or consider his request for further leave without pay and placed him in an Absent Without Leave (AWOL) status. The complainant resigned rather than face removal for AWOL. He then appealed to the MSPB, but an MSPB ALJ dismissed the appeal for lack of jurisdiction. The OSC filed a petition for review of the appeal decision with the MSPB in May of 1987. On July 8, 1988, the MSPB issued an opinion and order denying the OSC petition for review, and then reopened the case on its own motion. The MSPB upheld the decision dismissing the matter for lack of jurisdiction.

## Hatch Act Enforcement

During FY 1988, the OSC received 80 new allegations of Hatch Act violations and initiated full investigations of 11 alleged violations. As a result of the initial examination and full investigations of complaints (including those complaints carried over from FY 1987) the OSC —

- filed complaints seeking disciplinary actions against one federal employee and 10 local government employees;
- established in 17 other cases that violations had occurred, but were not sufficiently egregious to warrant prosecution, with the result that the OSC issued warning letters;
- found no violation in 46 cases and closed the matters.

## Whistleblowing Disclosures

In addition to its investigative and prosecutive missions, OSC provides a safe channel through which federal employees may disclose information which they reasonably believe evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. On receipt of such allegations from a federal employee, the OSC is required by §1206(b)(2) to transmit the information to the head of the agency concerned *without disclosing the identity of the source* unless he or she consents. The agency head is then required by §1206(b)(7) to report to the OSC the action taken or to be taken on the information referred.

If, on review of the information received, the OSC determines that there is a substantial likelihood that the information received does not disclose a violation of law, rule or

regulation, or mismanagement, waste, abuse, or a danger to the public, the Special Counsel may, under §1206(b)(3), require the agency head to investigate the matter and, in accordance with §1206(b)(4), report the investigative findings and the actions taken thereon to the Congress, the President, and to the OSC (for transmittal to the complainant).

The OSC is *not* authorized to investigate allegations of the kind described in §1206(b). Nevertheless, complainants often misconstrue the OSC's authority and send such allegations to the OSC with the expectation that the OSC will investigate the matter. Also, information which may be covered by §1206(b) is often included in or with allegations of other prohibited activities within OSC's investigative jurisdiction. Therefore, most matters which may be cognizable under §1206(b) are usually identified through the initial review of complaints conducted by the Prosecution Division's CEU. The Investigation Division's Disclosure Unit then conducts further review and follow-up with the complainant as needed to confirm the facts and issues involved. On completion of such review and inquiry, the OSC decides whether to: (1) transmit the information developed to the agency concerned under §1206(b)(2) or under §1206(b)(3); (2) refer the matter to the agency Inspector General or comparable office for any action deemed appropriate; or (3) close the matter without further action.

During FY 1988, the OSC received and considered 120 matters for possible referral to the agency concerned under §1206(b). Of these 120 new matters, plus six matters carried over from FY 1987, the OSC —

- referred 14 disclosures for investigation and a report under §§1206(b)(3) and (4);
- referred 32 disclosures for a report of action taken or to be taken thereon under §§1206(b)(2) and (7);
- referred 49 disclosures to the agency Inspector General;
- closed 25 matters due to lack of sufficient basis for further action;

- carried 6 matters over to FY 1989 for completion of review.

## Results of Referrals

At the beginning of FY 1988, three agency reports received during FY 1987 awaited final OSC review. During FY 1988, 11 §1206(b)(4) reports and 32 §1206(b)(7) reports were received from the agencies to which statutory referrals had been made during FY 1987 and FY 1988. At the close of FY 1988, two agency reports awaited review and closure in the OSC. Final review of the agency reports disclosed the following results from the statutory referrals —

### Section 1206(b)(3) referrals

Allegation substantiated in whole or in part . . . . .	8 (67%)
Allegation not substantiated. . . . .	4 (33%)

In the eight 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 . . . . .	3
Disciplinary action taken . . . . .	1
Evidence of a criminal violation referred to the Attorney General . . . . .	1
Other . . . . .	6
No further action taken . . . . .	1

### Section 1206(b)(2) referrals

Allegation substantiated in whole or in part . . . . .	19 (59%)
Allegation not substantiated. . . . .	13 (41%)

In the 19 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 . . . . .	3
Evidence of a criminal violation referred to the Attorney General . . . . .	1
Other . . . . .	11
No further action taken . . . . .	1

# Legislation

During FY 1987, legislation was introduced to amend the Civil Service Reform Act of 1978 (CSRA) in ways which would enhance existing protections for federal whistleblowers, and significantly affect the responsibilities and authority of the OSC in affording those protections.

The Special Counsel testified on H.R. 25 before the Civil Service Subcommittee of the House Post Office and Civil Service Committee on March 10, 1987, and on S. 508 before the Subcommittee on Federal Services, Post Office and Civil Service of the Senate Governmental Affairs Committee on July 31, 1987. The Special Counsel strongly supported the protection of whistleblowers in her testimony at both hearings and endorsed the concept of strengthening whistleblower protection. Nevertheless, the Special Counsel expressed concerns with respect to certain provisions contained in the legislation which she believed would hamper the OSC in obtaining relief for genuine whistleblowers. Following her testimony, OSC staff worked with other agencies in the Executive Branch, and the Congress, in a joint effort to negotiate more effective legislation to enhance legal protections for whistleblowers. No substantive legislative action, however, occurred with respect to this proposed legislation during FY 1988.

Also, during FY 1987, legislation was introduced to amend the federal Hatch Act. The Special Counsel testified on H.R. 20 and H.R. 21 before the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service on June 3, 1987. In her testimony, the Special Counsel expressed serious reservations about the fundamental recasting of the Hatch Act, a law

which has served to preserve important public values as much as it has served to protect the vast majority of government employees from partisan political considerations in the performance of public service. Among the concerns she expressed was that the proposed legislation would result in the politicization of the federal civil service. Even with the strongest of controls against coercion of political activity by government employees, she testified that it seemed unrealistic to believe that federal employees would be oblivious to the advantages of political partisanship when competing for promotions or other incidents of employment with politically active employees. Her testimony noted that overt coercion is comparatively easy to protect against and to enforce; what is not so easily regulated is the climate that can easily arise based upon the unspoken assumption that political conformity is the route to advancement and security, leading to subtle, self-imposed pressures on employees to conform, or appear to conform, to whatever political tendency will assure greater job security.

Following discussions of the issues raised during the hearings, congressional sponsors introduced a modified bill, H.R. 3400, which was reported out of the full Committee favorably on October 15, 1987, and passed by the House of Representatives on November 17, 1987.

On February 23, 1988, the Special Counsel testified on H.R. 3400 before the Senate Committee on Governmental Affairs, and repeated the concerns she expressed during House consideration of this legislation. Following these hearings, the Committee further amended H.R. 3400, and reported the bill favorably on July 7, 1988. The legislation, as amended, was pending in the Senate at the end of FY 1988.

# Further Information

Additional information on or copies of this report may be obtained by writing or contacting:

Office of Special Counsel  
1120 Vermont Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: FTS or (202) 653-7984

## Prohibited Personnel Practice Complaints

Complaints of prohibited personnel practices should be reported to:

Complaints Examining Unit  
Office of Special Counsel  
1120 Vermont Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005

Telephones:

Toll free number -  
1 (800) 872-9855  
Officer of the Week -  
FTS or (202) 653-7188

## Whistleblowing Disclosures

Disclosures of information evidencing violations of law, mismanagement, waste, abuse of authority, or danger to public health or safety may be reported in confidence to:

Disclosure Unit  
Investigation Division  
Office of Special Counsel  
1120 Vermont Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: FTS or (202) 653-9125

## Hatch Act Questions

Inquiries concerning the Hatch Act should be made in writing or by telephone to:

Prosecution Division  
Office of Special Counsel  
1120 Vermont Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005  
Telephone: FTS or (202) 653-7143