



# REPORT TO CONGRESS

U.S. OFFICE OF SPECIAL COUNSEL  
FISCAL YEAR 2006

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**U.S. Office of Special Counsel**

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Washington, D.C. 20036-4505**

**The Special Counsel**

The Honorable Richard B. Cheney  
President of the Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Mr. President and Mr. Speaker:

I respectfully submit, in accordance with 5 U.S.C. § 1218, Fiscal Year 2006 Report to Congress from the U.S. Office of Special Counsel. A copy of this report will also be sent to each Member of Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch

Enclosure

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## BIOGRAPHY OF THE SPECIAL COUNSEL

On June 26, 2003, President George W. Bush nominated Scott J. Bloch for the position of Special Counsel at the U.S. Office of Special Counsel. The U.S. Senate unanimously confirmed Mr. Bloch on December 9, 2003. On January 5, 2004, he was sworn in to serve a five-year term.

Mr. Bloch brings over 17 years of experience to the Office of Special Counsel, including litigation of employment, lawyer ethics, and complex cases before state courts, federal courts and administrative tribunals. He briefed and argued cases before state and federal appellate courts and is admitted to practice in the United States Supreme Court.



**Scott J. Bloch**

From 2001-2003, Mr. Bloch served as Associate Director and then Deputy Director and Counsel to the Task Force for Faith-based and Community Initiatives at the U.S. Department of Justice, where he worked on First Amendment cases, regulations, intergovernmental outreach, and programmatic initiatives. Before serving in the Justice Department, he was a partner with Stevens & Brand, LLP, of Lawrence, Kansas, where he practiced in the areas of civil rights law, employment law, and legal ethics. Mr. Bloch tried jury trials before state and federal courts, representing employees and employers in cases involving whistleblower and other retaliation claims, as well as civil rights claims. He worked on important cases that set precedents in the field of legal ethics, including a ground-breaking Texas case that changed the way plaintiffs' lawyers handle mass tort cases.

Mr. Bloch served as chair of his county Bar Ethics and Grievance Committee, investigating cases of alleged breaches by attorneys of ethics rules, and making recommendations to the state Supreme Court on disciplinary action. He also served on the state board of discipline, hearing testimony and legal arguments, and making findings on appropriate discipline of attorneys. For five years, he served as an Adjunct Professor at the University of Kansas School of Law.

Mr. Bloch earned his bachelor's and law degree from the University of Kansas, where he graduated Order of the Coif, and served on the Boards of Editors of *The Kansas Law Review* and *The Kansas Criminal Procedure Review*.

Mr. Bloch has published various articles including: "The Judgment of History: Faction, Political Machines, and the Hatch Act," published in the *University of Pennsylvania Journal of Labor & Employment Law* (7 U. Pa. J. Lab. & Emp. L. 225 (2006)), and "Don't Bury the Hatch Act: Hidden Dangers for the Unwary and Politically Active Prosecutor's Office Employee," published in *The Prosecutor* in the September/October 2004 issue (Vol.38/Number 5, Sept/Oct 2004).

He lives with his wife, Catherine, and six of his seven children in Alexandria, Virginia. His oldest is a Corporal in the United States Marine Corps and is currently in his third tour of duty in Iraq.

## MESSAGE FROM SPECIAL COUNSEL SCOTT J. BLOCH

Welcome to the 2006 Annual Report to Congress for the U.S. Office of Special Counsel. Included within you will find case data, case samples, graphical charts of important performance indicators, descriptions of agency activities, and details of changes at OSC during Fiscal Year 2006. It is my hope that you will find this information useful and informative.

We continue to make great progress in protecting whistleblowers and safeguarding the merit system. In our 2005 report, OSC reported how the chronic problem of backlogged Prohibited Personnel Practice (PPP) cases, Hatch Act cases and Disclosure Unit cases had been eliminated through focused and sustained effort by the entire agency over an 18-month period.

I am pleased to report that during FY 2006 we succeeded in avoiding a resurgence of each of the types of case backlogs that had plagued the agency for years. In FY 2006, after thorough review, OSC processed 1,930 PPP cases, including 237 “old” cases, some of which had been in the Investigation and Prosecution Division (IPD) for two and three years. This success in the IPD puts the agency in an excellent position at the start of FY 2007.

I am also extremely pleased to note that we again lowered processing times for PPP cases, Hatch Act cases, Uniformed Services Employment and Reemployment Rights Act (USERRA) cases. Processing times in OSC’s Whistleblower Disclosure Unit have stabilized at a level 75% below the average processing time in FY 2004. This annual report provides the details of these processing time milestones.

When I arrived at OSC in January, 2004, USERRA cases were a low priority at OSC. I drastically changed the situation by creating a USERRA Unit in the agency, and staffing it with attorneys and investigators dedicated full-time to USERRA enforcement. This unit now handles all of the cases referred from the Department of Labor for litigation, as well as all of the cases that come to OSC as part of the Demonstration Project created by the Veterans Benefits Improvement Act of 2004 (VBIA), which took effect in February 2005.

During FY 2006, OSC continued to provide excellent service to veterans by lowering the average time to process USERRA claims. Under the Demonstration Project created by the VBIA, OSC has exclusive investigative authority over certain federal sector claims brought under USERRA. I am very proud of what we have achieved so far. During FY 2006 (in the second year of the demonstration project), OSC received 168 cases for investigation and obtained corrective action in 28% of the cases completed, which is an extremely high rate of corrective action for any investigative agency. OSC required agencies to reinstate service members (including injured members) to jobs from which they had been wrongly removed. OSC also achieved corrective action in cases where the service member was denied initial employment by the agency because of service in the military. OSC will continue to vigorously enforce USERRA under the demonstration project for the benefit of the country’s brave service members.

OSC continues to experience high caseloads in all of its units. In particular, there is now a heightened awareness of the Hatch Act among Federal employees, brought about by significant press coverage of a string of high profile Hatch Act cases in the last three years, as well as by

dedicated outreach efforts to other agencies by OSC. There were more Hatch Act complaints received in FY 2006 than in any previous year.

A major focus of OSC during the next two years will be further improvement in reducing case processing times. The goal of providing timely justice to all federal complainants is the ongoing objective of OSC, along with the active achievement of benchmarks of more corrective actions and finding opportunities for greater litigation to generate public awareness of significant cases.



Special Counsel Scott J. Bloch (right) at the annual Federal Dispute Resolution Conference, where he gave a keynote address to over 1,000 federal employees. Also pictured, from left: Naomi C. Earp, Acting Chair, Equal Employment Opportunity Commission; Neil A. G. McPhie, Chairman, Merit Systems Protection Board; and Kimberly Y. Beg, Acting Director, FMCS Institute, ADR and International Affairs (Washington, DC). (Photo courtesy of FDR Conferences, Inc.)



## GRAPHICAL HIGHLIGHTS OF OUR AGENCY'S SUCCESSES

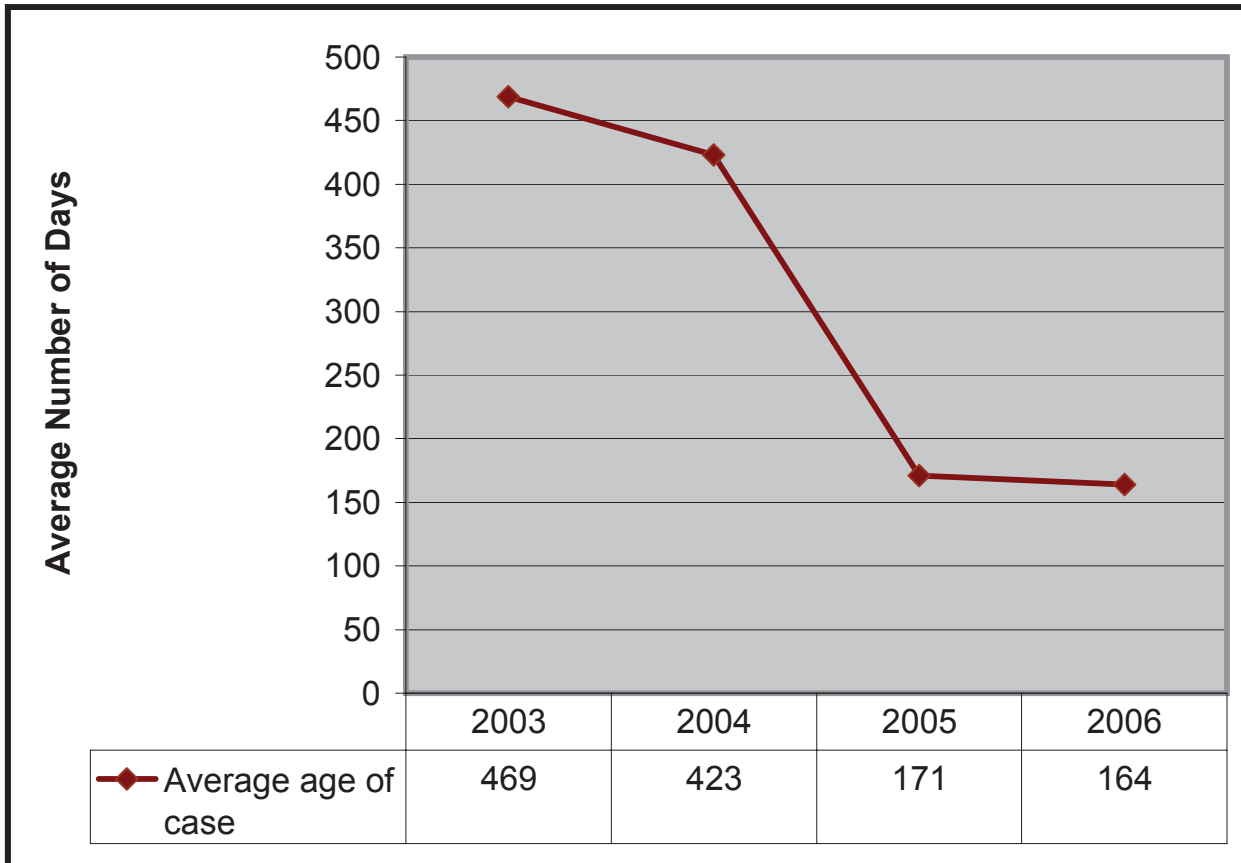
When the new Special Counsel took office in January 2004, two major problems confronted OSC: a serious backlog of cases in all of the units and a cumbersome structure of three separate Investigation and Prosecution Divisions (IPDs). The Government Accountability Office (GAO) issued a report in March 2004 (GAO 04-36) that was critical of OSC's chronic backlog problem in the Complaints Examining Unit and Disclosure Unit. That same month, Special Counsel Bloch created a Special Projects Unit (SPU) to begin immediately investigating the problem of the backlog of cases and to find solutions.

At the end of FY 2004, we had eliminated the backlogged prohibited personnel practice (PPP) cases in the Complaints Examining Unit from 447 to 119 cases and reduced the number of whistleblower disclosure cases in backlog from 674 to 82. Therefore, the overall case backlog reduction in FY 2004 was 82% and this work continued into the FY 2005 when OSC processed 1,774 prohibited personnel practice cases, including 576 "old" cases, some of which had been in the Investigation and Prosecution Division for two, three and four years.

The next step in solving the difficulties was a reorganization of the agency in January 2005. We eliminated the system of three co-equal investigation and prosecution units doing the same work and consolidated them into one Investigation and Prosecution Division. We also added a new Midwest field office. More importantly, we "flattened" the agency management review structure by reducing the number of supervisors and managers that had to review and approve the staffs' work. The Special Counsel further directed that each operating unit establish standard operating procedures that would establish consistency in case processing, and with that consistency, faster processing times. These improvements have led to further reductions in backlogs and enabled the agency to reach the meritorious cases faster, which enabled OSC to seek settlements and initiate prosecutions before evidence became stale and witnesses' memories faded. Decisions are now reached faster, bringing swifter justice to those Federal employees served by the Office of Special Counsel. The Special Counsel expects that swifter and more consistent decision-making by experienced employees and first-line managers will help prevent resurgent backlogs at OSC. At the same time, OSC has kept at the forefront the paramount goal of maintaining and increasing positive enforcement and results.

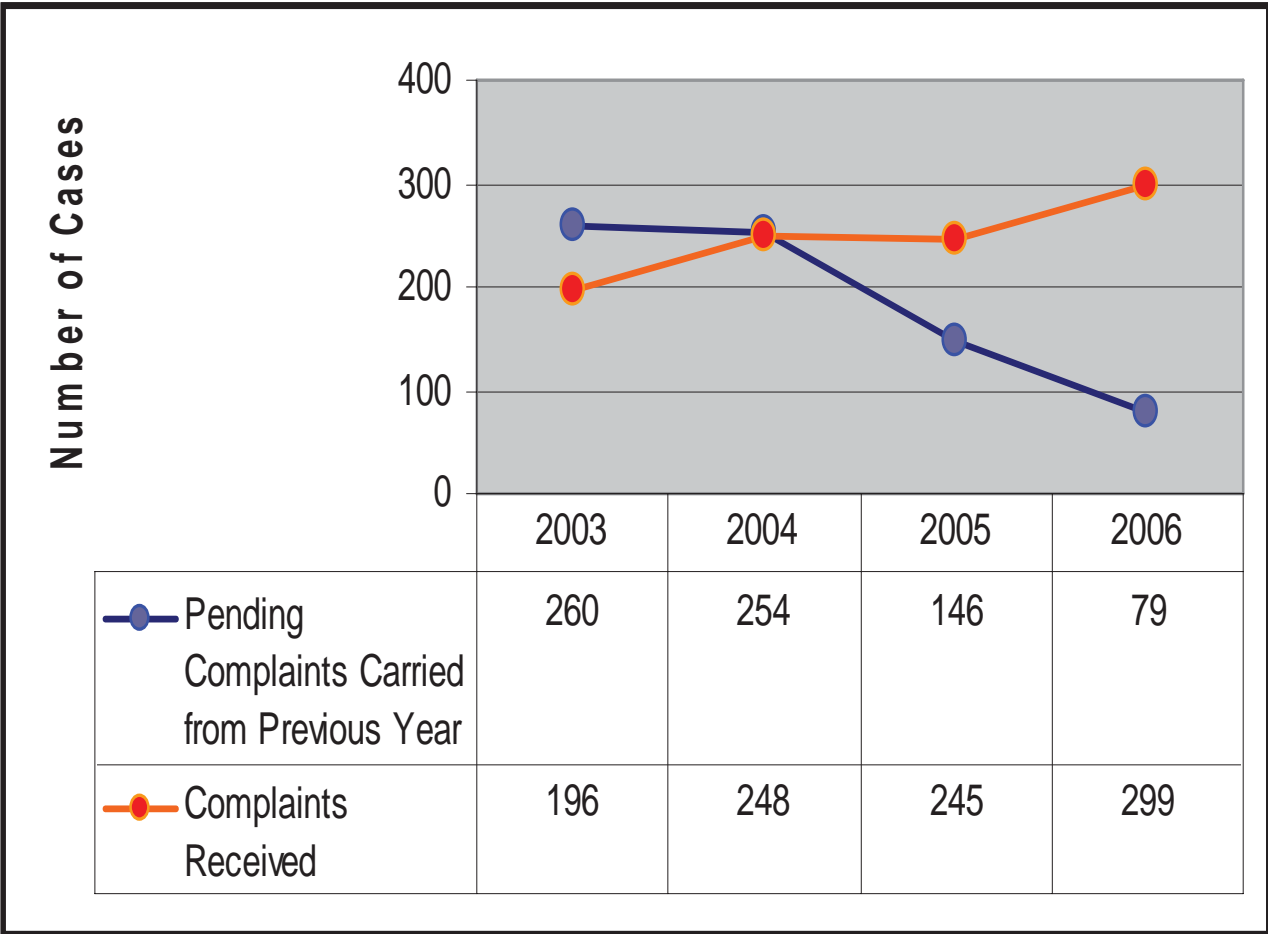
The next seven pages graphically tell the story of the successes of the last three years at OSC, especially the decreased case processing times and the elimination of the backlogs, including those backlogs mentioned by GAO in 2004. These successes were achieved despite increasing caseloads in several units and newly added responsibilities for the agency.

## Hatch Act Unit - Average Processing Time per Complaint



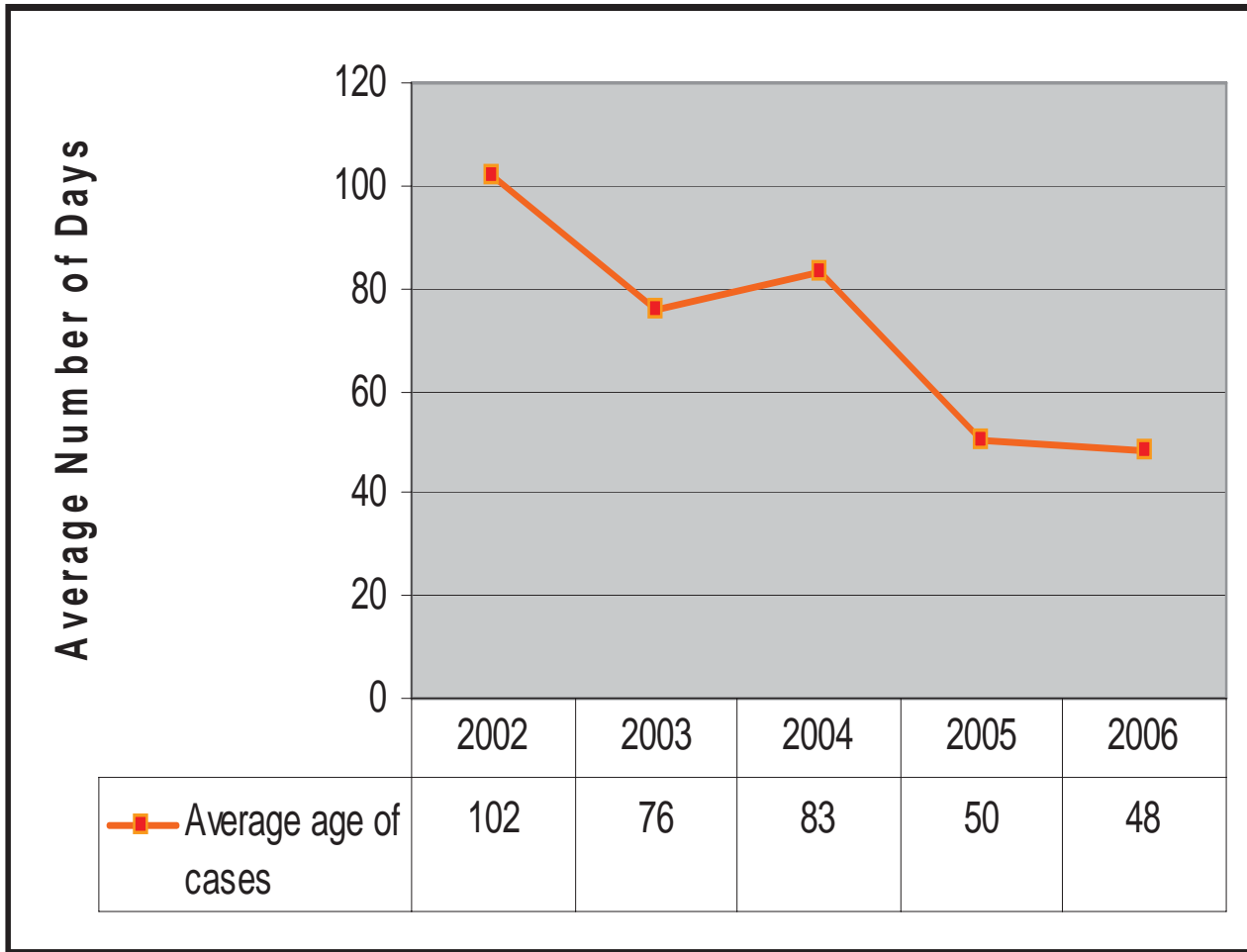
OSC's Hatch Act Unit reduced its case processing time dramatically during the period from FY 2003 to FY 2006. The average number of days to process the case in FY 2006 is one third of what it was in FY 2003.

## Hatch Act Complaints



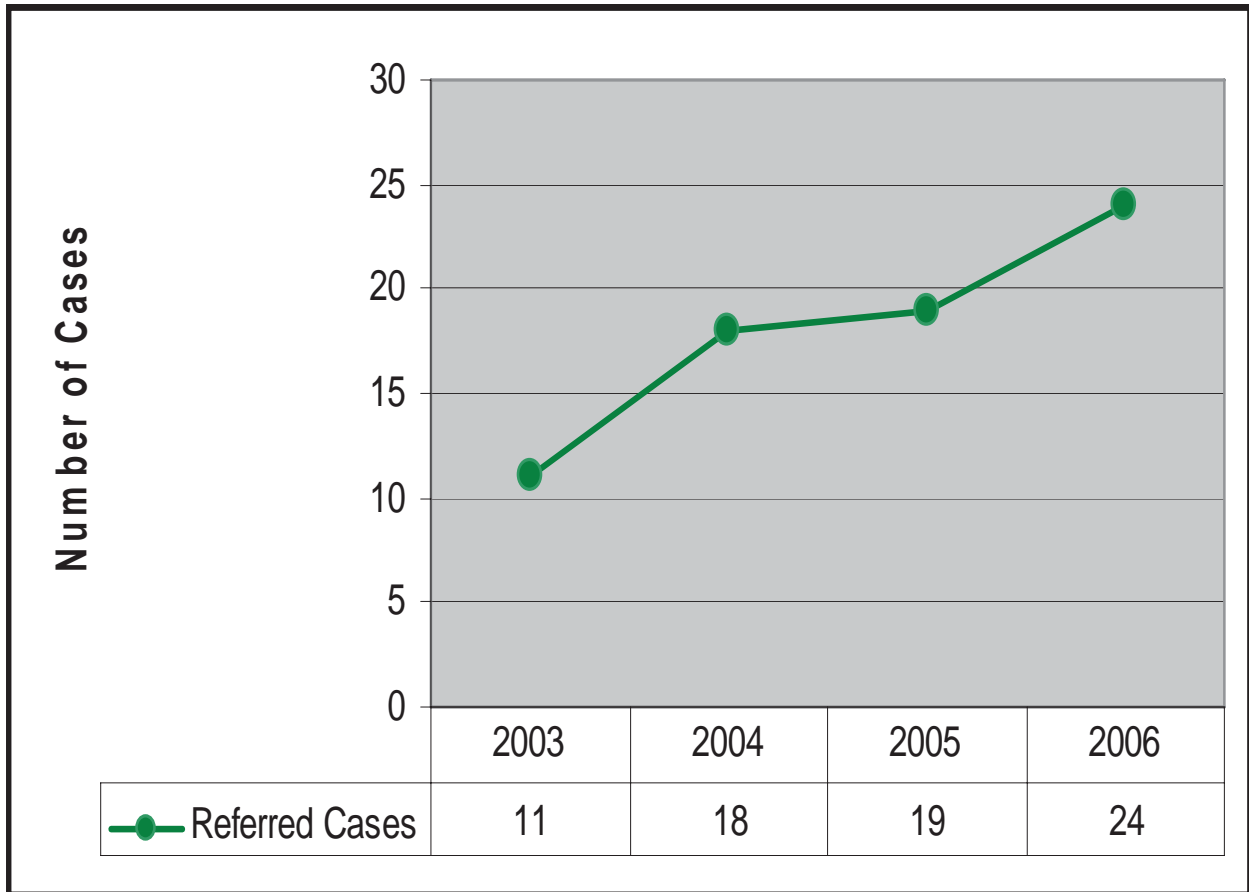
Starting in FY 2005, as OSC reduced its processing time for Hatch Act complaints, the number of pending complaints carried forward from the previous fiscal year sharply declined. From FY 2003 to FY 2006, the overall decline was 70%. During the same period, the number of complaints received increased by 53%. In just three years, the Hatch Act Unit has become much more efficient.

## Complaints Examining Unit - Average Processing of PPP Cases in the Unit



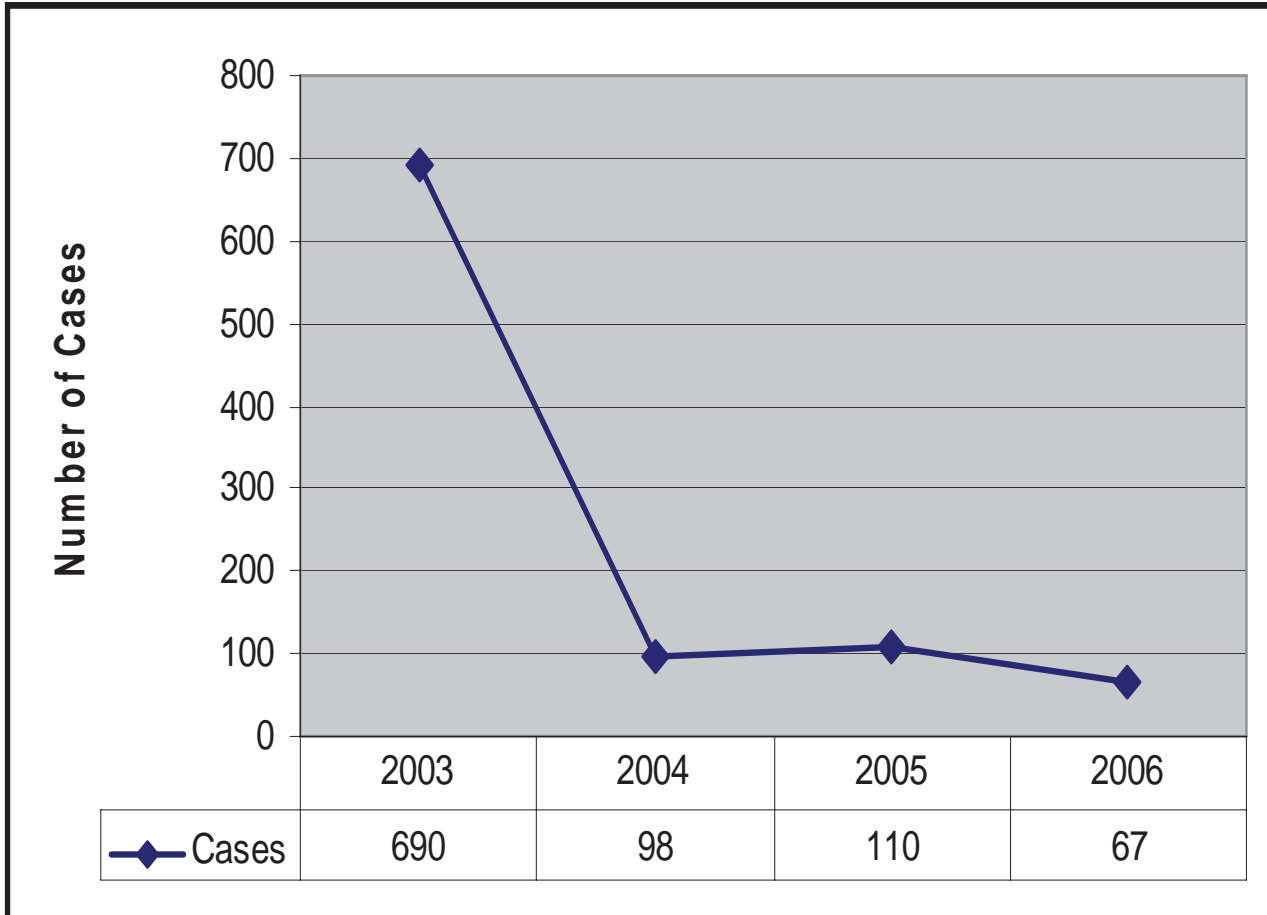
This chart shows the average number of days that a Prohibited Personnel Practice case remained in OSC’s Complaints Examining Unit, before the case was either closed or referred to OSC’s Investigation and Prosecution Division for further investigation.

## Disclosure Referrals to Agency Heads



When the Special Counsel analyzes a whistleblower disclosure and determines there is substantial likelihood of wrongdoing, he refers the matter to the head of the appropriate agency, who is then required to internally investigate the matter and report the results to OSC, the Congress, and the President.

### Disclosure Unit Cases Pending at End of Year



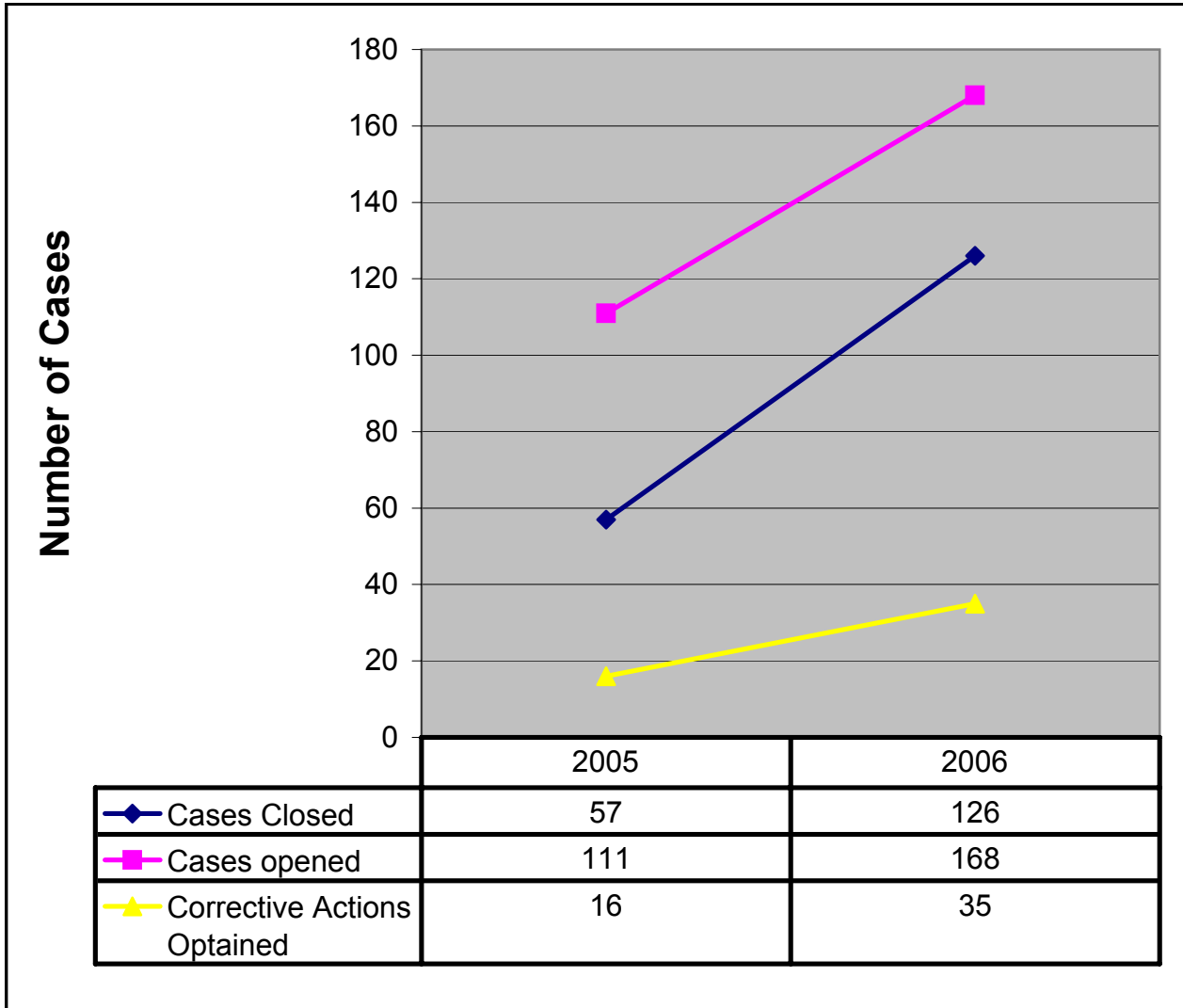
In FY 2003, the Disclosure Unit had a backlog of whistleblower disclosures. OSC reduced the backlog by FY 2004, and has prevented a backlog resurgence in FY 2005 and FY 2006.

## Disclosure Unit - Average Processing Time per Disclosure



This chart shows the improvement in processing time in OSC’s Disclosure Unit. The average processing time for disclosures in FY 2006 was 84 days. This was a 76% reduction from the high of FY 2004 (an average of 351 days).

## USERRA Demonstration Project



The USERRA Demonstration Project began in February of FY 2005, and showed steady growth during FY 2006 in caseload, number of cases processed, and corrective actions obtained.



## INTRODUCTION

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment, by protecting employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. OSC also has jurisdiction under the Hatch Act to enforce restrictions on political activity by government employees. In addition, the agency operates a secure channel for disclosures by federal whistleblowers of government wrongdoing. Finally, OSC enforces federal employment rights secured by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

## OVERVIEW OF OSC OPERATIONS

### *Statutory Background*

OSC was first established on January 1, 1979.<sup>1</sup> From then until 1989, it operated as an autonomous investigative and prosecutorial arm of the Merit Systems Protection Board (MSPB). By law, OSC received and investigated complaints from current and former federal employees, and applicants for federal employment, alleging prohibited personnel practices by federal agencies; provided advice on restrictions imposed by the Hatch Act on political activity by covered federal, state, and local government employees; and received disclosures from federal whistleblowers (current and former employees, and applicants for employment) about wrongdoing in government agencies. The office also enforced restrictions against prohibited personnel practices and political activity by filing, where appropriate, petitions for corrective and/or disciplinary action with the Board. In 1989, Congress enacted the Whistleblower Protection Act. The law made OSC an independent agency within the Executive Branch, with continued responsibility for the functions described above.

It also enhanced protections against reprisal for employees who disclose wrongdoing in the federal government, and strengthened OSC's ability to enforce those protections.<sup>2</sup> The Congress passed legislation in 1993 that significantly amended Hatch Act provisions applicable to federal and District of Columbia (D.C.) government employees, and enforced by OSC.<sup>3</sup> Provisions of the act enforced by OSC with respect to certain state and local government employees were unaffected by the 1993 amendments.

In 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) became law. It defined employment-related rights of persons in connection with military service, prohibited discrimination against them because of that service, and gave OSC new authority to pursue remedies for violations by federal agencies.<sup>4</sup> OSC's 1994 reauthorization act expanded protections for federal employees, and defined new responsibilities for OSC and other federal agencies. It provided that within 240 days after receiving a prohibited personnel practice complaint, OSC should determine whether there are reasonable grounds to believe that such a violation occurred, exists, or is to be taken. The act extended the protections of certain legal provisions enforced by OSC to approximately 60,000 employees of what was then known as the Veterans Administration (now the Department of Veterans Affairs), and to employees of certain government corporations. It also broadened the scope of personnel actions covered under these provisions. Finally, the act made federal agencies responsible for informing their employees of available rights and remedies under the Whistleblower Protection Act, and directed agencies to consult with OSC in that process.<sup>5</sup>

In November of 2001, Congress enacted the Aviation and Transportation Security Act, which created the Transportation Security Administration (TSA). Under the act, non-security screener employees of TSA could file allegations of reprisal for whistleblowing with OSC and the MSPB. The approximately 45,000 security screeners in TSA, however, could not pursue such complaints at OSC or the MSPB.

OSC efforts led to the signing of a memorandum of understanding (MOU) with TSA in May 2002, under which OSC would review whistleblower retaliation complaints from security screeners, and recommend corrective or disciplinary action to TSA when warranted. The MOU did not (and could not), however, provide for OSC enforcement action before the MSPB, or for individual right of action (IRA) appeals by security screeners to the MSPB.

### ***OSC's Mission***

OSC's mission is to protect current and former federal employees, and applicants for federal employment, especially whistleblowers, from prohibited employment practices; promote and enforce compliance by government employees with legal restrictions on political activity, and facilitate disclosures by federal whistleblowers about government wrongdoing. OSC carries out this mission by:

- investigating complaints of prohibited personnel practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
- providing advisory opinions on, and enforcing Hatch Act restrictions on political activity;
- operating an independent and secure channel for disclosures of wrongdoing in federal agencies;

- protecting reemployment and antidiscrimination rights of veterans under the USERRA; and
- promoting greater understanding of the rights and responsibilities of federal employees under the laws enforced by OSC.

## Summary of Year's Activity

The table below summarizes OSC's activity for FY 2006 (with comparative data for the previous fiscal years). More detailed data for each mission of the agency can be found in Tables 2-8, which appear in the sections of this report related to the individual units.

<b>TABLE 1 Summary of Overall Agency Matters<sup>a</sup> and Actions</b>					
	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005<sup>b</sup></b>	<b>FY 2006</b>
<b>Matters pending at beginning of fiscal year</b>	1,200	1,415	1,605	778	777
<b>New matters received</b>	2,345	2,530	2,798	2,684	2,718
<b>Matters closed</b>	2,118	2,344	3,612	2,685	2,814
<b>Matters pending at end of fiscal year</b>	1,423	1,601	791	777	681
<b>Corrective actions obtained</b>	n/a	n/a	112	93	114

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<sup>a</sup> The term "matters" in this table includes: prohibited personnel practice complaints (including Transportation Security Administration matters), Hatch Act complaints, whistleblower disclosures (DU matters), USERRA referrals from the MSPB pursuant to 5 U.S.C. § 1221(f)(3).

<sup>b</sup> Thirteen cases were miscoded in FY 2004.

## ***Budget and Staffing***

During FY 2006, OSC operated with a budget of \$15,171,000. By the end of the fiscal year, OSC had a staff of approximately 109 employees.

## ***OSC's Internal Organization and Functions***

OSC maintains its headquarters office in Washington, D.C. Four field offices are located in Dallas, Oakland, Detroit, and Washington, D.C. Agency components during FY 2006 included the Immediate Office of the Special Counsel (IOSC), five operating units/divisions and five supporting offices explained in detail below.

***Immediate Office of the Special Counsel.*** The Special Counsel and staff in IOSC are responsible for policymaking and overall management of OSC. They also manage the agency's congressional liaison and public affairs activities, and its outreach program, which includes promotion of compliance by other federal agencies with the employee information requirement at 5 U.S.C. § 2302(c).

***Complaints Examining Unit.*** This is the intake point for all complaints alleging prohibited personnel practices and other violations of civil service law, rule, or regulation within OSC's jurisdiction.<sup>7</sup> This Unit is responsible for screening up to 1,700 prohibited personnel practice cases per year. Attorneys and personnel management specialists conduct an initial review of complaints to determine if they are within OSC's jurisdiction, and if so, whether further investigation is warranted. The unit refers all matters stating a potentially valid claim to the Investigation and Prosecution Division for further investigation.

***Disclosure Unit.*** This unit is responsible for receiving and reviewing disclosures received from federal whistleblowers. It advises the Special Counsel on the appropriate disposition of the information disclosed (including possible

referral to the head of the agency involved for an investigation and report to OSC; referral to an agency Inspector General; or closure). The unit also reviews agency reports of investigation, to determine whether they appear to be reasonable and in compliance with statutory requirements before the Special Counsel sends them to the President and appropriate congressional oversight committees.

***Investigation and Prosecution Division.*** The Investigation and Prosecution Division (IPD) is comprised of four field offices. The IPD conducts field investigations of matters referred after preliminary inquiry by the Complaints Examining Unit. Division attorneys conduct a legal analysis after investigations are completed to determine whether the evidence is sufficient to establish that a prohibited personnel practice (or other violation within OSC's jurisdiction) has occurred. Investigators work with attorneys in evaluating whether a matter warrants corrective action, disciplinary action, or both.

If meritorious cases cannot be resolved through negotiation with the agency involved, division attorneys represent the Special Counsel in litigation before the Merit Systems Protection Board. They also represent the Special Counsel when OSC intervenes, or otherwise participates, in other proceedings before the Board. Finally, division investigators and attorneys also investigate alleged violations of the Hatch Act and the Uniformed Services Employment and Re-employment Rights Act. However, under a new pilot program, most USERRA functions will be housed in a new USERRA unit in the Special Projects Unit to assure uniformity of policy regarding the new pilot.

***Hatch Act Unit.*** The unit issues advisory opinions to individuals seeking information about Hatch Act restrictions on political activity by federal, and certain state and local, government employees. The unit is also responsible for enforcing the act. It reviews complaints alleging a Hatch Act violation and, when warranted,

investigates and prosecutes the matter (or refers the matter to the Investigation and Prosecution Division for further action). It will also oversee Hatch Act matters delegated out to the IPD.

**USERRA Unit.** Special Counsel Scott Bloch has made OSC's enforcement of USERRA a top priority. Thus, given the new, additional investigative responsibilities Congress assigned to OSC with the passing of the demonstration project, Mr. Bloch established OSC's USERRA Unit. The USERRA Unit is centrally located at OSC's headquarters in Washington, D.C. It is the specialized unit designated to receive, investigate, analyze, and resolve (via voluntary agreement or prosecution before the U.S. Merit Systems Protection Board) all USERRA and related veteran-employment claims. As part of OSC's outreach program, the USERRA Unit also educates federal agencies on their USERRA obligations.

#### **SUPPORTING UNITS:**

**Alternative Dispute Resolution Program.** In selected cases referred by the Complaints Examining Unit for further investigation, the agency contacts the complainant and the agency involved, and invites them to participate in OSC's voluntary Mediation Program. If mediation resolves the complaint, the parties execute a written and binding settlement agreement; if not, the complaint is referred for further investigation. The mediation program for Alternative Dispute Resolution has been reorganized. Rather than have a single ADR specialist under the leadership of an SES employee, the agency has expanded the program through cross-training multiple individuals from each of OSC's operating units. As a result the agency now has a broad pool of trained mediators with different legal areas of expertise.

**Legal Counsel and Policy Division.** This division provides general counsel and policy services to OSC, including legal advice and support on management and administrative

matters; legal defense of OSC in litigation filed against the agency; policy planning and development; and management of the agency ethics program.

**Management and Budget Division.** This division provides administrative and management support services to OSC, in furtherance of program, human capital, and budget decisions. Division also includes the Information Technology Branch, Human Resources Branch, Document Control Branch, Customer Service Unit, and the Budget and Procurement Branch. The purpose of this division is to put the administrative support functions under one authority.

**Training Office.** A training office has been created to train all new employees, cross train existing employees, and develop specialized training in areas such as litigation skills. Specifically, the Training Office will cross train attorneys and investigators to enable them to traverse organizational boundaries within the agency. They will develop sufficient expertise in several areas of the law, giving management the ability to detail employees to address any potential backlogs that could form in the various units.

**Special Projects Unit.** This unit uses senior trial lawyers to work cases of high priority and has also been used by the Special Counsel to conduct internal research on the processes and procedures of the operational units at OSC. In addition, this unit handles the new special project assigned by P.L. 108-454 that requires OSC to investigate the re-employment rights of military service members under USERRA, which involves new functions, increased caseload, and new personnel.

**PROHIBITED PERSONNEL PRACTICE COMPLAINTS**

***Stays***

***Receipts and Investigations***

OSC is authorized to receive and investigate complaints alleging any one or more of 12 prohibited personnel practices defined by law.<sup>8</sup>

Of the total 2,718 new matters OSC received during FY 2006, 1,805 or 66% were new PPP complaints.

**Table 2**, below, contains summary data (with comparative data for the two previous fiscal years) on OSC’s receipt and processing of such complaints during FY 2006.<sup>9</sup>

An individual may request that the Special Counsel seek to delay, or “stay,” an adverse personnel action, pending investigation of the action by OSC. If the Special Counsel has reasonable grounds to believe that the action resulted from a prohibited personnel practice, OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, OSC may then ask the Merit Systems Protection Board to stay the action. During 2006, OSC obtained 10 stays of personnel actions through negotiation with agencies, or litigation at the MSPB.

<b>TABLE 2 Summary of Prohibited Personnel Practice (PPP) Complaints Activity – Receipts and Processing<sup>a</sup></b>						
		<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Pending complaints carried over from previous fiscal year		740	594	653	524	521
New complaints received (Intake Unit)		1,558	1,791	1,964	1,771	1,805
<i>Total complaints:</i>		2,298	2,385	2,617	2,295	2,326
Complaints referred for field investigation		191	162	244	198	143
Complaints processed and closed		1,704	1,732	2,093	1,774	1,930
Processing times	< 240 days	1,284	1,471	1,799	1,198	1,693
	> 240 days	420	261	294	576	237
Percentage processed in under 240 days		75%	85%	86%	67.5%	88%

<sup>a</sup> The numbers in this table, as well as in other tables in this report, may vary somewhat from those in previous years’ reports. This is due to the fact that in response to an audit by the General Accounting Office, OSC enhanced its case tracking software system to generate more accurate reports of prohibited personnel practice and whistleblower disclosure matters. Use of the improved system has led to recalibration of some statistics from previous years.

## **Mediation**

OSC offers mediation in selected prohibited personnel practice cases as an alternative to further investigation after referral by the Complaints Examining Unit. Once a case is identified as mediation-appropriate, an Alternative Dispute Resolution Specialist contacts the parties to discuss OSC's program. An offer of mediation is made to the complainant first. If the complainant accepts, OSC then offers mediation to the agency involved. Pre-mediation discussions are designed to help the parties form realistic expectations and well-defined objectives for the mediation process. Mediation can result in monetary recovery, which can include retroactive promotions, attorney fees, and lump sum payments. In addition to monetary recovery, the benefits that complainants can receive include revised performance appraisals, transfers, and letters of recommendation. There were twelve formal mediations of PPP matters during FY 2006 (compared to five in FY 2005). 55% of these mediations were successful.

There are two reasons contributing to the higher number of mediations which occurred in FY 2006. First, the number of matters identified as mediation-appropriate was 52 in FY 2006, higher than the 22 in the previous year. Second, the percentage of complainants accepting OSC's offer to mediate rose from 27% in FY 2005 to 83% in FY 2006. (See **Table 3 below**).

Disclosure led to resignation. The complainant alleged that the Agency proposed her termination in violation of 5 U.S.C. § 2302(b)(8) and (b)(9), causing her to resign during her probationary period. She had previously disclosed travel fraud and claim reimbursement irregularities. Among those implicated in her disclosures were various high-level officials with responsibility for overseeing financial matters in the Agency. Some of the disclosures resulted in investigations by the Office of the Inspector General (OIG). She cooperated with the OIG during these investigations. The parties agreed to OSC mediation and all issues were resolved.

Wrongful termination for whistleblowing. The complainant alleged wrongful termination in violation of 5 U.S.C. §2302(b)(8) and (b)(9) for whistleblowing and filing a union grievance. He had been forced to work overtime with no compensation and without proper approval. When he refused to drop the grievance, his supervisor threatened him with termination. Both parties agreed to OSC mediation and all issues were resolved.

<b>TABLE 3 Summary of Prohibited Personnel Practice Complaints Activity – Mediation Program</b>						
		<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Matters identified before investigation as mediation-appropriate		39	43	82	22	52
Initial acceptance rates by parties	Complainants	80%	82%	68%	27%	83%
	Agencies	68%	69%	64%	22%	59%
Mediated and other resolutions		14	23	18	5	11
Resolution rate – OSC mediation program		82%	92%	86%	100%	55%

### ***Corrective and Disciplinary Actions***

If, after investigation of a complaint, OSC believes that a prohibited personnel practice has been committed, OSC notifies the agency involved. By law, before initiating litigation seeking corrective action from the Merit Systems Protection Board (the Board), OSC must report its findings and recommendations to the agency involved. Once the agency has had a reasonable period of time to take corrective action and fails to do so, OSC may file an enforcement action with the Board. Usually, however, corrective action is obtained through negotiation by OSC of a settlement between the complainant and the agency involved.

If OSC determines that disciplinary action (the imposition of discipline on an employee who has committed a violation) is warranted, it can file a complaint directly with the Board. Should the agency agree to take appropriate disciplinary action on its own initiative, then the matter can be settled without resort to an MSPB proceeding.

The following are examples of corrective and disciplinary actions obtained by OSC in FY 2006 through negotiation with the agency involved.



### ***Protecting the Federal Workforce from Reprisal for Whistleblowing***

Rescinded termination. A GS-12 Facility and Strategic Planner at a federal agency alleged that his termination was proposed because he disclosed to his agency's Office of Inspector General irregularities in the operations of that area's local Combined Federal Campaign. Investigation revealed that the disclosures were a factor in the decision to propose his termination. As a result of OSC's investigation, the VA rescinded the proposed termination.

Rescinded suspension. OSC secured corrective action in a case in which a federal employee alleged that he was suspended for five days because of his whistleblowing. The employee disclosed that senior officials had violated housing assistance regulations. As a result of OSC's investigation, the agency agreed to rescind the suspension, remove all negative documentation from the employee's Official Personnel File, and pay the employee's salary for the five days he was suspended.

Corrective action for blacklisted employee. A former border patrol agent alleged that he was not selected for over 200 agent positions nationwide because of his whistleblowing. His disclosures included reports of a widespread pattern and practice of travel fraud by border patrol agents who were serving details along the U.S.-Mexican border. Under this fraudulent scheme, agents received rental kickbacks from hotels and private landlords during their details. Because of the employee's disclosures, the government was able to discipline and prosecute many of these agents. Our investigation found a clear pattern of circumstantial evidence indicating that the employee's supervisor informally blacklisted him in retaliation for his whistleblowing so he could not find another position. OSC settled this matter in a confidential settlement agreement, whereby the agency agreed to provide the employee with appropriate corrective action.

Three retroactive promotions, plus back pay and attorney's fees. OSC secured corrective action in a case in which an appraiser at a federal agency alleged that his agency failed to promote him, significantly changed his working conditions, and took other personnel actions against him because he blew the whistle on the agency's improper appraisal practices. He asserted that these improper practices grossly inflated property values to the detriment of federal taxpayers. The appraiser's whistleblowing led to Office of Inspector General and Government Accounting Office investigations, as well as an Appraisal Foundation review, all of which confirmed his allegations. As a result of our investigation, the agency agreed to give the appraiser three retroactive promotions, to pay \$7,000 in performance awards, to restore 10 days of leave, to pay \$2,000 for career training, to pay attorneys' fees up to \$17,500, and to purge the appraiser's personnel records of all negative references related to his whistleblower status.

### ***Protecting the Federal Workforce from Reprisal for Protected Activity***

Reassignment for employee. Resignation of director. OSC secured corrective action in a case in which a secretary at a federal agency alleged that she was detailed for over two years to a lower-graded position because she failed to obey an illegal order. Specifically, she told her director that she would no longer perform secretarial duties connected to his nongovernmental work. Our investigation confirmed that the director had misused his office for personal work and had retaliated against the secretary after she refused to assist him. In response to a formal corrective action letter from OSC, the agency agreed to reassign the secretary to a new position, pay her reasonable attorney fees, and give her a clean employment record. The director resigned from federal service after OSC gave the results of its investigation to the agency.

***Protecting the Merit System through Enforcement of the Other PPPs (non-reprisal)***

managers admonishing them for assigning/promoting employees to work outside of their official position descriptions.

Due process violation. OSC secured corrective action in a case in which a Port Director alleged he was reassigned to another position without being notified that the position was lower graded. Our investigation found circumstantial evidence indicating that the employee was effectively demoted without being given his Chapter 75 due process rights. As a result of OSC's investigation, the agency paid the employee approximately \$83,000 (equivalent to the amount of pay he lost after the downgrade).

Obstruction of right to compete. OSC secured disciplinary action in a case in which a district manager with a federal agency told contract representatives that he was only going to be considering external applicants for an upcoming vacancy (the position had not yet been announced). The agency, at OSC's request, suspended the district manager for one day for attempting to influence these contract representatives from competing.

Recruitment and unauthorized preference.

On May 11, 2006, the OSC entered into a settlement agreement with DHS in which the agency admitted that the border patrol agent had performed IT duties outside of his official position description and that he should not have been recruited and retained in a supervisory border patrol agent capacity from the time he was promoted to a GS-11 supervisory border patrol agent position to the present. DHS agreed to take the following corrective action: 1) document an approximate 9-year detail to IT duties in the border patrol agent's Official Personnel File; 2) reassign the border patrol agent to a properly classified non-supervisory position; 3) update its policies and procedures regarding administration of AUO premium pay; 4) work with OSC to train all border patrol supervisory employees on preventing future prohibited personnel practices; and 5) issue letters of counseling to appropriate border patrol

## Summary of Favorable Actions

Complaints involving allegations of reprisal for whistleblowing – OSC’s highest priority – accounted for the highest numbers of the complaints resolved, and the highest numbers of favorable actions obtained by OSC during FY 2006<sup>1</sup>.

**Table 4**, below, contains FY 2006 summary data (with comparative data from previous fiscal years) on all favorable actions obtained by OSC in connection with its processing of whistleblower reprisal and other prohibited personnel practice complaints.

<b>TABLE 4 Summary of Prohibited Personnel Practice Matters Activity – Favorable Actions</b>						
		<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Total favorable actions obtained (all prohibited personnel practices) <sup>a</sup>	# of actions	126	115	80	45	52
	# of matters	107	83	65	45	48
Favorable actions obtained (reprisal for whistleblowing)	# of actions	98	75	57	37	40
	# of matters	83	75	49	37	37
Stays negotiated with agencies <sup>b</sup>		7	6	11	3	8
Stays obtained from Merit Systems Protection Board		1	1	1	1	1
Disciplinary actions negotiated with agencies		13	12	11	3	4
Corrective action complaints filed with the Board		0	0	1	1	1
Disciplinary actions obtained from the Board		0	1	0	1	0

<sup>a</sup>The purpose of this breakout is to show the number of favorable actions obtained, and the number of matters involved. A matter (case) can have more than one action (favorable outcome).

<sup>b</sup>Stays and disciplinary actions listed in this table (except for disciplinary actions obtained by OSC from the MSPB) are included in the totals shown in the first two rows above, but are broken out here for further information.

## THE HATCH ACT

### *Hatch Act Disciplinary Actions Filed:*

**State/Local Employee Violations.** OSC filed two complaints for disciplinary action against state or local employees or officers for using their official authority and influence for the purpose of interfering with or affecting the result of an election and/or coercing subordinates to make political contributions. In one complaint, OSC sought disciplinary action against a Sheriff of a local county Sheriff's Department for asking his subordinate employees to appear in a political campaign commercial on behalf of a gubernatorial candidate. The Sheriff asked his employees to appear in this campaign ad while they were on duty and asked them to appear in the commercial wearing their official Sheriff County uniforms and standing next to Sheriff Department official vehicles. The complaint also contained a separate count that alleged the Sheriff invited his subordinate employees to political fundraisers that the Sheriff held on behalf of his own re-election campaign. In the other case, the former mayor of Atlantic City was charged with holding several meetings during which he asked subordinate employees, mainly city department directors, to collect absentee ballots for a candidate in a then-upcoming primary for City Council, Third Ward. It was further charged that the former mayor held subsequent meetings where he requested his directors to inform him of the number of ballots they had collected. In a separate count the former mayor was also charged with using his official position in an endorsement letter on behalf of the same candidate, in violation of the Hatch Act's restrictions on use of official authority.

**Federal Employee Violations.** During FY 2006, OSC filed three complaints for disciplinary action against federal employees. For example, in one complaint an Assistant

United States Trustee (AUST) was charged with using her official authority or influence to affect the result of an election and for soliciting a political contribution from a subordinate. Specifically, the AUST handed an invitation to a political fundraiser to a subordinate employee while the AUST admitted to the employee that she knew "it was a little outside the rules." The AUST had received training on the Hatch Act a mere two weeks prior to this incident.

OSC also filed a complaint for disciplinary action against a federal employee for sending politically partisan electronic mail messages while on duty in violation of the Hatch Act. Specifically, the complaint was against an agency employee who sent an e-mail message to over 30 co-workers while on duty and in his federal office. The e-mail contained a letter from then-Chairman of the Democratic National Committee Terry McAuliffe, which urged its recipients to take immediate action after the Presidential Debates "to help Kerry win on November 2."

Lastly, OSC filed a complaint for disciplinary action against an employee of the Department of Veterans Affairs for distributing campaign materials while on duty in his government work place.

### *Hatch Act Disciplinary Actions Obtained:*

**Federal Employee Cases** In this fiscal year, OSC obtained eight disciplinary actions (through negotiated settlements or from the Merit Systems Protection Board). For example, OSC obtained disciplinary action against a federal employee for sending a partisan political e-mail, which advanced the re-election campaign of a Congressional candidate, while on duty and in the federal workplace. The e-mail was titled "Halloween Party for Tim Holden" and contained an attached invitation that encouraged people to attend the party and "meet Tim Holden," a

U.S. Representative seeking re-election to the 17th Congressional District, Pennsylvania. The federal employee sent the e-mail and invitation to over 300 recipients. In February 2006, an Administrative Law Judge (ALJ) recommended that the employee be suspended for 60 days for violating the Hatch Act. The ALJ noted that the e-mail described the candidate in highly favorable terms and strongly encouraged attendance at the event, and the ALJ concluded that the text and the attachment of the e-mail “obviously were directed toward the success of Mr. Holden’s reelection campaign.” In June 2006, the Merit Systems Protection Board upheld the ALJ’s decision and ordered that the employee be suspended for 60 days.

In FY 2006 OSC obtained disciplinary action against an attorney with the Small Business Administration, whom OSC had charged with knowingly and willfully violating the Hatch Act by engaging in political activity over a three year period on behalf of a political party while on duty in his government office (e.g., using his government office equipment to send and receive more than 100 e-mails, to draft documents and to have telephone conversations in support of a political party and its candidates). The Merit Systems Protection Board upheld the initial decision finding that the employee’s activities as charged warranted removal from his employment.

In April 2006, the Merit Systems Protection Board upheld an initial decision suspending a federal employee for 30 days for violating the Hatch Act’s solicitation prohibitions. OSC had charged the employee with soliciting political contributions when he permitted a campaign committee to send a letter identifying him as the sender to 144 people requesting political contributions for a candidate for partisan public office.

In yet two other cases, OSC reached settlement agreements with two federal employees who e-mailed invitations to a political fundraiser while they were on duty and in their federal workplace. One of the employees sent the invitation to subordinates. Their actions violated the Hatch Act’s prohibitions on soliciting political contributions, using official authority or influence to interfere with the result of an election, and engaging in political activity while on duty and/or in a federal building. Under the terms of the settlement agreements one employee served a ten day suspension, while the other employee served a twelve day suspension.

**State And Local Employee Cases** In March 2006, OSC reached a settlement agreement with the former Mayor of Atlantic City. OSC filed its petition seeking disciplinary action on November 9, 2005. He left office on December 31, 2005, after being defeated in his re-election bid. As described in greater detail in the preceding section, OSC had charged this official with violating the Hatch Act by asking several subordinates employees to collect absentee ballots for a candidate in a partisan election and by using his official position in an endorsement letter on behalf of the same candidate. Under the terms of the settlement agreement, the former mayor admitted violating the Hatch Act and he agreed not to seek or accept employment with the State of New Jersey for a period of eighteen months.

In yet another example, in November 2005, the Merit Systems Protection Board upheld an initial decision finding that an executive director of a New Jersey county agency had violated the Hatch Act when he ran for partisan public office. The Board found that the executive director’s violation was willful and ordered his county agency to remove him from his position.

<b>TABLE 5 Summary of Hatch Act Advisory Opinion and Complaint Activity</b>						
	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	
Advisory opinions issued	3,245	3,284	3,913 <sup>a</sup>	2,558	3,004	
New advisory requests received (written)	n/a	159	176	191	237	
New complaints received	213	196	248	245	299	
Warning letters issued	49	43	93	87	76	
Complaints processed and closed in fiscal year	107	201	357	310	266	
Corrective actions taken by recipients of cure letters:	Withdrawal from partisan races	12	18	17	4	9
	Resignation from covered employment	5	7	8	10	22
	Other	1	0	6	3	2
	Total:	18	25	31	17	33
Disciplinary action complaints filed with the Merit Systems Protection Board	4	4	7 <sup>b</sup>	11	6	
Disciplinary actions obtained (through negotiation or ordered by the Board)	4	4	2	8	8	
Complaints pending at end of fiscal year	260	254	146	79	112	

<sup>a</sup> This number is lower than reported in the President's FY 2006 Budget (Other Independent Agencies, Appendix, p. 1209) because of a duplication error.

<sup>b</sup> This number is higher than reported in the President's FY 2006 Budget because of system entries made after that publication.

## WHISTLEBLOWER DISCLOSURES

### Overview

In addition to its investigative and prosecutorial mission, OSC provides a safe channel through which federal employees, former federal employees, or applicants for federal employment may make whistleblower disclosures - that is, information that they reasonably believe evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or a substantial and specific

danger to public health or safety.<sup>10</sup> Such matters are processed by OSC's Disclosure Unit. Upon receipt of such information, if the Special Counsel determines that there is a substantial likelihood that the information discloses one or more of the kinds of wrongdoing described above, he is required to send the information to the head of the agency for an investigation. OSC does not divulge the identity of the whistleblower without that person's consent. The agency is required to investigate the matter, and send a report from the agency head to the Special Counsel. The required report describes the agency's findings

and conclusion. The Special Counsel sends the agency report, any comments by the whistleblower, and any comments or recommendations by the Special Counsel, to the President and congressional committees with jurisdiction over the agency. A copy of the agency report, and any comments on the report, are also placed in a public file located at OSC.<sup>11</sup> In FY 2006, 435 new

matters were received in the Disclosure Unit. There were 24 Agency referrals in FY 2006.

See **Table 6** below, which contains FY 2006 summary data (with comparative data for previous fiscal years) on OSC receipts and dispositions of whistleblower disclosures.

<b>TABLE 6 Summary of Whistleblower Disclosure Activity – Receipts and Dispositions<sup>a</sup></b>						
		<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Pending disclosures carried over from previous fiscal year		287	556	690	98	110
New disclosures received		555	535	572	485	435
<i>Total disclosures</i>		842	1,091	1,262	583	545
Disclosures referred to agency heads for investigation and report		18	11	18	19	24
Referrals to Agency IGs		6	3	8	14	10
Agency head reports sent to President and Congress		10	23	8	16	24
Results of agency investigations and reports	<i>Disclosures substantiated in whole or in part</i>	7	13	8	16	21
	<i>Disclosures unsubstantiated</i>	3	10	0	0	3
Disclosures processed	<i>In more than 15 days</i>	192	290	1,019 <sup>b</sup>	237	275
	<i>In less than 15 days</i>	94	111	135	236	203
Percentage of disclosures processed in less than 15 days		33%	28%	12%	50%	42%
Disclosure matters processed and closed		286	401	1,154 <sup>c</sup>	473	478

<sup>a</sup> It should be noted that many disclosures contain more than one type of allegation. This table, however, records each whistleblower disclosure as a single matter, even if there are multiple allegations in it.

<sup>b</sup> This number is large due to the backlog reduction effort.

<sup>c</sup> This number is large due to the backlog reduction effort, and includes approximately 500 cases that had been reviewed in prior years and determined to be low priority and probable closures.

## Special Counsel's Public Servant of the Year Award

In September of 2006, Leroy A. Smith received the Special Counsel's Public Servant of the Year Award. As in past years, this award is presented to the public servant who has performed an outstanding service to the public through OSC. Smith blew the whistle on unsafe and potentially deadly activities at the Bureau of Prisons, where not only inmates but also staff were at risk from dangerous chemicals during recycling operations.

***"All of us need to appreciate what Mr. Smith did, not just for the employees and inmates, but for the integrity of the system, and for the next time someone needs to step forward and bring the truth to light."***

**- Special Counsel Scott J. Bloch**

Cancer, kidney disease, central nervous system ailments and other health problems have all been linked to toxic exposure. "The inmates are seriously sick," Smith said, "and also they are contaminating the environment. They were sending this stuff out to landfills ... and water treatment plants." After prison officials minimized the health problems, Smith eventually pursued the complaints with the Office of Special Counsel.

"Managers recklessly, and in some cases knowingly, exposed inmates and staff to unsafe levels of lead, cadmium and other hazardous materials over a period of years," Special Counsel Bloch concluded in a report finished earlier in 2006. Two separate reports by the Federal Bureau of Prisons were inadequate. As a result of Bloch's follow-up inquiry, the Justice Department is investigating OSC's allegations that BOP and Federal Prison Industries have failed to take corrective action.



Mr. Smith's award



### ***Allegations of a Violation of Law, Rule or Regulation***

Violations of federal contracting laws and regulations. OSC referred allegations of multiple violations of federal contracting laws, rules, and regulations in connection with several contracts negotiated by contracting personnel at the Department of the Army, U.S. Army Corps of Engineers (USACE), Great Lakes and Ohio River Division, Louisville District. The whistleblower, former Contracting Division Chief, alleged that contracting personnel routinely disregarded applicable federal contracting laws, rules, and regulations, including the Federal Acquisition Regulation (FAR), Engineering FAR Supplement, Department of Defense FAR Supplement, the Chief Financial Officers Act of 1990 (31 U.S.C. § 901 *et seq.*), the Competition in Contracting Act (10 U.S.C. § 2304), and the Brooks Act (40 U.S.C. § 541 *et seq.*).

The USACE Office of Chief Counsel investigated the whistleblower's allegations and substantiated them in part. The investigators found that Administrative Contracting Officer authority had been improperly delegated on service contract, DACA27-98-D-0001. In response, Internal Review recommended that the agency re-issue guidance from the Office of the Chief of Contracting to contracting personnel regarding the proper authority for modifications on service contracts. Internal Review also recommended that contracting officers review contract records every 12 months to ensure compliance with the terms of the contract. A follow-up investigation in April 2004 confirmed that the Contracting Division was implementing the recommendations. The Office of Chief Counsel found that several of the other allegations had been previously investigated by Internal Review or the Department of Defense Office of Inspector General, and, when warranted, USACE had already taken appropriate corrective action. *Referred February 8, 2005.*

Improper storage of military equipment and supplies. OSC referred allegations that employees at the Department of Defense (DOD) Defense Logistics Agency, Defense Distribution Depot, Anniston, Alabama, (DDAA) violated regulations in connection with the storage of military equipment. The whistleblower, who requested anonymity, disclosed that 1) expensive military equipment stored at DDAA is often packaged and stored improperly, 2) DDAA employees are not conducting required inspections of incoming supply containers nor are they conducting timely inspections of inventory already in storage, and 3) DDAA employees fail to seek reimbursement from other agencies for packaging materials.

An investigation by the DOD Office of the Inspector General (OIG) substantiated the whistleblower's allegations. As a result of the investigative findings, the OIG recommended several corrective actions, including 1) inspection of all items stored in location P127 for proper packaging and preservation, 2) refresher training on receiving/packing/inspection procedures for relevant personnel, 3) and development and implementation of a method to provide accountability for night vision devices. *Referred August 5, 2005;*

### ***Allegations of Substantial and Specific Danger to Public Health and/or Safety and Abuse of Authority***

Improper treatment of VA psychiatric patients. OSC referred allegations from four whistleblowers that the U.S. Department of Veterans Affairs (VA), Greater Los Angeles Healthcare System (VAGLAHS), West Los Angeles Medical Center (Medical Center), Los Angeles, California was providing substandard care to veterans with mental illnesses. The whistleblowers alleged that the Medical Center was warehousing mentally ill veterans in its Emergency Department (ED), where they were exposed to conditions that were neither therapeutic nor safe for patients in need of

psychiatric care. The whistleblowers disclosed that the VAGLAHS management had reduced the number of psychiatric beds available at the Medical Center and closed its Psychiatric Emergency Service (PES) in violation of 38 U.S.C. § 1706. They further alleged that the allocation of psychiatric resources adopted by VAGLAHS management endangered patients, staff, and the public. According to the whistleblowers, during the frequent bed shortages, psychiatric patients presented for emergency care were either admitted to a fictitious ward, Ward 1 East, or denied immediate treatment and referred to an outpatient facility that is not equipped to treat their serious psychological conditions. Patients admitted to Ward 1 East were allegedly left on gurneys in the ED without the supervision of adequately trained nursing staff or psychiatrists for as long as three days. In addition, the whistleblowers alleged that VAGLAHS management engaged in an ongoing waste of funds in connection with the administration of long-term care contracts, needlessly extending the amount of time patients spend in high-cost hospital wards and refusing to renew cost-effective, long-term care contracts for mentally ill veterans subject to conservatorships.

The Secretary of Veterans Affairs delegated responsibility for investigating the whistleblowers' allegations to Dr. Jonathan B. Perlin, Undersecretary for Health. The agency's report found that the Medical Center experienced some complications in its provision of psychiatric services when the PES and ED were merged but that there was little evidence these complications produced lasting conditions in which patients were receiving substandard care. In addition, the agency concluded that the whistleblowers' allegations regarding the administration of long-term care contracts were largely unfounded. Finally, where the agency identified shortcoming in psychiatric programs at the Medical Center, it made recommendations for improvement. *Referred July 14, 2005.*

#### Dangers to public safety at prison factories.

OSC referred allegations that inmate workers and civilian staff members at United States Penitentiary Atwater, California (USP Atwater) and other Federal Bureau of Prisons (BOP) institutions were being exposed to lead, cadmium, barium, and beryllium in computer recycling facilities. The whistleblower, a BOP Safety Manager, alleged that toxic materials were released when Cathode Ray Tubes (CRTs) were broken during the recycling process. Despite numerous air quality tests documenting excessive levels of airborne lead and cadmium, management personnel at USP Atwater and Federal Prison Industries, Inc. repeatedly ordered reactivation of recycling operations without implementing recommended safety measures or the required approval of the safety department. According to the Occupational Health and Safety Administration (OSHA), overexposure to such toxic materials can cause cancer, kidney disease, disruption of the blood-forming system, damage to the central nervous system, impairment of the reproductive system, or even death. The whistleblower also disclosed that in his attempts to address safety concerns at USP Atwater, he discovered similar dangers in recycling facilities located at other BOP institutions throughout the country.

BOP produced two reports in response to OSC's referral. The reports substantiate some of the allegations but ultimately conclude that BOP FPI and Safety Staff appeared to have adequately addressed the safety concerns. The agency found that BOP and FPI management and staff took appropriate steps to ensure factories were operating safely. The whistleblower strongly disagreed and provided OSC with documentary evidence to support his comments. According to him, BOP investigators neglected to interview some witnesses in possession of relevant evidence.

Upon review of the agency's submissions and the whistleblower's comments, the Special Counsel found that the agency's findings were

unreasonable. The Special Counsel observed that the agency's reports made little effort to explain why documentary evidence appearing to contradict the agency's findings was unreliable or how this evidence could be reconciled with the conclusions of the agency's investigation. The Special Counsel also noted that the agency's reports appeared to rely on strained interpretations of applicable rules in order to justify management's actions and that the agency's investigation into recycling facilities at other BOP institutions appeared cursory at best. In light of these and other deficiencies, the Special Counsel recommended an independent and impartial investigation into BOP's recycling activities. It is our understanding that such an investigation is currently being conducted by the Office of Inspector General for the U.S. Department of Justice and that this investigation comprises all computer recycling facilities located in BOP institutions. *Referred November 15, 2004.*

Deficiencies in screening procedures at airports. OSC referred allegations that TSA screeners and management personnel at the U.S. Department of Homeland Security (DHS), Transportation Security Administration (TSA), Orlando International Airport, Orlando, Florida were not following standard operating procedures (SOPs) for the inspections at the airport. DHS partially substantiated the allegations and acknowledged an omission in its SOPs which created a security deficiency. In response to this finding, Secretary Chertoff noted that TSA acknowledged the vulnerability and plans to issue revised SOPs to airports required to conduct security screening to correct the omission and inconsistent screening methods. *Referred November 16, 2005.*

Improper testing of harrier jet engine component. OSC referred allegations that personnel at the U.S. Department of the Navy, Naval Aviation Depot, Marine Corps Air Station Cherry Point (NADEP CP), North Carolina were using an unauthorized procedure to conduct a functional test of an exhaust diffuser main repairable

assembly (exhaust diffuser MRA). The exhaust diffuser MRA is a component of the F402-RR-408A/B jet engine used in the U.S. Marine Corps' AV8B Harrier. The whistleblower, production supervisor for Shop No. 96556, alleged that the unauthorized testing procedure was a violation of law, rule or regulation and created a substantial and specific danger to public safety. NADEP CP's Shop No. 96556 is responsible for the repair and overhaul of the F402-RR-408A/B jet engine.

After a thorough investigation, the Navy substantiated the allegations. The Navy found that the artisans' use of an oil squirt can to perform the functional test on the exhaust diffuser MRA was improper. In addition, the Navy found that NADEP CP Quality Assurance (QA) personnel violated the QA procedures, specifically NAVAVNDEPOSINST 4855.8A, when they failed to issue a Corrective Action Request, as requested by the whistleblower, to determine if a recall of Harrier jet engines contained exhaust diffuser MRAs tested by the oil squirt can was necessary. The report disagrees with the whistleblower's assertion that the testing was flight critical and emphasizes that the deficient testing did not pose a risk of loss of aircraft because the engine cells undergo comprehensive testing prior to reinstallation on the aircraft. This subsequent testing would have revealed any problems with the engine. Thus, the Navy concluded the deficient testing did not pose a danger to the fleet. *Referred August 5, 2005;*

Failure to support wireless communications at the southwest border. OSC referred allegations that the failure to support wireless communications at the southwestern U.S. border has rendered the border unsafe for agents and vulnerable to terrorist infiltration. The whistleblower, a high level telecommunications specialist, alleged that in 2004 and 2005, officials in the Office of the Chief Information Officer, Department of Homeland Security, failed to allocate sufficient funds to support

the acquisition of wireless telecommunications equipment and technologies as intended by Congress, and instead used the monies for non-wireless procurements. He alleged that in many places along the nearly 2000 mile border with Mexico, agents could not communicate directly with one another and that routing calls through a dispatcher created delays that jeopardized the safety of agents and the mission of the agency.

The agency report acknowledged the need for adequate technologies for border patrol agents in the southwest, and cited recent initiatives designed to improve communications on the border, including the Secure Border Initiative and *SBI-net*. These recent efforts are intended to provide border patrol agents with the means to protect themselves against violence from criminal traffickers. The agency did not substantiate the allegation that money allocated by Congress for wireless initiatives was improperly spent on non-wireless programs. *Referred September 9, 2005.*

## **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

### ***USERRA Referral Cases***

OSC has a vital role in enforcing USERRA in the federal sector. The Act prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services, by making it illegal for an employer to deny any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. The right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training is also protected under the Act. OSC receives referrals of possible USERRA violations by federal executive agencies from the Veterans' Employment and Training Service (VETS) at the U.S. Department of Labor. In such cases, OSC may appear on behalf of, and act as attorney for, the aggrieved person. If the Special Counsel believes the complaint has merit, OSC will initiate an action before the MSPB. At the start of FY 2006, OSC had 6 pending USERRA cases. It received 11 referrals from VETS during the fiscal year. **Table 7**, below, sets forth the FY 2006 data concerning OSC's receipt and disposition during FY 2006 of USERRA cases (with comparative data for previous fiscal years).

**TABLE 7 Summary of USERRA Referral Activity**

	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Pending referrals carried over from previous fiscal year	10	8	4	12	6
Referrals received from DOL <sup>a</sup> during fiscal year	19	7	14	30	11
<i>Pending Referrals closed</i>	21	11	6	36	14
Pending referrals at the end of the fiscal year	8	4	12	6	3
Closed cases where corrective action was obtained (including corrective actions obtained in matters referred to litigation)	n/a	3	1	6	3
Closed cases where no corrective action was obtained	n/a	8	5	25	11
Litigation closed; no corrective action obtained	n/a	n/a	n/a	n/a	n/a
Litigation closed; corrective action obtained <sup>b</sup>	n/a	n/a	n/a	3	1
Matters referred for litigation pending	n/a	n/a	n/a	2	1
Pending litigation matters carried over from prior FY	n/a	n/a	n/a	n/a	2

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<sup>a</sup> Department of Labor

<sup>b</sup> No filings before the MSPB occurred prior to Special Counsel Scott J. Bloch's tenure in the 10-year history of the statute.

***The USERRA Demonstration Project***

On December 10, 2004, President Bush signed into law the Veterans Benefits Improvement Act of 2004 (VBIA), P.L. 108-454, which changes the manner in which certain federal sector USERRA claims are investigated. Starting on February 8, 2006, pursuant to a demonstration project established by section 204 of the VBIA, OSC rather than VETS began investigating USERRA claims filed by federal employees (and applicants for federal employment) whose social security number ends in an odd-numbered digit. In addition to those claims, OSC receives and investigates all federal sector USERRA claims containing a related prohibited personnel

practice allegation over which OSC has jurisdiction. Under the demonstration project, VETS continues to investigate even numbered claims that do not include a related prohibited personnel practice allegation. VBIA does not change the manner in which non-federal sector USERRA claims (i.e., those involving state and local governments and private employers) are received and investigated by VETS. Likewise, OSC continues to perform its prosecutorial function under the demonstration project.

**Table 8**, below, sets forth the FY 2006 data concerning OSC's receipt and disposition of USERRA cases.

<b>TABLE 8 Summary of USERRA Demonstration Project Activity<sup>a</sup></b>			
	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Pending referrals carried over from previous fiscal year	n/a	0	54
Cases opened	n/a	111	168
Cases closed	n/a	57	126
Cases pending at the end of the fiscal year	n/a	54	96
Closed cases where corrective action was obtained	n/a	16	35
Closed cases where no corrective action was obtained	n/a	38	91
Closed cases referred for litigation	n/a	0	n/a

<sup>a</sup>Under VIBA, P.L. 108-454; OSC started receiving cases in Feb. 2005.

***Protecting Reemployment Rights including those of Injured Soldiers***

Reemployment with back pay. The service member left the agency for active duty in a military agency. After his honorable discharge, he requested reemployment. The agency did not reemploy him because it believed that the service member had not timely requested reemployment. After OSC filed suit with the U.S. Merit Systems Protection Board on behalf of the service member, the agency agreed to reemploy the service member to his former position with appropriate step increases, award him back pay of \$84,617.50, make contributions to his Thrift Savings Plan account, and restore his annual and sick leave. The agency also agreed to review its policies and procedures to ensure compliance with USERRA and disseminate USERRA information to its employees via e-mail, posters, and its website.

Payment of lost wages. The service member alleged that the agency failed to reemploy him promptly and did not reemploy him to the appropriate “status” upon being honorably discharged. The service member had served as a police officer in the agency’s San Francisco office. The agency reemployed the service member but assigned him to its Washington, D.C. office. OSC’s investigation uncovered sufficient evidence to establish that the agency should have reemployed the service member to his former San Francisco duty station and should have reemployed him sooner. OSC successfully persuaded the agency to pay the service member an amount equaling the lost wages he suffered as a result of the delay in reemploying him and as a result of being reemployed to the agency’s Washington, D.C. office instead of its San Francisco office (i.e., the difference in locality pay).

Placement assistance and agency training. The service member alleged that a U.S. agency violated USERRA by failing to reemploy him to a suitable position. Specifically, the service member, an agency Police Officer who suffered a serious back injury while performing military service, alleged that the agency removed him from federal service after determining:

- 1) he was unable to perform the essential duties of a Police Officer because of his service-connected injury, and
- 2) there were no other available positions in which to place him.

OSC’s review of the service member’s complaint revealed that the agency did not comply with federal USERRA regulations requiring it to contact the U.S. Office of Personnel Management for placement assistance after determining that it could not reemploy the service member because of his service-connected disability. When informed by OSC of its USERRA obligations, the agency endeavored to comply with USERRA by looking for an alternative position and readying itself to request placement assistance from OPM. Additionally, OSC prepared and sent a training document to the agency explaining its responsibilities when presented with the task of reemploying service members who are injured while performing military service. The agency agreed to circulate the training document among the Human Resource Staff and other agency supervisors so that, if the agency is faced with a similar situation in the future, it will be fully aware of its responsibilities. The agency also agreed to post and circulate a USERRA information poster.

### *Preventing Denial of Initial Employment*

Position re-offered. The service member alleged that he was offered and accepted a position with a military agency. When the agency gave the service member an entry on duty (EOD) date, the service member informed the agency that he could not start on such date because of military service. In response, the agency withdrew the offer of employment. OSC contacted the agency and explained that it is illegal under USERRA to deny initial employment because of military service. In response, the agency re-offered the position, which the service member again accepted, and the parties agreed to a new EOD date.

Employment offer and lump sum payment. The service member, a member of a military agency, applied for two Social Insurance Specialist/Claims Representative positions with the Social Security Administration. During her job interview, the selecting official noted that she was a member of the military agency Reserve and asked if she could be activated. The agency later notified the service member that she was not selected. OSC's subsequent investigation uncovered evidence that the service member would likely have been selected but for her military service obligations. OSC negotiated full relief for the service member, namely: the agency agreed to pay the service member a lump sum reflecting loss of pay from the time the service member would have been selected until the time the service member began her job with another employer. (The service member declined the agency's employment offer.)

### *Educating the Federal Sector and Preventing Future Violations*

In addition to the individualized corrective action that OSC secured on behalf of many service members, OSC endeavors to improve the federal merit system by obtaining systemic corrective action wherever appropriate.

Systemic corrective action (i.e., a change in an agency's practice or policy) is warranted wherever a federal employer's practice or policy deviates from USERRA's requirements.

In Fiscal Year 2006, OSC identified two common USERRA violations. The first involved the manner in which federal employers reemployed injured service members. For example, many federal employers are unaware of their obligation to seek placement assistance from U.S. Office of Personnel Management upon determining that they are unable to reemploy an injured service member. The second concerned the kinds of documentation that federal employers demanded when a service member requested a leave of absence due to military service. In response to those common violations, OSC prepared training documents that clearly identify and fully explain federal employers' obligations. Now, whenever either of those issues are identified during the course of an OSC USERRA investigation (regardless if the issue was one that the service member raised), the training document is sent to the involved agency with the request that the agency disseminate it to managers and human resources staff. In those cases where such documents were sent, the agencies were receptive to OSC's guidance.



***Securing Competitive Promotions, Career Ladder Promotions, and Step Increases***

Retroactive promotion with back pay. Two service members alleged that their agency did not consider them for competitive promotions to GS-8 Senior Officer Specialist positions while they were away due to military service obligations. OSC's investigation confirmed that the agency violated federal USERRA regulations requiring that a federal agency's promotion plan provide a mechanism for considering absent service members for promotion. Thus, OSC persuaded the agency to consider the service members for promotion. Subsequently, the warden selected the service members for promotions to GS-8 Senior Officer Specialist positions. OSC also obtained evidence establishing that the service members would have been selected for promotion had the agency considered them earlier. Consequently, OSC requested that the agency provide full corrective action to the service members, and agency officials also agreed to promote the service members retroactively and to award them back pay and other applicable seniority-based employment benefits.

Retroactive step increase and back pay. The service member alleged that the agency did not grant the service member his step increase in salary upon being reemployed after completing 17 months of military service with the U.S. Army National Guard. OSC contacted the agency and educated it about its USERRA obligations. In response, the agency made the step increase retroactive and will award back pay to the service member.

***Correcting Denial of Benefits of Employment***

Retroactive promotion, back pay, and training. The service member alleged that the agency denied her a career ladder promotion to the GS-12 level because she was absent from employment due to military service. During its investigation, OSC obtained evidence indicating that, but for the service member's departure for military service, the service member would have attained her promotion. Thus, upon her return from military service, the agency granted OSC's request that it provide the service member appropriate training and, upon successful completion of such training, promote her retroactively and award her back pay.

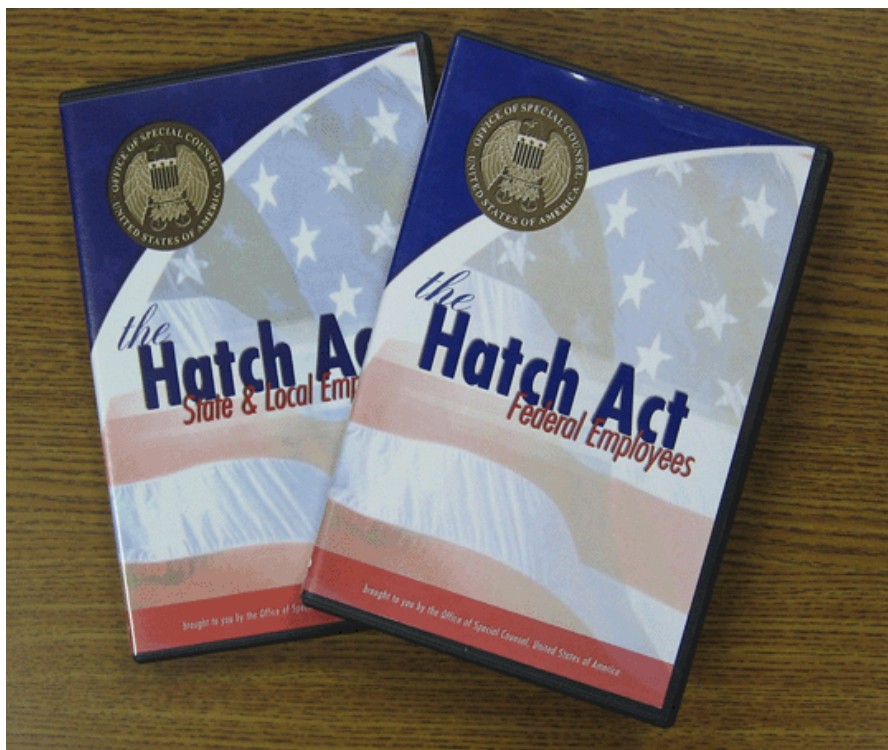
## OUTREACH PROGRAM

The Outreach Program provides OSC speakers and other resources to inform government employees about their rights and remedies under the laws enforced by OSC. To assist other agencies in meeting their statutory obligation under 5 U.S.C. § 2302(c), OSC created an educational program known as the 2302(c) Certification Program.

To participate in OSC's certification program, agencies must agree to: (1) place informational posters at agency facilities about prohibited personnel practices and whistleblowing; (2) provide information about both subjects to new employees as part of their orientation; (3) make information available periodically to current employees about prohibited personnel practices and whistleblower rights and remedies; (4) furnish training to supervisors on prohibited

personnel practices and whistleblower protections; and (5) establish a link from the agency's internet or intranet web site to OSC's web site. Once an agency has completed these five steps, OSC issues a certificate of compliance with § 2302(c), which is valid for three years. As of FY 2006, 51 agencies had registered and were working towards certification. There are 29 agencies which are certified. OSC employees spoke at 50 events during FY 2006.

A very common request from agencies to OSC is for a speaker to give an outreach presentation covering the details of the Hatch Act. OSC had two video presentations produced during FY 2006, one covering the Hatch Act from a Federal Employee's perspective, and the other dealing with the law's intricacies on the State and Local level. Where appropriate, OSC can now send a DVD to agencies for use in the agency's own training programs. See photo below.



## ANNUAL SURVEY PROGRAM

Each year, as required by 5 USC, Section 1212, OSC surveys persons who have contacted the agency for assistance and whose cases were closed during the previous fiscal year. During FY 2006, OSC surveyed individuals whose complaints were closed in FY 2006. Persons with Prohibited Personnel Practice (PPP) and USERRA cases were surveyed, as well as those who received written advisory opinions from OSC's Hatch Act (HA) Unit. They were sent a written notification to facilitate their electronic participation in the survey. The form used for the PPP and USERRA surveys seeks the following information:

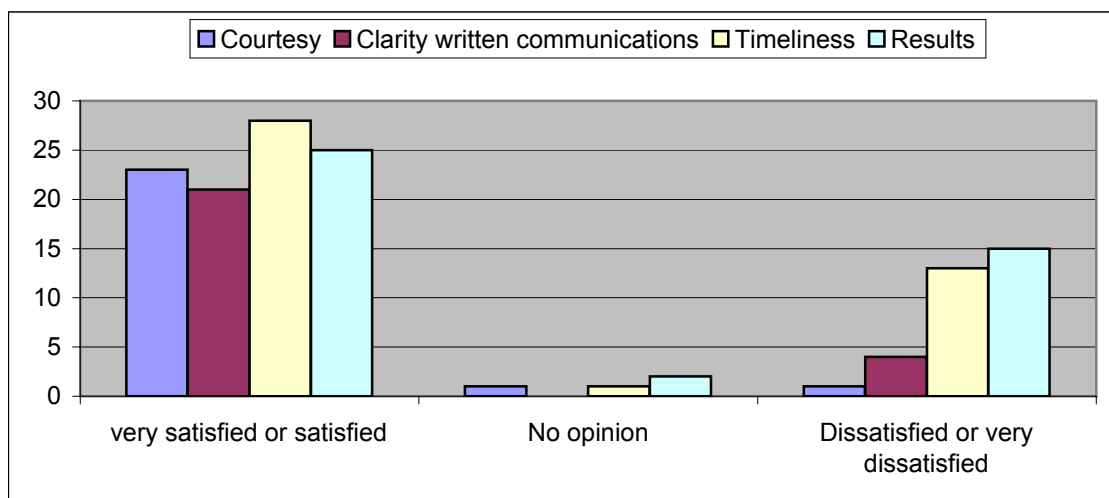
- whether potential respondents were fully apprised of their rights;
- whether their claim was successful at OSC or at the MSPB; and
- whether, successful or not, if they were satisfied with the service received from OSC.

Additional questions are asked based on the case type.

The survey results show that only 18% of respondents can recall being informed by their agencies concerning their rights and responsibilities. Although the survey response rate was relatively low, analysis of the results reveals some very encouraging information:

1. The graph below shows the high level of satisfaction reported by respondents who received advisory opinions from OSC. Of those individuals who sought advisory opinions, over 74% of them were satisfied or very satisfied (see Hatch Act Results in Appendix C). Of those individuals with a USERRA claim who took the survey, 63% were satisfied or very satisfied. See appendix D. All FY 2006 survey questions and response tallies are included in Appendices A-D.
2. While approximately 5% of PPP complainants who took the survey received the result they desired, an average of 37% weren't dissatisfied with the service provided by OSC in the areas of timeliness, oral communications, written communications, and courtesy. This means that 32% of the PPP survey respondents were willing to admit some level of appreciation for the service provided by OSC, even though their case was closed.

### Hatch Act Advisory Opinions - Customer Satisfaction



## FURTHER INFORMATION<sup>12</sup>

### *Annual Report*

Additional copies of this report can be requested by writing or contacting:

Director of Congressional and Public Affairs  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 202-254-3600  
<http://www.osc.gov/documents/reports/ar-2003.pdf>

### *Prohibited Personnel Practice Complaints*

Individuals with questions about prohibited personnel practices can contact the OSC Officer of the Week at:

Complaints Examining Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 800-872-9855, 202-254-3630  
Fax: 202-653-5151

The OSC complaint form (Form OSC-11) *must* be used to file a prohibited personnel practice complaint.<sup>13</sup>

The complaint form can be printed from OSC's web site (under "Forms"). Complaints can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc11.pdf>

### ***Mediation Program***

Questions about OSC's Mediation Program should be directed to:

Alternative Dispute Resolution Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 202-254-3600  
E-mail: [adr@osc.gov](mailto:adr@osc.gov)

### ***Hatch Act Questions***

Requests for advice about the Hatch Act can be made by telephone, regular mail, or e-mail to:

Hatch Act Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 800-85-HATCH [(800) 854-2824, 202-254-3650]  
Fax: 202-653-5151  
E-mail: [hatchact@osc.gov](mailto:hatchact@osc.gov)

The OSC web site has additional information about the Hatch Act, including frequently asked questions by federal, state and local government employees, and selected OSC advisory opinions responding to common factual situations.

### ***Whistleblower Disclosures***

Whistleblower disclosures (of information evidencing a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a danger to public health or safety) can be reported in confidence to:

Disclosure Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 800-572-2249, 202-254-3640  
Fax: 202-653-5151

The OSC whistleblower disclosure form (Form OSC-12) may be used to file a disclosure. The form can be printed from OSC's web site (under "Forms"). Disclosures can also be filed with OSC electronically from its web site, <http://www.osc.gov/documents/forms/osc12.pdf>

### ***Uniformed Services Employment and Reemployment Rights Act***

Questions about OSC's role in enforcing the act may be directed to:

Director of USERRA  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 202-254-3600  
E-mail: [userra@osc.gov](mailto:userra@osc.gov)

### ***Outreach Program***

For questions about OSC outreach activities, and requests for OSC publications

Director of Outreach  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505  
Telephone: 202-254-3600  
Fax: 202-653-5151

Many forms and publications are available at OSC's web site (under "Forms" and "E-Library") at <http://www.osc.gov/forms.htm>.

## APPENDIX A

### FY 2006 TOTALS AND RESPONSE OPTIONS

FY 2006	
Number Mailed	1,972
Number Returned	295
Response Rate	15%

What was the nature of your correspondence to OSC? (Please choose only one)	
Response Options	FY 2006
You filed a complaint concerning a Prohibited Personnel Practice	256
You requested a written advisory opinion from OSC concerning a possible violation of the Hatch Act (unlawful political activity)	25
Your case involved a USERRA complaint	14

## APPENDIX B

### FY 2006 Prohibited Personnel Practice Survey Responses

<b>1. Did the agency against which you filed the complaint inform you about your rights and responsibilities with regard to prohibited personnel practices?</b>	
<b>Response options</b>	<b>FY 2006</b>
Yes	45
No	189
Do not recall	19
Never employed by a federal agency	3

<b>2. Did you obtain the result that you wanted from OSC?</b>	
<b>Response options</b>	<b>FY 2006</b>
Yes	13
No	243

<b>3. Did your complaint include any allegation of reprisal for whistleblowing?</b>	
<b>Response options</b>	<b>FY 2006</b>
Yes	139
No	104



<b>4. What reason did OSC give for closing any reprisal for whistleblowing allegation in your complaint without obtaining the result that you desired? (Check all that apply.)</b>	
<b>Response Options</b>	<b>FY 2006</b>
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	8
No personnel action taken by the agency involved	14
Information that you disclosed did not appear to be a legally protected disclosure	20
Your disclosure occurred after the personnel action involved in your complaint	5
Insufficient proof that the agency official (who took the personnel action against you) knew about your disclosure.	10
Insufficient proof of connection between your disclosure and the personnel action involved in your complaint	22
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint.	8
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	21
You or OSC settled the matter with the agency involved	3
You declined corrective action offered by the agency involved	1
You notified OSC that you had filed or would file an Individual Right of Action (IRA) or other appeal with the Merit Systems Protection Board (MSPB)	4
You withdrew your complaint	0
Other	71
Do not recall	11

**5. Did you file an Individual Right of Action or other appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?**

<b>Response Options</b>	<b>FY 2006</b>
Yes	66
No	160
Have not decided whether to file	17

**6. Did you ask for the same relief that you sought from OSC?**

<b>Response Options</b>	<b>FY 2006</b>
Yes	61
No	1
Do not recall	4

**7. Were you successful at the MSPB in obtaining the same result that you sought from OSC?**

<b>Response Options</b>	<b>FY 2006</b>
Yes	1
Partially	3
No	33
Appeal pending	24

**8. If the answer [to the previous question] was “yes” or “partially,” how did you obtain that result?**

<b>Response Options</b>	<b>FY 2006</b>
Settlement	3
Decision after hearing	0
Other	1

9. What reason did OSC give for closing your complaint without obtaining the result that you Desired? (Check all that apply)	
Response Options:	FY 2006
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	8
No personnel action taken by the agency involved	3
OSC could not disprove the reason given by the agency involved for the personnel action taken, as described in your complaint	16
Insufficient evidence that the personnel action involved in your complaint violated a law or regulation	43
You or OSC settled the matter with the agency involved	1
You declined corrective action offered by the agency involved	0
You withdrew your complaint	3
OSC filed a petition with the Merit Systems Protection Board (MSPB) for corrective action	0
OSC obtained a decision in the corrective action proceeding filed with the MSPB	0
Closed for further action on discrimination allegations through EEO processes	5
Resolved through OSC's Mediation Program	0
Other	37
Do not recall	8

10. How would you rate the service provided by OSC in each of the following areas?					
Service Categories to be rated	FY 2006 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	15	52	46	44	99
<i>Oral communications</i>	11	31	50	50	114
<i>Written communications</i>	8	39	21	62	126
<i>Timeliness</i>	13	58	31	45	109
<i>Results</i>	1	10	8	28	209

## APPENDIX C

<b>FY 2006 HATCH ACT UNIT SURVEY RESPONSES</b>
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<b>1. As a result of our written advisory opinion given to you concerning the proposed political activity, what was the impact?</b>	
<b>Response Options</b>	<b>FY 2006</b>
The OSC opinion advised that the person in question was free to carry out his or her planned political activity.	19
The OSC opinion advised that the person in question should not continue his or her planned political activity.	6

<b>2. How would you rate the service provided by OSC in the following areas?</b>					
<b>Service Categories to be rated</b>	<b>FY 2006 Ratings</b>				
	<b>Very satisfied</b>	<b>Satisfied</b>	<b>No opinion / inapplicable</b>	<b>Dissatisfied</b>	<b>Very dissatisfied</b>
<i>Courtesy</i>	15	8	1	0	1
<i>Clarity Written Communications</i>	12	9	0	3	1
<i>Timeliness</i>	13	15	1	4	9
<i>Results</i>	17	8	2	3	12

## APPENDIX D

<b>FY 2006 USERRA UNIT SURVEY RESPONSES</b>
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<b>1. Did the agency against which you filed the complaint inform you about your rights and remedies with regard to USERRA?</b>	
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Response Options	FY 2006
Yes	4
No	8
Do not recall	1
Never employed by a federal agency	1

<b>2. Did you obtain the result that you wanted from OSC?</b>	
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Response options	FY 2006
Yes	7
No	7

<b>3. What reason did OSC give for closing your USERRA case? (Check all that apply.)</b>	
--	--

Response options	FY 2006
No OSC jurisdiction over your position, the agency, or agency official involved in the complaint	1
You declined corrective action offered by the agency involved	4
Insufficient evidence that the personnel action involved in your complaint violated USERRA	2
You or OSC settled the matter with the agency involved	0
You withdrew your complaint	0
Other	0
Do not recall	0

<b>4. Did you file a USERRA appeal with the MSPB in connection with the same events that you reported in your complaint to OSC?</b>	
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Response options	FY 2006
Yes	1
No	0
Do not recall	0

<b>5. Did you ask for the same relief that you sought from OSC?</b>	
---	--

Response options	FY 2006
Yes	0
No	0
Do not recall	0

6. Were you successful at the MSPB in obtaining the same result that you sought from OSC?	
Response options	FY 2006
Yes	0
Partially	0
No	0
Appeal pending	0

7. If the answer to previous question was “Yes” or “Partially,” how did you obtain that result?	
Response options	FY 2006
Settlement	0
Decision after hearing	0
other	0

8. How would you rate the service provided by OSC in each of the following areas?					
Service categories to be rated	FY 2006 Ratings				
	Very satisfied	Satisfied	No opinion, or N/A	Dissatisfied	Very dissatisfied
<i>Courtesy</i>	10	0	0	1	3
<i>Oral communications</i>	9	1	1	0	3
<i>Written communications</i>	8	1	1	2	2
<i>Timeliness</i>	5	4	1	2	2
<i>Results</i>	4	2	2	2	4

## APPENDIX E

### ACRONYMS

ADR	Alternative Dispute Resolution
ALJ	Administrative Law Judge
CEU	Complaints Examining Unit
CY	Calendar Year
DOL	Department Of Labor
DOT	Department of Transportation
DU	Disclosure Unit
FAA	Federal Aviation Administration
FY	Fiscal Year
HA	Hatch Act
HAU	Hatch Act Unit
IPD	Investigation and Prosecution Division
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OSC	Office of Special Counsel
PPP	Prohibited Personnel Practice
SPU	Special Projects Unit
SSA	Social Security Administration
USC	Unites States Code
USERRA	Uniformed Services Employment and Reemployment Rights Act
VETS	Veterans Employment and Training Services
WPA	Whistleblower Protection Act

## APPENDIX F

### ENDNOTES

<sup>1</sup> Reorganization Plan Number 2 of 1978. See 5 U.S.C.A. App.1, § 204. The Civil Service Reform Act of 1978 (Public Law No. 95-454, 92 Stat. 1111) enlarged OSC's functions and powers.

<sup>2</sup> Public law No. 101-12 (1989). Provisions setting forth OSC authorities and responsibilities were codified at 5 U.S.C. § 1211, et seq.

<sup>3</sup> Public Law No. 103-94 (1993), codified in scattered sections of 5 U.S.C. and 12 U.S.C.

<sup>4</sup> Public Law No. 103-353 (1994), codified at 38 U.S.C. § 4301, et seq. The Veteran's Employment Opportunities Act of 1998 (Public Law No. 103-424) also expanded OSC's role in protecting veterans. The act made it a prohibited personnel practice to knowingly take, recommend, or approve (or fail to take, recommend, or approve) any personnel action, if taking (or failing to take) such action would violate a veteran's preference requirement. See 5 U.S.C. § 2302(b)(11). (The former § 2302(b)(11) was redesignated as § 2302(b)(12).).

<sup>5</sup> Public Law No. 103-424 (1994), codified in various sections of title 5 of the U.S. Code. The provision making federal agencies responsible, in consultation with OSC, for informing their employees of rights and remedies under the Whistleblower Protection Act, appears at 5 U.S.C. § 2302(c).

<sup>6</sup> Unless noted otherwise, all references after this to prohibited personnel practice complaints include complaints alleging other violations of civil service law, rule, or regulation listed at 5 U.S.C. § 1216, except for alleged violations of the Hatch Act.

<sup>7</sup> When the Complaints Examining Unit makes a preliminary determination to close a complaint without further investigation, it must by law provide complainants with a written statement of reasons, to which they may respond. On the basis of the response, if any, the unit decides whether to close the matter, or refer it to the Investigation and Prosecution Division.

<sup>8</sup> The 12 prohibited personnel practices are (in substance): (1) discrimination based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (allegations of discrimination, except discrimination based on marital status or political affiliation, are generally deferred by OSC to EEO processes, consistent with 5 C.F.R. § 1810.1); (2) soliciting or considering improper employment recommendations; (3) coercion of political activity; (4) deceiving or willfully obstructing anyone from competing for employment; (5) influencing anyone to withdraw from competition to improve or injure the employment prospects of another; (6) giving an unauthorized preference or advantage to improve or injure the employment prospects of another; (7) nepotism; (8) reprisal for whistleblowing; (9) reprisal for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or an Inspector General; or refusing to obey an order that would require one to violate a law; (10) discrimination based on personal conduct that does not adversely affect job performance; (11) violating veterans' preference requirements; and (12) violating a law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301. It should be noted that these are general summaries of the prohibited personnel practices defined at 5 U.S.C. § 2302(b). That section should be consulted for fuller descriptions of the elements of each of these violations.

<sup>9</sup> It should be noted that complaints frequently contain more than one type of allegation. Table 2, however, records all allegations received in a complaint as a single matter.

<sup>10</sup> 5 U.S.C. § 1213(a).

<sup>11</sup> 5 U.S.C. § 1213(c)-(e).

<sup>12</sup> For callers with hearing/speech disabilities, all OSC telephone numbers listed here may be accessed using TTY by dialing the Federal Relay Service at (800) 877-8339.

<sup>13</sup> 5 C.F.R. § 1800.1.