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REFORM SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND
THE DISTRICT OF COLUMBIA

**STATEMENT OF SCOTT J. BLOCH
SPECIAL COUNSEL
U.S. OFFICE OF SPECIAL COUNSEL**

BEFORE THE

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON
THE FEDERAL WORKFORCE, POSTAL SERVICE, AND
THE DISTRICT OF COLUMBIA**

HEARING ON

**A REVIEW OF THE MERIT SYSTEMS PROTECTION BOARD
AND
THE OFFICE OF SPECIAL COUNSEL**

**Thursday, July 12, 2007
Washington, DC**

In 1776, John Adams wrote that “Good government is an empire of laws.” I have quoted this often in my tenure, and I believe in its emphasis on enforcing laws and the rule of law, holding our officials and managers in the federal government to a higher standard of fidelity to the law, and holding ourselves accountable to the law and our public charge to make a difference.

Chairman Davis, Ranking Member Marchant, and distinguished Members of the Subcommittee – thank you for the opportunity to address you on the reauthorization of the U.S. Office of Special Counsel. It’s also an honor to be here beside Chairman Neil McPhie, who’s done so much for the Merit System and the rule of law.

My name is Scott Bloch and I am the Special Counsel of the U.S. Office of Special Counsel, or OSC. I am here to seek reauthorization of the U.S. Office of Special Counsel because it is upholding our small empire of laws that keep our federal government accountable, honest, efficient, and just for more people in a timely way than at any time in its history.

We have sought to bring to the attention of the public, and in particular the federal employees, the fine work that our career staff is doing in government accountability and protections for the ordinary heroes who blow the whistle.

I have written and spoken often about these matters, as have my staff, because it is important that people know there is someone there who will stand up for them, who has powers to bring redress, who will not countenance reprisal when citizens show their concern by blowing the whistle on waste, fraud and abuse.

The Office of Special Counsel upholds laws intended to maintain accountability, honesty and integrity in our federal government, and provides protection for its employees. This is a vital function: when those who work for our fellow citizens show their concern by blowing the whistle on waste, fraud, and abuse, someone who has powers to bring redress, and not countenance reprisal, must stand up for them.

Accordingly, I come before you today to request congressional reauthorization of the U.S. Office of Special Counsel.

As you know, OSC is an independent watchdog agency established as part of the post-Watergate reforms of the late 1970s. We essentially operate within the executive branch to protect worker rights and the merit system under four statutory functions. These are to:

1. Review and validate whistleblower disclosures;
2. Investigate and prosecute complaints of Prohibited Personnel Practices (PPP), with a special focus on discrimination against whistleblowers;
3. Enforce the Hatch Act, the law that limits the political activity of government employees, and;
4. Enforce the Uniformed Services Employment and Reemployment Rights Act, or USERRA, the law that protects the job rights of military service members when they return from active duty.

These functions are less meaningful if federal employees are unaware of how they are protected.

OSC's contribution to upholding the empire of laws and bringing accountability, transparency and good government is secured by our independence. When others in government try to interfere in our investigations or to intimidate or pressure us, then the independence we use to provide justice and accountability is itself threatened.

We need support from this committee, support that shows the committee encourages our independence. This combats a negative image that government is all about partisan bickering and special interests. We need authority and moral support to continue on in the matters that we are engaged in to instill greater public trust in government, and to secure the rights of government employees to report whistleblower wrongdoing, and to hold accountable the leaders of agencies, at the highest levels, if need be to have them removed if they have offended their oaths and transgressed the laws of the United States.

When I accepted this appointment I understood that, as an independent "watchdog" agency, I would often be the bearer of bad news to the White House, federal agencies, and the public. As the Great Greek Sophocles noted in *Antigone*, "No one likes the bearer of bad news." We do not always please everyone, and sometimes, we please no one.

But we are required by law and the oath I took to uphold the laws of the United States in my charge, and to uphold the Constitution. There are many who wonder what the government's commitment is to real accountability, real principles of good government, and real integrity in the agencies that run this mighty nation.

What does independence mean? It means I make decisions based on facts and law, on evidence. I do so based on the decisions of experienced office staff members who understand the concept of independence and are not influenced by partisanship or political cycles.

Those who know me know that I bring a stringent commitment to law, the rule of law, and an independent spirit to this office and have from day one. If we show we are not committed to those principles, or only committed when it does not result in something we disagree with, we show disrespect for the justice system of which I am a part. Justice is what we are talking about.

We've had some signature successes in recent years. Many of you should remember the Anne Whiteman case involving aircraft near-misses at Dallas-Fort Worth International Airport, one of the world's busiest. We are looking at the continuing issues of whistleblower retaliation there, as well as problems in the follow through with the IG investigation of DFW.

It turns out that the concerns of the whistleblower have intensified and turned out to be correct. Based on her new disclosures as well as those of an additional FAA confidential whistleblower with personal knowledge of these matters – the problems of cover-up of near misses and operational errors have not been remedied, proper discipline of officials has not occurred, and the culture of underreporting is worse. We have reported to the Secretary of the Department of Transportation this week of extensive retaliation against Ms. Whiteman in the last two years as well as a continuing problem with cover up of operational errors, near misses and other deviations from FAA regulations that potentially compromise air safety, not only in Dallas Fort Worth, but across the country.

We are asking the DOT to do a more extensive investigation than was done before to unearth whether this is a national policy to underreport and assign what are classic operational errors to pilots or just not to write them up at all. There is evidence that the union has been ceded control over these safety and other management issues, and that the pay for performance system may be the reason why people are being told not to report errors: the fewer errors a facility has, the better they do in their ratings, and the more people are paid by way of salary increases and bonuses. The only losers in the whole system are the passengers and air safety.

We also substantiated Leroy Smith's disclosure involving environmental hazards within federal prison facilities. That case resulted in pushing and pulling between us and the Bureau of Prisons, and really required some work on our part to get attention to a frankly deficient report delivered by the target agency. As a result of our efforts, and that of the Whistleblower, the investigation by the DOJ IG has expanded to other prison facilities, and it has changed the system for how such facilities function.

Safety and health have benefited because of his brave disclosures. We awarded him our Public Servant Award at the end of last fiscal year. There is continuing investigation going on in a number of prison facilities of the same problems our case revealed. The IG is continuing to investigate environmental safety issues as a result of what OSC instigated, and as of a couple of months ago, the whistleblower was in contact with OSC to give us the names of additional whistleblowers who have had problems with these toxic releases.

As you know, we have also had several prominent Hatch Act cases arise in the recent past, such as the matter involving The Administrator of the General Services Administration, Lurita Doan. It is important for the American taxpayer to know whether federal positions are being abused for political gain and that the agencies of our government are there for the benefit of all taxpayers, and not just for those who are in power.

In the area of whistleblower retaliation, there have been some important victories for whistleblowers, including our substantiation on retaliation against a whistleblower and one who was perceived to be one, and we reported to the President that the Inspector General in that case at the Department of Commerce should be disciplined. As of June 29, the Inspector General was no longer with the Department of Commerce.

Last year, we uncovered whistleblower retaliation and Hatch Act coercion when a lower grade secretary to the top political appointee in the USDA in Alaska was trying to make her do his outside political work and also wanted her to falsify a travel voucher. When she refused, she was transferred and demoted. We got her job back and the political appointee fired. There are many others we have listed on our website, but these are some of the newsworthy whistleblower cases of recent vintage.

It is the responsibility of each of us appointed to investigatory positions in government to investigate every legitimate complaint. If we do not, we fail the American people, and the rule of law begins to erode. I choose to fight this erosion, and it is my hope that this Committee will support OSC as it continues its watchdog role.

It is of great importance for people to know there is an agency that will stand up for them, has powers to bring redress, and will defend citizens who blow the whistle on government waste, fraud, and abuse.

Not only is this important for the federal employee, but to all Americans, as well, to know that there is an agency who will protect federal workers who report the waste of taxpayer money.

Moreover, greater awareness of the work we do in government accountability and whistleblower protection has deterrence value, to keep employers and employees from violating these laws in the first place.

I am here to request reauthorization for our office, and to request several enhancements to allow us to improve on our record for the benefit of the government and the taxpayers.

It is my pleasure to report that our agency is functioning better than at any other time in its history, and I believe we have a chance to improve on even that record. To support this claim, I refer you to our annual report for Fiscal Year 2006.

Among the topics I will address today, I'll begin with something that is a distinct priority for me, not only as an American citizen, but as the father of a veteran who has served three tours of duty in Iraq.

The authority granted to OSC over claims of some federal employees under the Uniformed Services Employment and Re-employment Rights Act, USERRA, was conferred on OSC in the Veterans Benefits Improvement Act of 2004.

The Act established a demonstration project for referral of USERRA claims against federal agencies to the Office of Special Counsel. For the period of this demonstration project, roughly half of the claims against federal agencies under USERRA are to be referred to the OSC for assistance, investigation, and resolution, as well as for enforcement. The remaining federal claims are to be referred to the Veterans' Employment and Training Service (VETS) of the Department of Labor.

The Demonstration Project is to conclude with the end of this fiscal year. This matter is under the jurisdiction of the Committee on Veterans' Affairs, which we expect to take up this matter once the General Accountability Office provides a mandated assessment of this Demonstration Project.

Nonetheless, I want to take advantage of this opportunity to express our concern and create awareness of the need for ensuring that our returning National Guard and Reserve have the clearest possible pathway to resolution of claims they make under USERRA.

We are concerned that, should decisions be made that increase the number of troops returning from combat, we could see a corresponding "spike" in the number of military members requiring relief under USERRA. Before this happens, Congress should ensure that procedures and resources are in place to ensure that a surge in USERRA claims does not result in delay in the resolution of these claims. In other words, the sooner the Demonstration Project is terminated, and legislation is passed to streamline the USERRA claims process, the better we will meet the needs of our returning service members.

On matters of general agency functioning, three years ago the Office of Special Counsel was heavily criticized – and rightly so – by the Government Accountability Office. The GAO issued a report pointing out OSC's dysfunctions: the agency was saddled with a huge backlog, and bureaucratic disorganization made it a challenge to fulfill the statutory mission OSC has of protecting the rights of federal workers and the merit system.

In response to the GAO report and congressional requests, my staff and I undertook efforts to dramatically reduce the case backlog I had inherited, and to improve the operations of the agency to preclude future backlogs.

The central achievement of the months that followed was the backlog resolution and increased enforcement under all areas of OSC jurisdiction. Over the initial eighteen months of my tenure, OSC employees worked incredibly hard to reduce the backlog. They were able to double the percentage of positive findings in whistleblower disclosure and prohibited personnel practice cases. Our career staff should be proud of the many achievements made during that time.

The case process was also made more transparent and, in spring 2005, staff from this Committee did a review of OSC's backlog resolution work. These staffers pored over OSC's case files and interviewed numerous career attorneys over a three-week period to examine each aspect of the operation. At the conclusion of their review, committee staff on both sides expressed satisfaction, and OSC received a very kind letter from then-committee Chairman Tom Davis and then-subcommittee Chairman Jon Porter, praising OSC's hard work and protection of whistleblowers.

As you know, OSC also underwent reorganization during this time. In addition to implementing standard operating procedures for the investigation units and coordinating policy implementation, OSC also opened a third field office in Detroit, which joined our other field offices in Dallas and Oakland, California and brings more geographic balance to our field offices.

Our field offices work in conjunction with our DC headquarters to provide relief for federal employees who have found themselves in the midst of a whistleblower or Prohibited Personnel Practice complaint. Our Detroit office has only been operational for two years, but it is functioning very well, by any measure.

The results speak for themselves. We have no backlogs. The cases in the pipeline are appropriate by age and status, and each field office is keeping up and providing strong production and strong results. We're doing aggressive outreach to educate federal workers, and geographic balance has helped there as well as it has in the arena of investigations.

As I mentioned earlier, OSC has recently been involved in some high profile cases regarding enforcement of the Hatch Act, as well as whistleblower protections. I am proud that the excellent work of our career staff has been highlighted in these cases, and we will continue to pursue justice in these matters.

Now, for the legislative matters I want to bring before the committee:

1. An overzealous provision in the Prohibited Personnel Practice law allows our agency to be tagged with attorneys fees in any case in which OSC's request for disciplinary action has been denied. You can see how this might have a chilling effect on OSC's vigorous pursuit of disciplinary cases. We would ask that the Committee modify this provision, which threatens to inhibit our prosecutorial discretion.
2. I ask for our agency to have the power to file Amicus Briefs in cases of ours that go beyond the Merit Systems Protection Board. This would allow our expertise in both our statutes and the specific cases to complement the work of the Justice Department.
3. Our agency is unable to provide one-stop shopping of the Veterans Preference provision in the Prohibited Personnel Practice law. It is the case that OSC is able to seek corrective action under other PPP provisions, like the blanket (b)6 and (b)12 provisions against any unauthorized preference, or even under USERRA, as the cases frequently overlap. However, we think it would be much less confusing for service members to understand that we can seek corrective or disciplinary action under any of the PPPs, as well as USERRA.
4. That leads to another issue, the current lack of a provision in USERRA for disciplinary action.

I hope during the upcoming question and answer period I can highlight the excellent work our career staff has done, and would be glad to attempt to answer any questions you may have about our day-to-day operations that have produced excellent results for so many people. Combined with our slashing of processing times and increased enforcement, these results show that our agency has improved and is promoting good government.

Together with this committee, and other agencies like MSPB and OGE, we can look forward to continuing service to federal employees and the American taxpayer. I look forward to your questions.

Thank you.