

A Report To Congress From The Office of Special Counsel

Calendar Year 1982



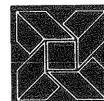
**The Office of the Special Counsel
United States Merit Systems Protection Board**

"The reduction of fraud and waste in all federal programs is a major commitment and priority of my Administration."

President Ronald Reagan
The Roosevelt Room
March 26, 1981

"In my view, when a legitimate complaint...is brought to my attention my... responsibilities...are to insure the protection of the employee."

Special Counsel K. William O'Connor
before the Committee on Governmental Affairs
September 23, 1983



The Special Counsel

1120 Vermont Avenue, N.W.
Washington, D.C. 20419

May 2, 1983

TO THE MEMBERS OF THE CONGRESS
OF THE UNITED STATES OF AMERICA

In accordance with United States Code Section 1206(m) of title 5 of the Civil Service Reform Act of 1978, I respectfully submit this annual report to the Congress on the activities of the Office of the Special Counsel of the United States Merit Systems Protection Board. This report covers the work of the office for calendar year 1982 as required by the U.S. Code and includes legislative recommendations to the Congress.

The Office of the Special Counsel was established by the Civil Service Reform Act of 1978 as an operationally independent office within the United States Merit Systems Protection Board. The Office of the Special Counsel has two primary responsibilities:

- (1) to receive and investigate allegations of violations of civil service law, rule or regulation, primarily prohibited personnel practices and to initiate appropriate corrective and disciplinary actions when warranted, and
- (2) to protect federal "whistleblowers" from reprisal and refer allegations to agency heads.

Additionally, the office is mandated to

- ° investigate and prosecute violations of the Hatch Act, and
- ° investigate and prosecute arbitrary or capricious withholding of information prohibited by the Freedom of Information Act.

To improve the accuracy and consistency of data, future annual reports from this office will be based on the federal fiscal year. Your support of our efforts to improve government management is appreciated. We welcome your inquiries.

Respectfully,


K. William O'Connell

Table of Contents

Introduction	1
The Mandate of the Office of the Special Counsel	2
The OSC in Transition: New Goals for 1983	4
Prohibited Personnel Practices	7
Whistleblowing	9
Other Practices under Purview of the OSC, including Hatch Act and Freedom of Information Act	11
New Legislation Sought by the OSC	13
A Budgetary and Administrative Review	14
 <u>Appendices</u>	
<u>Data Tables</u>	I
<u>Technical Definitions</u>	II
<u>How to Report to the OSC</u>	III

Introduction

1982 was a year of major transition for the Office of the Special Counsel of the Merit Systems Protection Board. In October, 1982, leadership of the office was transferred to K. William O'Connor, formerly Inspector General of the Community Services Administration. Special Counsel Alex Kozinski resigned in August when he was appointed Chief Judge of the United States Court of Claims.

This annual report for calendar 1982 covers the last 10 months of Mr. Kozinski's tenure and the first two months of Mr. O'Connor's. Due to the difficulty of aligning fiscal and calendar year statistics and budget figures, the next annual report will follow the federal fiscal year, allowing a more accurate assessment of the activities and the performance of the office.

As the first Special Counsel confirmed by the Senate, Mr. Kozinski focused his attention on alleviating internal administrative problems, coping with substantial fiscal constraints, reducing an existing backlog of cases and establishing performance measurements. Mr. O'Connor has outlined a new set of goals for the Office of Special Counsel which is discussed in a separate section, "The OSC in Transition: New Goals for 1983."

The OSC is a Vital Part of the Campaign Against Fraud, Waste and Mismanagement

Both Mr. Kozinski and Mr. O'Connor have emphasized the important contribution the Office of the Special Counsel must make to government-wide efforts to improve management and reduce fraud and waste.

One of the first actions taken by President Reagan after his inauguration was the launching of the President's Campaign Against Fraud, Waste and Mismanagement. In March, 1981, the President's Council on Integrity and Efficiency was established to coordinate and strengthen the role of the Inspectors General. The Office of Special Counsel plays a unique and important part in this campaign. As an ex officio member of the President's Council, the Special Counsel spearheads efforts to protect federal employees who wish to "blow the whistle" on wrongdoing within their agencies. On request, the Special Counsel provides advice and assistance to the Inspectors General on civil service laws and political activity banned by the Hatch Act.

Introduction

The Mandate of the Office of the Special Counsel

The Office of the Special Counsel was established by the Reorganization Plan No. 2 of 1978 and the 1978 Civil Service Reform Act. It should be emphasized that the Office of the Special Counsel is an operationally independent office within the United States Merit Systems Protection Board. The Special Counsel acts much like a prosecutor before the Board, which serves as the judiciary in merit systems cases. The Special Counsel assists the Board in protection of the Merit System through its independent authority to investigate and prosecute.

All federal employees are required by Civil Service Rule 5.4 to testify and provide records to the Office of the Special Counsel during an investigation. The Special Counsel also is authorized to issue subpoenas for documents and the attendance and testimony of witnesses, and to require depositions under oath or a written reply to questions.

The Primary Activities of the Special Counsel

The Office of the Special Counsel has several basic responsibilities:

- ° Prohibited Personnel Practices: To receive and investigate allegations of violations of Civil Service law, rule or regulation, primarily the prohibited personnel practices established under the Civil Service Reform Act of 1978 (5 U.S.C. 2302(b)), and initiate appropriate corrective and disciplinary actions where warranted.
- ° Whistleblowing: To provide a safe channel for federal employees to disclose information on government wrongdoing without fear of retaliation and without disclosure of identity except with the employee's consent.

The OSC is also authorized to investigate other practices, including:

- ° Hatch Act Violations: assure that reports of specific political activities of federal and certain state and local employees, prohibited by the Hatch Act, are investigated.
- ° Non-compliance with the Freedom of Information Act: investigate, and if warranted, prosecute all allegations of arbitrary or capricious

The Mandate of the Office of the Special Counsel

withholding of information under the Freedom of Information Act.

The Office of Special Counsel had branch or field offices in the following cities during calendar year 1982: Philadelphia, Los Angeles (branch office closed in October 1982), Seattle (branch office), San Francisco, Dallas, Atlanta, and Washington, D.C. (opened in October, 1982). Data tables showing the cases handled by each field or branch office are available in the Appendix.

During calendar year 1982, the Office of Special Counsel reviewed and closed over 1700 cases which dealt with Prohibited Personnel Practices, Whistleblowing, Hatch Act violations, Freedom of Information and other types of inquiries. A discussion of each type of action follows in the next sections.

The OSC in Transition: New Goals for 1983

Statement by K. William O'Connor
Special Counsel, Merit Systems Protection Board
March 1, 1983

There is a tendency among those who first assume leadership of an office or agency to promise a lengthy list of goals and reforms which quickly become lost in the maze of activities needed to meet the day-to-day duties of running an office. The Office of Special Counsel has been challenged by the Congress to prove its effectiveness in carrying out its statutory goals or close its doors. I am on record as saying that if this office cannot be made to work, I will lead the parade to abolish it. I stand by that statement. I have not promised an unrealistic, ingenuous set of goals for this office. I have committed my staff and myself to only two integrated standards: Professionalism and Responsiveness.

Standards of professionalism dictate that an office focus its attention on those areas where it can be most effective, productive and cost efficient within the bounds of its statutory responsibilities. The preeminent responsibility of this office must be the enforcement of Civil Service laws, rules and regulations. However, the mandated authority of the Office of Special Counsel covers a broad number of issues. We must choose priorities carefully to have the greatest influence on the preservation and protection of the Merit System.

The Office of Special Counsel currently has 28 attorneys and investigators nationwide and a budget so small that it is "rounded out" to zero by the computers at the Office of Management and Budget. Given the limited resources, we have chosen to focus our attention on prohibited personnel practices, without, of course, excluding important tasks like referral of whistleblower complaints.

Responsiveness requires an effectively administered office that takes legal action in an appropriate and expeditious manner. My concept of due process is that the longer action is delayed, the greater the possibil-

The OSC in Transition: New Goals for 1983

ity that due process will be denied. Prompt process is essential to due process.

Complaints by federal employees related to prohibited personnel practices and whistleblowing must be investigated. In the past, some employee complaints were resolved summarily without contacting the complainant-- a problem attributed to inadequate staff and funding. A new directive of the office is to investigate every complaint received at least to the extent of interview. At a minimum every complainant will be personally contacted by an investigator or attorney. Personal contact by the staff will reduce the chances of a valid complaint being overlooked because of the employee's inability to clearly and sufficiently articulate the charges in writing.

Often a delay in action on a matter may result in the inability to investigate properly and resolve worthy cases. To reduce this problem and ensure effective investigation, the office has established the objective of resolving all complaints within 90 days of receipt.

The Office of the Special Counsel has been beset by funding, staffing and leadership problems since its inception. We do not intend to dwell on these matters and will not offer administrative problems as an excuse for less than satisfactory performance of our mandate. Organizational changes have been instituted to maximize the cost effectiveness of the office while allowing it to meet the highest standards of professionalism and responsiveness.

We have a duty to respond promptly to the complaints of federal employees. To achieve more uniform and economical access for federal employees to the staff of the office, new field offices were opened in Chicago (February, 1983) and in Washington, D.C. (October, 1982.)

To improve communication and enhance the objectives of our overall program, the Office of Congressional and Public Relations has been established. The director of that office is charged with keeping the lines of communication open to the Congress, the press, and the public. Additionally, the communications office will increase the awareness of the OSC among federal employees so that they will know that the OSC can and will help them in their efforts to "blow the whistle" on wrongdoing in the government.

An Inspector General function has been established within the OSC. The Associate Special Counsel for Investigation will serve as the Inspector General. He will develop and implement internal control systems and

conduct inspections and audits of all administrative and program operations. The initial thrust of his efforts is developing procedural instructions and standards to evaluate productivity and quality. The OSC IG will review and investigate any complaints against individual staff members or actions by the office (except those relating to legal and prosecutive determinations). I established an IG in this office to assure that the performance of the staff meets high professional standards.

These changes will result in the office contributing more effectively to the Administration's pledge to protect whistleblowers and to improve the management of government. The Office of Special Counsel is taking an active role in the President's Campaign Against Fraud, Waste and Mismanagement. I personally have strong ties to the Inspectors General because of my previous service as an Inspector General and my involvement in the initial planning and establishment of the President's Council on Integrity and Efficiency. This office shares the commitment of the Administration to improve management of the federal government.

The challenge of making the Office of Special Counsel an effective organization is not being taken lightly. A pledge has been made to the President, to Congress, to federal employees and to the public. That pledge will be met.

Prohibited Personnel Practices

During 1982, the Office of the Special Counsel closed 1,648 cases involving allegations of prohibited personnel activities or practices prohibited by Civil Service laws, rules or regulations. (See Appendix for definition.) The majority of the matters received and reviewed by the OSC involve alleged prohibited personnel actions. Although all federal agencies have channels through which complaints can be resolved, an employee may feel that it is necessary to notify the OSC. The Special Counsel can intervene on behalf of the employee.

If possible, complaints are resolved by the OSC through informal channels. If warranted, the OSC may decide to use its authority in one or more ways:

- initiate an investigation and if necessary request that any intended adverse personnel actions be postponed pending completion of the investigation (defined as a "stay of personnel action"),
- initiate action against the offending employees,
- recommend corrective action by the agency and send a report of the investigation to the agency head, the Merit Systems Protection Board, the Office of Personnel Management, and if necessary, to the President. If corrective action is not taken at the request of the OSC, the Special Counsel may ask the Merit Systems Protection Board to order corrective action.

There is a substantial and constant flow of matters involving alleged prohibited personnel actions through the Office of the Special Counsel. There were 442 pending prohibited personnel activity matters on the books at the end of 1981. During 1982, an additional 1,404 complaints of this same nature were received.

Such a large number of complaints obviously involves duplication as several employees may inquire about the same action. About one-third of the 1,648 cases of prohibited personnel actions closed during 1982 had to be closed because the Special Counsel concluded that: 1) there was insufficient information or incorrect information (even though attempts are usually made to have the complainant provide better information), 2) no prohibited personnel action was involved, or 3) the provisions of the law did not apply to the agency or the employee involved. Almost 140 cases were investigated personally by investigators.

Prohibited Personnel Practices

Examples of Prohibited Personnel Cases during 1982

A. Special Counsel versus the Department of Energy
No. HQ12088210056.

In a precedent-setting decision, the Office of Special Counsel initiated action against a personnel practice being used by a federal agency based upon a "pattern of practice" allegation. The OSC alleged that the performance appraisal system applied to Senior Executive Service employees at the Department of Energy was defective and resulted in a pattern of prohibited personnel practices in violation of 5 U.S.C. section 2302(b)(11). A total of 19 DOE SES employees were affected by this determination.

The OSC requested stays of actions from the Merit Systems Protection Board. The matter is still under investigation by the OSC.

B. Disciplinary Action sought against HUD administrator
and Corrective Action sought for two HUD employees
under his supervision. No. HQ12068110019 and
HQ12088210004.

The Office of Special Counsel asked the Merit Systems Protection Board to seek disciplinary action against a regional administrator of the U.S. Department of Housing and Urban Development, James C. Cummings, Jr. The investigation conducted by the OSC indicated that Cummings took prohibited personnel action against two HUD office employees, John Mullin and Richard Orejuella. Mullin and Orejuella had been reassigned to a different area office in retaliation for "blowing the whistle" on alleged improper real estate dealings by Cummings. The OSC obtained stays of the reassignments and negotiated an informal stay for the duration of the Board proceedings. The OSC asked the agency to take corrective action by cancelling the reassignments. The request for disciplinary action against Cummings is now pending before an administrative law judge of the MSPB.

Related to the Cummings case, the OSC began action in January 1983 to protect another HUD employee who served as a key witness when the Cummings case was being heard by the MSPB. Two stays of personnel action were requested in January, 1983, to freeze the proposed reassignment of Marvin Lesht.

Whistleblowing

The active cooperation of federal employees and private citizens in reporting violations of law or regulations, fraud, waste or mismanagement is essential to a successful governmentwide campaign to improve federal management. Fighting fraud, waste and mismanagement is a major commitment of the Reagan administration. The President and other high-ranking government officials have voiced their support of "whistleblowing" in which a federal employee or private citizen exposes wrongdoing in the government. The OSC and the Merit Systems Protection Board have been working with the President's Council on Integrity and Efficiency on strategies to assure that whistleblowing is appropriate, and plays a vital role in the overall government management improvement program.

The main responsibilities of the Office of Special Counsel are to refer whistleblower allegations of federal employees to the appropriate agency head or Inspector General and if warranted, take action to see that whistleblowers are protected from reprisal. Reports sent to agencies do not include the identity of whistleblowers unless the OSC determines that disclosure is absolutely necessary to the resolution of the case and obtains the permission of the whistleblower.

The office referred 68 allegations to agencies in 1982. An investigation by the agency head was ordered in four of these cases. A total of 107 whistleblower referral cases were closed. Seventy-five percent of those referred under 5 U.S.C. § 1206(b)(3) resulted in disciplinary action or administrative corrective action and 50 percent of all cases referred to agencies resulted in disciplinary or administrative action.

Examples of Agency Action Resulting from Whistleblower Referrals:

Thousands of Dollars Saved at HUD

The Special Counsel requested a report from the Secretary, Department of Housing and Urban Development, on allegations of overpayments in housing assistance programs and a failure on the part of those responsible for monitoring the program to take corrective action. The investigation resulted in the collection of thousands of dollars in overpayments and the referral of criminal findings to the Department of Justice.

Whistleblowing

Health Hazards Eliminated at Naval Station

The Special Counsel asked the Secretary of the Navy to look into a possible health hazard at a Naval Ordnance Station. The review resulted in the immediate halting of electric arc wire spraying operations until all potential health hazards could be eliminated.

Example of OSC Action against Reprisal:

OSC Investigation Convinces Agency to Reverse Action

An employee of the Department of Energy in Amarillo, Texas filed a complaint with the OSC on June 11, 1982, for alleged reprisal for his "whistleblowing" action. He alleged that his proposed reassignment to Albuquerque, New Mexico, was in retaliation for his whistleblowing to the Office of Personnel Management regarding use of unapproved qualifications standards by the Department of Energy. During an on-site investigation by OSC, the agency insisted that the action was not in reprisal for whistleblowing. However, the agency decided to cancel the employees reassignment and restore his fully satisfactory performance appraisal.

Other Practices under the Purview of the Special Counsel

In addition to the Special Counsel's authority to receive and investigate allegations of violations of Civil Service law, rule or regulation and to protect federal whistleblowers from reprisal as well as referrals of disclosures evidencing fraud, waste and mismanagement, the Civil Service Reform Act specifies several other areas that the Special Counsel is specifically authorized to investigate:

- Political activity which is prohibited under subchapter III of Chapter 15 of title 5, U.S.C. Hatch Act Violations;
- Political activity by any state or local officer or employee which is prohibited under Chapter 15 of this title;
- Arbitrary or capricious withholding of information under section 552 of this title, the Freedom of Information Act; and
- Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

The OSC Provides Advice and Public Information on the Hatch Act

The Office of the Special Counsel investigates reports and allegations of Hatch Act violation and, when appropriate, prosecutes employees who violate the Act. During 1982, the office closed 52 Hatch Act cases. There were 26 cases pending at the end of 1981 and 115 matters were received during 1982. These matters involved federal, state and local employees.

A major role of the Special Counsel is providing advisory opinions and public information on the Hatch Act. This is vital to preventing violations of the Act. During 1982, the OSC issued over 1800 advisory opinions to Congressional Offices and the public either by letter or by telephone. The office responded to over 230 requests for publications on the Hatch Act. There were 14 warning letters. Twenty-five complaints were resolved informally and 13 complaints were brought before the Merit Systems Protection Board for disciplinary action.

Examples of Hatch Act Cases During 1982:

Jim J. Baker, a Customs Patrol Officer of the U.S. Customs Service, Brownsville, Texas, had participated in the reelection campaign of a U.S. Senator as an advisor. He was charged with violating the Hatch Act.

Other Practices under the Purview of the Special Counsel

In addition to the Special Counsel's authority to receive and investigate allegations of violations of Civil Service law, rule or regulation and to protect federal whistleblowers from reprisal as well as referrals of disclosures evidencing fraud, waste and mismanagement, the Civil Service Reform Act specifies several other areas that the Special Counsel is specifically authorized to investigate:

- Political activity which is prohibited under subchapter III of Chapter 73 of title 5 U.S.C. Hatch Act Violations;
- Political activity by any state or local officer or employee which is prohibited under Chapter 15 of this title;
- Arbitrary or capricious withholding of information under section 552 of this title, the Freedom of Information Act; and
- Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

The OSC Provides Advice and Public Information on the Hatch Act

The Office of the Special Counsel investigates reports and allegations of Hatch Act violation and, when appropriate, prosecutes employees who violate the Act. During 1982, the office closed 52 Hatch Act cases. There were 96 cases pending at the end of 1981 and 115 matters were received during 1982. These matters involved federal, state and local employees.

A major role of the Special Counsel is providing advisory opinions and public information on the Hatch Act. This is vital to preventing violations of the Act. During 1982, the OSC issued over 1800 advisory opinions to Congressional offices and the public either by letter or by telephone. The office responded to over 250 requests for publications on the Hatch Act. There were 24 warning letters. Twenty-five complaints were resolved informally and 13 complaints were brought before the Merit Systems Protection Board for disciplinary action.

Examples of Hatch Act Cases During 1982:

Jim J. Dukes, a Customs Patrol Officer of the U.S. Customs Service, Brownsville, Texas, had participated in the reelection campaign of a U.S. Senator as an assignment for a college level political science course. He was charged with violating the Hatch Act.

Following a hearing, the administrative law judge found that Dukes had violated the law and recommend that he be suspended without pay for a period of 30 days. The Special Counsel filed exceptions to the recommended decision. He has asked the Board to exercise its discretion in fashioning a penalty more appropriate to the minor nature of Dukes' misconduct.

Chandler C. Biggs is an Outdoor Recreation Planner with the Bureau of Land Management, Department of the Interior. After being advised by the local newspaper that it would not publish his letter to the editor opposing a partisan candidate for the state legislature, Biggs paid the newspaper \$17.50 to ensure its publication. He was charged with violating the Hatch Act. Biggs waived his right to a hearing. The parties have entered into a stipulation of facts concerning the circumstances of Biggs' political activity and have filed briefs on the legal issues with the administrative law judge.

Responsibilities Under the Freedom of Information Act

The Special Counsel also may determine if disciplinary action is warranted when a court or administrative authority questions an employee's actions in withholding information requested under the Freedom of Information Act. Generally, cases are referred to the office by the District Courts.

As does any other federal agency, the Office of Special Counsel also receives requests for information it possesses under the Freedom of Information Act. Costs of administering FOIA requests totaled \$8,643.68, only \$343.10 of which was reimbursed. Expenses included administrative and staff time for processing, photocopying, automatic data processing and postage.

Prohibited Disciplinary Action

The Special Counsel is authorized to investigate, before bringing disciplinary action, employees who have been found to be involved in any prohibited discrimination. In acting under this provision, disciplinary action against an individual employee should not take place until there has been an appropriate finding by an administrative agency or court. The OSC works with the Equal Employment Opportunity Commission on cases such as sexual harrassment or other types of discrimination.

Independent Litigation Authority to be Proposed by the Special Counsel

The Special Counsel will request legislation to grant the Office of the Special Counsel independent litigation authority, parallel to the authority of the Merit Systems Protection Board to represent itself in court in matters having to do with the performance of its functions. 5 U.S.C. § 1205(h).

Litigation authority is required by OSC for subpoena enforcement; to defend against suits or bring suit; and to bring actions against any agency where there is a question of the scope of the jurisdiction granted to the Merit Systems Protection Board to direct the agency.

The Office of the Special Counsel will propose to add a new section (n) to existing 5 U.S.C. § 1206 in the following suggested legislative language:

1205 (n) "Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel, and represent the Special Counsel, in any civil action brought in connection with any function out by the Special Counsel pursuant to this title or as otherwise authorized by law."

New Legislation Sought by the OSC

A Budgetary and Administrative Review

The most significant administrative change made during 1982 was the opening of the Washington Field Office on October 12, 1982, to respond to the needs of federal employees in the District of Columbia, Maryland, Virginia and West Virginia. The field office was initially headed by Leonard M. Dribinsky of the Philadelphia Field Office. On December 13, 1982, Carolyn E. Galbreath assumed the position of Field Office Chief. Special Counsel K. William O'Connor stressed the importance of the Washington, D.C. area, "The Washington Field Office is essential to improving the responsiveness of the Office of the Special Counsel because so many federal workers live in or around the Capital area."

The opening of the Washington Field Office was made possible by the restoration of funding in October, 1982, to the \$4.0 million level. This also allowed the Special Counsel to continue plans to open an additional field office in Chicago in February, 1983. The funding level for the office in January, 1982, was \$3,694 million. In July a supplemental appropriation for program activities in the amount of \$238 thousand was received. In mid September, an additional supplemental appropriation of \$104 thousand was received.

A new method of processing payroll and a new accounting system were adopted during 1982. Payroll was contracted with the Department of the Interior. The new arrangement has proven to be more cost efficient while providing personnel and accounting data not previously available

A Budgetary and Administrative Review

Appendices

Data Tables

Data Tables

The following statistics were compiled from the Matters Reporting System of the Office of Special Counsel. For definitions of terminology used, please refer to Technical Definitions and Additional Details in the Appendix.

PROFILE OF MATTERS RECEIVED BY TYPE
 TIME PERIOD: 01/01/82 THROUGH 12/31/82

OFFICE	TOTAL	PROHIBITED ACTIVITY MATTERS	WHISTLEBLOWER ALLEGATIONS	PENDING EVALUATION	HATCH ACT FEDERAL/ST LOC
CENTRAL OFFICE	420	260	51	48	38 23
SAN FRANCISCO	257	179	16	58	4 0
LOS ANGELES	17	13	1	3	0 0
SEATTLE	98	67	10	14	4 3
DALLAS	361	282	16	40	15 8
PHILADELPHIA	534	342	17	159	5 11
BOSTON	6	4	0	2	0 0
ATLANTA	327	251	5	67	3 1
WASHINGTON, DC FIELD OFFICE	<u>56</u>	<u>6</u>	<u>0</u>	<u>50</u>	<u>0</u> <u>0</u>
TOTALS:	2,076	1,404	116	441	69 46

PROFILE OF MATTERS CLOSED BY TYPE

TIME PERIOD: 01/01/82 THROUGH 12/31/82

OFFICE	TOTAL	PROHIBITED							HATCH ACT FEDERAL ST/LOC
		MATTERS ADMIN. CLOSURE	ACTIVITY ONSITE INVEST	OTHER INQ'RY	WHISTLEBLOWER CASES b (2)	AGENCY CERT (3)	b (3)		
CENTRAL OFFICE	419	130	56	162	33	5	0	20	13
SAN FRANCISCO	301	119	32	145	0	0	0	3	2
DALLAS	356	128	8	207	2	0	0	7	4
PHILADELPHIA	411	154	36	219	0	0	0	1	1
ATLANTA									
WASHINGTON, DC FIELD OFFICE	247	65	5	176	0	0	0	1	0
TOTALS:	1,740	599	138	911	35	5	0	32	20

PROFILE OF PENDING MATTERS BY TYPE

TIME PERIOD 01/01/82 THROUGH 12/31/82

OFFICE	TOTAL	PROHIBITED ACTIVITY MATTERS	WHISTLEBLOWER ALLEGATIONS	PENDING EVALUATION	HATCH ACT FEDERAL ST/LOC
CENTRAL OFFICE	326	160	42	75	35
SAN FRANCISCO	207	161	5	35	5
DALLAS	118	85	3	14	4
PHILADELPHIA	206	125	3	59	5
ATLANTA	126	104	0	19	2
WASHINGTON, DC FIELD OFFICE	<u>127</u>	<u>84</u>	<u>0</u>	<u>40</u>	<u>2</u>
TOTALS:	1,110	719	53	242	61
					<u>1</u>
					35

Technical Definitions and Additional Details

Technical Definitions and Additional Details

1. Functions of the Office of the Special Counsel*
 - Receive and investigate allegations of prohibited personnel practices (§ 1206(a)(1)).
 - Notify complainants when investigations are terminated (§ 1206(a)(2)).
 - Conduct investigations in the absence of an allegation (§ 1206(a)(3)).
 - Transmit disclosures of information concerning agency wrongdoing to agency heads for investigation where the Special Counsel determines there is a substantial likelihood the allegations are true (§ 1206(b)(3)).
 - Transmit disclosures of information to the President and to the Congress when the agency fails to submit a report (§ 1206(b)(5)).
 - Review the agency investigative report and determine whether the agency head's findings appear reasonable and comply with section (§ 1206(b)(4) (§ 1206(b)(6))).
 - Transmit disclosures of information to agency heads for a report on action taken or to be taken by the agency (§ 1206(b)(7)).
 - Transmit intelligence information received to House and Senate Intelligence Committees (§ 1206(b)(9)).
 - If the Special Counsel determines there are reasonable grounds to believe a prohibited personnel practice has or will occur, report determinations, findings and recommendations to the Board and agency involved (§ 1206(c)(1)(A)).
 - Request the Board to order agencies to take corrective action (§ 1206(c)(1)(B)).
 - If the Special Counsel determines there is reasonable cause to believe a criminal violation by an employee has occurred, report the determination to the Attorney General and the

* References are to title 5, United States Code, except as otherwise noted.

head of the agency involved and submit a copy of the report to the Directors of OPM and OMB (§ 1206(c)(2)).

- If the Special Counsel determines there is reasonable cause to believe that any other violation of law, rule or regulation has occurred, report it to the head of the agency involved (§ 1206(c)(3)).
- Maintain a public list of noncriminal matters referred to agency heads under (§ 1206(b)(3) and (c)(3) (§ 1206(d)).
- Investigate allegations of Hatch Act violations, arbitrary and capricious withholding of information under the Freedom of Information Act (FOIA), activities prohibited by any civil service law, rule or regulation, involvement by any employee in prohibited discrimination found by a court or administrative authority to have occurred (§ 1206(e)).
- Determine whether allegations may be resolved more appropriately under an administrative appeals procedure (§ 1206(e)(2)).
- Approve or disapprove of an agency taking disciplinary action against an employee during the course of a Special Counsel investigation (§ 1206(f)).
- File complaints for disciplinary action with Board (§ 1206(g)(1)).
- Submit complaint for disciplinary action against an employee appointed by the President with the advice and consent of the Senate, to the President, together with the employee's response (§ 1206(g)(2)).
- File complaints for corrective action with the Board in cases where the Special Counsel believes there is a pattern of prohibited personnel practices (§ 1206(h)).
- Intervene or otherwise participate in proceedings before the Board (§ 1206(i)).
- Prescribe regulations for the receipt and investigation of allegations (§ 1206(k)).
- Request the Board or any member of the Board to stay personnel actions (§ 1208).

- Administer oaths, examine witnesses, take depositions and receive evidence (§ 1205(b)(1)).
- Designate employees of the Office of the Special Counsel to administer oaths, examine witnesses, take depositions and receive evidence (§ 1205(b)(1)).
- Issue subpoenas, order the taking of depositions and order responses to written interrogatories (§ 1205(b)(2)).
- File complaints with the Board requesting review of OPM rules or regulations (§ 1205(e)).
- Initiate proceedings to determine whether disciplinary action is warranted when a court finds that the circumstances surrounding withholding of information under FOIA raise questions whether agency employees acted arbitrarily or capriciously (§ 552(a)(4)(F)). Recommend corrective action to the administrative authority of the agency concerned.
- Initiate proceedings to determine whether disciplinary action is warranted against an employee after court determination of willful or intentional violation of the Right to Financial Privacy Act of 1978. Submit findings and recommendations to the administrative authority of the agency (12 U.S.C. § 347(b)).
- Submit an annual report to the Congress on the activities of the Special Counsel, including recommendations for legislation or other action by Congress (§ 1206(m)).
- Appoint legal, administrative and support personnel for the Office of the Special Counsel (§ 1206(j)).
- Prepare and submit through the Board an annual budget to the President and to the appropriate Committees of the Congress (§ 1206(j)).
- Prepare procurement requests.

2. Prohibited Personnel Practices

Federal agency heads, managers, supervisors and personnel officials are responsible under the Civil Service Reform Act for preventing prohibited personnel practices, and for complying with and

enforcing civil service laws, rules and regulations. Under the law, any employee who is authorized to recommend, approve, or take or direct others to take personnel actions, may not in exercising that authority:

- Discriminate for reasons of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation;
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- Coerce the political activity of any person from competing for employment;
- Deceive or willfully obstruct any person from competing for employment;
- Influence any person to withdraw from competition for any position in order to improve or injure the employment prospects of any other person;
- Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant;
- Engage in nepotism, that is, in the hiring or promotion of relatives or the advocacy of such activity;
- Take or fail to take a personnel action as a reprisal for whistleblowing;
- Take or fail to take a personnel action as a reprisal for the exercise of an appeal right;
- Discriminate for reasons of personal conduct that is not adverse to on-the-job performance of the employee, applicant or others; or,
- Take or fail to take a personnel action in violation of any law, rule or regulation implementing or directly concerning the merit system principles, such as the principle of fair and open job competition.

These prohibitions relate only to those personnel actions specified in the law regarding appointments, promotions, reassignments, adverse actions, or personnel decisions of a similar nature. They apply only to employees or job applicants of Executive Branch agencies, the Administrative Office of the United States Courts, and the Government Printing Office. They do not apply to actions affecting noncareer senior executives and employees in excepted positions that are confidential, policy-determining, policy-making, or policy-advocating. They also do not apply to any employee of:

- A government corporation;
- The Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or certain other intelligence agencies excluded by the President;
- The General Accounting Office;
- The United States Postal Service or Postal Rate Commission; or
- The Federal Bureau of Investigation.

Grievance or appeal procedures are available within federal agencies for resolving most complaints. However, information evidencing the commission of a prohibited personnel practice should be reported to the Office of the Special Counsel.

3. Whistleblowing

The Special Counsel is authorized by 5 U.S.C. § 1206(b) (2) to receive and transmit to the appropriate agency head information from employees, former employees or job applicants evidencing a violation of law, rule or regulation, mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety.

Reports requested on whistleblower allegations may take two forms. If the Special Counsel determines there is a substantial likelihood that the information discloses a violation of law, rule or regulation, mismanagement, a gross waste of funds, and abuse of authority or a substantial and specific danger to public health or safety, he may require the agency head to investigate the allegations and submit a written report in compliance with the requirements of 5 U.S.C. § 1206(b)(3) and (4). These sections require that a written report be reviewed and signed by the agency head within 60 days after the information is transmitted and that it contain: (1) a summary of the information received; (2) a description of the investigation the agency conducted; (3) a summary of the evidence found as a result of the agency's investigation; (4) a listing of any violation or apparent violation of law, rule or regulation; and (5) a description of any corrective action taken or planned as a result of the agency's investigation. These reports are submitted to the Congress and the President and a copy is sent to the complainant. The reports are reviewed by the Special Counsel to determine whether the findings appear reasonable and whether the reports comply with

the statutory requirements. The reports are placed in a public file maintained by the Office of the Special Counsel.

When the Special Counsel determines that information received from the complainant does not warrant the type of investigation and report discussed above, the allegation is submitted to the agency head for a report pursuant to 5 U.S.C. § 1206(b)(7), which requires the agency to inform the Special Counsel, within a reasonable time, of what action has been or is to be taken with respect to the allegation.

The statute provides that the identity of the whistleblower may not be revealed without his consent, unless the Special Counsel determines that the disclosure of identity is necessary to carry out his functions. If the complainant or whistleblower does not consent to disclose his name to the agency, all identifying information is deleted from the material transmitted to the agency for investigation or report.

4. Actions by the Office of the Special Counsel

A. Investigation

An investigation will be initiated if the review discloses sufficient basis. If the review and preliminary inquiry disclose reasonable grounds to believe a personnel action results from a prohibited personnel practice, the Special Counsel may also seek an initial 15-day stay of the personnel action from the Merit Systems Protection Board. In those cases, if circumstances warrant, the Special Counsel may also seek a 30-day extension of the stay and an added extension for such time as the Merit Systems Protection Board considers appropriate.

During an investigation by the Office of the Special Counsel no disciplinary action may be taken against any employee for any alleged prohibited activity under investigation, or any related activity, without the approval of the Special Counsel. The complainant will be informed in writing when an investigation is terminated, and the reasons for that termination will be stated.

Special Counsel Action

B. Review

When an allegation is received, the Office of the Special Counsel reviews it to determine whether the information suggests a prohibited personnel practice has been or will be committed and to determine if an investigation is required. If the Special Counsel concludes that no personnel action is involved, that the information is not factually correct, that the prohibited personnel practice provisions of the law do not apply to the agency or the employee affected, or that the information does not suggest the commission of a prohibited personnel practice, the case will be closed and the complainant informed of this decision.

Similarly, if information is insufficient for determining appropriate action, the complainant or agency involved will be asked to provide more precise or additional information. The complainant may also be asked to consent to the disclosure of his or her identity, which otherwise is held in confidence, should such disclosure be necessary to conduct a Special Counsel investigation.

C. Correction

When an investigation discloses the commission of a prohibited personnel practice, the Special Counsel may initiate disciplinary action against the responsible employee. The Special Counsel may also seek to correct the matter informally. If informal resolution is unsuccessful, a report of the OSC findings will be sent to the agency head, the Merit Systems Protection Board, the Office of Personnel Management, and, when required, the President. This report will contain recommendations for corrective action.

If the corrective action is not taken for reasons unacceptable to the Special Counsel, the Merit Systems Protection Board may be asked to address the matter. After giving the agency due opportunity to respond, the Board may then order corrective action.

D. Prosecution

The Office of the Special Counsel seeks to enforce the law through voluntary compliance by agencies and the prosecution of complaints against offending employees and agencies before the Merit Systems Protection Board. For example, the Special Counsel

may file a complaint against an employee after an investigation discloses sufficient grounds for disciplinary action, or when an individual knowingly and willfully refuses or fails to comply with a Board order. The Board may impose any of several sanctions: suspension, reprimand, removal, reduction in grade, debarment from federal employment for up to five years, and payment of a civil penalty of up to \$1,000. The law requires that federal employees who violate the Hatch Act be removed from government employment. However, the Merit Systems Protection Board is authorized to impose by unanimous vote, a lesser penalty provided it is no less severe than a 30-day suspension. The rights of the employee charged in such cases are set forth in the law and in Merit Systems Protection Board regulations.

Should an agency fail or refuse to accept the Special Counsel's recommendation to correct a prohibited personnel practice, the Special Counsel may request the Merit Systems Protection Board to order corrective action. The Board may order corrective action after affording the agency an opportunity to comment.

State and local employees who violate the Hatch Act also are subject to prosecution before the Merit Systems Protection Board. The Board may determine that the removal of such employees is warranted. If the agency fails to remove an employee after a finding by the Board, the Special Counsel may request an order from the Board to withhold federal funds from the state or local agency. The same action may be taken if the employee is re-employed within 18 months in a state or local agency of the same state.

5. Stays of Personnel Actions

The purpose of a stay is to freeze proposed personnel actions against an employee whose case is currently under investigation by the OSC. Although the Merit Systems Protection Board may refuse to grant a stay of personnel actions, this does not affect the ongoing investigation of the OSC. When the investigation has been completed, the Special Counsel may choose to request appropriate corrective action. A stay merely maintains the status quo so that potentially damaging actions will not affect the complainant, until a full assessment of the allegations has been made.

There are three types of stays that may be requested by the Special Counsel. The three stays are requested in order and have the following effects:

"A" Stay, 5 U.S.C. 1208(a)

(a)(1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within three calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"B" Stay, 5 U.S.C. 1208(b)

(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this section for a period of not more than 30 calendar days.

"C" Stay, 5 U.S.C. 1208(c)

(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved.

How to Report to the Office of the Special Counsel

How to Report to the Office of the Special Counsel

Most job-related complaints are resolved at the agency level either through informal discussion with a supervisor or through established grievance procedures. Certain matters, such as adverse personnel actions, may also be resolved under an appeals procedure where an appeal right is granted by law or regulation. Employees are encouraged to use these channels first.

Any employee may report an alleged prohibited activity to the Office of the Special Counsel without being represented by an attorney. Although the OSC cannot give advisory opinions except in matters involving the Hatch Act, it will clarify its jurisdictional authority and advise the employee of information needed to take action on a problem.

Information submitted to the Office of the Special Counsel should be in writing. At a minimum, the following should be included in the submission:

- ° Full name, address and phone number at which the complainant may be reached for more information, or for notification of action taken. The identity of the individual will not be revealed without prior consent except in those instances when immediate action is required to carry out the responsibilities of the Special Counsel. The office will attempt to contact the person first in such instances.
- ° The name and address or location of the federal agency involved, including the specific office or activity that is the subject of the complaint.
- ° The job title, pay grade and employment status of the employee or employees affected by the allegedly wrongful actions.
- ° An indication whether the information submitted shows:
 - ° a prohibited personnel practice or other activity prohibited by civil service law, rule or regulation; or
 - ° a violation of other law, rule or regulation; or
 - ° mismanagement, a gross waste of funds, abuse of authority or substantial and specific danger to public health or safety.

- A brief and accurate statement of those facts believed to provide evidence of prohibited activity or wrongdoing, and a concise description of the actions and events being reported. If the information concerns a prohibited personnel practice, indicate the specific personnel action taken or proposed. Always indicate:
 - the specific actions that show wrongdoing;
 - who was involved in the action;
 - when the action was taken, or proposed action to occur;
 - any pertinent documentary evidence or information currently in possession of the complainant; and
 - whether or not consent is given to disclose the identity of the employee filing the complaint, if this is necessary to take legal action.

The Office of the Special Counsel may not be able to take appropriate action if incomplete information is received. Additional information may be requested if the OSC cannot determine what action is appropriate or whether the matter falls within its jurisdiction.

Where To Report

Reports and requests for information should be sent to the central office in Washington, D.C., or to one of the field offices listed below.

Reports of illegal activities not within the Special Counsel's investigative authority and of mismanagement, waste of funds, abuse of authority and of dangers to public health or safety may also be sent to the central office in Washington, D.C. They will receive prompt review and referral to the appropriate office. All other matters should be sent to one of the field or branch offices listed below. Inquiries and requests for additional information should be sent to the nearest field office.

Central Office

Office of the Special Counsel
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419
Phone: FTS 653-7188

Field Offices

Office of the Special Counsel
Washington Field Office
1121 Vermont Avenue, N.W.
Washington, D.C. 20419
Phone: FTS 376-8990
(202) 376-8990

Area Covered: District of Columbia, Maryland,
Puerto Rico, Virgin Islands,
Virginia, West Virginia,
Canal Zone, Overseas

Office of the Special Counsel
Atlanta Field Office
Pershing Point Plaza, Room 317
1365 Peachtree St., N.E.
Atlanta, GA 30309
Phone: FTS 257-3750
(404) 881-3750

Area Covered: Alabama, Florida, Georgia,
Kentucky, Mississippi, North
Carolina, South Carolina,
Tennessee.

Office of the Special Counsel
Dallas Field Office
Room 2B29
1100 Commerce Street
Dallas, TX 75242
Phone: FTS 729-8871
(214) 767-8871

Area Covered: Arkansas, Colorado, Kansas,
Louisiana, New Mexico, Okla-
homa, Texas, Utah, Wyoming.

Office of the Special Counsel
Chicago Field Office
300 So. Wacker St.
Chicago, Ill 60606
Phone: FTS: 886-0441
(312) 886-0441

Area Covered: Nebraska, North Dakota,
South Dakota, Illinois,
Indiana, Iowa, Michigan,
Minnesota, Missouri,
Ohio, Wisconsin.

Office of the Special Counsel
Philadelphia Field Office
Room 505, Mall Building
325 Chestnut Street
Philadelphia, PA 19106
Phone: FTS 597-3286
(215) 597-3286

Area Covered: Connecticut, Delaware,
Maine, Massachusetts,
New Hampshire, New Jersey,
New York, Pennsylvania,
Rhode Island, Vermont.

Office of the Special Counsel
San Francisco Field Office
Post Office 36007, Room 11454
450 Golden Gate Avenue
San Francisco, CA 94102
Phone: FTS 556-9450
(415) 556-9450

Area Covered: Alaska, Arizona, California,
Guam, Hawaii, Idaho, Montana,
Nevada, Oregon, Washington.

Branch Office

Office of the Special Counsel
Seattle Branch Office
Federal Building, Room 3242
915 Second Avenue
Seattle, WA 98174
Phone: FTS 399-2840
(206) 442-2840