

GUEST COLUMN

*Knoxville News-Sentinel
10/8/09*

Is U.S. Office of Special Counsel a 'domestic enemy'?

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We are current or former federal employees who "blew whistles" about agency wrongdoing and experienced unlawful reprisal for doing our lawful duty. This should worry America — that federal employees with significant responsibilities for public safety are punished for doing their duty in an age of all-too-possible catastrophic terrorist attacks. We put the



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blame largely upon the U.S. Office of Special Counsel and desire Congress and/or the Obama administration to do the oversight necessary to substantiate or dispel our concerns.

The U.S. Office of Special Counsel was created by the Civil Service Reform Act of 1978 with an unprecedented mandate as a federal law enforcement agency — to protect civilian federal employees from agency lawbreaking, specifically violations of the "merit principles" of the federal civil service (termed "prohibited personnel practices," most particularly from the whistleblower reprisal type).

The Office of Special Counsel is tiny — about 110 employees. It may be, relatively speaking, a most important federal law enforcement agency as the "immune system" of the federal civil service — the primary bulwark against dysfunction and corruption taking root and flourishing.

We contend it may be, relatively speaking, a most corrupting one, because of its self-nullifying interpretations of its duties to protect federal employees.

By law, the OSC should be quite transparent, providing both extensive information through its annual reports to Congress as well as creating permanent, publicly available records of its determinations of agency lawbreaking (along with the involved agency heads' certified responses). The indisputable fact is, based on a review of its annual reports to Congress and publicly available records, OSC has investigated about 50,000 complaints, alleging about 100,000 specific violations, without once reporting its determination "there is reasonable cause to believe" a violation occurred.

This is because OSC interpreted the law's "any violation of any law, rule, or regulation" to exclude those within its jurisdiction.

Instead, OSC only reports its determinations of agency wrongdoing when it makes the discretionary decision that the violation "requires corrective action," something it has done about 200 times in 30 years.

Americans rely on federal employees doing their duty, ethically and competently, to protect their health, safety and welfare. Federal employees rely on OSC to protect them in doing so. OSC's 30-year long abnegation of its fundamental duty — to investigate their complaints, determine if there is "reasonable cause to believe" the violation occurred and, if so, to report it to the involved agency head — has left the federal civil service battered and America much diminished and more threatened.

Federal employees take oaths to "defend the Constitution against all enemies, foreign and domestic." When a federal law enforcement agency interprets away its statutory duties, when its doing so results in great harm to the integrity and efficiency of the federal civil service — in turn enabling great harm to America (such as 9/11, going to war in Iraq for false assumptions, unlawful politicization of the Department of Justice, and financial meltdown), is it fair to describe it as a "domestic enemy?"

We believe America is more vulnerable to a nuclear 9/11 or other terrorist attack because of OSC's failure to follow the law to protect federal employees. We call upon Congress and/or the Obama administration to do the targeted oversight necessary to substantiate or dispel our concerns.

The "good news" about our concerns? If they are substantiated, a hidden cause of great national trauma will be exposed and can be readily corrected.

Joe Carson has "prevailed" in several federal whistleblower appeals, despite OSC. Coleen Rowley is a retired FBI attorney and was one of TIME magazine's "Persons of Year" in 1992. Dave Nolan is legal counsel to OSC Watch.