

# Law Review 1266

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## Honoring Whistleblowers

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### 9.0--Miscellaneous

On June 28, 2012, it was my honor to attend the "Public Servant of the Year Award" ceremony<sup>[1]</sup> presided over by the Honorable Carolyn N. Lerner, Special Counsel of the United States and head of the United States Office of Special Counsel (OSC).<sup>[2]</sup> OSC honored three "Public Servants of the Year" for 2011: James Parsons, Mary Ellen Spera, and William Zwicharowski. These three civilian Air Force employees are mortuary professionals at the U.S. Port Mortuary at Dover Air Force Base in Delaware. From 2008 to 2010, these three employees witnessed serious wrongdoing related to the mortuary process involving the remains of U.S. military personnel killed in action in Iraq and Afghanistan.

Mr. Parsons, Ms. Spera, and Mr. Zwicharowski took the courageous step of reporting these problems to OSC. In response to their disclosures, and to the timely and diligent OSC investigation, the Air Force took significant corrective action. Today, the Port Mortuary is improved, thanks to these individuals and to the Air Force's actions.

I understand the critical role of the Inspector General (IG) and OSC, and I understand that the IG and OSC need information from individual employees and service members. I had some very interesting and responsible jobs in my long career in the Navy and Navy Reserve, but the most interesting, and most responsible, came in 1996-97, when I served (on active duty) as the Director of the Hotline Investigations Division, Office of the Naval Inspector General. After I retired from the Navy Reserve in 2007, I worked for OSC as an attorney.

I am convinced that Mr. Parsons, Ms. Spera, and Mr. Zwicharowski had the best motives and showed great courage in contacting OSC with their observations. Like so many whistleblowers, these conscientious civil servants disclosed wrongdoing despite the risk that they might face ostracism and retaliation. I think that honoring them as "Public Servants of the Year" was entirely appropriate.

I am also aware that whistleblowers do not always have only the purest of motives when making their complaints, but that is not the point. Even a person with impure motives may have valuable information that the IG needs in order to ferret out fraud, waste, and abuse. When I served as the Director of the Hotline Investigations Division, I constantly repeated a mantra to our own staff and to the IGs of major Navy commands that "we investigate complaints, not complainants." The proper role of the IG is to investigate and find problems, and then to get them corrected, and the motive of the complainant is generally irrelevant.

If IGs are to be successful in their work, they need information from whistleblowers, and that means protecting whistleblowers (military and civilian) from reprisal.<sup>[3]</sup> I am most pleased that Special Counsel Carolyn N. Lerner and her staff are doing a great job in

protecting federal whistleblowers, and that was an area where OSC needed improvement when Ms. Lerner took the reins.<sup>[4]</sup>

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<sup>[1]</sup> Several sentences in this article come directly from the program distributed at the ceremony.

<sup>[2]</sup> OSC is an independent federal investigative and prosecutorial agency, created by the Civil Service Reform Act of 1978. The agency's responsibilities include serving as a secure channel for fraud, waste and abuse allegations involving federal agencies, preventing and remedying Prohibited Personnel Practices (including reprisal for whistleblowing), and enforcing the Hatch Act, the Uniformed Services Employment and Reemployment Rights Act, and other civil service laws, rules, and regulations.

<sup>[3]</sup> I invite the reader's attention to Law Review 27, published in July 2001. I wrote that article while on active duty in Bahrain, conducting a Military Whistleblower Protection Act investigation. You can find 766 "Law Review" articles at [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org), along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week.

<sup>[4]</sup> Ms. Lerner was appointed by President Obama and confirmed by the Senate, and she began her five-year term in June 2011.