May 6, 2018

To: American Patriots - citizens who believe America - to be America to the world - must have a trustworthy federal civil service

From: Joseph Carson, PE - a patriot who is deeply concerned for America - and our unprecedented global civilization's future - Knoxville, TN jpcarson@tds.net 865-300-5831

Subject: How 40 years of failure or refusal to comply with fundamental aspects of the Civil Service Reform Act (CSRA) of 1978 has enabled corruption and dysfunction in federal agencies - leaving a much diminished and more threatened America in 2018

Related Websites:
www.broken-covenant.org www.carsonversusdoe.com www.merit-principles.org

I, Joseph P. Carson, PE, make these unclassified "whistleblower disclosures" consistent with my positive legal and professional duty as a licensed professional engineer (PE) licensed in Tennessee to be "truthful and objective" in such public statements. The codes of ethics of the engineering professional societies to which I belong impose similar requirements.[1]

If these concerns are valid - and no one, anywhere, is now saying that all of them are frivolous - then America is at unnecessarily increased risk of a WMD terrorist attack or other catastrophe and they explain much about what has befallen America since 1978 and besets America now.[2]

Outline of "Broken Covenant" of Civil Service Reform Act of 1978 (CSRA)

Note: The relevant law is not extensive, 5 U.S.C. §§ 1201-1221 and 2301-2306, with particular focus on §§1204(a)(3), 1213, 1214, 2301, 2302, and 2305.

Civil Service Reform Act of 1978 (CSRA), Pub. L. 95-454

CSRA's objectives - create the statutory framework and implementing agencies for the regulation of the management culture in every federal agency so that federal employees could perform their duties, without fear or favor, per the "merit system principles" - defined in §2301(b) - because they were adequately protected from reprisal and other types of "prohibited

[1] In 2015, the Tennessee Board of Architectural and Engineering Examiners considered a complaint that my claims are not "truthful and objective" and closed it without action. John Cothron, the Executive Director of the Board, can verify this. <John.Cothron@tn.gov> (800) 256-5758. I belong to a number of professional societies including AAAS, ANS, ASME, and NSPE

[2] Despite that, this is "good news" for America - a previously hidden cause of much which has befallen America in past 40 years and besets us today is exposed and can be readily corrected!

personnel practices (PPP's)" - defined in §2302(b)." [3]

Why does CSRA not provide for agencies to self-regulate their management culture? Two reasons: 1) create a comprehensive system for over 200 federal agencies, and 2) Congress knew better than to trust agencies to self-regulate their management cultures.[4]

The "3-legged stool" model Congress created for regulating the management culture in **almost** every federal agency (except government corporations, FBI, and intelligence agencies) and the President's responsibility is to ensure the "3-legged stool" is together, upright, and able to support weight. The "three legs" are: 1) agency heads, 2) U.S. Office of Special Counsel (OSC), and 3) U.S. Merit Systems Protection Board (MSPB). [5]

Agency heads: "prevent PPPs" in almost all agencies, see §2302(c) - this duty does not apply in government corporations, FBI, and intelligence agencies.[6]

U.S. Office of Special Counsel (OSC) -

1) protect employees in (almost all) agencies from PPPs - this duty does NOT apply in

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[3] Pub. L. 95-454 is the CSRA. The endnotes of 5 U.S.C. §1101 contains Section 3 of the CSRA, "Findings and Statements of Purpose." The nine "Merit System Principles" are the statutory bedrock for regulating the management culture in every federal agency, including government corporations, FBI, and intelligence community agencies, but they are not "self-implementing" - the verb "shall" is absent from their definition. To implement the merit system principles, Congress defined 13 types of "prohibited personnel practices (PPPs)" as agency violations of one or more merit system principles. The merit system principles are implemented indirectly, by protecting federal employees from PPPs. When federal employees are adequately protected from PPPs in their agency, it implies the agency "embodies" the merit system principles. See the September 26, 2016 "Special Study" of the US Merit Systems Protection Board (MSPB), "The Merit System Principles: Guiding the Fair and Effective Management of the Federal Workforce," available at http://www.mspb.gov/MSPBSEARCH/viewdocs.aspx?docnumber=1340293&version=1345596&application=ACROBAT

[4] By 31 U.S.C. §9101, there are about 35 government corporations, many of which have regulatory roles in various financial markets.

[5] The name of MSPB - Merit System*<u>S</u>* Protection Board reflects that while the merit principles apply to all federal agencies, the "system" to protect them - primarily by protecting employees from PPPs - takes various forms, particularly in agencies for which the agency head, and not the President, is responsible to "take any action necessary" to ensure the agency's workplace culture "embodies" the merit principles and is free of PPPs.

[6] By 5 U.S.C. §2301(c), the President, just as the heads of government corporations, FBI, and intelligence agencies, has the duty to "take any action necessary" to ensure federal agency employment "embodies" the merit system principles.

FBI and intelligence agencies, [7] and

2) be a confidential, secure, independent disclosure channel for federal employees in ALL agencies (including FBI and intelligence agencies), particularly for disclosures containing information that cannot be publicly disclosed, see §§1213 and 1214. OSC is unique in providing a direct, confidential, disclosure route from the concerned employee in ANY agency to House and Senate Intelligence Committees when their disclosure involves classified foreign intelligence or counter-intelligence information, see §1213(j).[8]

U.S. Merit Systems Protection Board (MSPB) - conduct reactive "special studies" of OSC and EVERY type of agency (i.e. including government corporations, FBI, intelligence agencies and components, and other agencies) as necessary to determine whether scandals/dysfunction/failures in federal agencies resulted from federal employees not being adequately protected from PPPs and/or federal employees not being able to effectively voice concerns, particularly classified ones, see §1204(a)(3) and (e)(3)

The President - based on MSPB special studies and OSC public reports, "take any action....necessary" to ensure the federal civil service "embodies" the merit system principles, see §2301(c).

Heads of Government Corporations, Director of FBI, and heads of intelligence agencies: because OSC does NOT have PPP law enforcement jurisdiction at these agencies, they have a larger duty, similar to that of President for overall federal civil service - based on MSPB special studies, results of disclosures made to OSC, and other input, to "take any action....necessary" to ensure that government corporations, FBI, and intelligence agencies "embodies" the merit system principles, see §2301(c).

Congress - do the necessary oversight of the complex scheme it created for the regulation of the management culture in every federal agency. When scandal or failure occurs involving any agency, take larger view and ascertain if OSC and MSPB are implicated, given their essential roles in the regulation of the management culture in agencies, including FBI and intelligence agencies. Task the Government Accountability Office (GAO), per §2305, to conduct the requisite audits and review to determine whether the President, OSC, MSPB, and agency heads are complying with their respective duties for ensuring the sound management of the federal civil service.

Comptroller General of the United States - use his independent authority to direct

[7] For government corporations OSC has jurisdiction for the reprisal-type PPPs.

[8] FBI and intelligence agency employees are almost universally unaware of their singular disclosure rights at OSC - and OSC apparently does not have the specialized equipment/people with requisite clearances to receive highly classified disclosures to transmit, confidentially, to House and Senate Intelligence Committees.

Government Accountability Office (GAO) audits and reviews of OSC, MSPB, and federal agencies, per 5 U.S.C. §2305, when "considered necessary" to determine whether the federal civil service embodies the merit system principles.[9]

Why is this system so broken for almost 40 years?

OSC - so grossly under-resourced as to be a fraud, the most corrupt and corrupting federal agency in America's history. It has about 130 employees to police a federal workforce of over 2,000,000! It needs 450-500 employees, if not more, to be viable.[10]

MSPB - renounced its duty to conduct the required "special studies" to determine whether "the public interest in a civil service free of PPPs is being adequately protected" in any or all federal agencies, apparently at its creation. It has never conducted any special study of OSC. Falsely claimed to a federal court it had issued regulations for its "special studies" function when it never has.

MSPB is supposed to be the check and balance on OSC via its adjudicatory and special studies functions. If OSC is overly zealous in protecting federal employees from PPP's, MSPB can rein it in via its adjudicatory function. MSPB's special studies function is supposed to determine whether OSC is properly complying with its statutory duties as a disclosure channel and is protecting feds from reprisal and other types of PPPs. Because MSPB renounced this function at its creation, and because neither OSC nor MSPB have Inspector Generals, OSC's nearly 40 year long law-breaking by omission - it fails to do what the law directs it to do - remains hidden. [11]

Agency heads in almost all agencies (excepting government corporations, FBI and intelligence agencies) - "in the dark" about whether they are, in objective fact, "preventing

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[9] In 40 years, no Comptroller General has "considered necessary" that he direct such GAO audits or reviews - what is he waiting for? Does he need something as a member of the Secret Service assassinating the President or member of his family? A federal agency employee actively participating in a terrorist attack on America?

[10] PPPs are now so rife in federal agencies that OSC will need a "surge" of resources to bring them under control. If and when MSPB determines federal agency employees - in government corporations, in intelligence community agencies, in FBI, and in other agencies are, as a rule, where adequately protected from PPPs, then OSC's appropriate permanent size could be determined.

[11] Why is MSPB the "Merit System***(S)*** Protection Board" and not the "Merit System Protection Board"? Because the "System" to ensure federal agency employment "embodies" the merit system principles (which requires employees are adequately protected from PPPs) is different in government corporations, in FBI and intelligence agencies (and agency components), than in other federal agencies - but MSPB is responsible to conduct "special studies" of the various "systems" to protect federal agency employees from PPPs and to ensure employment "embodies" the merit system principles.

PPPs" in their agencies, because of this compounded OSC/MSPB law-breaking.

Heads of Government Corporations, director of FBI and heads of intelligence agencies: "in the dark" about whether the federal civil service "embodies" the merit system principles in their agencies, because of this compounded OSC/MSPB lawbreaking.

The President - "in the dark" about whether the federal civil service "embodies" the merit system principles, because of this compounded OSC/MSPB lawbreaking.

Congress - "largely in the dark" - it largely outsourced its oversight of OSC/MSPB to external entities, particularly after the "Republican Revolution" of the 1994 election. OSC and MSPB are tiny and obscure to Congress, there is little institutional memory with large, continuing, turnover of relevant Committee staff. [12]

Comptroller-General of United States: has not, in almost 40 years "considered necessary," per 5 U.S.C. §2305, to direct GAO to conduct audit and reviews to determine whether the federal civil service "embodies" the merit system principles."

America - much diminished and more threatened because of the battered federal civil service which manifests in repeated scandal in various agencies, contributing to a corrosive distrust by Americans to their federal government and its agencies.

Fundamental, falsifiable, claims about "broken covenant" of CSRA:

1) Contrary to law, federal employees cannot, as a rule, effectively bring forward concerns, particularly one involving classified information (Where "effectively" means their concerns receive a timely and objective resolution.) This is particularly the case in FBI and intelligence agencies, where most employees are unaware of their statutory right to make disclosures to OSC and of OSC's duty to directly transmit their classified concerns to House and Senate Intelligence Committees if they involve foreign intelligence or counter-intelligence.

2) Contrary to law, federal employee, are not adequately protected from reprisal and other types of PPPs, this is particularly true in FBI and intelligence agencies, where OSC does NOT have jurisdiction for PPP complaints and agency heads have NOT created equivalent systems.

3) Contrary to law, the neither the President, nor any agency head, nor the Comproller General has an objective basis to dispute points one and two.

[12] The "alarm system" by which agency heads, the President and Congress should be informed that the federal civil service - in any or all agencies - does NOT "embody" the merit principles is itself broken.

What to do?

I claim about a dozen civil service laws have been violated, largely by omission, for decades, in OSC and MSPB.

For OSC, these include:

- 5 U.S.C. § 1212(a)(4)
- 5 U.S.C.§ 1213(g)(1) [13]
- 5 U.S.C. § 1213(b) and (c) for employees of Tennessee Valley Authority (TVA) and other wholly-owned government corporations, particularly given the wording of 5 U.S.C. §2302(a)(2)(C)(i and 2302(b)(8) that states such employees are within OSC's whistleblower reprisal protection jurisdiction if they make whistleblower disclosures to

[13] In Carson v. Department of Energy, docket no. AT-1221-0520-W-1, the full MSPB, determined, in a final, non-precedential, decision dated May 21, 2015, at ¶10 (page 6 of decision) that, "Section 1213(g)(1) places no limits on OSC's authority to determine which disclosures to refer to agency heads....." See, http://whsknox.blogs.com/2018/Carson-v-DOE-AT-1221-14-0520-W-1-final.pdf. Despite this, then Special Counsel Lerner still claimed that OSC, by this law, only has jurisdiction to refer disclosures from current or former federal agency employees and only when their disclosure 1) involves another agency, and 2) is unrelated to their work duties in the federal agency which employs or employed them. Not surprisingly, OSC has not made a single referral by this law since its enactment in 1989.

I work in the environmental management program of the Department of Energy (DOE) - the world's largest environmental clean-up program, performed by DOE contractors. There has been a continuing series of engineering debacles, costing billions, in it. Over 100,000 loyal, patriotic Americans suffered harm working in DOE's unsafe and unhealthy facilities during the Cold War. The Secretary of Energy regularly reminds DOE and DOE contractor workers of their responsibility to bring concerns forward (yes, he ignores mine though!). Why doesn't he also just tell OSC to transmit to him, per §1213(g)(1), all reasonably evidenced environment, safety, health, and security concerns made to OSC by DOE contractor employees?

For example, how might the Flint, Michigan public health and safety disaster been averted if only then-Special Counsel Lerner had followed this law? She was the only federal official, outside of the President, who could have, by referring a whistleblower disclosure about Flint water quality from a local official, a State official, a local doctor, a local citizen, etc., required then-EPA Administrator Gina McCarthy to investigate the matter, per §1213(g)(1), and report, in a permanent, publicly available record, per §1219(a)(4), what EPA had done or was going to do to correct the concern. Multiply that by a 1000 for so much that is so wrong - and, more frightening, remains so wrong - for America's health, safety, security and welfare.

OSC.

- 5 U.S.C. § 1214(a)(1)(A), (a)(1)(C), (a)(1)(D), (a)(2)(A), (a)(4), (b)(2)(A)(i) and (ii), (b)(2)(D), (e), and requirements of the "termination statement" found in endnotes of 5 U.S.C. § 1214, citing Pub. L. 103-424 Section 12(b) [14]

For MSPB, these include:

- 5 U.S.C. §1204(a)(3) and (e)(3)

I have been bringing these whistleblower disclosures forward for 15 years and they still remain unresolved, which is why I am now the party in an unprecedented third federal whistleblower appeal to the US Supreme Court. Why has this gone on for so long? Because the attorneys who lead OSC and MSPB have done everything they legally can to evade their objective resolution - and apparently do so in the name of legal ethics! They do not dispute that they consider themselves to have an attorney-client relationship with the agencies they lead and, therefore, their paramount profession duty is to protect their agencies - not the merit principles, nor the America health, safety, security and welfare. [15]

My whistleblower disclosures can be readily resolved - any agency head could request the Attorney General to review the disputed civil service laws and issue opinions on their proper interpretation. [16]

So if you care about America and the survival of human civilization, please advocate for a lawful resolution of my claims of decades-long, compounded, continuning, civilization-threatening, law-breaking in OSC and MSPB, as we near the 40th anniversary of the still-born CSRA.

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[14] Since 1994, OSC has been required to provide extensive information to complainants, subsequent to closing its investigation of their PPP complaints, per the "termination statement" of the statutory note to §1214, which quotes section 12(b) of P.L. 103-424. A federal judge found OSC in non-compliance with that section of law in Carson v. Office of Special Counsel, 514 F.Supp. 2d 54, (D.C.D. September 27, 2007), even though he did not order the "extraordinary" relief of mandamus. OSC did not appeal this decision but still did not change its practice of ignoring this law. See http://whsknox.blogs.com/2018/Westlaw_Document_14_20_23.pdf, pages 8 and 10

[15] The Supreme Court case is Carson v. MSPB, docket no. 17-1434. I'm glad I'm a PE and not an attorney. I could not live with myself being a fraudulent, law-breaking, PE such as by allowing sub-standard steel to be used in a bridge. Attorneys at OSC and MSPB can apparently feel good about themselves when they use legal ethics to justify their not following the law to protect ethical PE's employed in federal agencies. In a global civilization UTTERLY dependent on its engineered underpinnings - now and forevermore, as long as it sustains, agency attorneys throwing agency PE's under the bus in the name of legal ethics cannot be allowed to stand.

[16] See 28 U.S.C. §512. Heads of Executive Departments as the Department of Energy, could direct, not just request, this.