

Testimony of Teresa Chambers

Before the House Committee on Oversight and Government Reform
*Protecting the Public from Waste, Fraud, and Abuse: H.R.1507, the Whistleblower
Protection Enhancement Act of 2009*

May 14, 2009

Mr. Chairman and members: Thank you for this opportunity to speak with you today about the need to reform the federal government's whistleblower protection system.

My name is Teresa Chambers and I am Exhibit A in the case for reform. I have spent the past 33 years – my entire adult life – in law enforcement. I have a master's degree in applied behavioral science from the Johns Hopkins University and am a graduate of the FBI National Academy as well as the FBI National Executive Institute.

Today, I am the Chief of Police for the Town of Riverdale Park, Maryland. Previously, I was the Chief of the United States Park Police. My story is not that of a typical whistleblower. These differences, however, more powerfully illustrate what is wrong with the current laws and framework.

For the past five and one-half years, I have been trapped in a byzantine, bizarre, and utterly broken system. All these years of litigation have yet to resolve what to me is, a very simple question – **Is telling the truth a firing offense in federal service?**

In February 2002, following a nationwide search, I was selected by the Bush administration to lead the United States Park Police. My mission was to modernize the oldest uniformed federal constabulary, commissioned by President George Washington. Reporting directly to the National Park Service (NPS) Director, I was charged with bringing the United States Park Police into the post-9/11 twenty-first century.

My swearing-in ceremony on the Mall of our Nation's Capital was one of the proudest days of my life. As an outsider and the first woman chief, I knew that my selection was not uniformly popular inside the Park Police. But I was not terribly concerned. As a cop, I had been in tough situations before; and I believed that I would win over any critics by doing this very difficult job very well.

In late November 2003, I was contacted by a reporter from *The Washington Post*. The union representing Park Police officers, the Fraternal Order of Police, had supplied this reporter with internal documents showing that the force did not have enough officers to cover all current assignments, especially given expanded patrol duties on the National Mall following the 9/11 attacks. The reporter wanted an official agency response.

As a police chief, my job requires me to be in frequent contact with the media. I met the reporter in my office accompanied by the sergeant who served as the Park Police Press Officer. I carefully but truthfully answered the reporter's questions. I also confirmed that the documents he had were accurate. Immediately after concluding the interview, I

telephoned then NPS Deputy Director Donald Murphy and gave him a detailed briefing as to what information the reporter had and the type of questions he had asked.

On December 2nd, the *Post* published an article entitled “Park Police Duties Exceed Staffing”. After reading it, I thought it would be well received because thorny issues had been handled deftly. That was not the case. This was a period during the first term of the Bush administration when there was little tolerance of any publicity that was not glowingly positive. Apparently, some political appointees were quite upset by the article.

Three days after its publication, I was summoned to a meeting in the National Park Service’s Director’s office. When I arrived, then Director Fran Mainella was not present. Instead I was met by Deputy Director Murphy and three armed special agents. Without offering an explanation, Mr. Murphy ordered me to surrender my gun, badge and identification. I was placed on administrative leave and ordered not to speak any further with the media.

Two of the agents escorted me back to my office to quickly collect personal effects, and then I was walked out into the street – in uniform but with no badge or weapon – to the public, a police officer but with absolutely no means to protect myself in the event I was confronted, a situation with which uniformed police officers are frequently faced. Deputy Director Murphy did not even make arrangements to have me transported safely home.

Standing there at the curb in my full uniform holding a cardboard box of things, I was stunned. Little did I know that a long, strange odyssey had just begun.

An announcement was issued that I had been assigned to work at home. What followed could only be described as a media furor. My so-called leave was covered as front page news, accompanied by outraged editorials.

One week later on December 12th, I was summoned to a meeting at the U.S. Geological Survey headquarters in Reston, Virginia. There I met with Deputy Director Murphy and a senior Department of Interior (DOI) attorney. After threatening me with disciplinary action, they offered to forego any punishment and fully restore me as Chief provided that I would appear at a press conference and dispel any impression that there was any disagreement. One more string was attached – Mr. Murphy or another political appointee would screen any and all future communications that I had with Congress or the media. I asked to think about it overnight.

After reflection, I concluded that these conditions required me to lie and prevented me from doing the job I was hired to do. I refused to agree to what was, essentially, an effort to blackmail me into misleading Congress and the public.

Days later, I was charged administratively with improperly disclosing “law enforcement sensitive information” to *The Washington Post*. For good measure DOI tacked on five other administrative charges, most unrelated to the interview, none of which had been

raised previously. One specification, for example, involved my alleged failure to promptly return a phone call from an attorney in the Solicitor's Office about the "Tractor-Man" incident on the National Mall. Another charge was circumventing the chain-of-command by raising an issue with then DOI Deputy Secretary Steven Griles after he had invited the communication. Neither charge was true, and I filed a detailed rebuttal.

Convinced that these charges would not withstand either factual or legal scrutiny, I lodged a complaint with the U.S. Office of Special Counsel (OSC). The OSC conducted a Bush-administration style investigation that dragged on for five months but came to no conclusion. I got the impression that my case was too hot for them to handle, but I later learned that OSC does very little in whistleblower cases regardless of the controversy or egregiousness of the case.

At one point, OSC offered to host an alternative dispute resolution. At their offices, I met with another Bush political appointee who suggested that DOI would offer me \$300,000 to resign. When I indicated that I was not interested in money, these "negotiations" quickly ended.

All during these months, I was still technically the Chief of the United States Park Police, being given full pay in return for staying home. In April, the Interior Department gave in to intense media pressure and announced that I was under no gag order. So, I began honoring interview requests from the media, notifying Interior of each and every contact as DOI required of me.

In less than one week, the gag was re-imposed. On April 12th, Jacqueline Jackson, a Deputy Solicitor, contacted one of my lawyers to indicate that "her client" had concerns about recent media interviews in which I had participated. In response to a request for written clarification, the next day Ms. Jackson sent a letter stating that the "no interview" order would remain in effect.

After more than seven months on administrative leave, I became convinced that it was futile to wait for the Special Counsel to act. The passage of time entitled me to file directly with the Merit Systems Protection Board (MSPB).

On July 9th, I filed my individual right of action for restoration of my job and law enforcement credentials with the MSPB. Only a few hours later, the Department of Interior announced its decision to fire me.

As we prepared for the MSPB hearing, I learned that the Department of the Interior had convened a secret "hearing" to determine the facts of the case. Presided over by then Deputy Assistant Secretary Paul Hoffman, a political aide with no legal training, witnesses gave transcribed testimony that was offered as the basis for Mr. Hoffman's decision to fire me. Needless to add, they did not ask to hear my side of the story.

In pre-hearing meetings with the MSPB judge, Elizabeth Bogle, I was shocked when she counseled me against taking my case to a hearing, stating that I would "embarrass"

myself. She strongly urged me to resign and said that she had already decided to sustain some of the charges. In the MSPB process, the judge is supposed to be the finder-of-fact, but it was painfully clear that my judge had already signaled her intent to rule against me.

Even after Judge Bogle's warnings, the hearing was a shock. I believed I was finally going to get my day in court. Judge Bogle, however, seemed in a hurry, limiting the number of witnesses who could be questioned and refusing to order the Department of the Interior to produce requested and relevant documents.

One key document that we requested was a copy of my Performance Evaluation covering the period in question. In depositions, we had taken sworn testimony that I had received a glowing evaluation during the period in which Interior later decided I had become troublesome. I am still attempting to obtain a copy of this now missing evaluation.

In October 2004, Judge Bogle issued a ruling upholding four of the six administrative charges against me. While throwing out two of the charges, she nonetheless found that termination was justified, in large part, because I had "expressed no remorse." It was unclear about what I was supposed to be remorseful.

My attorneys filed a voluminous appeal, citing more than forty serious procedural errors by Judge Bogle. That appeal went to the full Board of the MSPB, consisting of three presidential appointees.

The MSPB chose not to act on my appeal for more than a year-and-a-half. In September 2006, the MSPB issued a two-to-one split decision rejecting my appeal. The majority opinion, barely 24 pages long, used only one sentence to dismiss all of the procedural objections and devoted only one paragraph to its reasoning as to why it decided the removal was justified. The dissent, on the other hand, in a detailed opinion, found that the four remaining administrative charges were either not supported by the evidence or failed to constitute any offense at all.

My attorneys prepared an appeal to the U.S. Court of Appeals for the Federal Circuit. In February 2008, this court upheld my challenge. The appeals court ruling affirmed that police and other public servants are legally protected when raising warnings about "a risk to public safety."

Rather than ordering me restored, the appeals court sent my case back to the MSPB to correct its failure to recognize that I was removed "in reprisal for making a protected disclosure" under the Whistleblower Protection Act (WPA).

The MSPB, again, did not act with timing that even approximated deliberate speed. By the time it did rule in January 2009, the MSPB Board member who ruled in my favor had left. That left only the two Republican members who split on whether what I had said was protected under the Whistleblower Protection Act, but they agreed that I would have been removed anyway absent the *Post* interview which touched off the furor – a conclusion that is clearly at odds with the facts.

My legal team has again filed an appeal with the Federal Circuit. As recently as this April, however, the Justice Department indicated that its “client,” the Interior Department, had no interest in resolving this case if it involved my reinstatement. Therefore, the legal battle will continue to drag on.

The foregoing has only been a brief outline of what has been nearly a six-year ordeal. For me it has meant many sleepless nights, fighting the discouragement, doubt, and fatigue. For you in Congress, as policymakers, this cannot be how you intend the system of whistleblower protections to work.

Here are three conclusions and recommendations that I have taken away from my experience:

1. The system is flat out broken. The Office of Special Counsel does not help whistleblowers and has itself become an embarrassment. The Merit Systems Protection Board does not protect merit but merely promotes delay. In reality, MSPB offers the worst of two worlds: all the procedural red tape of a real court without any of a court’s substantive protections or requirement to afford proper due process in an objective setting.

Congress should junk this dysfunctional system that appears designed to defeat whistleblowers, drag out proceedings, and deter all but the most stout-hearted. Instead of legalisms, civil servants should have access to a speedy dispute resolution process to end disputes early and fairly. This one-step process would offer the employee and the agency a chance to seek mediation or other alternative dispute resolution prior to heading to trial.

If I had the opportunity to take my case to a jury of my peers, I would not be here before you today. Giving federal employees access to jury trials is the single biggest reform Congress can enact. Before juries, agencies would quickly learn that reprisal campaigns will backfire.

2. The Whistleblower Protection Act is filled with jurisdictional loopholes. For example, it protects reports of gross waste or mismanagement but does not define what it means by the term “gross” – and, in reality, it does not protect the honest federal employees who are trying to do the right thing.

In essence, the WPA does not protect telling the truth – plain and simple. Congress should make it clear that, absent some statutory prohibition like state secrets, honesty is the official policy of federal service.

3. Whistleblower protections are not just about protecting conscientious employees. They are a key channel to ensure that the United States Congress gets truthful, candid information.

In theory, federal employees are supposed to be able to communicate with members of Congress, but that law has no teeth. One of the administrative charges against me that was thrown out involved my informing congressional staff about dangerous staffing shortages.

Congress already prohibits the executive branch from using any appropriated funds to gag or restrain communication between Congress and civil servants. But this prohibition lacks any enforcement mechanism. Congress needs to put teeth behind this law so that it is more than a rhetorical prop.

Congress should consider authorizing citizen suits to recover, directly from the salaries of officials who violate this law, appropriated funds misused by restricting communication. This somewhat personal yet public benefit remedy would subject the individuals who suppress information to judgment in the bright light of day.

Finally, let me emphasize the most fundamental problem with the system. It concentrates on the personnel action but completely ignores the underlying problem over which the civil servant risked his or her career. In my case, I told Congress and top agency officials and ultimately confirmed to the media that the United States Park Police was dangerously understaffed.

It is still understaffed, even more so today. According to the last figures published in the media, the number of U.S. Park Police officers is the lowest it has been in twenty years yet its workload associated with protecting our priceless and irreplaceable national icons – and those who visit them – from terrorism continues to grow.

Despite a Federal Circuit ruling that these statements are “protected speech”, nothing in the system triggers action to address the identified threats to public safety. My biggest concern continues to be for the men and women patrolling the monuments, parks, and parkways and the public who visits these national treasures. Officers are not getting the support they need to do a demanding but vital job; and, because of this, both they and the public remain in danger.

I am proud of my service with the United States Park Police, and I stand by the decisions I have made. My hope is that my experience will result in positive change for public servants who understand their obligation and have the courage to speak truth to power regardless of how inconvenient those truths may be.

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