

**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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**U.S. OFFICE OF SPECIAL COUNSEL**

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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.

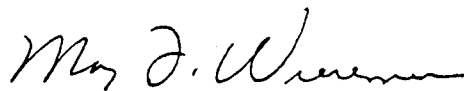
The Special Counsel

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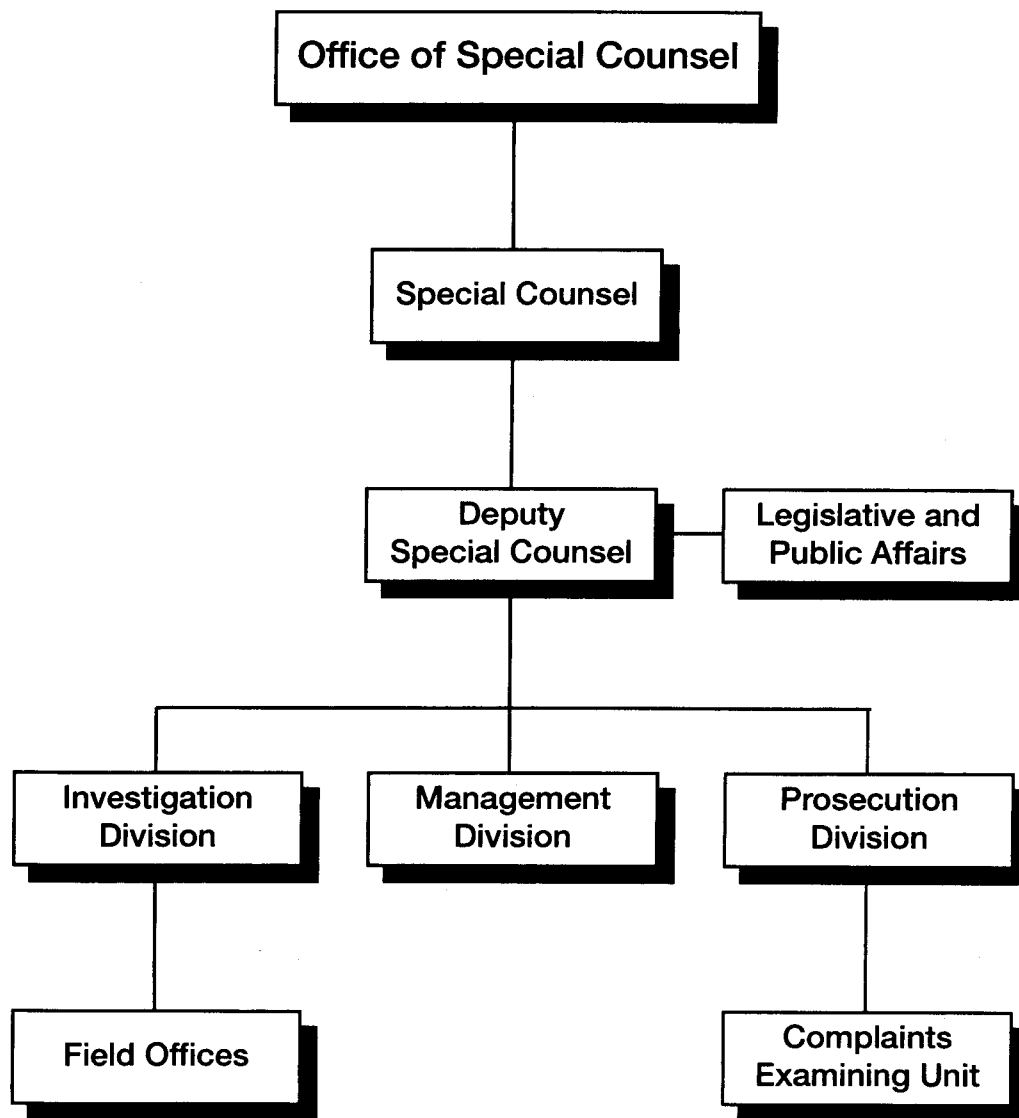
In addition to the fulfillment of its statutory mission, the OSC continued its active program to educate federal employees and managers about prohibited personnel practices, and other matters within the investigative jurisdiction of this agency. This program was originally instituted in FY 1989 to make 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),<sup>1</sup> 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

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<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.

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.