

Veterans Affairs Whistleblower Coalition

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July 3, 2006

Senator Susan Collins, Chair, Homeland Security and Governmental Affairs Committee
461 Dirksen Senate Office Building
Washington, DC 20510
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Subject: Request for Congressional Oversight of U.S. Office of Special Counsel's (OSC) Compliance with Law in Protecting Federal Employees from Prohibited Personnel PRACTICES (PROTECTED PERSONNEL PRACTICES), Particularly Whistleblower Reprisal

Dear Senator Collins,

I am the Founder and Director of the VA Whistleblowers Coalition (www.VAWBC.com). We are a partner coalition to several other concerned federal employees, respectable colleagues, and other whistleblower coalitions/groups. Our group, comprised mostly of VA practitioners, is growing rapidly with membership throughout our nation. You'll find our members in the same locations that veterans reside...from sea to shining sea! Many of our members have chosen not to have their names posted on our website due to fear of further retaliation by their respective Department of Veterans Affairs (DAV) agencies. In short, our members have endured reprisal by Department of Veterans Affairs officials for disclosing veteran patient harm and/or abuse, or other government waste, fraud, or abuse. Consistently, the Office of Special Counsel (OSC) has failed to protect these brave DAV employees and the veterans they serve. This breakdown in our government is indeed a shameful disservice to DAV employees and the servicemen and servicewomen that anticipate safe, honest, and reliable healthcare.

From working with many skilled and dedicated federal civil service employees for many years on difficult issues including environmental, accounting, public health/safety, and national security, we realize the vital importance that the merit principles of the federal civil service be protected, particularly the prohibition on whistleblower reprisal. While we realize that our national security partners are not covered by OSC oversight, they clearly have expressed similar concerns publicly.

As you know, the recent Supreme Court decision in Garcetti, et al v. Ceballos, denied first amendment protection to a government whistleblower. We all know that concerned federal employees can face difficult decisions. At a minimum, these employees should know - and we want to be able to assure them - that Congress has done and is doing the oversight necessary to

verify the US Office of Special Counsel is complying with its statutory duties to protect them from PROTECTED PERSONNEL PRACTICES.

We understand that OSC has jurisdiction over almost all civilian federal employees, except those in FBI and intelligence agencies. We understand OSC receives almost 2000 PROTECTED PERSONNEL PRACTICE complaints annually and conducted about 25,000 PROTECTED PERSONNEL PRACTICE investigations since its inception as an independent agency by the Federal Whistleblower Protection Act of 1989 (P.L. 101-12). Congress recognized the vital importance of OSC's responsibilities in protecting federal employees from PROTECTED PERSONNEL PRACTICES by inserting the related statutory language in the law - 5 USC 1201 Appendix A.

We understand OSC's statutory obligations to these concerned employees include: 1) investigating the PROTECTED PERSONNEL PRACTICES complaint to the extent necessary to determine whether there are reasonable grounds to believe a PROTECTED PERSONNEL PRACTICE occurred, 2) making such a determination, and, 3) if a positive determination is made, reporting it, in every instance, to the involved agency. We understand the law allows OSC two methods of making its required report - either directly to the head of the involved agency, in which case the agency head must certify a response addressing what the agency will do to correct the PROTECTED PERSONNEL PRACTICE and by when [see 5 USC 1214(e)] - or, in the alternative, or if dissatisfied with the initial agency response, to both the Merit System Protection Board (MSPB) and the agency, as part of establishing jurisdiction for seeking corrective action on behalf of the affected employee, if the agency does not promptly correct the PROTECTED PERSONNEL PRACTICE [(see 5 USC 1214(b)(2)(B)]. Additionally, when OSC terminates a PROTECTED PERSONNEL PRACTICES investigation, it is required to include a "termination statement" in its investigation termination notice as described in the "amendment" section of 5 USC 1214, that allows the employee to talk to an appropriate OSC official about its investigation, its findings, and how the law was applied by OSC.

From a review of recent OSC Annual Reports to Congress, we are unable to tell how many times OSC had made or reported positive PROTECTED PERSONNEL PRACTICES determinations. Additionally, we understand that OSC is required to maintain a public record of every positive PROTECTED PERSONNEL PRACTICES determination reported to the involved agency head, together with the agency head-certified response [see 5 USC 1219(a)(3)]. **We understand, based on a review of documents in OSC's public reading room, that it has not made a single such report since being created in 1989, not in approximately 25,000 PROTECTED PERSONNEL PRACTICES investigations. We also understand OSC recently admitted, in a court proceeding, that it has failed to include the required "termination statements" in approximately 18,000 PROTECTED PERSONNEL PRACTICES investigation termination letters since 1994.**

This raises troubling questions about OSC's compliance with its statutory duties to protect federal employees from PROTECTED PERSONNEL PRACTICES. There should be no doubt, given current events and threats, about OSC's scrupulous compliance with its statutory obligations to protect federal employees from PROTECTED PERSONNEL PRACTICES, and

Congress' commitment to ensuring it. Unfortunately, it now seems there is reasonable ground for such doubt. OSC's scrupulous compliance with its statutory obligations to protect federal employees from PROTECTED PERSONNEL PRACTICES, especially its reporting all its positive PROTECTED PERSONNEL PRACTICES determinations is essential to the heads of agencies complying with their positive obligation to prevent PROTECTED PERSONNEL PRACTICES in their agencies [(5 USC 2302(c)] as well as for agencies to make accurate reports to Congress, per the No FEAR Act [(5 USC 2301, amendment section, section 203(a)].

Therefore, we respectfully request that you promptly take the necessary action to dispel the doubt or correct the situation. Our Country's protection depends, in part, on the willingness of concerned federal employees to responsibly act on their concerns. These employees need to be protected, as the law requires, by OSC. Everyone now needs to know, based on Congressional oversight, this is happening.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Fudin". The signature is written in a cursive, flowing style.

Dr. Jeffrey Fudin
Chair/Founder, VA Whistleblowers Coalition
www.VAWBC.com
518-588-5651

Copied to the following by facsimile:

Senator Steve Buyer, Chairman of the House Veterans Affairs Committee

Senator Hillary Rodham Clinton, Senate Special Committee on Aging

Congressman Tom Davis, Chair, House Government Reform Committee

Senator Joe Lieberman, Ranking Member, Homeland Security and Governmental Affairs Committee

Congressman Michael McNulty, House Ways and Means Committee

Congressman Henry Waxman, Ranking Member House Government Reform Committee

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