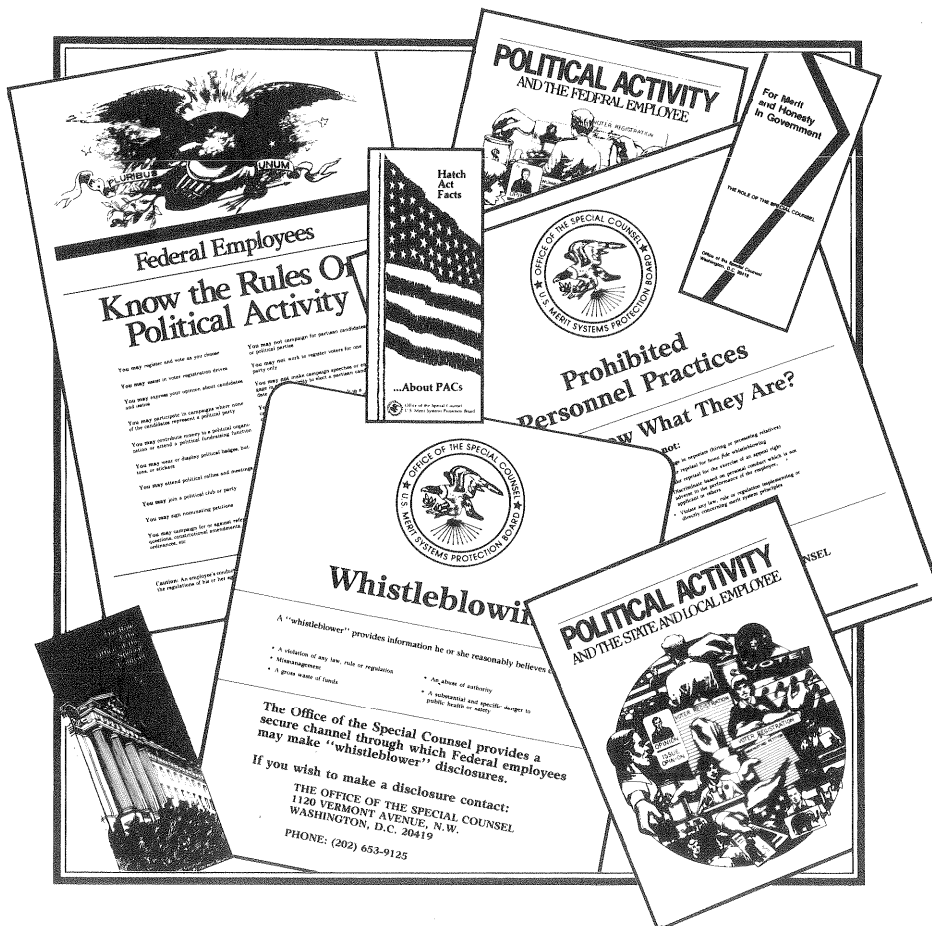
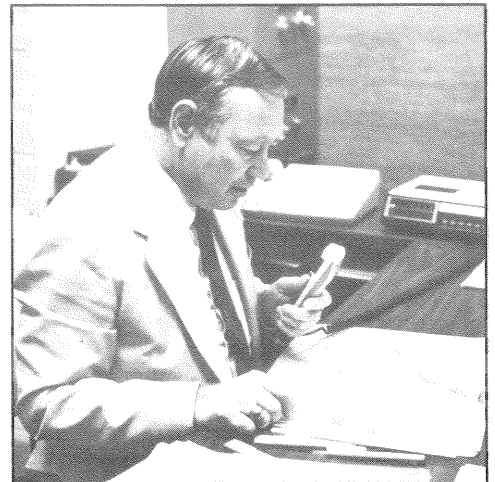
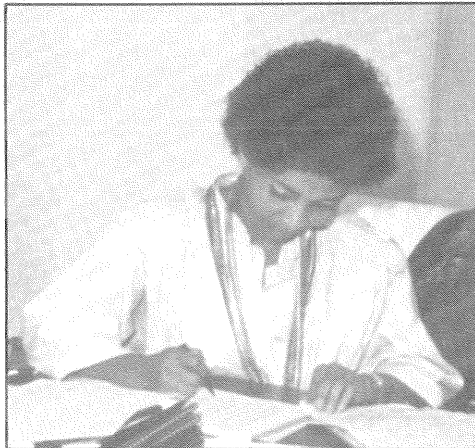
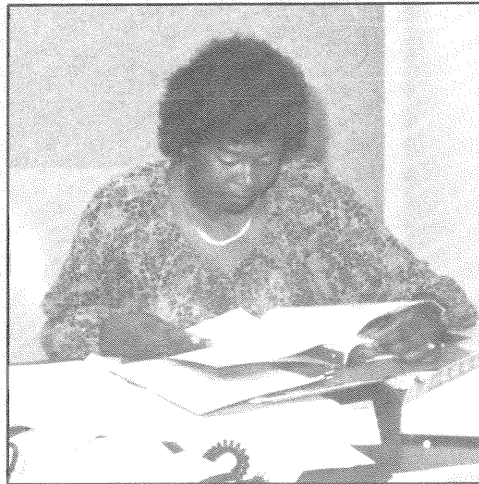
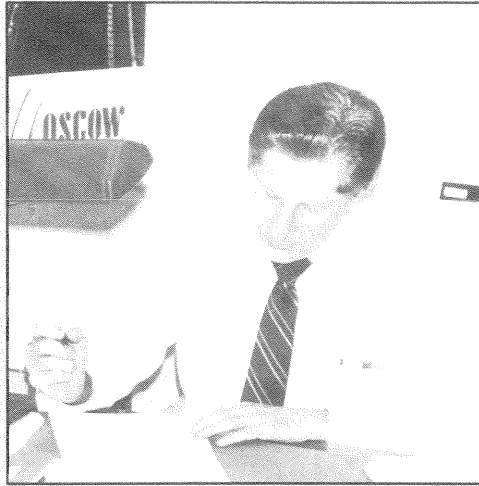


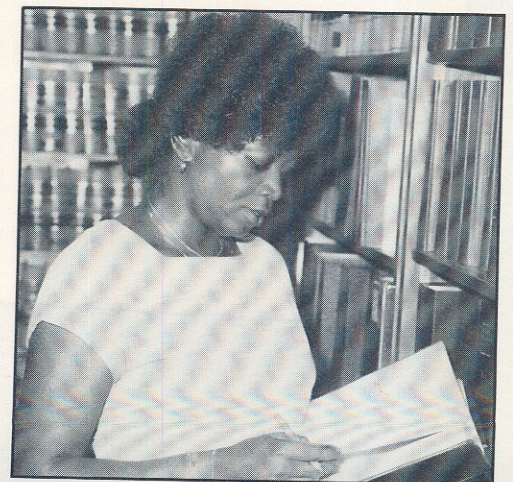
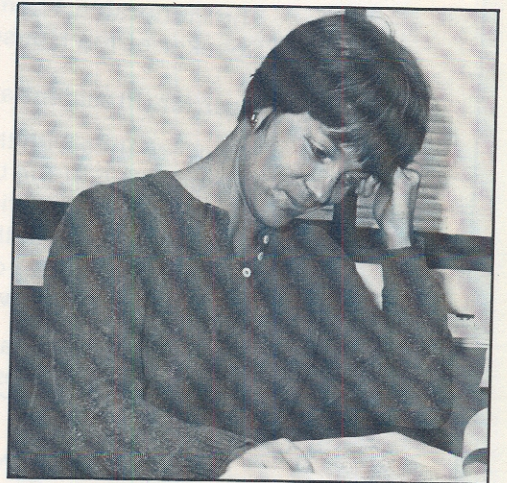
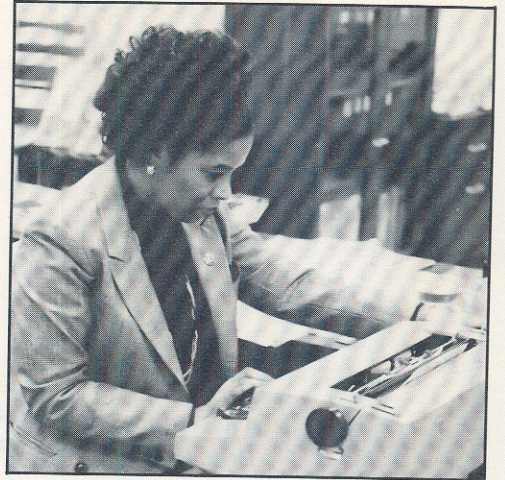
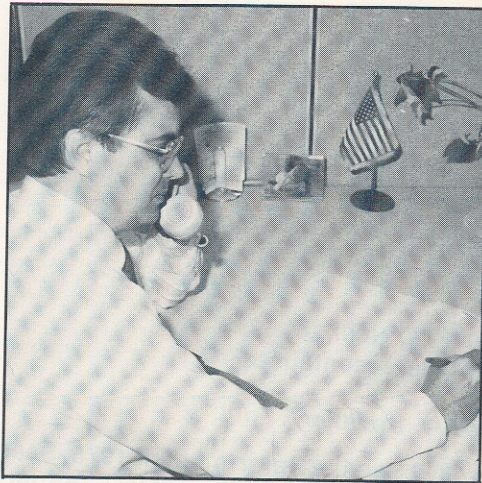
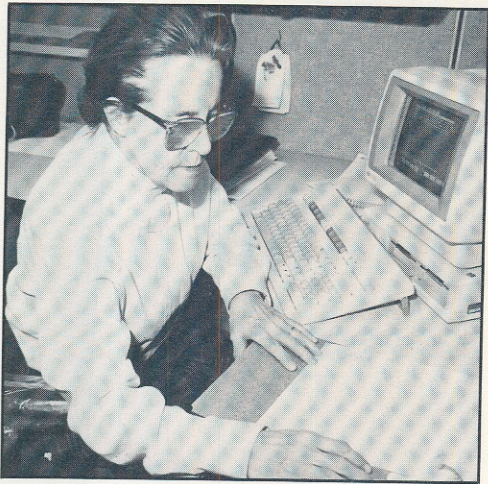
A Report To Congress From The Office of Special Counsel

Fiscal Year 1984



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





OFFICE OF THE SPECIAL COUNSEL
U. S. Merit Systems Protection Board



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

The Special Counsel

December 4, 1984

The Honorable George Bush
President of the Senate
and
The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives

Dear Mr. President and Mr. Speaker:

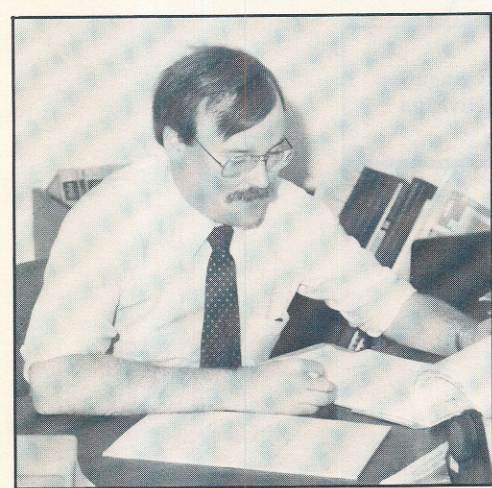
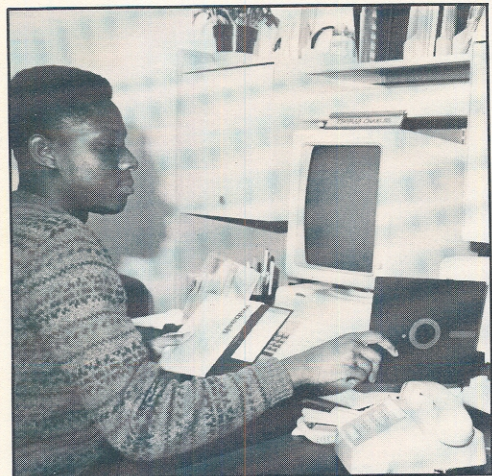
In accordance with the Civil Service Reform Act of 1978, Section 1206 (m) of Title 5 of the United States Code, I submit this annual report to the Congress covering Fiscal Year 1984 activities of the Office of the Special Counsel of the United States Merit Systems Protection Board. The data and status of cases reported is, therefore, as of September 30, 1984, unless otherwise indicated.

As is customary, a copy of this report will be forwarded to each member of Congress.

With respect,

A handwritten signature in black ink, appearing to read "K. William O'Connor". The signature is written in a cursive style with a long horizontal line extending to the right.

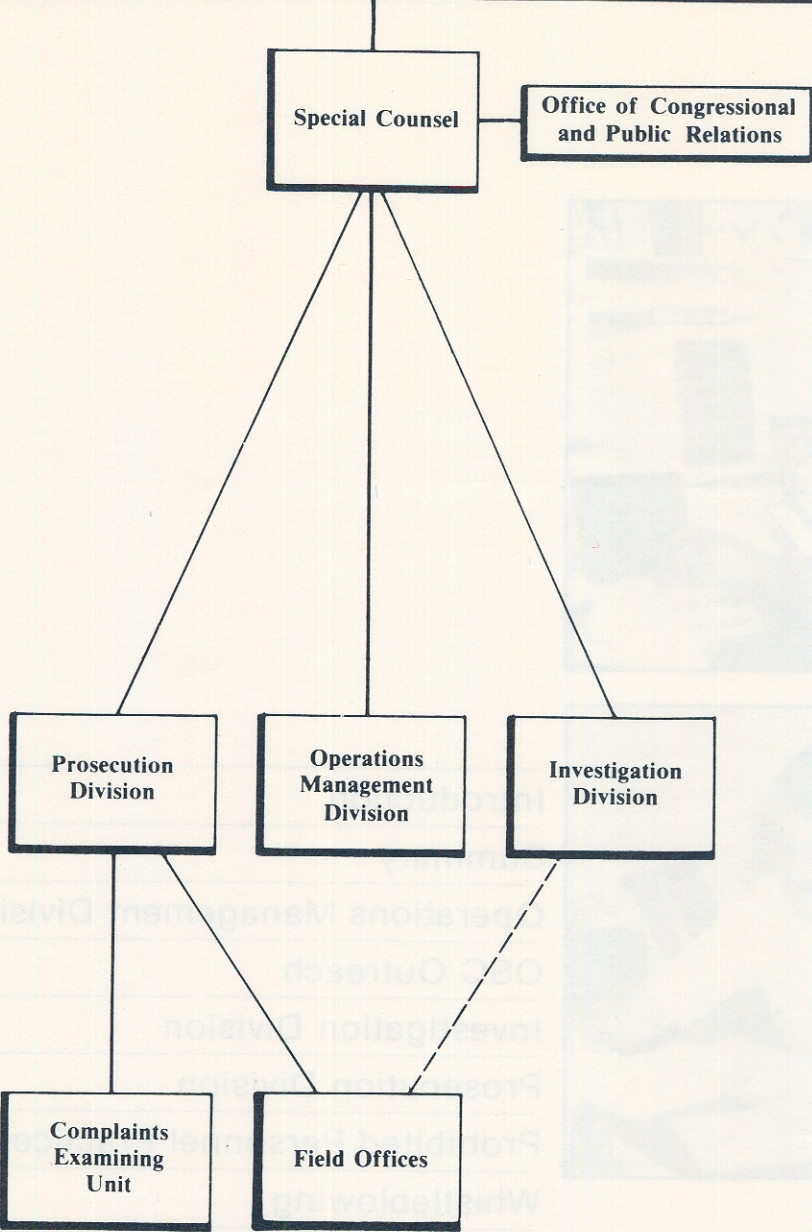
K. William O'Connor



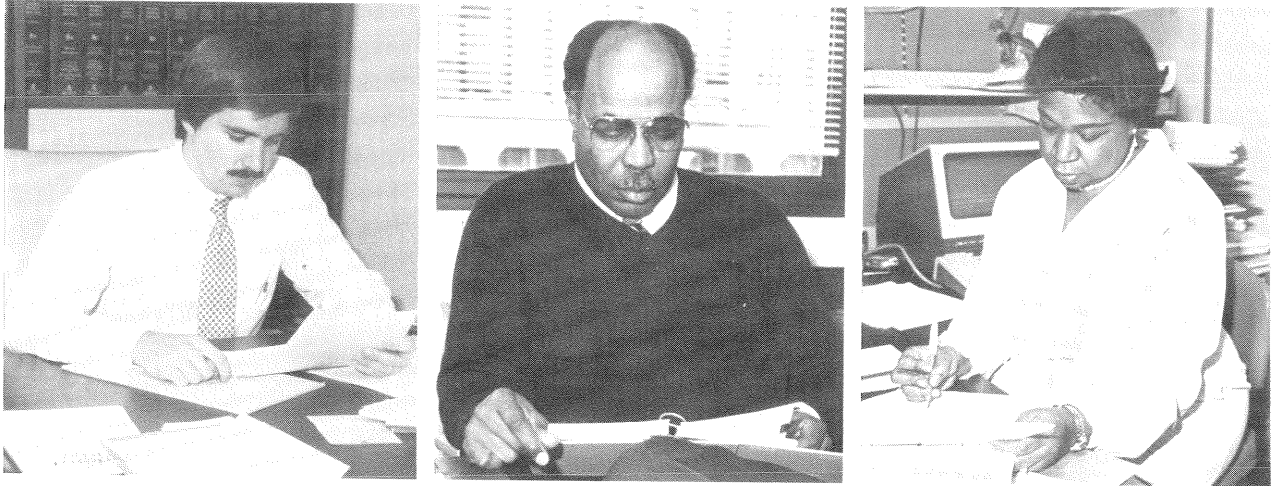
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OFFICE OF THE SPECIAL COUNSEL



December, 1984



Introduction

The Office of the Special Counsel (OSC) was established in 1979 by Reorganization Plan Number 2 of 1978; its functions and powers were enlarged by the Civil Service Reform Act of 1978. The OSC is an independent investigative and prosecutive agency, incorporating functions designed to protect the merit system, protect whistleblowers and enforce the Hatch Act. The OSC prosecutes disciplinary and corrective actions before the U.S. Merit Systems Protection Board (MSPB).

The relationship of the OSC to the MSPB may be likened to that of a prosecutor to a court, the Board being the tribunal before which the OSC prosecutes cases. Both institutions work to protect the merit system, thereby protecting the legal rights of those who work within that system and

the agencies in which they are employed. The primary responsibilities of the OSC are:

1. to investigate allegations of activities prohibited by civil service law, rule or regulation, primarily allegations of prohibited personnel practices and, if warranted, to initiate corrective or disciplinary actions;
2. to operate a secure channel through which civil servants may report allegations of waste, fraud, mismanagement, abuse of authority or a substantial and specific danger to public health or safety without fear of being identified publicly, and to require executive branch agencies to respond to those allegations;
3. to enforce the Hatch Act.



Summary

FY 1984 saw the Office of Special Counsel evolve as a law enforcement agency. The centralized structural organization and the role of field offices facilitated this evolution. All allegations are received and screened in the Headquarters by attorneys, investigators and personnel specialists. Meritorious allegations are sent to the investigators. Experienced criminal investigators and supervisors have been employed and have trained pre-existing staff in law enforcement investigative techniques. Investigations are field oriented, highly focused and intense. Administrative subpoenas are routinely issued and enforced; sworn, transcribed interviews are common practice. Witnesses, subjects and targets may be represented by counsel during interrogation. Persons who provide knowingly false information or statements to OSC investigators may be referred to the Attorney General for criminal prosecution.

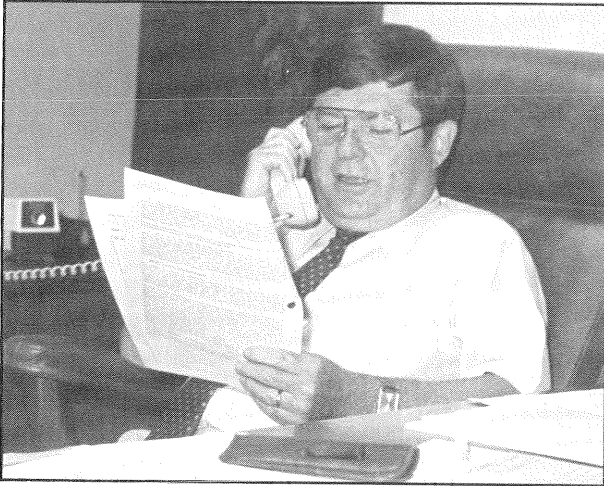
The object of law enforcement investigation is to obtain evidence with which to enforce the laws. That object is being attained. Reports of investigation are analyzed by staff attorneys and prose-

cutions are initiated where appropriate. No case recommended for prosecution by senior career staff has ever been declined by the incumbent Special Counsel.

FY 1984 was a year of continued budgetary stability, and consolidation of resources. It was the first year reflecting the results of the course change set during the previous year toward disciplinary prosecution of those who violate the law. October 1984 concluded the second year of the tenure of the current Special Counsel as the agency head, a longer period than any prior incumbent. Consistency of policy has helped stabilize the agency.

As the new fiscal year opened, a total of 844 matters were carried over from FY 1983. In addition, during FY 1984, the agency received 1,626 new matters relating to the three primary statutory responsibilities.

At the close of the FY 1984, 2,055 matters had been processed and resolved. Only 416 matters were carried over into fiscal year 1985, less than half the number OSC had carried into FY 1983. All other matters had been resolved.



Operations Management Division

In OSC administration, the most noteworthy occurrence was the severance at the end of FY 1984 of the Office of the Special Counsel's administrative interaction with the MSPB.

In July, the MSPB Chairman and the Special Counsel jointly announced the establishment of separate administrative operations for the two agencies. Both agency heads agreed that the administrative reorganization would enhance the efficiency of the respective agencies. This change in administrative functions was accomplished by October 1, 1984.¹

The change necessitated modification of the OSC's operations management division. That division assumed full responsibility for all OSC general ledger accounting, payroll, and procurement, in addition to its previous functions.

The separation of the agencies is friendly and cooperative. OSC provides MSPB with computer

services on a reimbursable basis, so MSPB does not need to purchase such equipment and software; MSPB graphics staff assists OSC on a reimbursable basis and loans OSC costly equipment when required.

OSC computer capabilities were improved during the fiscal year. New systems were established to permit the office to compile and use data on cases in litigation more extensively, acknowledge the receipt of complaints more quickly and expedite the examination of new complaints. In addition, investigative control systems, senior staff use of personal computers and improved funds control systems are being installed and should be operational by the end of the first quarter of FY 1985.

Budget and staffing were stable during the year. OSC achieved its 86 full time equivalency (FTE) personnel ceiling during FY 1984 within the

¹ An appropriate notice was published in the Federal Register, 49 Fed. Reg. 40131 (October 12, 1984).



authorized budget of \$4.444 million. At the same time, productivity improved quantitatively and qualitatively.

During FY 1984, OSC personnel-payroll and accounting systems were transferred to the Department of Agriculture, National Finance

Center (NFC) System because the previous federal payroll service was discontinued.

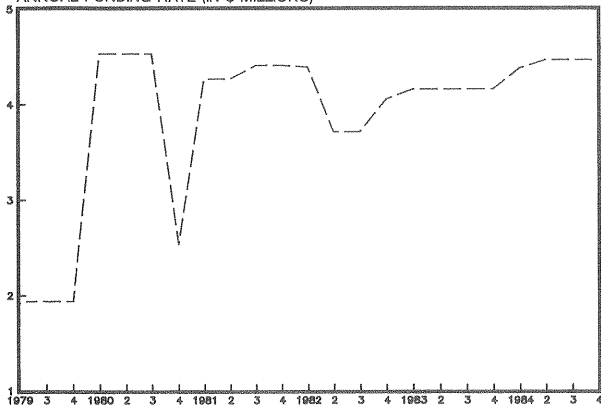
The Administration's Civil Service wide goal of 135 square feet of office space per person was achieved by OSC in FY 1984 by relocation and consolidation. This management economy

OFFICE OF THE SPECIAL COUNSEL FUNDING RATES

JANUARY 1, 1979 TO PRESENT

— AUTH. RATE

ANNUAL FUNDING RATE (IN \$ MILLIONS)



CRG200. FISCAL YEAR QUARTERS

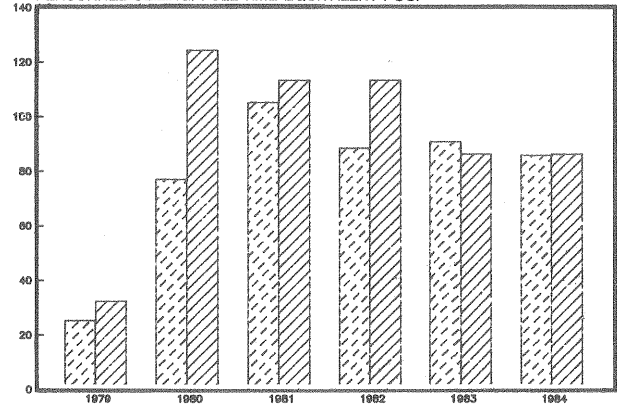
PERSONNEL CEILINGS AND ON BOARD STRENGTH

FISCAL YEARS 1979 THROUGH 1984

ACTUAL FTE POS. USED

POSITIONS AUTHORIZED

PERSONNEL CEILING/FULL-TIME EQUIVALENT POS.



CRG216. FISCAL YEAR



improves control and integrates function by permitting the entire central office staff to share common space.

The Chicago field office was closed after senior career staff review revealed continued operation of that field office was not cost-effective. Workload and staff positions were absorbed into the

central office. The five field office staff members were offered lateral transfer to the Headquarters office. The investigators did so. The attorney and clerical staff chose not to move to the central office and were given three months notice to obtain other employment.



OSC Outreach

The Special Counsel has placed great emphasis upon outreach to improve and maintain communications and respond to legislative inquiries which span the OSC program.

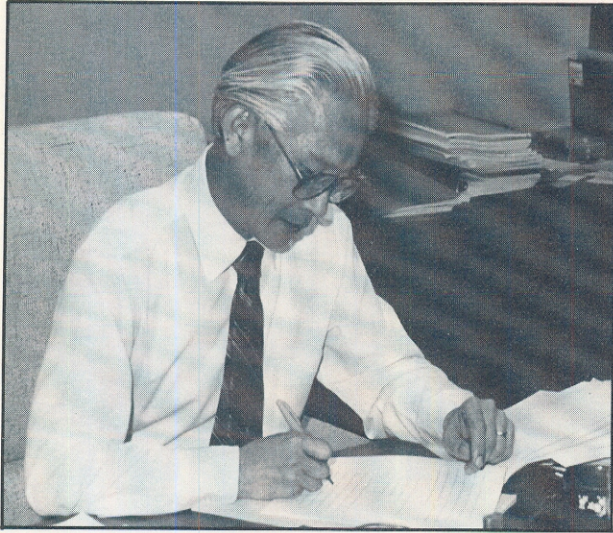
The activities of the Office of Congressional and Public Relations have been designed to increase awareness among federal employees of the provisions of CSRA, the Hatch Act and the role and responsibility of OSC.

The Office of Congressional and Public Relations is staffed with two full-time employees. The Director of that office is charged with maintaining a liaison with the Congress, the press and the public. The operating divisions are routinely tasked with information retrieval projects to provide prompt response to frequent inquiries.

During the year two new posters dealing with whistleblowing and prohibited personnel practices were designed and printed. In addition, a new

information booklet on the Hatch Act and political action committees was published. As of September 30, a pamphlet planned for general distribution entitled "The Role of the Special Counsel" was awaiting publication.

During FY 1984, the Office of Congressional and Public Relations distributed over 79,000 copies of OSC informational materials to the public and Congress. In addition, the Office responded to an average of 300 press and Congressional inquiries per month, and produced and dispatched some 2,300 letters to the press, Congress and the public. Automated systems including personal computers have been installed to promptly and accurately track matter-related inquiries from Congress and the Executive branch. Continued emphasis on outreach and responsiveness is planned in FY 1985.



Investigation Division

Matters to be investigated are assigned either to the Headquarters Investigative Unit of the Investigation Division or to a field office. The Headquarters Investigative Unit was composed of 11 investigators at the end of FY 1984. The Special Counsel has intensely recruited for investigators with criminal law enforcement backgrounds. OSC investigators who now comprise this unit formerly served in such agencies as the Intelligence Division of the Internal Revenue Service, the U.S. Naval Investigative Service, the Air Force Office of Special Investigations, Offices of Inspectors General, the Internal Affairs Division of the Washington, D.C. Police Department, and state or local law enforcement agencies.

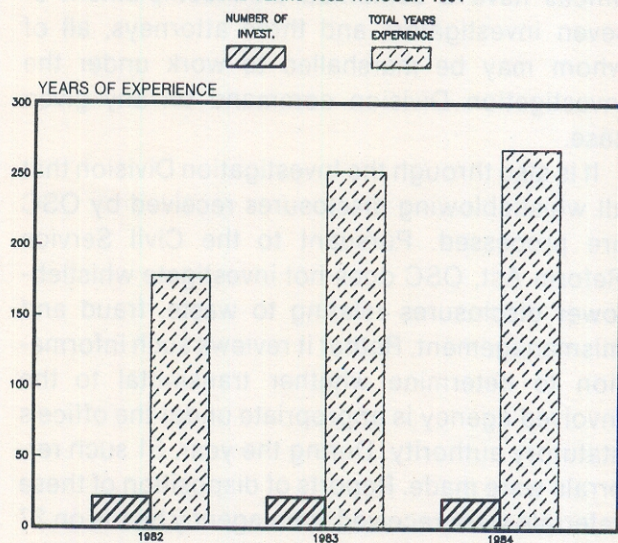
Prohibited personnel practices are violations of law in which complex questions of intent and motivation are ordinarily at issue. They must be investigated like any other infraction of law. The analysis, tactics and methods for investigating criminal offenses of such complexity are directly applicable to those violations of Title 5 which OSC seeks to identify and prosecute. While all phases of a case are important, the most time and resource consuming part is its investigation. No prosecution can or should be brought without

reliable evidence. The duty of the Investigation Division is to obtain that evidence or ascertain that it does not exist.

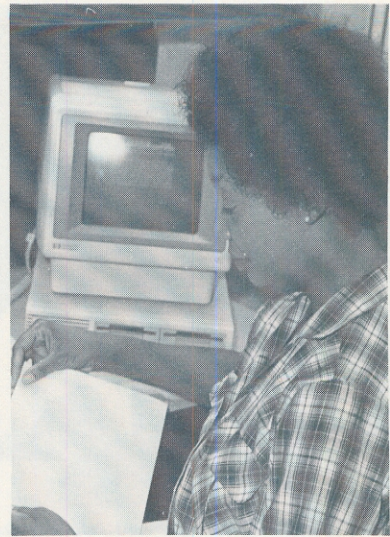
That the above staff, philosophical and procedural shifts in OSC investigations have been successful is well-illustrated by the success OSC has

INCREASE IN TOTAL YEARS OF INVEST. EXPERIENCE

FISCAL YEARS 1982 THROUGH 1984



CRG231 PROFESSIONAL INVESTIGATIVE WORK FORCE



Investigation Division

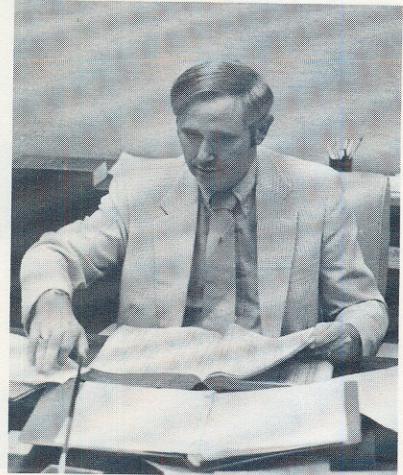
achieved in FY 1984 in recommended corrective actions taken by agencies and by the marked increase in plea bargaining by respondents in OSC prosecutions before the MSPB.

The Headquarters investigative unit gives close technical supervision and assistance to all investigations conducted by the remaining two field offices in Dallas and San Francisco. These field offices have a combined staff complement of seven investigators and three attorneys, all of whom may be marshalled to work under the Investigation Division command on any given case.

It is also through the Investigation Division that all whistleblowing disclosures received by OSC are processed. Pursuant to the Civil Service Reform Act, OSC does not investigate whistleblower disclosures relating to waste, fraud and mismanagement. Rather it reviews such information to determine whether transmittal to the involved agency is appropriate under the office's statutory authority. During the year, 51 such referrals were made. Reports of disposition of these referrals were received from agency heads on 37 such matters. A more extensive report on this activity is contained in the chapter on Whistleblowing.

During FY 1984, the complete OSC manual on investigative jurisdiction, methods and procedures (issued for the first time in December of 1982) was revised and expanded. Also during FY 1984, all investigative staff were given training to maintain and expand investigative skills. Such training is to be continued on a regular basis to improve the quality of investigative results.

In FY 1983, the Special Counsel designated the head of the Investigation Division to serve as the Inspector General for OSC. In that role, the Associate Special Counsel for Investigation maintains special law enforcement liaison with the Inspector General community, including advising agency Inspectors General every month of all matters pending in OSC which relate to their agencies. This exchange of information avoids unnecessary duplication of investigative activity. This liaison has proved useful to the Inspector General community as well as the OSC. Joint investigations and information sharing enhance the effectiveness of OSC investigative operations.

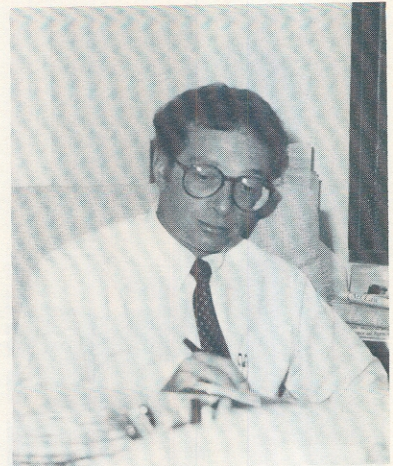
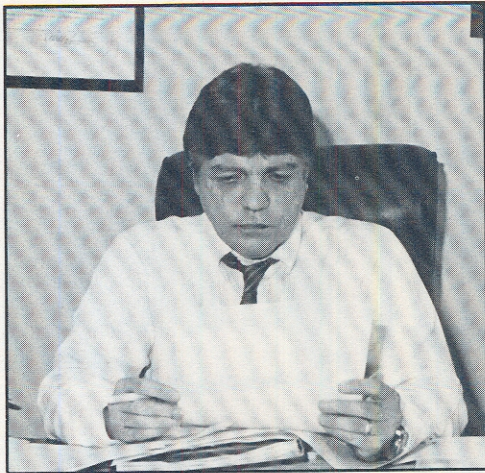


Prosecution Division

Examples of such coordinated efforts during FY 1984 are as follows:

- In one matter, the Office of the Inspector General of the Department of Agriculture participated in an OSC investigation of alleged prohibited personnel practices and other alleged violations by certain managers and supervisors. The investigation disproved the allegations of prohibited personnel practices, but revealed to the Inspector General a number of questionable or imprudent administrative practices which management was in the process of correcting.
- In another matter growing out of joint investigative activity, the Inspector General of the Department of Housing and Urban Development (HUD) assisted the OSC in obtaining agency corrective action in the form of a personal statement by the Secretary of HUD, published in the agency newsletter. The statement cautioned agency managers against taking reprisals against employees for whistleblowing to the Inspector General.
- An allegation of Hatch Act violations was forwarded by the Inspector General of the Veterans Administration. Following investigation, charges were filed against the subject of the referral. This case is currently pending a final Board order.

The Special Counsel also attempts to maintain close cooperation with other agencies' investigative offices. For instance, in October 1983, an Office of Personnel Management regional director referred to the OSC the results of an OPM investigation that indicated possible prohibited personnel practices by an office manager in a component of the Department of Health and Human Services (HHS). The OPM investigation raised questions of unauthorized preference in the promotion of employees within the office. OPM also advised HHS of the matter. The matter was investigated by OSC with participation by the HHS Office of Personnel Systems Integrity, so that determinations could be made as to whether any violations of HHS policies or practices warranted corrective action.



Prosecution Division

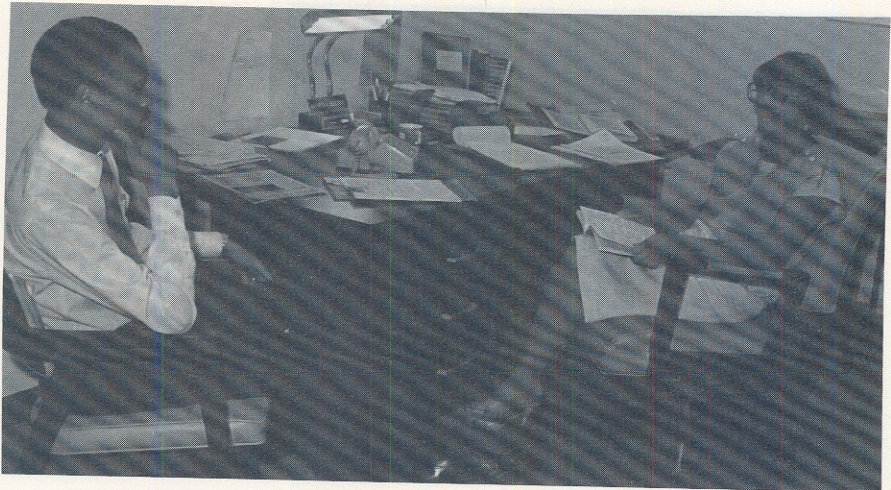
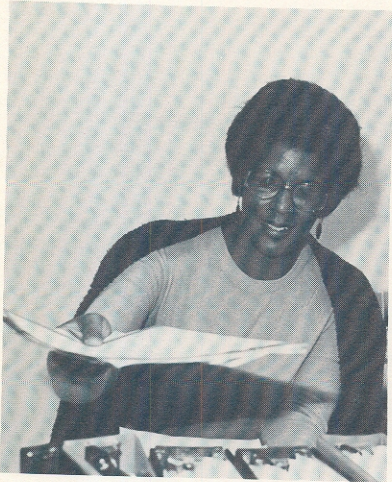
Matters are processed through the OSC with an eye toward disciplinary prosecution and institutional corrective action. During FY 1984, disciplinary action was initiated against two employees for whistleblower reprisal, and against six employees for other prohibited personnel practices or other violations of civil service laws. In addition, charges were prosecuted against five employees for Hatch Act violations. Corrective action was initiated in five cases. Two petitions for stays were filed with the MSPB and OSC intervened in two matters pending before the MSPB.

During the fiscal year eleven cases involving disciplinary sanctions went to trial before administrative law judges. Five of the cases tried involved, *inter alia*, charges of reprisal for whistleblowing, four involved other prohibited personnel practices and two were Hatch Act cases. In addition, two Hatch Act cases and one case which charged an employee with granting an

unlawful preference in a personnel action were settled when the charged employees submitted to disciplinary sanctions rather than trial.

OSC filed two subpoena enforcement actions in Federal District Courts. In addition, OSC staff coordinated with various United States Attorneys offices in defending eleven lawsuits brought against OSC in Federal District Courts during FY 83 and FY 84. Motions to dismiss the complaints were granted in three of these cases during FY 84, and the other eight were pending at the close of the fiscal year.

Under an agreement between OSC and the U.S. Attorney for the District of Columbia, 75 percent of OSC's Headquarters trial attorneys have served, or are serving, in details to the U.S. Attorney's office (as Special Assistant U.S. Attorneys) for 120-180 day assignments to gain litigation experience, further enhancing the prosecutive capabilities of the office.



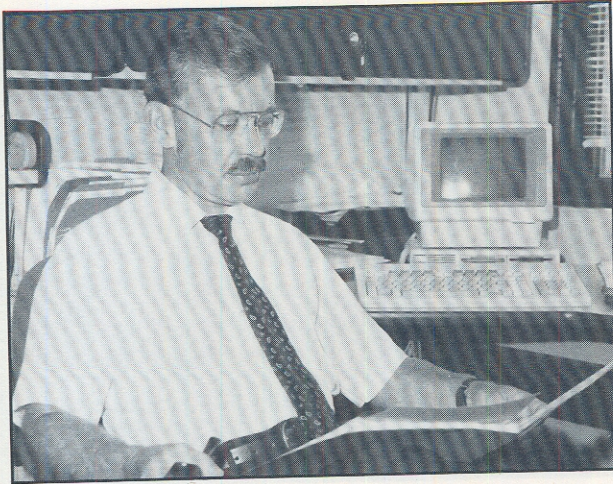
Prohibited Personnel Practices

Within the Prosecution Division, the Complaints Examining Unit (CEU), first established in September 1983, conducts initial examination and statutorily required preliminary inquiry into all new complaints and allegations. This centralized front-end review ensures constant policy application and early assessment of the substance and prosecutive potential of each new matter received. Those matters found through these screening procedures to merit further inquiry are immediately assigned to the Investigation Division or field office for full field investigation. This procedure ensures quality control over all initial determinations and expedites the disposition of matters not warranting full field investigation. The procedure also assures official OSC staff contact with each complaint, so there is no misunderstanding of the nature and scope of the complaint or allegation.

FY 1984 was the first full year of activity for CEU. That unit has materially aided in reducing the average time required for resolution of matters from over 200 to less than 108 days.

If, in connection with any investigation, the Special Counsel determines there is reasonable cause to believe that an employee has committed a crime, the Special Counsel is required by statute to report the matter to the Attorney General. 5 U.S.C. § 1206(c)(2)(A). The Special Counsel also may refer matters to the Attorney General under the general requirement of 28 U.S.C. § 535.

During FY 1984, the Supreme Court held that any person who gives knowingly false information to a representative of a law enforcement agency concerning any matter within the agency's jurisdiction is guilty of violating 18 U.S.C. § 1001. *United States v. Rodgers*, 104 S. Ct. 1942 (1984). Accordingly, any person who gives knowingly false information or statements to OSC investigators will be the subject of a referral to the Attorney General for consideration of criminal prosecution.



Prohibited Personnel Practices

The personnel practices specifically prohibited by the CSRA of 1978 are codified at 5 U.S.C. § 2302(b) and provide the standard for CEU and OSC general operations. Complainants generally allege violations of one or more of these provisions. The statute provides that any person who has the authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority:

- Discriminate on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation;
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job related abilities or characteristics;
- Coerce the political activity of any person;
- Deceive or willfully obstruct any person from competing for employment;
- Influence any person to withdraw from competition for any position in order to improve or injure the employment prospects of any other person;
- Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant;
- Engage in nepotism (hire or promote relatives or advocate such activity);
- Take reprisal against a whistleblower;
- Take reprisal against an employee for exercising an appeal right;
- Discriminate on the basis of personal conduct which does not adversely affect job performance of the employee, applicant or others;
- Take a personnel action violating any law, rule or regulation implementing or directly concerning merit system principles codified at 5 U.S.C. § 2301.

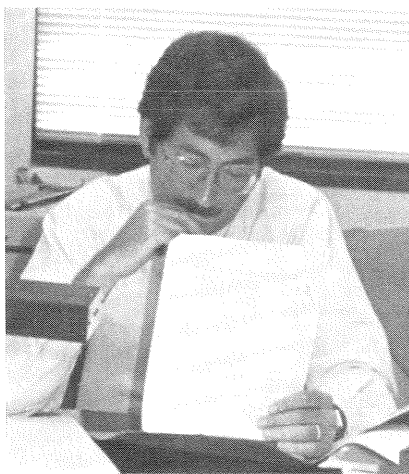


While unlawful discrimination is a prohibited personnel practice within OSC jurisdiction, Congress has left intact the procedures for investigating certain discrimination complaints already established in the agencies and the Equal Employment Opportunity Commission (EEOC). Accordingly, the Special Counsel normally defers such matters to agency or EEOC procedures rather than initiate redundant independent investigations (5 C.F.R. § 1251.3). During FY 1984, 374 such complaints were so deferred. However, where there is evidence of particularly egregious conduct, the Special Counsel investigates certain allegations of sexual harassment, and racial and religious discrimination, rather than defer to the EEOC procedures. This is done in order to seek disciplinary sanction against the law violator, a remedy unavailable to EEOC.

Allegations of unlawful discrimination not under the jurisdiction of EEOC (discrimination because of marital status and political affiliation, 5 U.S.C. § 2302 (b)(1)(E)), are processed by the Special Counsel as any other allegation of a prohibited personnel practice.

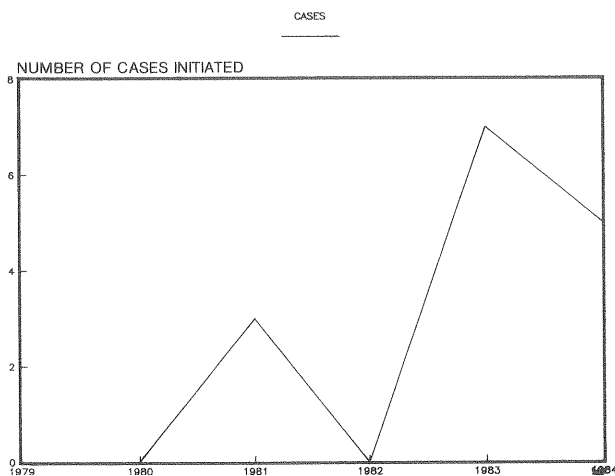
Resolution of complaints of prohibited personnel practices may be achieved in a number of ways if the investigation shows that the law was broken. For example, the OSC may:

- Investigate and, if necessary, request an order from MSPB to stay any personnel action pending completion of the investigation.
- Report the findings of the investigation to the agency head, the MSPB, the Office of Personnel Management and, if appropriate, to the President and recommend that the agency take corrective action. If the corrective action recommended by the Special Counsel is not taken, he may petition the MSPB to order corrective action. Such an action is civil in nature and lies against the agency, rather than an individual.
- Initiate disciplinary action before the MSPB against the law breaker individually. In such cases the agency is not a named party. The array of sanctions which the MSPB may impose upon the law breaker include: removal from federal service; reduction in grade; debarment from federal employment for a period not to exceed five years; suspension; reprimand; and assessment of a civil penalty not to exceed \$1,000.



During FY 1984, 1,378 complaints that alleged prohibited personnel practices were received. This number represents 84.5 percent of the total intake of the office during FY 1984 (1,626). Of the 1,378 complaints received, 204 (14.8%) alleged reprisal for whistleblowing.

**DISCIPLINARY ACTION CASES
FILED BEFORE MSPB (EXCLUDING HATCH ACT)**



CR227. FISCAL YEAR — 15 CASES

Disciplinary actions were initiated against 13 employees during the year. The following is a brief synopsis of the non-Hatch Act cases filed:

- Special Counsel v. DeFord and Julian

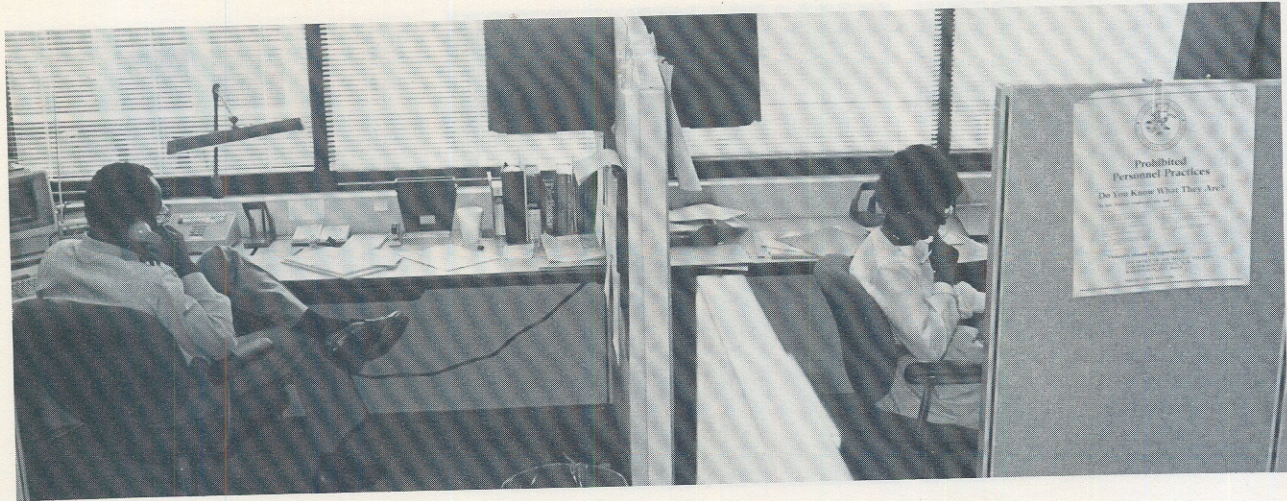
DeFord, Director of the Office of Administration, EPA, Triangle Park, North Carolina, and Julian, Personnel Officer, Office of Administration, EPA, Triangle Park, North Carolina, were prosecuted for improperly promoting a subordinate employee.

Julian conceded liability and submitted to a 90 day suspension without pay. He testified against DeFord in a hearing on the charges. The case pended before an ALJ at the end of FY 1984.

- Special Counsel v. Russell

Russell, Comptroller of the U.S. Customs Service, was charged with sexually harassing and assaulting female subordinates.

OPM and Russell contend that OSC lacks jurisdiction of the offense, which was referred to OSC by the U.S. Attorney for the District of Columbia. The jurisdiction issue pended before an ALJ at the close of FY 1984.



- Special Counsel v. Williams

Williams, former Deputy Director of the Federal Mediation and Conciliation Service (FMCS), was charged with improperly accepting gifts from his subordinates and with violating standards of conduct.

Although Williams conceded jurisdiction, OPM and FMCS challenged the jurisdiction of OSC. The jurisdiction issue pended before an ALJ at the end of FY 1984.

- Special Counsel v. Evans-Hamilton

Evans-Hamilton, Administrative Officer, Veterans Administration, Medical Research Service, Veterans Administration Medical Center, Kansas City, Missouri was charged with improperly influencing an applicant to withdraw from competition and granting an unauthorized preference to another candidate. Evans-Hamilton conceded the violation and submitted to a 30 day suspension without pay.

- Special Counsel v. Falt and LeDuc

Falt, formerly a Budget Officer, United States Army Installation Support Activity Europe (ISAE) and LeDuc, Deputy Chief, U.S.

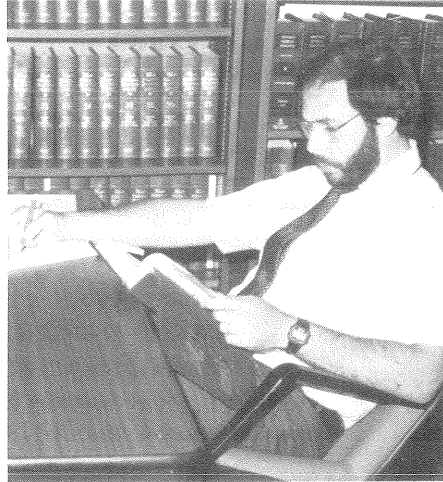
Army Installation Support Activity Europe (ISAE) were charged with reprisal for whistleblowing. The cases were pending hearing before an ALJ at the close of the FY 1984.

- Special Counsel v. Everett

Everett, a civilian employee with the North Carolina Air National Guard, was charged with reprisal against a subordinate for the subordinate's exercise of an appeal right. The case was pending hearing before an ALJ at the close of FY 1984.

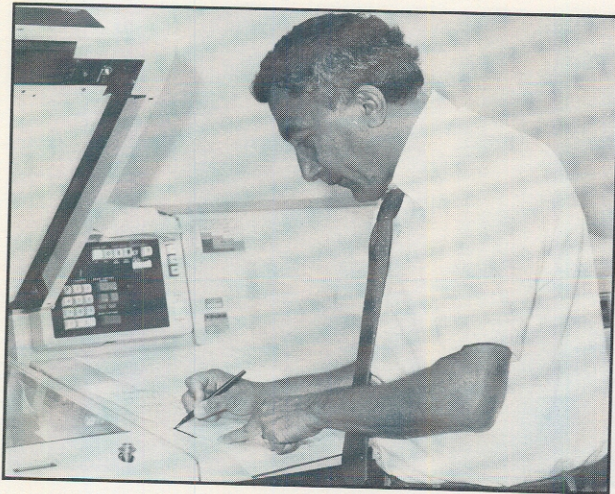
In FY 1984, OSC requested two stays of personnel actions on behalf of the complainants and filed two requests for extensions of those stays. The stay actions were in connection with an investigation of alleged reprisal for whistleblowing and an investigation of alleged discrimination for political beliefs.

During FY 1984, the office also intervened in two matters. In one matter OSC intervened to correct a presiding official's misinterpretation of the regulations and Federal Personnel Manual instructions involving nepotism. This matter was pending before the Board at the end of the fiscal year.



In the other matter OSC intervened in an appeal to the MSPB by two employees, who had been disciplined by an agency for drug abuse and for lying to a statutory Inspector General. OSC intervened on the side of the agency to present evidence against the employees. The evidence was obtained during an OSC investigation coordinated with the Inspector General. This matter too was pending before the Board at the close of the fiscal year.

OSC sent five corrective action letters to agency heads. In two, corrective action had been taken at the end of the year by the agency head. In one, a reassignment was reversed; in the other, disciplinary action was imposed for employee misconduct detected in the investigation. The remaining requests for corrective action pended agency response at the end of FY 1984.



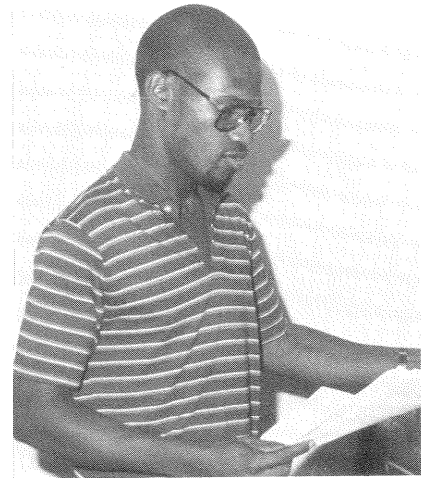
Whistleblowing

In addition to its investigative and prosecutive mission, OSC also operates as a channel to receive disclosures of wrongdoing and mismanagement from current and former Federal employees. The Civil Service Reform Act created this system and gave the Special Counsel unique authority to require the heads of agencies in the Executive Branch to investigate serious allegations and to furnish written reports to OSC of the investigative findings and consequences.

Employee disclosures are received and analyzed in OSC's Investigation Division. The analysis, which usually involves a series of contacts with the discloser, is to determine whether there exists a substantial likelihood that the information disclosed evidences one of the categories of wrongdoing or negligence enumerated in the statute, 5 U.S.C. § 1206(b)(1). Once a determination is made, the information is referred to an agency in one of three ways:

- In serious matters, under the statute, the Special Counsel by letter formally requires the head of the agency to cause an investigation of the allegation and report the results to OSC in writing, signed by the agency head personally. 5 U.S.C. §§1206 (b)(3), (4)
- In less serious matters, under the statute, the information is referred by letter to the head of the agency for appropriate action. The agency head is required by statute to report to OSC what action will be or was taken on the information. 5 U.S.C. §§ 1206(b)(2), (7).
- Where the source of the information is anonymous or is not a Federal employee, or where the merits of the information cannot be assessed, the Special Counsel informally transmits the information to the agency Inspector General for action as appropriate. Inspectors General may provide reports of any results from the information.

The identity of the discloser of information to OSC is never revealed without that person's consent. Where necessary, the information sent to the agency head is redacted to conceal the identity of the source. If the agency official responsible for the investigation requires additional information in the course of the investigation, OSC acts as intermediary unless the source waives confidentiality.



When a report is received from an agency, Investigation Division officials evaluate it and frequently request comments from the source. Once the agency's report is determined to be reasonable as to findings and sufficiently thorough, OSC accepts it, and provides copies to the President and the Congress. The discloser is given a copy of the report from which any information protected by law from disclosure is deleted. An identical version is placed in a file available to the public.

A failure by an agency head to provide such a report must be reported by the Special Counsel to the President and the Congress. No such failure has occurred in this reporting period.

OSC is only authorized to review, rather than investigate, whistleblower allegations unless the allegations implicate a complaint of a prohibited personnel practice or other violation subject to OSC jurisdiction. In evaluating agency action on whistleblower allegations beyond OSC investigative jurisdiction, OSC may confer with the source

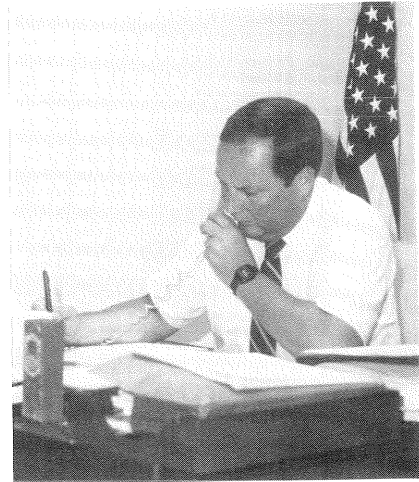
of the information and the Inspector General of the agency. The reports of agency heads are evaluated based on the statutory standard, logic, and investigative experience. Where agency Inspectors General have been assigned by the agency head to investigate a Special Counsel complaint, the results are uniformly satisfactory. The overwhelming trend is for agency heads to submit these whistleblower investigations to their Inspectors General.

Schedule of Complaints Received

FY 1984	Beginning disclosures on hand	22
FY 1984	New matters received	131
FY 1984	Ending balance on hand	9

Schedule of Matters Referred

Investigation and Report Required (5 U.S.C. §§ 1206(b)(3), (4))	8
Report Only Required (5 U.S.C. §§ 1206(b)(2), (7))	33
Informal Referral to I.G.	54



Schedule of Matters Closed

5 U.S.C. § 1206(b)(4) report	6
5 U.S.C. § 1206(b)(7) report	24
Informal Referrals to IG	48
Closed without Referral	55 ¹

¹ OSC does not refer purported allegations which are incomprehensible or not cognizable under law.

Schedule of Reports Received

Reports of Investigation (5 U.S.C. § 1206 (b)(4))	5
Reports of Action Taken (5 U.S.C. § 1206(b)(7))	24
Informal Reports from IGs)	10

The following are illustrative of the types of matters referred and the improvement of government which resulted.

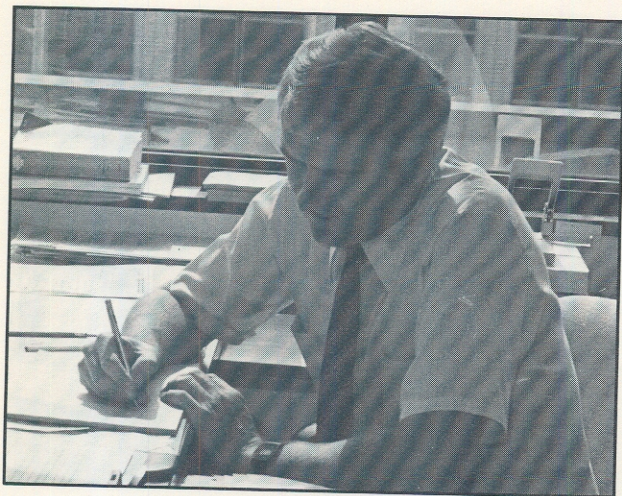
- By formal requirement to investigate, the Special Counsel referred allegations from a Department of Army employee that wide-

spread travel fraud was being committed and was being overlooked in the Corps of Engineers. The first report returned to OSC by the agency concluded that no genuine problem existed. The whistleblower, however, having pointed out to OSC the defects in the initial report, also agreed to disclose his identity to the Department of the Army to assist in further inquiry. After over one year of extensive and intensive investigation, over \$350,000 in fraudulent travel claims have been confirmed. Either criminal prosecution or administrative action has been taken against over 150 Army employees and the Army's financial reporting system has been revised. The Army investigation continues.

- In response to a formal requirement to investigate, the Administrator of the Veteran's Administration reported that he had confirmed the whistleblower's allegations of widespread waste by the VA in providing unauthorized treatment contrary to both law and stated VA policy. The Administrator estimated the fiscal year 1982 cost of this practice to be \$82.6 million. The VA has moved to prevent the improper practices.



- In response to a formal referral of information received, the Department of Interior, in the person of its Inspector General, reported that three employees were disciplined and restitution made for conversions of government property to private benefit within the Bureau of Indian Affairs.
- In response to a formal referral of information received, the Secretary of the Army reported that one employee resigned and another was reprimanded.
- In response to a formal referral of information received, the Attorney General reported that allegations of mismanagement within a component of the Department of Justice were substantiated. The specific systems and procedures involved were rectified and one employee resigned.
- In response to a formal referral of information received, the Administrator of the Veteran's Administration reported that the VA substantiated some allegations of improper leave and overtime authorization on the part of a VA physician. The physician resigned after the VA informed him that his employment would be terminated on the strength of the findings.



Hatch Act

The Office of the Special Counsel is the only federal agency charged with responsibility for enforcing the provisions of the Hatch Act. By statute the office is required to investigate allegations of prohibited political activity and, when appropriate, prosecute employees who violate the law before the MSPB. The discretion to authorize prosecution lies with the Special Counsel.

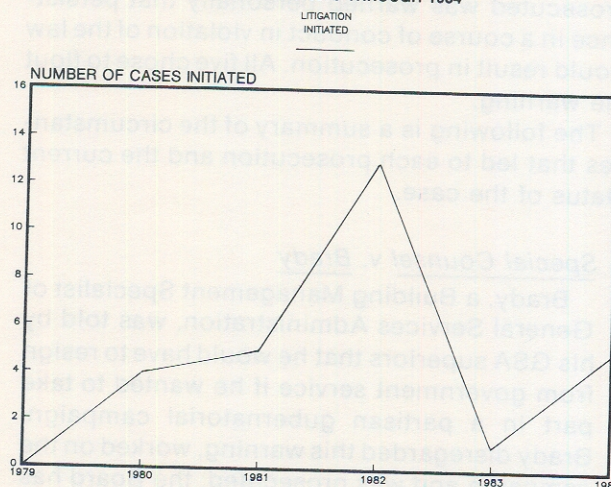
A total of 69 allegations were carried over from FY 1983. During FY 1984, a total of 93 allegations of Hatch Act violations were received by the OSC. By the end of FY 1984, a total of 137 Hatch Act matters had been closed leaving 25 matters carried over to FY 1985.

In the tenure of the current Special Counsel, since October of 1982, emphasis on OSC Hatch Act enforcement has focused primarily upon educating those covered by the law to encourage voluntary compliance, proceeding upon the generally accepted law enforcement theory that prevention of violation is more efficient than apprehension and prosecution. During FY 1984, in excess of 79,000 employees, Congressional staff members and members of the public were provided information on the Hatch Act through informal telephone and formal written advisory opinions, briefings and speeches to groups of

employees and publications prepared and distributed by OSC.

In an effort to conserve resources and to fairly apply the law, the office makes extensive use of advisory and warning letters. These letters advise individuals that OSC has received information indicating a violation of the Hatch Act,

HATCH ACT LITIGATION INITIATED
FISCAL YEARS 1979 THROUGH 1984



CR220. TOTAL OF 28 CASES



and provide an opportunity for the employee to correct the situation without undergoing formal prosecutive action. During FY 1984, 53 individuals received warning letters.

Between October of 1982 and the end of the fiscal year, only six disciplinary complaints were filed with the MSPB against employee for violations of the Hatch Act. Five of these were prosecuted during FY 1984. In all five, the employee prosecuted was warned personally that persistence in a course of conduct in violation of the law would result in prosecution. All five chose to flout the warning.

The following is a summary of the circumstances that led to each prosecution and the current status of the case.

- *Special Counsel v. Brady*

Brady, a Building Management Specialist of General Services Administration, was told by his GSA superiors that he would have to resign from government service if he wanted to take part in a partisan gubernatorial campaign. Brady disregarded this warning, worked on the campaign and was prosecuted; the Board has ordered Brady's suspension without pay for 60 days.

- *Special Counsel v. Bacan*

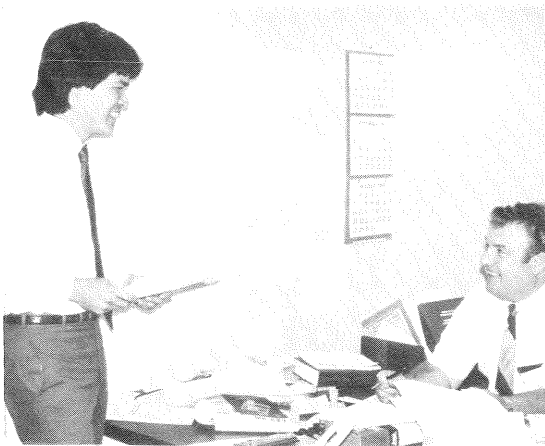
Bacan was a Coal Mine Safety and Health Inspector in Washington, Pennsylvania. The Special Counsel sent Bacan a letter informing him that a prior candidacy for school board director had violated the Hatch Act, and that, while he would not now be prosecuted for that earlier violation, becoming a candidate for reelection would result in prosecution. Bacan was also similarly advised by his agency superiors.

Bacan did not withdraw his candidacy, and was re-elected. He resigned from federal employment after the charges were filed.

- *Special Counsel v. Chidlow*

Chidlow was charged with being a partisan candidate by running in an election for a school board position. Agency officials had warned him that candidacy in a partisan election was prohibited; OSC warned Chidlow to withdraw. Chidlow continued his candidacy and OSC prosecuted.

The MSPB ordered Chidlow suspended for 45 days without pay.



- *Special Counsel v. Johnson*

Johnson is a Letter Carrier with the United States Postal Service, at the Edison Park Station, South Bend, Indiana. Despite warning from a postal service personnel manager that partisan political activity is forbidden under the Act, Johnson filed a petition with the Clerk of Cass County, Michigan, to have his name placed on the ballot as a candidate for Cass County Commissioner for the 7th District Democratic primary.

An OSC investigation was initiated into Johnson's partisan political activities; an OSC advisory letter informed him that he had violated the law by running for partisan political office and must not run again.

Despite the warning letter, Johnson ran for re-election. The Special Counsel filed charges which are pending before an ALJ.

- *Special Counsel v. Mahone*

Mahone was an employment specialist for the Employment and Training Administration (ETA) of Lake County, Indiana. Mahone was an Indiana County employee covered by the Hatch Act. Mahone ran for elective office in a partisan election, after having been warned by her agency that to do so would violate the Hatch Act. After hearing and appeal, the Board ordered Mahone removed from employment.



Legislation

Although there are ambiguities as to the scope of the enabling legislation establishing OSC, the Special Counsel adheres to the position taken in confirmation hearings in 1982. At that time, the current Special Counsel testified before the Senate Committee on Governmental Affairs that "I am a conservative when it comes to legislation until a full and fair opportunity to explore and interpret existing legislation has been undertaken." At that time, the scope of existing OSC jurisdiction had not been fully explored through litigation and judicial interpretation.

The litigative activities of the OSC during the last fiscal year express the interpretation of the jurisdiction the Special Counsel conceives Congress vested in this office.

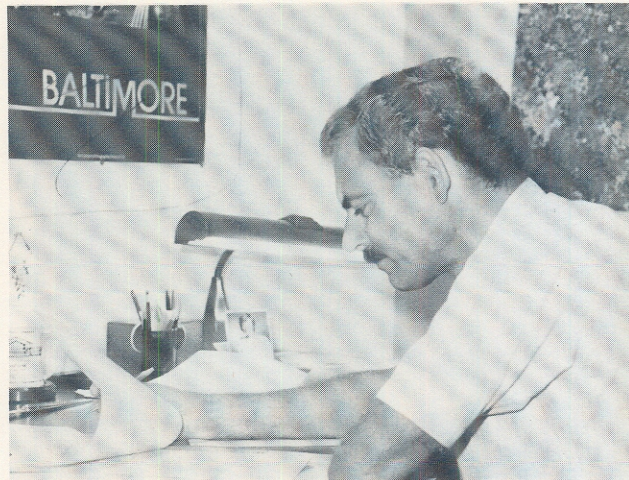
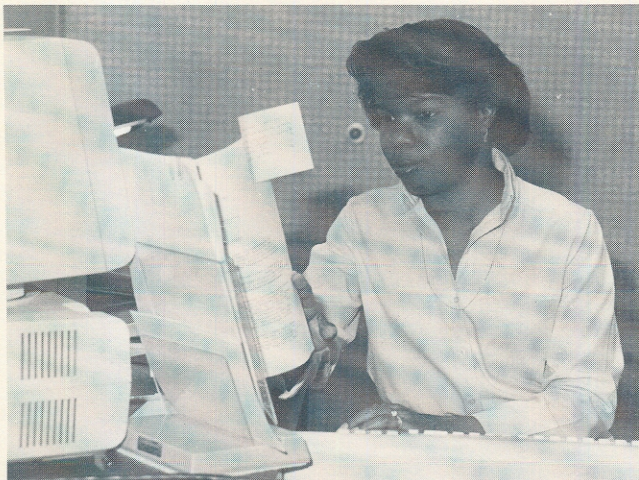
For example, in a case litigated in the first and second quarters of the fiscal year, the issue of witness protection arose. The Special Counsel, notified of allegation of harassment of OSC witnesses, filed a motion with the MSPB to seek agency direction of protection for the witness. The ALJ denied the motion for lack of jurisdiction.

Also, during the fiscal year, the office filed cases before the MSPB charging standards of conduct violations and violations of EEOC sexual harassment regulations. While the OSC conceives that such violations are within its extant jurisdiction, this jurisdiction had never been tested. As of the close of the fiscal year those matters were pending before ALJs, OPM contending that OSC does not have authority to enforce the federal standards of conduct before the MSPB in disciplinary actions.

In another matter, the Special Counsel asserted jurisdiction over civilian technicians of the National Guard. While the Agency filed a motion to dismiss arguing that the Board had no authority to discipline employees of the National Guard, the ALJ denied the motion on the grounds that National Guard technicians are not excluded from coverage. That case pends before the ALJ.

In yet another case involving a motion filed with MSPB requesting issuance of a third party subpoena to OSC for investigative files, the Board implied that the Special Counsel could invoke executive privilege to withhold documents.

The judicial decisions of MSPB finally define the scope of OSC jurisdiction, under the enabling legislation. OSC enforcement processes must be made coincident with the scope set by the MSPB unless the scope is modified by Congress.



Conclusion

Despite the Special Counsel's stance with respect to legislative recommendations, bills were introduced in the Congress which, if passed, would have directly affected the agency. In August of 1984, Senator Charles Grassley introduced S. 2927 which proposed to modify the current empowering statute. The bill received bipartisan support from 21 Senators.¹

Upon introducing the bill, Senator Grassley said:

"...the bill would grant the Special Counsel the authority to better carry out his intended charter... This is a time when the Congress must exercise its chief responsibility in the federal process: that of

serving as a check and balance to the administrative process. It is clear in the case of responsible whistleblowers that remedies must be sought and corrections made. Only where there are remedies can there be rights. The Congress must ensure that our laws and intended ethics do not grow apart.

"For this, the Congress bears a responsibility. It is the responsibility of determining the context in which our civil servants work. If there is a mismatch between the principles espoused in our Code of Ethics on the one hand, and how the work of government is executed on the other, then we will destroy any noble sense of purpose among our civil servants, and feed a cancer of cynicism."

Two days after Senator Grassley introduced S. 2927, Representatives John McKernan (R-Maine) and Barney Frank (D-Massachusetts) introduced identical legislation in the House of Representatives in the form of H. R. 6145. Shortly thereafter, Representative Berkley Bedell (D-Iowa) introduced a third bill, H. R. 6149, also identical to S. 2927.

None of the bills introduced during the 98th Congress affecting OSC were passed.

¹ They were: Robert Dole (R-Kan.), Howell T. Heflin (D-Ala.), Joseph R. Biden (D-Del.), Roger W. Jepsen (R-Iowa), Alan J. Dixon (D-Ill.), Nancy Landon Kassebaum (R-Kan.), William Proxmire (D-Wisc.), Thomas F. Eagleton (D-Mo.), Daniel K. Inouye (D-Hawaii), Earl M. Levin (D-Mich.), George J. Mitchell (D-Maine), Jennings Randolph (D-W.Va.), Don Nickels (R-Okla.), Jeremiah A. Denton (R-Ala.), Robert W. Kasten, Jr. (R-Wisc.), Rudolph E. Boschwitz (R-Minn.), Quentin N. Burdick (D-N.D.), Claiborne Pell (D-R.I.), Wendell H. Ford (D-Ky.), John Melcher (D-Mont.), and John Heinz (R-Pa.)



Conclusion

The Office benefitted during the last fiscal year from staff consolidation, budget and policy stability, and a refined complaint processing structure. Disciplinary prosecution became the prime

litigation focus; and OSC approaches the coming fiscal year as a year of continued vigorous law enforcement.