REGULATING OUTSIDE ACTIVITIES

WHISTLEBLOWING and other PPPs

Rights of Federal Employees:
CSRA and WPA

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Field Office Chief
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U.S. OFFICE OF SPECIAL COUNSEL
OFFICE OF SPECIAL COUNSEL (OSC)
5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800

AUTHORIZED TO —

- INVESTIGATE PROHIBITED PERSONNEL PRACTICES AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION

- SEEK CORRECTIVE ACTION ON BEHALF OF INDIVIDUALS WHO ARE THE VICTIMS OF PROHIBITED PERSONNEL PRACTICES

- SEEK DISCIPLINARY ACTION AGAINST AGENCY OFFICIALS WHO COMMIT PROHIBITED PERSONNEL PRACTICES
• PROTECTED DISCLOSURE

• PERSONNEL ACTION

• KNOWLEDGE

• CAUSAL CONNECTION
WHAT IS WHISTLEBLOWING?

REASONABLE BELIEF DISCLOSURE EVIDENCES:

- A VIOLATION OF ANY LAW, RULE OR REGULATION
- GROSS MISMANAGEMENT
  - MORE THAN DE MINIMIS
- GROSS WASTE OF FUNDS
  - MORE THAN A DEBATEABLE EXPENDITURE
- ABUSE OF AUTHORITY
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH
  AND/OR SAFETY
NATIONAL SECURITY MATTERS:

DISCLOSURES ARE NOT PROTECTED, UNLESS MADE TO
OSC OR OIG, IF

- PROHIBITED BY LAW, OR

- REQUIRED BY EXECUTIVE ORDER TO BE SECRET
  FOR NATIONAL SECURITY OR FOREIGN AFFAIRS
  REASONS
CAUSAL CONNECTION

CONTRIBUTING FACTOR TEST:

ANY FACTOR WHICH ALONE OR IN CONNECTION WITH OTHERS TENDS TO AFFECT IN ANY WAY THE OUTCOME OF THE PERSONNEL ACTION AT ISSUE

- CAN BE ESTABLISHED BY KNOWLEDGE / TIMING ALONE
- OFTEN ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE
AFFIRMATIVE DEFENSE

MT. HEALTHY TEST (MODIFIED):

CLEAR AND CONVINCING EVIDENCE THAT SAME ACTION WOULD HAVE OCCURRED IN ABSENCE OF WHISTLEBLOWING

- STRENGTH OF THE EVIDENCE IN SUPPORT OF THE PERSONNEL ACTION
- EXISTENCE AND STRENGTH OF MOTIVE TO RETALiate
- TREATMENT OF SIMILAR EMPLOYEES WHO ARE NOT WHISTLEBLOWERS
FIRST AMENDMENT

VIOLATION OF FIRST AMENDMENT IS A PPP:
5 U.S.C. § 2302(b)(12)

- Speech, Press, Association, Petition and Religion
- Speech/Expression: Must Touch Matters of **Public Concern**
- Balancing Test: Employee-Citizen’s Interest in Speaking on Matter of Public Concern v. Employer’s Interest in Regulating Speech
OFF-DUTY CONDUCT

- DISCRIMINATION BASED ON CONDUCT NOT RELATED TO PERFORMANCE, 5 U.S.C. § 2302(b)(10)
- NEXUS BETWEEN OFF-DUTY CONDUCT AND JOB PERFORMANCE (OR EFFICIENCY OF THE SERVICE)
- 5 U.S.C. § 7513 (Efficiency of Service); 5 C.F.R. § 7.1 (Fill Positions on Basis of Merit and Fitness)