



June 28, 2017

Nominations of Claire M. Grady to be Under Secretary for Management, U.S. Department of Homeland Security and Henry Kerner to be Special Counsel, Office of Special Counsel

Committee on Homeland Security and Governmental Affairs, United
States Senate, One Hundred Fifteenth Congress, First Session

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Opening Statement of Chairman Ron Johnson
Nomination Hearing to Consider Claire M. Grady to be Under Secretary for Management,
U.S. Department of Homeland Security and
Henry Kerner to be Special Counsel, Office of Special Counsel
June 28, 2017

Today the Committee will consider two nominations within its jurisdiction that are integral to ensuring the Department of Homeland Security is efficient and effective, and that the people who raise issues of waste, fraud, and abuse throughout the federal government are protected.

Under Secretary for Management, Department of Homeland Security (DHS)

The Under Secretary for Management (USM) is responsible for ensuring that DHS's workforce has clearly defined responsibilities and the means to efficiently carry out the Department's mission. The USM's office handles a budget of just under \$1 million and approximately 1,800 full time equivalents.

More broadly, the USM oversees the Department's budget of almost \$66 billion, appropriations, expenditure of funds, accounting, and finance; procurement processes; human resources and personnel of approximately 240,000 employees; IT systems, facilities, property, equipment, and other material resources; and performance measurements. Several programs that fall squarely under the USM's responsibilities have been flagged by non-partisan government watchdogs as being at high-risk for abuse, including the Department's management of human capital (including employee morale and engagement, and cohesion among component leadership), management of its grant and acquisition programs, and the Department's cybersecurity.

Special Counsel, Office of Special Counsel

The Special Counsel is the head of the Office of Special Counsel (OSC), an independent agency created by Congress in 1979. The OSC has over 100 employees and operates a budget of almost \$25 million each year. The OSC is charged with: (1) providing a safe haven for federal employees to make protected disclosures (with the exception of certain intelligence agencies); and (2) investigating allegations of whistleblower retaliation or other prohibited personnel practices. Federal employees are protected when they disclose allegations of: a violation of law, rule or regulation; gross mismanagement or waste; abuse of authority; or dangers to public health or safety.

If the OSC reviews a protected disclosure and finds there is a "substantial likelihood" of wrongdoing by an agency, it transfers the matter to the agency for investigation and issues a report to Congress and the President. It cannot, however, force the agency to take other action. If the OSC finds that an individual faced retaliation for the disclosure, it may negotiate "disciplinary action" with the agency against the retaliating employee and prosecute when appropriate.

The OSC also investigates Hatch Act violations and protects the employment and reemployment rights of civilian military members. Finally, it plays an important role in training agencies on how to handle whistleblowers and employees on their rights through its outreach and 2302(c) Certification Program.

Claire Grady

Ms. Grady has extensive experience in federal acquisitions and procurement. She is currently the Director of Defense Procurement and Acquisition Policy at the Department of Defense, and previously served as the Deputy Assistant Commandant for Acquisition and Director of Acquisition Services for the United States Coast Guard. Ms. Grady also previously served as the Director of Strategic Initiatives in the Office of the Chief Procurement Officer at the Department of Homeland Security shortly after it was created. Ms. Grady has a Master of Business Administration degree from the University of Maryland, a Master of Science degree from the National Defense University's Industrial College of the Armed Forces, and a Bachelor of Arts degree from Trinity University.

Henry Kerner

Mr. Kerner is currently the Assistant Vice President of Investigations at the Cause of Action Institute. Prior to that, he was the Deputy Director of Investigations at the House Oversight and Government Reform Committee, and the Staff Director and Chief Counsel of this Committee's Permanent Subcommittee on Investigations under then-Ranking Member McCain. Mr. Kerner also has years of litigation experience working as a Deputy District Attorney at the Los Angeles County District Attorney's Office. Mr. Kerner has a law degree from Harvard University and Master of Arts and Bachelor of Arts degrees from UCLA.

I'd like to thank the nominees for agreeing to serve in these important positions, and I look forward to hearing their testimony.

Opening Statement of Senator Heidi Heitkamp (in Ranking Member role)

Committee on Homeland Security & Governmental Affairs

Nominations of Claire M. Grady to be Under Secretary for Management, U.S. Department of Homeland Security and Henry Kerner to be Special Counsel, Office of Special Counsel

Wednesday, June 28, 2017

As Prepared:

Thank you Chairman Johnson.

I know Ranking Member McCaskill wishes she was able to be here today, and I know she appreciates the nominees' work with hers and Chairman Johnson staffs throughout this process.

I am honored that Ranking Member McCaskill asked me to step in for her this morning, and I am looking forward to hearing from both nominees regarding how they can best serve the American people through their roles in the Office of Special Counsel and the Department of Homeland Security, if confirmed.

At the heart of OSC's mission is the protection of federal employees from prohibited personnel practices, and specifically, from illegal retaliation against whistleblowers.

As the Ranking Member of the Homeland Security and Governmental Affairs Subcommittee with oversight over the federal workforce, I cannot emphasize enough what a crucial time it is to make sure that our federal workers know that they have a safe and independent agency to turn to in the OSC.

In 2016 alone, the OSC received over 6,000 new matters—a 53 percent increase from 2010. That is a tremendous upturn, and it speaks not only to the large number of prohibited personnel practice complaints in general, but also to the trust federal employees had in Special Counsel Lerner during her tenure at the OSC.

At a time when our federal workforce is undergoing a number of new challenges such as reorganization at the behest of the Office of Management and Budget, it is important that the Special Counsel remains an independent, just, fair, and unbiased

voice when it comes to protecting federal employees when they report any wrongdoing from within their respective agencies.

The DHS Under Secretary for Management plays a critical role in achieving excellence in all areas of DHS mission support. While DHS has made considerable progress in recent years to unify its component agencies, major management challenges remain in the four key areas of human capital, acquisitions, financial management, and IT.

Failure to address these challenges could have serious consequences for U.S. national and economic security, and that is why it is critical to have a qualified individual at the helm.

Specifically, we need someone with demonstrated leadership and experience, a robust understanding of DHS and its various components, a willingness to engage with various stakeholders, and an ability to find opportunities to improve the way DHS functions.

We appreciate the nominees' time today, and I am looking forward to hearing Ms. Grady's and Mr. Kerner's responses to the Committee members' questions.

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**Statement of Claire M. Grady
Before the
U.S. Senate Homeland Security and Governmental Affairs Committee
On Her Nomination to Serve as
Under Secretary for Management of the Department of Homeland Security**

June 28, 2017

Chairman Johnson, Ranking Member McCaskill, and distinguished Members of this Committee, it is an honor to appear before you as the President's nominee to be the Under Secretary for Management for the Department of Homeland Security. I am grateful to the President, Secretary Kelly and Deputy Secretary Duke for the trust and confidence they have placed in me.

I would like to thank the Members of this Committee and their staffs for the important work you do. I appreciated the opportunity to speak with several of you to discuss the matters of particular importance to you regarding the management operations of the Department of Homeland Security. For those of you I have not yet had the privilege to meet during this process, if confirmed, I look forward to the opportunity to do so in the near future.

I would also like to thank the many current and former employees of the Department who have contacted me throughout this process to offer their support and encouragement. It is truly the men and women of DHS who ensure mission success, frequently working very long hours and overcoming challenging circumstances to do so. There is no more dedicated or talented group of professionals anywhere in the world, and their outreach and expressions of support have been both humbling and inspiring.

Before I speak further about the important work the Department does to safeguard our nation, I'd like to express my gratitude to the friends and family who were able to attend in person to support me today, including: my mother, Mary Grady, my aunt and uncle, Helen and Vincent Walters, my son-in-law, Lieutenant Michael Berl, my oldest sister Kelly Grady and her husband Michael Zuckerman, and Maggie Meisberger, the oldest of my five nieces - each of whom is amazing in their own right. I would also like to acknowledge my husband, Colonel Rick Cornelio, who, as always, has my back. I am so proud of him and his service to our nation, first during his 34 years on active duty in the Air Force and now as a civil servant. His love and support have been unwavering. With three simple words "not big enough", he reminds me that while challenges may be serious and daunting, they still can be tackled.

More than 15 years after 9/11, the threats to our nation, our people and our way of life remain. The world is a dangerous place and the velocity of those threats is ever changing and accelerating. Round the clock, whether at a computer, in our communities, at an airport, in a port, at sea, at a desk, in the air, in the classroom, on the border, in a command center, or in a lab, the professionals of DHS valiantly serve our nation and keep us safe. They have committed themselves to thwarting our nation's adversaries (natural or man-made) in an environment where a single incident can have devastating consequences. And if tragedy were to befall our nation,

they are prepared to respond and aid in the recovery. I can think of no greater honor than to be considered for a position to help these dedicated men and women safeguard our nation by strengthening and integrating the Department's management functions.

Let me share some information about my professional background. I am a career Federal civil servant and have had the privilege of supporting our nation for more than 25 years. I started as a GS-7 intern, progressed through positions of increasing responsibility and scope, and have been a member of the Senior Executive Service for over a decade. I served in senior positions at the component and headquarters level of two agencies, the Departments of Defense and Homeland Security, leading large, diverse, and geographically dispersed workforces to deliver results.

Currently, I am the Department of Defense Director of Defense Procurement and Acquisition Policy, responsible for over 30,000 procurement professionals throughout the world, who, in 2017, did brilliant work in obligating \$297 billion in support of the warfighter. I also advise senior DoD leadership on acquisition strategies for major defense acquisition programs and major automated information systems. Prior to this, I proudly worked at DHS for nearly ten years, with assignments at both headquarters and one of DHS' operational components, the United States Coast Guard. During my tenure at the Coast Guard, I played key roles in several important changes, including the stand-up of the Coast Guard acquisition directorate and Coast Guard modernization, which realigned the organization to maximize the operational effectiveness and value delivered to the nation.

My parents raised me to value hard work, discipline, and perseverance. They instilled in me the expectation that when things get difficult, it is our obligation to help our family, friends, neighbors and strangers - to take on the tough challenges and make things better. I was never more aware of this responsibility than when presented with the opportunity to be considered for this position. I recognize the many challenges DHS faces: the diverse mission set, myriad stakeholders; complex oversight; and the urgency and criticality of the work itself. I know none of this is easy. But, I am impressed by the progress that has been made through the efforts of not just a few, but a multitude of people at every level within the Department.

If confirmed, I would be committed to building on the great things that are underway throughout DHS, striving for excellence in all areas of mission support and delivering maximum value for every dollar entrusted to the Department. I would welcome the opportunity to engage collaboratively with Members of this Committee and other Members of Congress to assist and inform their important work of oversight and support for the Department. Finally, I would be dedicated to ensuring a culture of respect and professionalism; the dedicated men and women of DHS and our nation deserve nothing less.

If confirmed, I look forward to returning to the Department and re-joining the nearly 240,000 outstanding security professionals that are DHS.

Thank you for your consideration. I look forward to answering your questions.

**OPENING STATEMENT OF HENRY KERNER, NOMINEE FOR SPECIAL COUNSEL, OFFICE OF
SPECIAL COUNSEL, BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS COMMITTEE**

Chairman Johnson, Ranking Member McCaskill, and distinguished members of the Committee: Thank you for the honor to appear before you today, and for the privilege of your consideration of my confirmation. I am humbled and honored to have been nominated by the President to lead this important office that protects the whistleblowers vital to holding our government accountable.

I would like to start by thanking a few people: First and foremost, a big thank you to my family in California who are watching online. They have been incredibly supportive and I appreciate their encouragement and steadfastness. I would also like to thank Katherine and Nick Rossi, who have been tremendous friends. I am also terrifically grateful to Senator John McCain, who gave me the opportunity to serve as his staff director on this Committee's Permanent Subcommittee on Investigations during the 113th Congress – making this something of a homecoming for me. Additionally, I am heartened by the attendance of so many current and former colleagues of mine. I have learned so much from all of them and appreciate their continued support and affection. And a special thank you to John Vecchione and Julie Smith of Cause of Action Institute for being so accommodating with my time during the confirmation process.

Lastly, I would be remiss, if I failed to express my appreciation for the outgoing OSC leadership. Special Counsel Carolyn Lerner, Acting Special Counsel Adam Miles, and the career staff at OSC should be commended for restoring confidence in the agency and significantly advancing protections for whistleblowers. I am especially grateful that Mr. Miles decided to bring on new Principal Deputy Special Counsel Tristan Leavitt early to assist with the transition process. Mr. Leavitt, an eight-year Hill veteran with whom I've worked previously, is exceptionally talented and committed to the mission of the agency. I am thrilled he chose to join OSC last week, and I look forward to working with him again, should I be confirmed.

As for my own background, I have been a government lawyer and counsel for nearly my whole professional life. I served as a prosecutor in Los Angeles County for nearly two decades, most of which I spent in the city of Compton, California. That experience taught me how crucial it is for citizens to have confidence in the law and the legal system – to trust, and be given tangible reasons to believe, that government officials with integrity are striving to apply the law fairly to each and every person. I also found satisfaction in searching for the truth based on evidence and facts, not preconceptions or assumptions. As a frontline prosecutor, it doesn't matter what you *think* someone did. You have to prove it beyond a reasonable doubt, and you have an ethical obligation only to bring a case if you honestly believe it is valid.

Among other roles, I spent several years in the complaints section, which required me to review cases as they came into the office and decide what, if any, charges to file. This experience taught me valuable skills in how to assess credibility and make timely judgments about the merits of cases.

Once I transitioned to the Hill, I was one of the primary congressional investigators of the “Fast and Furious” scandal, which involved allegations of “gunwalking” made by whistleblowers to Congress. My work with whistleblowers continued when I became the minority staff director on PSI, and when I returned to the House Oversight and Government Reform Committee in a leadership role. Through my interactions with the whistleblowers, I have learned about what animates people to speak out when others may not, and what a vital impact such brave civil servants can have on our country’s policies.

I believe my professional experiences have given me a better understanding of how whistleblowers might feel when they want to do the right thing, but their supervisors ignore their concerns. For example, during my time in Los Angeles, I was once ordered to proceed to trial with a case that I felt did not meet the legal requirements or ethical obligations incumbent upon me as a prosecutor and a member of the Bar. Despite my protestations, the prosecutor’s office would not reverse its theory of the case and ordered me to proceed to trial.

In order to resolve my significant ethical concerns, I chose to go outside of the traditional channels for recourse. I took it upon myself to conduct additional investigation of the crime scene and to interview additional witnesses. These witnesses provided information that contradicted my supervisor’s original theory of the case. I took my findings back to the office and managed to convince my bosses that we should not proceed with the case. While this was an isolated case, the experience – combined with my decades of work with numerous crime victims and government whistleblowers – has allowed me to gain a better understanding of the challenges and self-doubt many whistleblowers experience while trying to do the right thing.

To that end, I am particularly pleased that the Committee has done so much work to advance legislation to protect whistleblowers. Just last month, the Senate passed this Committee’s Dr. Chris Kirkpatrick Whistleblower Protection Act. It was developed in response to this Committee’s work with Department of Veterans Affairs whistleblowers, but it will help federal employees government-wide once enacted.

Chairman Johnson and Ranking Member McCaskill, I know that you have also put an immense amount of work into the Office of Special Counsel Reauthorization Act, which was reported to the Senate floor last month. I have already heard from staff at OSC about how beneficial that legislation is in clarifying Congress’s longstanding intent to provide OSC with access to all materials necessary to carry out the responsibilities assigned to it in 1978.

Two weeks ago, the President signed the Follow the Rules Act, and I want to thank this Committee for working so swiftly to develop S. 1083 and get it to the President’s desk. That key bill remedies OSC’s inability to obtain extensions of personnel stays when the Merit Systems Protection Board is without a quorum, as it is presently. As the Committee knows, this straightforward fix has a very direct impact for whistleblowers, including in cases currently under investigation by OSC.

These provisions will greatly strengthen my capacity to protect whistleblowers should I be confirmed as Special Counsel. For that I am grateful.

In closing, I would just like to highlight a few of my goals for OSC, should I be confirmed, based on my discussions to date with members and staff in Congress, stakeholders, and OSC employees. First, as I already mentioned, I want to continue the good job Ms. Lerner has done and build on her successes at OSC. Second, I want to continue to implement the information technology system upgrades currently in progress, while paying special attention to cybersecurity and caseload efficiency gains. Third, I want to address how to optimize intake of an ever-expanding caseload in order to provide appropriate response times to whistleblowers. Fourth, I want to increase education and outreach with agency and congressional staff, especially with regard to the Hatch Act and whistleblowers' rights. And finally, I want to place an increased emphasis on litigation to promote accountability, deter future violations, and strengthen OSC's bargaining position when negotiating settlement agreements for whistleblowers.

If confirmed, I look forward to the opportunity to work collaboratively with this Committee and other stakeholders to protect one of the federal government's most important assets – dedicated federal employees who are willing to “blow the whistle” on misconduct and violations of the public trust.

Thank you, and I would be happy to answer any questions the Committee may have.