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Fielding, Fred - General Files

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Folder Title:

Bloch, Scott

Fielding, Fred F.

From: Flood, Emmet T.
Sent: Tuesday, May 06, 2008 1:23 PM
To: Fielding, Fred F.
Cc: Bakke, Mary Beth
Subject: FW: press on the Bloch search warrants...

FYI

From: Fratto, Tony
Sent: Tuesday, May 06, 2008 1:18 PM
To: Stanzel, Scott M.; Perino, Dana M.; Flood, Emmet T.; Teuber, Terri M.; Mamo, Jeanie S.
Subject: FW: press on the Bloch search warrants...

From: Roehrkasse, Brian [mailto:Brian.Roehrkasse@usdoj.gov]
Sent: Tuesday, May 06, 2008 1:16 PM
To: Fratto, Tony; Bergman, Cynthia L.
Subject: FW: press on the Bloch search warrants...

We are not commenting.

Fyi... (this just hit the wires)

WSJ: FBI Agents Raid Office Of Special Counsel

By John R. Wilke

OF THE WALL STREET JOURNAL

WASHINGTON (Dow Jones)--Federal Bureau of Investigation agents are raiding the Office of Special Counsel here, seizing computers and documents belonging to the agency chief, Scott Bloch, and staff.

More than a dozen FBI agents served grand jury subpoenas shortly after 10 a.m. EDT, shutting down the agency's computer network and searching its offices, as well as Bloch's home. Employees said the searches appeared focused on alleged obstruction of justice by Bloch during the course of a 2006 inquiry into his conduct in office.

The independent agency, created by Congress in the wake of the Watergate scandal, is charged with protecting federal employees and deciding whether their complaints merit full-scale investigation - a first line of defense against fraud and mismanagement in government. It also enforces a ban on U.S. employees engaging in partisan political activity.

(This story and related background material will be available on The Wall Street Journal Web site, WSJ.com.)

The Wall Street Journal reported last Nov. 28 that Bloch had used "Geeks on Call," an outside

computer-service firm, to erase his computer

and those of two former staff members in December 2006. Bloch's agency

is typically involved in sensitive investigations of alleged government wrongdoing. Before the departure of White House political director Karl Rove, Bloch's staff was looking into whether he or other White House officials improperly used federal agencies to help re-elect Republicans in 2006.

At the same time, Bloch has been under investigation himself since 2005. At the direction of the White House, the federal Office of Personnel Management's inspector general is looking into claims that Bloch abused his investigative authority, improperly retaliated against employees or dismissed whistleblower cases without adequate examination.

The computer erasures became part of that investigation and are one of the reasons behind Tuesday's raid, employees said. Investigators were trying to determine whether the deletions were improper or part of a cover-up, the Journal article reported.

Bypassing his agency's computer technicians, Bloch phoned 1-800-905-GEEKS, the mobile PC-help service. It dispatched a technician in one of its signature PT Cruiser wagons. In the Journal story, Bloch confirmed that he contacted Geeks on Call but said he was trying to eradicate a virus that had seized control of his computer. He said the erasures didn't delete any files related to the inquiry.

Bloch was in the office this morning during the raid and could not be reached for comment. The search is still under way, witnesses said.

-By John R. Wilke, The Wall Street Journal; 202-862-6625

(END) Dow Jones Newswires

Jamen
Flood
Buck

KATZ, MARSHALL & BANKS, LLP

Facsimile Cover Sheet

To: Fred Fielding, Esquire
From: Debra S. Katz
Date: April 29, 2008 Time: 5:50 pm
Fax No.: 202-456-6279

DOCUMENTS	NUMBER OF PAGES (Includes cover page)
Correspondence re: U.S. Special Counsel Scott Bloch	18

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KATZ, MARSHALL & BANKS, LLP

By Telecopier and Hand-Delivery
April 29, 2008

President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: U.S. Special Counsel Scott Bloch

Dear Mr. President:

On March 3, 2005, my clients, a group of public interest organizations and current and former employees of the United States Office of Special Counsel (OSC), filed a complaint against Special Counsel Scott Bloch, seeking redress for his violations of federal personnel laws, as well as other abuses of authority and misconduct. After a seven-month delay, Clay Johnson, the Director of the President's Council on Integrity and Efficiency (PCIE) finally asked Office of Personnel Management's Inspector General (OPM IG) to investigate the complaint. Some two and a half years later, the investigation remains open.

In the intervening years since our original complaint was filed, I have written periodically to Mr. Johnson, to Harriet Miers, former White House Counsel, to Fred Fielding, White House Counsel, and to yourself to update you about Mr. Bloch's acts of misconduct and headline grabbing antics. These have included obstruction of the OPM IG's investigation, destruction of documents, false statements to Congress, misuse of official authority, pursuit of Hatch Act investigations for politically motivated reasons, destruction of computer files at OSC, and other improper and illegal activity. On several occasions I (as well as others, including members of Congress from both sides of the aisle), have asked that you exercise your authority to remove Mr. Bloch from his position for malfeasance and misconduct. See 5 U.S.C. §1211(b) (President may remove Special Counsel before the expiration of his term for "inefficiency, neglect of duty, or malfeasance in office").

Mr. Bloch has done lasting damage to OSC's reputation and credibility. My clients – who were among the first victims of Mr. Bloch's sorry tenure – have waited over three years for justice. This is just too long. Therefore, I am calling upon you to take appropriate steps to bring about the completion of the OPM IG's investigation. I am also renewing my request that Mr. Bloch be held accountable for his unbroken record of misconduct and malfeasance, recounted and summarized below, and that he be removed from office and not be permitted to finish out his term.

A. Original Complaints

1. Special Counsel Bloch took office on January 5, 2004. One month later, in one of his first official acts, Mr. Bloch ordered that all references to OSC's jurisdiction over complaints by federal workers alleging sexual orientation discrimination be "scrubbed" from OSC's web-site, and its official publications. Mr. Bloch took this action without conducting any legal review of whether OSC did, in fact, have jurisdiction over such complaints, and without consulting either the Office of Personnel Management or the U.S. Department of Justice.

Almost immediately after Mr. Bloch scrubbed the website, his actions were publicized and a heated public controversy erupted. The controversy triggered significant national media attention and bipartisan expressions of concern by members of Congress.¹ The controversy continued over the next month, reaching its zenith on March 31, 2004, when the White House issued a strongly-worded statement, which was widely interpreted as a rebuke of Mr. Bloch. The White House confirmed that "[l]ong-standing federal policy prohibits discrimination against federal employees based on sexual orientation. President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work." See "Employees are protected from bias for sexual orientation, White House says," *Federal Times*, March 1, 2004, attached as Exhibit 2).²

¹ Among the Congressional inquiries was a February 19, 2004 letter from the Senate Committee on Governmental Affairs, signed by both Chairman Susan Collins (R-Maine) and ranking minority member Joseph Lieberman (D-Connecticut), among others; a March 4, 2004, letter from Rep. Shays (R-Connecticut), Rep. Greenwood (R-Pennsylvania), and Rep. Simmons (R-Connecticut); and a separate March 4, 2004 letter signed by 70 other Members of the House on the Democratic side. See Congressional letters, attached as Exhibit 1. The letter from Senators Collins and Lieberman expressed concern that Mr. Bloch's decision to remove all references to jurisdiction over sexual orientation discrimination complaints "appears inconsistent with... assurances" that Mr. Bloch had given to committee staff in written submissions and conversations during consideration of his nomination two months before, that he would continue OSC's policy of protecting federal employees against sexual orientation discrimination.

² Despite this rebuke, Mr. Bloch has refused to enforce this prohibition. Misstating applicable legal precedent, Mr. Bloch has frequently asserted that he is without legal authority to investigate and prosecute discrimination based on sexual orientation, notwithstanding the contrary position of the rest of the Executive Branch, including the Office of Personnel Management and the Department of Justice. Mr. Bloch's most recent misrepresentation of the legal precedent occurred before the House Subcommittee on July 12, 2007. During a hearing on OSC's Reauthorization, he claimed that the Merit Systems Protection Board (MSPB) had ruled that federal employees do not have statutory protection against discrimination based on their sexual orientation. Fortunately, the Chairman of the MSPB was present during Mr. Bloch's testimony and openly disagreed with Mr. Bloch's misrepresentation of Board precedent. See Hearing Before the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, July 12, 2007, at pp. 47-48 (observing that Mr. Bloch's reading of MSPB precedent was not reasonable), attached as Exhibit 3.

2. As noted above, Mr. Bloch's inept handling of the sexual orientation discrimination matter generated significant unfavorable press coverage and attention. Almost immediately, Mr. Bloch made known his belief – and his anger – that OSC staff had (in his words) “leaked” information to the press about his reversal of OSC's interpretation of the law. To avoid future “leaks,” Mr. Bloch issued a gag order prohibiting staff from commenting on agency matters without his approval. Mr. Bloch's actions and his animus toward employees whom he assumed had spoken to the press were, of course, directly antithetical to the mission of OSC, which is, among other things, to promote transparency in government, and investigate and prosecute agency officials who retaliate against whistleblowers.

3. Mr. Bloch blamed career staff for the attention his actions had attracted. In subsequent months, Mr. Bloch doubled the size of his political staff and began increasingly to exclude OSC career staff from any participation in key agency management and policy decisions, as well as from hiring decisions. Mr. Bloch required that all complaints alleging sexual orientation discrimination be funneled through one of his political deputies. Mr. Bloch and his political staff also took charge of hiring and ended the prior practice of holding competitions for vacant attorney positions under which career managers would select the candidates they believed were the most qualified. Instead, Mr. Bloch and his political staff selected new career staff themselves, non-competitively.

In many instances, the employees whom Mr. Bloch and his political staff brought on board non-competitively were known to have a personal connection or affiliation to Mr. Bloch or his Deputy, James “Jim” Renne. In addition, Mr. Bloch abandoned OSC's practice of recruiting new lawyers from top tier local law schools such as the Georgetown Law Center or the George Washington University Law School. Instead, Mr. Bloch recruited and hired several new attorneys who were recent graduates of Ave Maria Law School. At the time, Ave Maria was a new and only provisionally accredited law school that was located in Michigan and whose purpose was to provide a legal education in the context of fidelity to the Catholic faith.³

During this time, Mr. Bloch also hired Alan Hicks, the former headmaster of a Pennsylvania boarding school attended by one or more of his children (St. Gregory's Academy). Mr. Hicks, who had no relevant experience whatsoever, was hired non-competitively to serve as a “consultant” or “expert” on an “intermittent” basis. Mr. Hicks

³ According to its website, Ave Maria School of Law “offers an outstanding legal education in fidelity to the Catholic Faith as expressed through Sacred Tradition, Sacred Scripture, and the teaching authority of the Church.” Ave Maria has been categorized as a Tier IV law school by U.S. News and World Report. The ABA recently sent a letter to Ave Maria threatening to withdraw its accreditation for failure to maintain a qualified faculty.

produced no work product. His employment was discontinued after Public Employees for Environmental Responsibility publicized Mr. Hicks' prior relationship with Mr. Bloch, and filed a suit under the Freedom of Information Act seeking information about his OSC duties.⁴

4. Mr. Bloch's efforts to purge existing career staff and bring in his own loyalists came to a head in January 2005 when he implemented a surprise "reorganization," whose centerpiece was the creation of a new field office in Detroit, Michigan. As part of the reorganization, Mr. Bloch directed the involuntary geographic reassignments of twelve career OSC employees to open and staff the new field office.

The involuntary geographic reassignments were announced at a staff meeting, with no advance notice whatsoever given to affected employees or, indeed, to any of the career staff, including career executives. Mr. Bloch did not solicit volunteers for the reassignments, as is customary in the federal sector, and did not conduct any management or cost-benefit analysis to support the new field office. Further, had the twelve affected employees accepted their reassignments, it would have imposed enormous relocation costs on OSC.

Mr. Bloch initially provided the reassigned employees only 10 days to decide if they would accept the reassignments, and indicated that their employment would be terminated if they did not agree to relocate. After an uproar ensued (again captured in the media and the subject of Congressional interest), Mr. Bloch extended the time to respond to 60 days.

In the end, not a single one of the employees accepted their reassignments and virtually all left the agency, which was exactly what Mr. Bloch intended in targeting them for reassignment.⁵ OSC lost almost 20% of its legal and investigative staff at

⁴ GAO conducted a limited investigation into whether there was any legal authority for Mr. Hicks' hiring. See GAO-06-16 (November 2005). It concluded that there existed regulatory authority to hire Mr. Hicks as an intermittent employee. It expressly declined, however, to determine whether Mr. Hicks was actually qualified to perform the tasks that were specified for him by OSC, which included reviewing and analyzing OSC programs for efficiency and to make recommendations regarding changes. It is hard to understand how Mr. Hicks could conceivably have been qualified for this task, given that his background consisted of 10 years as a headmaster at Mr. Bloch's children's boarding school.

⁵ Both the surprise reassignments and the bizarre method chosen by Mr. Bloch to inform the twelve employees who were affected seems calculated to have instilled the maximum level of fear among the entire career staff. Thus, Mr. Bloch held a five-minute meeting for all OSC staff the afternoon when he announced the reorganization. During the meeting, at which no questions were solicited or asked, Mr. Bloch stated that certain unidentified career staffers would be reassigned to the Dallas and Oakland offices, and the newly-created Detroit office. To learn whether one's name was on the list for reassignment, Mr. Bloch directed employees to return to their offices and check the OSC Intranet. When employees did so,

headquarters, including a senior executive with over 20 years of relevant experience, several senior attorneys, and the Director of OSC's then highly successful ADR program.

The opening of the new field office and the forced reassignments were widely recognized as a pretext for purging career staff. A group of anonymous OSC career staff explained in a letter of January 13, 2005, to Senator Susan Collins that "directing reassignments to field offices, including the newly created Detroit office is completely unsupported and, at a minimum, constitutes gross mismanagement."⁶ See Letter from OSC Staff to Sen. Collins, attached as Exhibit 4. The employees observed that the reasons Mr. Bloch provided for the reorganization, were "pretextual and nonsensical." Specifically they noted, "the manner in which [the reorganization] has been undertaken suggests a retaliatory motive and smacks of an attempt to purge existing career staff." Indeed, the employees noted, "the twelve employees were clearly targeted." They further noted that "Some have voiced serious concerns over with several of the Special Counsel's sweeping initiatives, including the decision to place a political appointee in charge of the Hatch Act Unit and his attempt to deny protection to federal employees suffering from sexual orientation discrimination." "Moreover," the employees explained, "all of the affected attorneys and investigators work for the reassigned senior executive who is unfairly viewed as aligned with the prior Special Counsel's politics and policies."

5. In the wake of the surprise reorganization and forced geographic reassignments, on March 3, 2005, my clients, who include several of the reassigned employees, filed a complaint against Mr. Bloch. See Complaint (Mar. 3, 2005), attached as Exhibit 5. Their complaint alleged, among other things, that Mr. Bloch:

- created a hostile work environment with a series of retaliatory acts against career OSC staff members, culminating in the involuntary reassignment of twelve career employees based on actual or perceived whistle blowing and/or sexual orientation;
- imposed non-disclosure policies on career staff in violation of the Anti-Gag statute and in violation of the Lloyd LaFollette Act, 5 U.S.C. Sec. 7211, which guarantees all federal employees the right to communicate with Congress;

however, the information had not yet been posted, and considerable anxiety ensued over the next 30 minutes, before the names were finally posted, and employees learned their fates.

⁶ Subsequent events have confirmed these employees' concerns regarding the pretextual nature of the justifications given for the new field office. That office has never had enough work to do to justify its existence; and even cases that should arguably be investigated by it have often been assigned to other offices where there are more experienced staff members.

- abandoned merit-based competitive hiring for career positions and misused special hiring authorities;
- refused to enforce existing statutory prohibitions against sexual orientation discrimination in the federal workforce; and
- provided false statements to Congress.

In an amended complaint, filed on March 31, 2005, my clients further alleged that Mr. Bloch:

- hastened the termination date of the employees who refused the geographic reassignments in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments;
- declined to permit employees to remain on at OSC headquarters in positions they were qualified to hold, in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments; and
- abused his authority by affording disparate treatment to two high-profile Hatch Act complaints based on partisan political considerations.⁷ See Amended Complaint (Mar. 31, 2005), attached as Exhibit 7.

6. On May 24, 2005, after the complaints were filed, an oversight hearing on

⁷ One of the cases concerned a visit by Senator John Kerry to the Kennedy Space Center, and the other a complaint filed by Representative Conyers against then-National Security Advisor Condoleezza Rice for using government funds to travel around the country in the weeks before the election making speeches, which were alleged to be political. In the Kerry case, Special Counsel Bloch and Deputy Special Counsel Renne referred the complaint to the career staff and ordered an on-site investigation within days after the Kerry visit. On the other hand, when the Rice complaint came on October 21, Mr. Renne assigned it to Mr. Bloch and himself and then sat on the complaint, taking no action, until after the election, when he finally referred it to the Hatch Act Unit for investigation.

In a letter to Rep. John Conyers, dated July 7, 2005, as well as in response to post hearing questions posed by Senator Akaka, Mr. Bloch falsely denied that the complaint had ever been assigned to either himself or Mr. Renne. See Hearing, U.S. Senate Subcommittee on Oversight of Government Management (May 24, 2005) at p. 205, attached as Exhibit 6. To cover his tracks and in a clear act of obstruction of justice, Mr. Bloch directed the alteration of OSC's computerized case tracking system to eliminate any evidence that the Rice complaint had originally been assigned to himself and Mr. Renne.

the reorganization was held before the Senate Subcommittee on Oversight of Government Management. During that hearing, Mr. Bloch made a number of false statements to the Subcommittee. He falsely asserted that he had consulted senior career staff about his plan to open a new field office. See Hearing Before the U.S. Senate Subcommittee on the Oversight of Government Management (May 24, 2005) (Exhibit 6) at 9. Mr. Bloch lied when he stated that the senior executive that he assigned to the Detroit office praised the decision to open a new field office as a "creative" one. Id. at 16. Mr. Bloch also asserted (falsely) that he had offered the Director of OSC's ADR program the opportunity to stay on at headquarters, and that she had declined this offer. Id. at 30.⁸ Finally, Mr. Bloch untruthfully denied that he had insisted that the reassigned employees agree not to communicate with Congress as a condition of any settlement of their claims against him. Id. at 24.

B. Obstruction of Justice

1. The complaints that my clients filed in March 2005 were referred to the Integrity Committee (IC) of the PCIE by Mr. Bloch's deputy, Jim Renne.⁹ On April 14, the IC concluded that it did not have jurisdiction over the complaints, and referred them to former White House Counsel, Harriet Miers. See Letter from IC to H. Miers, attached as Exhibit 8. Two weeks later, Ms. Miers referred the complaints to the PCIE for investigation.

2. The complaints languished before the PCIE for over seven months, as Mr. Bloch waged an internal campaign to convince its Director, Clay Johnson, not to investigate the charges at all. We understand that while Mr. Bloch publicly claimed to welcome the opportunity to "clear" himself of the well-publicized allegations against him, behind the scenes he made every effort he could to torpedo the investigation.

Among other things, Mr. Bloch fiercely resisted the assignment of the investigation to the OPM IG. His objection was based on the ridiculous notion that – because OPM itself disagreed with Mr. Bloch regarding whether sexual orientation discrimination in the federal workforce was illegal – the OPM IG could not investigate the claims against Mr. Bloch impartially.¹⁰

⁸ Both the senior executive and the Director of the ADR program provided affidavits to the committee refuting Mr. Bloch's statements.

⁹ My clients had requested that their complaint be referred to the PCIE, not the IC, because the latter lacks jurisdiction over complaints against the Special Counsel. Despite this request, Mr. Renne forwarded the complaints to the IC, thus delaying any action on them for at least a month.

¹⁰ Mr. Bloch has since repeated this claim publicly in response to more recent incidents in which his misconduct has been revealed.

3. On October 17, 2005, we were advised that the OPM IG had been assigned to conduct an investigation of the complaint. The long-delayed investigation was slow to get off the ground. For months Mr. Bloch, through his political staff, stubbornly resisted or delayed responding to the IG's requests for access to relevant documents and witnesses. Mr. Bloch's political staff asserted bogus claims of attorney client privilege in an effort to frustrate the inquiry. The assertion of these bogus claims continued throughout the investigation, thus hampering the OPM IG's ability to secure relevant testimony from key players, including Mr. Bloch's former deputies, Mr. Renne and James McVay.¹¹

During this period, Mr. Bloch also sought to garner political support to assist him in squelching the OPM IG's investigation. As reported by the *Hill* newspaper in its June 13, 2006 edition, as the investigation began to pick up in intensity during the Spring of 2006, a group of individuals holding leadership roles in certain so-called "family values" organizations sent you a letter asking you to intervene and end the investigation.¹² See *The Hill*, June 13, 2006, attached as Exhibit 9. Ignoring the serious charges of misconduct and violations of federal personnel laws, the letter adopted Mr. Bloch's favorite ploy: attempting to divert attention from his own conduct by complaining that he had been targeted for investigation because of his stance regarding sexual orientation discrimination.

It is obvious that Mr. Bloch himself solicited this letter of support even as he publicly claimed that he was cooperating in the investigation and welcomed it. The effort to marshal political support to interfere with an official investigation was clearly improper, and again inconsistent with OSC's own good-government mission. Mr. Bloch's conduct once again betrayed his own failure to appreciate the very laws and policies that he was charged with enforcing.

4. Over the summer of 2006, as the IG began to interview the OSC complainants and other OSC employees, we became aware that Mr. Bloch was violating his promise to recuse himself from the investigation. Sources within OSC advised me that Mr. Bloch had discussed with senior staff his desire to compel employees who had

¹¹ "Federal officials have no attorney-client privilege that can be asserted against federal investigators with respect to consultations with government lawyers." See Simon, William, Propter Honoris Respectum: The Professional Responsibilities of the Public Official's Lawyer: A Case Study from the Clinton Era, 77 Notre Dame L. Rev. 999, 1012 (1998), citing *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir., 1998); *In re Grand Jury Subpoena*, 112 F.3d 910, 921 (8th Cir. 1997), cert. denied, 525 U.S. 1105 (1997).

¹² These organizations included, among others, the Family Research Council, the Christian Coalition, and the Traditional Values Coalition.

been interviewed by the IG to complete affidavits describing what they had been asked and what they had told investigators.¹³ I was also informed that Mr. Bloch had insisted that interviews must be scheduled through one of his political deputies, Rebecca McGinley, whom Mr. Bloch had appointed to be OSC's "liaison" with the IG. Ms. McGinley's designation for this role was telling. Ms. McGinley was a relatively inexperienced attorney, with no relevant experience, to whom Mr. Bloch had delegated significant authority.¹⁴ She was widely viewed by OSC career staff as a "spy" who was fiercely loyal to Mr. Bloch and who would report any perceived "disloyalty" by career staff directly to Mr. Bloch.

On September 7, 2006, I wrote a letter of protest to Clay Johnson regarding these matters, but received no response. See Letter from D. Katz to C. Johnson, attached as Exhibit 10. On January 30, 2007, Ms. McGinley continued her obstruction by sending a heavy-handed and misleading email to all OSC staff. See Email from R. McGinley to OSC staff, attached herein as Exhibit 11. In the email, Ms. McGinley mischaracterized the OPM IG's investigation as one being conducted "on our behalf." She instructed employees that if they were contacted directly by the OIG they must notify her of this contact. She also instructed staff that all interviews by the IG must be conducted at OSC headquarters, unless the employee being interviewed specifically requested otherwise.¹⁵

This episode, like others before it, garnered more unfavorable attention for Mr. Bloch in the press. Thereafter, James Byrne, Mr. Bloch's new deputy, withdrew Ms. McGinley's instructions to staff.

5. During this period, while Ms. McGinley was actively interfering with the OPM investigation, Mr. Bloch himself committed a blatant act of obstruction of justice. As reported by the *Wall Street Journal* (Nov 28, 2007 edition), Mr. Bloch hired "Geeks on Call" in December 2006 to do a sophisticated seven level "wipe" of his computer hard drive, and the hard drives of two of his political deputies. See *Wall Street Journal*, Nov 28, 2007, attached as Exhibit 12. Mr. Bloch initially claimed that he commissioned

¹³ Although Mr. Bloch was ultimately dissuaded from implementing this plan, his musings were widely known among OSC staff.

¹⁴ Notwithstanding her inexperience, in 2006 Mr. Bloch gave Ms. McGinley the job of Acting Deputy Special Counsel (the number two spot at OSC), which she held for approximately one year.

¹⁵ It bears noting that shortly after these events, Mr. Bloch provided Ms. McGinley, a political appointee, with a career appointment, thus permitting her to "burrow in" to the civil service. He also granted her a coveted six month detail to the U.S. Attorney's office, notwithstanding that he had routinely denied the requests for similar details by OSC career attorneys. McGinley was known to have boasted of her career appointment and detail to OSC staffers, explaining that Mr. Bloch had awarded these benefits to her because he "owed" her, presumably for her efforts to obstruct the OPM IG investigation.

"Geeks on Call" to perform these services to eradicate a "virus" on his computer which had caused it to "crash." He later stated in a February 6, 2008, letter to Representatives Henry Waxman and Tom Davis, and during radio interviews that he called "Geeks" because he was also concerned about a possible "hacking" threat. See Letter from S. Bloch to Rep. Waxman and Rep. Davis, attached as Exhibit 13.

According to Mr. Bloch, all of the files on his computer were either "personal" or not relevant to the OPM IG investigation. Mr. Bloch had "Geeks on Call" transfer these files to a flash drive, which he has refused to turn over to the OPM IG, asserting his right to personal "privacy" in its contents.

Each and every one of the assertions that Mr. Bloch has made to explain his conduct is ludicrous. Mr. Bloch obviously enlisted the assistance of "Geeks on Call" to destroy evidence being sought by the OPM IG, not to eradicate a virus. As the head of operations for Geeks on Call in D.C. told the *Wall Street Journal*, the procedure it employed on Mr. Bloch's computer is used to render hard drives unreadable, not to address viruses or hacking threats. See Exhibit 12. In addition, Mr. Bloch has never provided a plausible explanation as to why he wiped the hard drives of his political deputies to address a virus on his own laptop.¹⁶ Further, OSC has its own IT department, which would have been responsible for addressing any "virus" or hacking issue; OSC does not use "Geeks on Call" to service its computers. Mr. Bloch's assertion that "Geeks on Call" was more qualified to address computer problems than OSC's highly qualified IT staff is, to say the least, not plausible. Further, OSC policy precludes the use of outside vendors to reconfigure its computer equipments, as doing so constitutes a security threat.

Moreover, it is unclear how "Geeks on Call" could have transferred the "personal" and other files on Mr. Bloch's computer to a flash drive, if his hard drive had, in fact, "crashed" as he has asserted. It is also odd that Mr. Bloch would not have directed an examination of the security of the entire OSC network, given his claims that his laptop was infected by a virus, and/or had been hacked.

Finally, even if every file that Mr. Bloch transferred to the new flash drive were "personal," it is outrageous for Mr. Bloch to expect to be taken at his word on that matter. Federal policy (as well as OSC's own directives) provides that information that is stored on government computers is the property of the government, not the user. Having put the

¹⁶ According to a December 7, 2007 article that appeared on www.govexec.com, a spokesperson for Mr. Bloch made the astonishing statement that Mr. Bloch "also had the computers of former aides who had departed the agency wiped because the computer technicians arrived at the office while Bloch was not present and were billing the agency for their time." See *Government Executive*, Dec 7, 2007, attached as Exhibit 14.

files on a government computer, and used government funds to transfer them to a flash drive (also bought with government funds), Mr. Bloch cannot prevent the OPM IG from examining the flash drive to determine their relevance.¹⁷

C. Abuses of Official Authority

Throughout his tenure, Mr. Bloch has engaged in a pattern of abuse of official authority. This course of conduct began within months after he began his term, when Mr. Bloch employed OSC investigative authority to promote pet causes over which the agency lacked jurisdiction. It has since escalated into a full scale and widely publicized campaign by Mr. Bloch to employ OSC's investigative authority to protect himself against accountability for his violations of law and other misconduct.

1. Misuse of Official Authority In Order to Promote Pet Causes

a. Mercury and Autism

Shortly after his term began, Mr. Bloch abused the statutory authority OSC possesses under 5 U.S.C. § 1213 to refer whistleblower disclosures by federal employees for investigation. On May 20, 2004, Mr. Bloch sent a letter to Congressional oversight committees and issued a press release offering OSC's views on a controversial matter over which it lacked jurisdiction, not to mention any expertise – whether there is a causal relationship between the use of childhood vaccines containing mercury, and the incidence of autism. See OSC press release, attached as Exhibit 15.

The circumstances surrounding Mr. Bloch's letter are extremely suspicious. Apparently, a member of Mr. Bloch's political staff, Catherine Deeds, either had a personal interest in the issue of the relationship between autism and mercury or was doing a favor for individuals affiliated with certain advocacy groups interested in the issue. These groups gathered signatures on hundreds of identical form letters accusing the Center for Disease Control of colluding with pharmaceutical companies to cover up information revealing the dangers of mercury in the vaccine supply. They submitted the form letters to OSC. See Form Letter to S. Bloch, attached as Exhibit 16. Mr. Bloch then characterized these form letters as representing "hundreds" of whistleblower "disclosures" and forwarded them to Congress on OSC letterhead with a strong statement

¹⁷ Remarkably, in several radio interviews, Mr. Bloch asserted that requiring him to give the OPM IG access to his "personal files" (stored on the government computer) would violate his right to privacy! This patently ludicrous assertion collides with OSC's routine requests to examine the government issued computers and emails of the subjects of its own investigations, including, among others, Karl Rove!

suggesting that the position of the groups was meritorious.¹⁸

Contrary to routine practice in disclosure cases, none of OSC's career staff was involved in the consideration of the form letters, the decision to transmit them to Congress or the drafting of Mr. Bloch's letter. Mr. Bloch's letter was released to the press and publicly touted by the interest groups as an authoritative government opinion to support their argument that there is a connection between the vaccines and autism, notwithstanding scientific opinion to the contrary. The collusion between Mr. Bloch and these groups is obvious, and is confirmed by the fact that the advocacy group "SAFEMINDS" issued its press release announcing Mr. Bloch's letter on May 19, 2004, the day before OSC publicly announced it.¹⁹ See SAFEMINDS press release, attached as Exhibit 17. Further, Mr. Bloch's letter continues to be cited by these groups as evidence of the correlation between mercury and autism.

b. "Intelligent Design"

In August 2005, Mr. Bloch again used his official authority and government resources to promote a pet cause unrelated to OSC's mission. One of his political deputies, Mr. McVay, issued eleven single-spaced pages of detailed "findings" on behalf of Dr. Richard von Sternberg, a research associate at the Smithsonian. See Letter from J. McVay to R. Sternberg, attached as Exhibit 18. Mr. Sternberg claimed that he had suffered retaliation for publishing an article questioning evolutionary theory and supporting the concept of "intelligent design." OSC issued its eleven pages of findings notwithstanding its admission that it lacked jurisdiction over the entire matter because, as a research associate, Dr. Sternberg was not even an employee of the Smithsonian.

Equally outrageous, Mr. McVay issued these "findings" notwithstanding that OSC never even investigated Dr. Sternberg's complaint. The findings appear to be based entirely upon OSC's reading of emails and other documents Dr. Sternberg provided. OSC did not interview anyone at the Smithsonian, including the individuals whose emails it cited in support of its "findings."

The OSC letter was very widely publicized on the internet, and in the print and television media. See Sternberg articles, attached as Exhibit 19. It was routinely characterized as providing the results of a "government investigation" finding retaliation

¹⁸ Mr. Bloch refers to having received "hundreds of disclosures from private citizens" on the issue. In fact, what Mr. Bloch received were not "disclosures" but form letters, obviously orchestrated by an interest group.

¹⁹ The media contact for "SAFEMINDS" was Joe Giganti of Veritas Media Group. Mr. Giganti is a conservative commentator who, like Ms. Deeds, is affiliated with Pro-Life groups. It seems very likely that this personal connection was the source of the letter from Mr. Bloch.

by the Smithsonian against Dr. Sternberg.²⁰

As in the case of the mercury/autism "disclosure," the Sternberg case was handled exclusively by Mr. Bloch's political staff, with no involvement by OSC's career employees. Once again, Mr. Bloch used his official authority and the imprimatur of his office to promote a personal agenda.

2. Authorizing Leak of the Investigative Report Concerning the Lurita Doan Hatch Act Investigation and Lying to Congress About it

As you know, OSC conducted an investigation of allegations that GSA Administrator Lurita Doan had violated the Hatch Act when she met with political appointees on GSA property to host a slide show given by the White House Office of Political Affairs. Mr. Bloch sent you a letter last June expressing his conclusion that Ms. Doan had in fact violated the Hatch Act.

Regardless of the validity of OSC's conclusions regarding Ms. Doan's actions, Mr. Bloch engaged in blatant misconduct in connection with this matter. First, in order to keep the public spotlight on himself and to deflect attention from the ongoing OPM investigation, he authorized the leak of OSC's findings to the press before Ms. Doan had the opportunity to respond to the report. Second, the report that OSC leaked with his approval was not redacted to protect the privacy of witnesses. Finally, and perhaps worst of all, Mr. Bloch attempted to shift the blame for the leak to Ms. Doan herself, and lied to Congress about his role in authorizing the leak.

The relevant events are as follows: On May 18, 2007, OSC delivered a copy of its investigative report (dated May 18) to Ms. Doan. On May 23, 2007, an article containing details from the report appeared on the *Government Executive* website.²¹ See *Government Executive*, May 23, 2007, attached as Exhibit 22. Mr. James Mitchell, OSC's Director of Communications, advised Mr. Bloch of the article. Mr. Bloch was surprised and angry—not that the report had been leaked—but that it had been leaked to

²⁰ For example, the "Discovery Institute" a prominent advocate of the theory of intelligent design, issued a press release entitled "Office of Special Counsel Concludes Smithsonian Created a 'Hostile Work Environment' in Effort to Oust Biologist Skeptical of Darwinism." See Discovery Institute press release, attached as Exhibit 20. That press release was picked up by numerous publications, both nationally and internationally. The *Washington Post* ran a story citing OSC's investigative "findings." See *Washington Post*, Aug. 19, 2005, attached as Exhibit 21. Dr. Sternberg appeared on the popular television show "The O'Reilly Factor" and cited OSC's "findings" on his behalf. Indeed, OSC's findings continue to this day to be cited and published by critics of Darwinian theory, most recently in the feature length film "Expelled," which contains a segment on Dr. Sternberg.

²¹ It is our understanding that *Government Executive* had obtained a copy of the report from someone within GSA who was hostile to Ms. Doan.

Government Executive (rather than some major media outlet). That same day, Mr. Mitchell, with the approval of Mr. Bloch, provided a copy of the report to the *Washington Post*, which placed it on the newspaper's website that very evening.

The version that appeared at the *Washington Post* website, however, was dated May 17th and contained some significant differences from the final May 18th report. As was later confirmed, the May 17th report that the *Washington Post* had put on its website was an earlier draft of the investigative report that Mr. Mitchell had supplied to the *Washington Post* in error, intending instead to supply the *Washington Post* with the final report.

When Mr. Mitchell became aware of his error the next morning, he quickly alerted the *Washington Post* and supplied it with the final report. In his haste, however, he neglected to redact the final report to protect witness privacy. On the morning of May 24, the *Washington Post* took down the earlier draft and replaced it with the final, unredacted report of May 18. Thus, the report that the *Washington Post* placed on its website included the names of witnesses, discussions of the performance evaluations of some of them, and extremely critical comments that Ms. Doan had made about one of her political appointees, Emily Taylor.

Immediately after Mr. Bloch authorized the leak and Mr. Mitchell effectuated it, both began to lie and dissemble about OSC's role. In a May 24th *Government Executive* article, which questioned OSC's involvement in the leak of the preliminary draft, Mr. Mitchell cited a non-existent policy under which OSC "does not comment on the process used to draft reports, or 'how specific versions may have been disseminated.'" See *Government Executive*, May 24, 2007, attached as Exhibit 23.

At the same time, Mr. Bloch was actively deceiving Ms. Doan's attorney, Michael Nardotti, concerning the circumstances of the leak. On May 24, 2007, Mr. Nardotti sent Mr. Bloch a very strongly worded letter, referring to a telephone conversation they had had the night before, complaining about the leak and pointing out that it obviously came from someone within OSC. Mr. Nardotti demanded that Bloch investigate the source of the leaks and hold the responsible individual accountable. He also stated that the leaking of the reports showed that OSC was biased and demanded that OSC turn the entire matter over to an independent investigator. See Letter from M. Nardotti to S. Bloch (May 24, 2007), attached as Exhibit 24.

Mr. Bloch, of course, did not institute any investigation of the leak. There was no need to investigate the leak because Mr. Bloch knew full well that he himself had directed his Communications Director to provide copies of the report to the press. Instead, he responded by letter the next day, stating that it was "false" to claim that OSC provided the press with the investigative report. Even more outrageously, Mr. Bloch

accused Ms. Doan herself of leaking the report as part of some "ruse" or effort to create "roadblocks" to OSC's official investigation. See Letter from S. Bloch to M. Nardotti (May 25, 2007), attached as Exhibit 25.

On May 30, Nardotti responded, pointing out inconsistencies in Mr. Bloch's letter, and his failure to directly address whether OSC had leaked the preliminary draft. Mr. Nardotti pointedly asked whether someone within OSC had leaked the May 17th draft or the May 18th final report. See Letter from M. Nardotti to S. Bloch (May 30, 2007), attached as Exhibit 26.

Later that day, Mr. Bloch sent a one-paragraph letter, this time attempting to dodge the issue in its entirety, by reminding Mr. Nardotti that the investigation was about Ms. Doan and resurrecting his blatantly false allegation that Mr. Nardotti's persistent questions about the leak of the report were not legitimate and were just an effort to divert attention from Ms. Doan's violations. See Letter from S. Bloch to M. Nardotti (May 30, 2007), attached as Exhibit 27.

Thus, Mr. Bloch clearly authorized the improper leak of the May 18, 2007 report to the press and then falsely claimed that he did not. Further, he cynically tried to shift the responsibility for the leak to Ms. Doan. Still worse, however, Mr. Bloch subsequently lied to a Congressional committee by professing to have no knowledge about how the Post came into possession of the report, by claiming that he did not authorize it, and by refusing to agree to investigate the source of the leak, supposedly on the grounds that to do so would somehow be perceived as violating the rights of the leaker! See Hearing Before the House Subcommittee on Federal Workforce, July 12, 2007, at 38-39, 76-77, 95-97 (Exhibit 3). Mr. Bloch's evasive and untruthful testimony regarding his knowledge of the leak and his role in authorizing it was clearly perjurious.

3. Launching Investigations for Self-Protection: Iglesias/U.S. Attorney Investigation

Perhaps Mr. Bloch's greatest abuse of official authority involves his recent efforts to protect himself against the consequences of his misconduct by instigating and then maintaining a series of baseless investigations of the White House. Thus, in April of 2007, Mr. Bloch made the rounds of the media announcing that he intended to investigate alleged violations of law in connection with the termination of former U.S. Attorney, David Iglesias, as well as alleged Hatch Act violations by your then-political advisor, Karl Rove. Mr. Bloch has since expanded his "investigation" to cover all of the U.S. Attorneys who were fired.

Mr. Bloch's motives for insinuating himself into these controversial and widely publicized matters were patently self-serving. The scope of the investigations Mr. Bloch

announced (not to mention the media blitz that accompanied his announcement), betrayed that it was largely an act of political grand-standing designed to give him cover against any actions that you might take to hold him accountable for his own long list of transgressions.²²

For example, the OSC's "investigation" of a claim on behalf of Mr. Iglesias under the Uniform Service Employment Rights and Restoration Act (USERRA) (which OSC itself apparently solicited Mr. Iglesias to file) is clearly without any legal foundation. Presidential appointees who have been confirmed by the Senate are not entitled to claim statutory protection against decisions regarding their continued tenure, and Mr. Bloch knows this. Further, notwithstanding Mr. Bloch's grandstanding, there was never any basis for believing that a Hatch Act violation was committed by anyone in connection with Mr. Iglesias' firing or the firings of the other U.S. Attorneys.²³

In fact, Mr. Bloch has rejected the repeated advice of career staff to stand down and/or limit the Iglesias/U.S. Attorney investigations. He has preferred to keep them open and as broad in scope as possible in order to keep himself in the public spotlight and to protect himself against any efforts by the Administration to hold him accountable for the serious acts of misconduct detailed above.

Most recently, Mr. Bloch accused the Department of Justice of impeding his investigation of the U.S. Attorney firings by declining to provide him with documents while the DOJ IG conducts its own investigation of these matters. In fact, it is standard procedure for OSC (or any other investigator conducting an administrative inquiry) to suspend its investigative activity while a potential criminal investigation is on-going. Further, in charging DOJ with obstructing his "investigation," Mr. Bloch is in conflict with the recommendations of OSC's career staff, which have counseled that OSC should stand down while the DOJ IG's investigation goes forward.

* * * * *

²² Mr. Bloch recently tried to employ this device to defend himself from questioning about the "Geeks on Call" matter. In a letter of February 6, 2008 to Representatives Davis and Waxman, he urged the Members to "look closely at the facts and circumstances surrounding . . . the entirety of the OPM investigation which I believe is being misused to impede my statutorily mandated efforts to provide independent oversight of the Executive Branch." See Exhibit 13. Mr. Bloch has made similar claims in radio interviews and letters to the *Wall Street Journal* and the *Washington Post*.

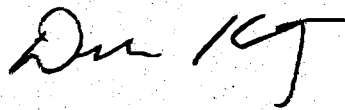
²³ Remarkably, Mr. Bloch recently requested and secured additional funding for this sham investigation by representing that such funding was needed to hire computer forensics experts.

As the foregoing summary makes clear, Mr. Bloch's continued tenure as Special Counsel has wreaked havoc within the agency, and destroyed its credibility. In fact, Mr. Bloch has been and continues to be an embarrassment to your Administration.

Federal sector whistleblowers serve a key function. In a very real sense, they are the eyes and ears of the public. The law provides them with clear protection. It is time to replace Mr. Bloch with a Special Counsel who cares about the mission of OSC and will devote his or her energies to protecting whistleblowers rather than devising scheme after scheme to try to preserve his position.

We have repeatedly asked that you take action to address this intolerable situation and restore integrity and leadership to OSC. At this point, continued inaction on your part can only lead the public to conclude that you prefer a discredited and toothless Office of Special Counsel to an effective one. Accordingly, for one more time, my clients request that you remove Mr. Bloch from his position and provide relief to the OSC employees who were injured by the illegal and pretextual reorganization that Mr. Bloch implemented in 2005.

Sincerely,



Debra S. Katz

Enc. (in hand-delivered copy)

cc: Fred Fielding, White House Counsel

Bakke, Mary Beth

From: Coffina, Scott A.
Sent: Friday, July 18, 2008 8:48 AM
To: Flood, Emmet T.
Cc: Fielding, Fred F.; Farren, J. Michael; Lee, Kenneth K.
Subject: Re OSC

http://talkingpointsmemo.com/news/2008/07/special_counsel_deputy_quits_o.php

Scott A. Coffina
Associate Counsel to the President
Phone: 202-456-7361
Fax: 202-456-5214

7/18/2008

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Special counsel deputy quits over independence

No. 2 official at whistle-blower agency quits over concerns about independence of the office

LARA JAKES JORDAN
AP News

Jul 17, 2008 17:00 EST

The second-in-command at the government's top whistle-blower office has quit in a dispute with his boss, whom he accused of putting "political agendas and personal vendettas" ahead of the agency's mission and independence.

James Byrne's resignation as deputy to U.S. Special Counsel Scott Bloch is effective Saturday. Bloch is under federal investigation, accused of destroying evidence potentially showing he retaliated against his own staff.

"Upon my departure, I am obligated to note that the mission, independence and very existence of the Office of Special Counsel are — and shall remain — at risk unless and until this agency is afforded a presidentially appointed, Senate-confirmed leader who is capable of putting OSC's mission and OSC's people ahead of political agendas and personal vendettas," Byrne, the deputy special counsel, wrote in a July 10 letter to Bloch that was obtained by The Associated Press.

"This agency, and the people whom we serve, deserve no less."

A spokesman for Bloch declined comment. Bloch is a Senate-confirmed presidential

appointee.

The Office of Special Counsel is responsible for protecting the rights of federal workers and ensuring that government whistle-blowers are not subjected to reprisals.

A group of current and former agency workers filed a complaint against Bloch in 2005, accusing him of retaliating with intimidation and involuntary transfers of those who opposed his policies. The employees also accused Bloch of refusing to protect federal workers from discrimination based on sexual orientation.

Those charges are being investigated by the inspector general at the Office of Personnel Management.

FBI and White House Office of Personnel Management agents raided Bloch's office and home in May as part of a criminal investigation into whether he obstructed justice and, potentially, lied to Congress about hiring an outside tech company to scrub his government laptop computer.

Bloch has denied any wrongdoing, and told House investigators in March that the data wipe was done to protect government and personal information on the computer, not to destroy it.

Rep. Tom Davis, R-Va., has joined liberal-leaning watchdog groups in demanding that Bloch resign immediately.

Last year, Bloch recommended that then-GSA chief Lurita Doan be disciplined for engaging in illegal political activities and doling out no-bid awards. Doan abruptly resigned in April at the White House's behest.

Bloch currently is looking to see if it can discipline Justice Department officials who improperly — and potentially illegally — rejected top law students for jobs because their were Democrats or liberal. An internal Justice Department investigation last month concluded that politics and ideology disqualified a significant number of newly graduated lawyers and summer interns seeking coveted Justice jobs in 2006.

Source: AP News

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By Telecopier and Hand-Delivery
April 29, 2008

President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: U.S. Special Counsel Scott Bloch

Dear Mr. President:

On March 3, 2005, my clients, a group of public interest organizations and current and former employees of the United States Office of Special Counsel (OSC), filed a complaint against Special Counsel Scott Bloch, seeking redress for his violations of federal personnel laws, as well as other abuses of authority and misconduct. After a seven-month delay, Clay Johnson, the Director of the President's Council on Integrity and Efficiency (PCIE) finally asked Office of Personnel Management's Inspector General (OPM IG) to investigate the complaint. Some two and a half years later, the investigation remains open.

In the intervening years since our original complaint was filed, I have written periodically to Mr. Johnson, to Harriet Miers, former White House Counsel, to Fred Fielding, White House Counsel, and to yourself to update you about Mr. Bloch's acts of misconduct and headline grabbing antics. These have included obstruction of the OPM IG's investigation, destruction of documents, false statements to Congress, misuse of official authority, pursuit of Hatch Act investigations for politically motivated reasons, destruction of computer files at OSC, and other improper and illegal activity. On several occasions I (as well as others, including members of Congress from both sides of the aisle), have asked that you exercise your authority to remove Mr. Bloch from his position for malfeasance and misconduct. See 5 U.S.C. §1211(b) (President may remove Special Counsel before the expiration of his term for "inefficiency, neglect of duty, or malfeasance in office").

Mr. Bloch has done lasting damage to OSC's reputation and credibility. My clients – who were among the first victims of Mr. Bloch's sorry tenure – have waited over three years for justice. This is just too long. Therefore, I am calling upon you to take appropriate steps to bring about the completion of the OPM IG's investigation. I am also renewing my request that Mr. Bloch be held accountable for his unbroken record of misconduct and malfeasance, recounted and summarized below, and that he be removed from office and not be permitted to finish out his term.

A. Original Complaints

1. Special Counsel Bloch took office on January 5, 2004. One month later, in one of his first official acts, Mr. Bloch ordered that all references to OSC's jurisdiction over complaints by federal workers alleging sexual orientation discrimination be "scrubbed" from OSC's web-site, and its official publications. Mr. Bloch took this action without conducting any legal review of whether OSC did, in fact, have jurisdiction over such complaints, and without consulting either the Office of Personnel Management or the U.S. Department of Justice.

Almost immediately after Mr. Bloch scrubbed the website, his actions were publicized and a heated public controversy erupted. The controversy triggered significant national media attention and bipartisan expressions of concern by members of Congress.¹ The controversy continued over the next month, reaching its zenith on March 31, 2004, when the White House issued a strongly-worded statement, which was widely interpreted as a rebuke of Mr. Bloch. The White House confirmed that "[l]ong-standing federal policy prohibits discrimination against federal employees based on sexual orientation. President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work." See "Employees are protected from bias for sexual orientation, White House says," *Federal Times*, March 1, 2004, attached as Exhibit 2).²

¹ Among the Congressional inquiries was a February 19, 2004 letter from the Senate Committee on Governmental Affairs, signed by both Chairman Susan Collins (R-Maine) and ranking minority member Joseph Lieberman (D-Connecticut), among others; a March 4, 2004, letter from Rep. Shays (R-Connecticut), Rep. Greenwood (R-Pennsylvania), and Rep. Simmons (R-Connecticut); and a separate March 4, 2004 letter signed by 70 other Members of the House on the Democratic side. See Congressional letters, attached as Exhibit 1. The letter from Senators Collins and Lieberman expressed concern that Mr. Bloch's decision to remove all references to jurisdiction over sexual orientation discrimination complaints "appears inconsistent with... assurances" that Mr. Bloch had given to committee staff in written submissions and conversations during consideration of his nomination two months before, that he would continue OSC's policy of protecting federal employees against sexual orientation discrimination.

² Despite this rebuke, Mr. Bloch has refused to enforce this prohibition. Misstating applicable legal precedent, Mr. Bloch has frequently asserted that he is without legal authority to investigate and prosecute discrimination based on sexual orientation, notwithstanding the contrary position of the rest of the Executive Branch, including the Office of Personnel Management and the Department of Justice. Mr. Bloch's most recent misrepresentation of the legal precedent occurred before the House Subcommittee on July 12, 2007. During a hearing on OSC's Reauthorization, he claimed that the Merit Systems Protection Board (MSPB) had ruled that federal employees do not have statutory protection against discrimination based on their sexual orientation. Fortunately, the Chairman of the MSPB was present during Mr. Bloch's testimony and openly disagreed with Mr. Bloch's misrepresentation of Board precedent. See Hearing Before the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, July 12, 2007, at pp. 47-48 (observing that Mr. Bloch's reading of MSPB precedent was not reasonable), attached as Exhibit 3.

2. As noted above, Mr. Bloch's inept handling of the sexual orientation discrimination matter generated significant unfavorable press coverage and attention. Almost immediately, Mr. Bloch made known his belief – and his anger – that OSC staff had (in his words) “leaked” information to the press about his reversal of OSC's interpretation of the law. To avoid future “leaks,” Mr. Bloch issued a gag order prohibiting staff from commenting on agency matters without his approval. Mr. Bloch's actions and his animus toward employees whom he assumed had spoken to the press were, of course, directly antithetical to the mission of OSC, which is, among other things, to promote transparency in government, and investigate and prosecute agency officials who retaliate against whistleblowers.

3. Mr. Bloch blamed career staff for the attention his actions had attracted. In subsequent months, Mr. Bloch doubled the size of his political staff and began increasingly to exclude OSC career staff from any participation in key agency management and policy decisions, as well as from hiring decisions. Mr. Bloch required that all complaints alleging sexual orientation discrimination be funneled through one of his political deputies. Mr. Bloch and his political staff also took charge of hiring and ended the prior practice of holding competitions for vacant attorney positions under which career managers would select the candidates they believed were the most qualified. Instead, Mr. Bloch and his political staff selected new career staff themselves, non-competitively.

In many instances, the employees whom Mr. Bloch and his political staff brought on board non-competitively were known to have a personal connection or affiliation to Mr. Bloch or his Deputy, James “Jim” Renne. In addition, Mr. Bloch abandoned OSC's practice of recruiting new lawyers from top tier local law schools such as the Georgetown Law Center or the George Washington University Law School. Instead, Mr. Bloch recruited and hired several new attorneys who were recent graduates of Ave Maria Law School. At the time, Ave Maria was a new and only provisionally accredited law school that was located in Michigan and whose purpose was to provide a legal education in the context of fidelity to the Catholic faith.³

During this time, Mr. Bloch also hired Alan Hicks, the former headmaster of a Pennsylvania boarding school attended by one or more of his children (St. Gregory's Academy). Mr. Hicks, who had no relevant experience whatsoever, was hired non-competitively to serve as a “consultant” or “expert” on an “intermittent” basis. Mr. Hicks

³ According to its website, Ave Maria School of Law “offers an outstanding legal education in fidelity to the Catholic Faith as expressed through Sacred Tradition, Sacred Scripture, and the teaching authority of the Church.” Ave Maria has been categorized as a Tier IV law school by U.S. News and World Report. The ABA recently sent a letter to Ave Maria threatening to withdraw its accreditation for failure to maintain a qualified faculty.

produced no work product. His employment was discontinued after Public Employees for Environmental Responsibility publicized Mr. Hicks' prior relationship with Mr. Bloch, and filed a suit under the Freedom of Information Act seeking information about his OSC duties.⁴

4. Mr. Bloch's efforts to purge existing career staff and bring in his own loyalists came to a head in January 2005 when he implemented a surprise "reorganization," whose centerpiece was the creation of a new field office in Detroit, Michigan. As part of the reorganization, Mr. Bloch directed the involuntary geographic reassignments of twelve career OSC employees to open and staff the new field office.

The involuntary geographic reassignments were announced at a staff meeting, with no advance notice whatsoever given to affected employees or, indeed, to any of the career staff, including career executives. Mr. Bloch did not solicit volunteers for the reassignments, as is customary in the federal sector, and did not conduct any management or cost-benefit analysis to support the new field office. Further, had the twelve affected employees accepted their reassignments, it would have imposed enormous relocation costs on OSC.

Mr. Bloch initially provided the reassigned employees only 10 days to decide if they would accept the reassignments, and indicated that their employment would be terminated if they did not agree to relocate. After an uproar ensued (again captured in the media and the subject of Congressional interest), Mr. Bloch extended the time to respond to 60 days.

In the end, not a single one of the employees accepted their reassignments and virtually all left the agency, which was exactly what Mr. Bloch intended in targeting them for reassignment.⁵ OSC lost almost 20% of its legal and investigative staff at

⁴ GAO conducted a limited investigation into whether there was any legal authority for Mr. Hicks' hiring. See GAO-06-16 (November 2005). It concluded that there existed regulatory authority to hire Mr. Hicks as an intermittent employee. It expressly declined, however, to determine whether Mr. Hicks was actually qualified to perform the tasks that were specified for him by OSC, which included reviewing and analyzing OSC programs for efficiency and to make recommendations regarding changes. It is hard to understand how Mr. Hicks could conceivably have been qualified for this task, given that his background consisted of 10 years as a headmaster at Mr. Bloch's children's boarding school.

⁵ Both the surprise reassignments and the bizarre method chosen by Mr. Bloch to inform the twelve employees who were affected seems calculated to have instilled the maximum level of fear among the entire career staff. Thus, Mr. Bloch held a five-minute meeting for all OSC staff the afternoon when he announced the reorganization. During the meeting, at which no questions were solicited or asked, Mr. Bloch stated that certain unidentified career staffers would be reassigned to the Dallas and Oakland offices, and the newly-created Detroit office. To learn whether one's name was on the list for reassignment, Mr. Bloch directed employees to return to their offices and check the OSC Intranet. When employees did so,

headquarters, including a senior executive with over 20 years of relevant experience, several senior attorneys, and the Director of OSC's then highly successful ADR program.

The opening of the new field office and the forced reassignments were widely recognized as a pretext for purging career staff. A group of anonymous OSC career staff explained in a letter of January 13, 2005, to Senator Susan Collins that "directing reassignments to field offices, including the newly created Detroit office is completely unsupported and, at a minimum, constitutes gross mismanagement."⁶ See Letter from OSC Staff to Sen. Collins, attached as Exhibit 4. The employees observed that the reasons Mr. Bloch provided for the reorganization, were "pretextual and nonsensical." Specifically they noted, "the manner in which [the reorganization] has been undertaken suggests a retaliatory motive and smacks of an attempt to purge existing career staff." Indeed, the employees noted, "the twelve employees were clearly targeted." They further noted that "Some have voiced serious concerns over with several of the Special Counsel's sweeping initiatives, including the decision to place a political appointee in charge of the Hatch Act Unit and his attempt to deny protection to federal employees suffering from sexual orientation discrimination." "Moreover," the employees explained, "all of the affected attorneys and investigators work for the reassigned senior executive who is unfairly viewed as aligned with the prior Special Counsel's politics and policies."

5. In the wake of the surprise reorganization and forced geographic reassignments, on March 3, 2005, my clients, who include several of the reassigned employees, filed a complaint against Mr. Bloch. See Complaint (Mar. 3, 2005), attached as Exhibit 5. Their complaint alleged, among other things, that Mr. Bloch:

- created a hostile work environment with a series of retaliatory acts against career OSC staff members, culminating in the involuntary reassignment of twelve career employees based on actual or perceived whistle blowing and/or sexual orientation;
- imposed non-disclosure policies on career staff in violation of the Anti-Gag statute and in violation of the Lloyd Lafollette Act, 5 U.S.C. Sec. 7211, which guarantees all federal employees the right to communicate with Congress;

however, the information had not yet been posted, and considerable anxiety ensued over the next 30 minutes, before the names were finally posted, and employees learned their fates.

⁶ Subsequent events have confirmed these employees' concerns regarding the pretextual nature of the justifications given for the new field office. That office has never had enough work to do to justify its existence; and even cases that should arguably be investigated by it have often been assigned to other offices where there are more experienced staff members.

- abandoned merit-based competitive hiring for career positions and misused special hiring authorities;
- refused to enforce existing statutory prohibitions against sexual orientation discrimination in the federal workforce; and
- provided false statements to Congress.

In an amended complaint, filed on March 31, 2005, my clients further alleged that Mr. Bloch:

- hastened the termination date of the employees who refused the geographic reassignments in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments;
- declined to permit employees to remain on at OSC headquarters in positions they were qualified to hold, in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments; and
- abused his authority by affording disparate treatment to two high-profile Hatch Act complaints based on partisan political considerations.⁷ See Amended Complaint (Mar. 31, 2005), attached as Exhibit 7.

6. On May 24, 2005, after the complaints were filed, an oversight hearing on

⁷ One of the cases concerned a visit by Senator John Kerry to the Kennedy Space Center, and the other a complaint filed by Representative Conyers against then-National Security Advisor Condoleezza Rice for using government funds to travel around the country in the weeks before the election making speeches, which were alleged to be political. In the Kerry case, Special Counsel Bloch and Deputy Special Counsel Renne referred the complaint to the career staff and ordered an on-site investigation within days after the Kerry visit. On the other hand, when the Rice complaint came on October 21, Mr. Renne assigned it to Mr. Bloch and himself and then sat on the complaint, taking no action, until after the election, when he finally referred it to the Hatch Act Unit for investigation.

In a letter to Rep. John Conyers, dated July 7, 2005, as well as in response to post hearing questions posed by Senator Akaka, Mr. Bloch falsely denied that the complaint had ever been assigned to either himself or Mr. Renne. See Hearing, U.S. Senate Subcommittee on Oversight of Government Management (May 24, 2005) at p. 205, attached as Exhibit 6. To cover his tracks and in a clear act of obstruction of justice, Mr. Bloch directed the alteration of OSC's computerized case tracking system to eliminate any evidence that the Rice complaint had originally been assigned to himself and Mr. Renne.

the reorganization was held before the Senate Subcommittee on Oversight of Government Management. During that hearing, Mr. Bloch made a number of false statements to the Subcommittee. He falsely asserted that he had consulted senior career staff about his plan to open a new field office. See Hearing Before the U.S. Senate Subcommittee on the Oversight of Government Management (May 24, 2005) (Exhibit 6) at 9. Mr. Bloch lied when he stated that the senior executive that he assigned to the Detroit office praised the decision to open a new field office as a “creative” one. Id. at 16. Mr. Bloch also asserted (falsely) that he had offered the Director of OSC’s ADR program the opportunity to stay on at headquarters, and that she had declined this offer. Id. at 30.⁸ Finally, Mr. Bloch untruthfully denied that he had insisted that the reassigned employees agree not to communicate with Congress as a condition of any settlement of their claims against him. Id. at 24.

B. Obstruction of Justice

1. The complaints that my clients filed in March 2005 were referred to the Integrity Committee (IC) of the PCIE by Mr. Bloch’s deputy, Jim Renne.⁹ On April 14, the IC concluded that it did not have jurisdiction over the complaints, and referred them to former White House Counsel, Harriet Miers. See Letter from IC to H. Miers, attached as Exhibit 8. Two weeks later, Ms. Miers referred the complaints to the PCIE for investigation.

2. The complaints languished before the PCIE for over seven months, as Mr. Bloch waged an internal campaign to convince its Director, Clay Johnson, not to investigate the charges at all. We understand that while Mr. Bloch publicly claimed to welcome the opportunity to “clear” himself of the well-publicized allegations against him, behind the scenes he made every effort he could to torpedo the investigation.

Among other things, Mr. Bloch fiercely resisted the assignment of the investigation to the OPM IG. His objection was based on the ridiculous notion that – because OPM itself disagreed with Mr. Bloch regarding whether sexual orientation discrimination in the federal workforce was illegal – the OPM IG could not investigate the claims against Mr. Bloch impartially.¹⁰

⁸ Both the senior executive and the Director of the ADR program provided affidavits to the committee refuting Mr. Bloch’s statements.

⁹ My clients had requested that their complaint be referred to the PCIE, not the IC, because the latter lacks jurisdiction over complaints against the Special Counsel. Despite this request, Mr. Renne forwarded the complaints to the IC, thus delaying any action on them for at least a month.

¹⁰ Mr. Bloch has since repeated this claim publicly in response to more recent incidents in which his misconduct has been revealed.

3. On October 17, 2005, we were advised that the OPM IG had been assigned to conduct an investigation of the complaint. The long-delayed investigation was slow to get off the ground. For months Mr. Bloch, through his political staff, stubbornly resisted or delayed responding to the IG's requests for access to relevant documents and witnesses. Mr. Bloch's political staff asserted bogus claims of attorney client privilege in an effort to frustrate the inquiry. The assertion of these bogus claims continued throughout the investigation, thus hampering the OPM IG's ability to secure relevant testimony from key players, including Mr. Bloch's former deputies, Mr. Renne and James McVay.¹¹

During this period, Mr. Bloch also sought to garner political support to assist him in squelching the OPM IG's investigation. As reported by the *Hill* newspaper in its June 13, 2006 edition, as the investigation began to pick up in intensity during the Spring of 2006, a group of individuals holding leadership roles in certain so-called "family values" organizations sent you a letter asking you to intervene and end the investigation.¹² See *The Hill*, June 13, 2006, attached as Exhibit 9. Ignoring the serious charges of misconduct and violations of federal personnel laws, the letter adopted Mr. Bloch's favorite ploy: attempting to divert attention from his own conduct by complaining that he had been targeted for investigation because of his stance regarding sexual orientation discrimination.

It is obvious that Mr. Bloch himself solicited this letter of support even as he publicly claimed that he was cooperating in the investigation and welcomed it. The effort to marshal political support to interfere with an official investigation was clearly improper, and again inconsistent with OSC's own good-government mission. Mr. Bloch's conduct once again betrayed his own failure to appreciate the very laws and policies that he was charged with enforcing.

4. Over the summer of 2006, as the IG began to interview the OSC complainants and other OSC employees, we became aware that Mr. Bloch was violating his promise to recuse himself from the investigation. Sources within OSC advised me that Mr. Bloch had discussed with senior staff his desire to compel employees who had

¹¹ "Federal officials have no attorney-client privilege that can be asserted against federal investigators with respect to consultations with government lawyers." See Simon, William, Propter Honoris Respectum: The Professional Responsibilities of the Public Official's Lawyer: A Case Study from the Clinton Era, 77 Notre Dame L. Rev. 999, 1012 (1998), citing *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998); *In re Grand Jury Subpoena*, 112 F.3d 910, 921 (8th Cir. 1997), cert. denied, 525 U.S. 1105 (1997).

¹² These organizations included, among others, the Family Research Council, the Christian Coalition, and the Traditional Values Coalition.

been interviewed by the IG to complete affidavits describing what they had been asked and what they had told investigators.¹³ I was also informed that Mr. Bloch had insisted that interviews must be scheduled through one of his political deputies, Rebecca McGinley, whom Mr. Bloch had appointed to be OSC's "liaison" with the IG. Ms. McGinley's designation for this role was telling. Ms. McGinley was a relatively inexperienced attorney, with no relevant experience, to whom Mr. Bloch had delegated significant authority.¹⁴ She was widely viewed by OSC career staff as a "spy" who was fiercely loyal to Mr. Bloch and who would report any perceived "disloyalty" by career staff directly to Mr. Bloch.

On September 7, 2006, I wrote a letter of protest to Clay Johnson regarding these matters, but received no response. See Letter from D. Katz to C. Johnson, attached as Exhibit 10. On January 30, 2007, Ms. McGinley continued her obstruction by sending a heavy-handed and misleading email to all OSC staff. See Email from R. McGinley to OSC staff, attached herein as Exhibit 11. In the email, Ms. McGinley mischaracterized the OPM IG's investigation as one being conducted "on our behalf." She instructed employees that if they were contacted directly by the OIG they must notify her of this contact. She also instructed staff that all interviews by the IG must be conducted at OSC headquarters, unless the employee being interviewed specifically requested otherwise.¹⁵

This episode, like others before it, garnered more unfavorable attention for Mr. Bloch in the press. Thereafter, James Byrne, Mr. Bloch's new deputy, withdrew Ms. McGinley's instructions to staff.

5. During this period, while Ms. McGinley was actively interfering with the OPM investigation, Mr. Bloch himself committed a blatant act of obstruction of justice. As reported by the *Wall Street Journal* (Nov 28, 2007 edition), Mr. Bloch hired "Geeks on Call" in December 2006 to do a sophisticated seven level "wipe" of his computer hard drive, and the hard drives of two of his political deputies. See *Wall Street Journal*, Nov 28, 2007, attached as Exhibit 12. Mr. Bloch initially claimed that he commissioned

¹³ Although Mr. Bloch was ultimately dissuaded from implementing this plan, his musings were widely known among OSC staff.

¹⁴ Notwithstanding her inexperience, in 2006 Mr. Bloch gave Ms. McGinley the job of Acting Deputy Special Counsel (the number two spot at OSC), which she held for approximately one year.

¹⁵ It bears noting that shortly after these events, Mr. Bloch provided Ms. McGinley, a political appointee, with a career appointment, thus permitting her to "burrow in" to the civil service. He also granted her a coveted six month detail to the U.S. Attorney's office, notwithstanding that he had routinely denied the requests for similar details by OSC career attorneys. McGinley was known to have boasted of her career appointment and detail to OSC staffers, explaining that Mr. Bloch had awarded these benefits to her because he "owed" her, presumably for her efforts to obstruct the OPM IG investigation.

"Geeks on Call" to perform these services to eradicate a "virus" on his computer which had caused it to "crash." He later stated in a February 6, 2008, letter to Representatives Henry Waxman and Tom Davis, and during radio interviews that he called "Geeks" because he was also concerned about a possible "hacking" threat. See Letter from S. Bloch to Rep. Waxman and Rep. Davis, attached as Exhibit 13.

According to Mr. Bloch, all of the files on his computer were either "personal" or not relevant to the OPM IG investigation. Mr. Bloch had "Geeks on Call" transfer these files to a flash drive, which he has refused to turn over to the OPM IG, asserting his right to personal "privacy" in its contents.

Each and every one of the assertions that Mr. Bloch has made to explain his conduct is ludicrous. Mr. Bloch obviously enlisted the assistance of "Geeks on Call" to destroy evidence being sought by the OPM IG, not to eradicate a virus. As the head of operations for Geeks on Call in D.C. told the *Wall Street Journal*, the procedure it employed on Mr. Bloch's computer is used to render hard drives unreadable, not to address viruses or hacking threats. See Exhibit 12. In addition, Mr. Bloch has never provided a plausible explanation as to why he wiped the hard drives of his political deputies to address a virus on his own laptop.¹⁶ Further, OSC has its own IT department, which would have been responsible for addressing any "virus" or hacking issue; OSC does not use "Geeks on Call" to service its computers. Mr. Bloch's assertion that "Geeks on Call" was more qualified to address computer problems than OSC's highly qualified IT staff is, to say the least, not plausible. Further, OSC policy precludes the use of outside vendors to reconfigure its computer equipments, as doing so constitutes a security threat.

Moreover, it is unclear how "Geeks on Call" could have transferred the "personal" and other files on Mr. Bloch's computer to a flash drive, if his hard drive had, in fact, "crashed" as he has asserted. It is also odd that Mr. Bloch would not have directed an examination of the security of the entire OSC network, given his claims that his laptop was infected by a virus, and/or had been hacked.

Finally, even if every file that Mr. Bloch transferred to the new flash drive were "personal," it is outrageous for Mr. Bloch to expect to be taken at his word on that matter. Federal policy (as well as OSC's own directives) provides that information that is stored on government computers is the property of the government, not the user. Having put the

¹⁶ According to a December 7, 2007 article that appeared on www.govexec.com, a spokesperson for Mr. Bloch made the astonishing statement that Mr. Bloch "also had the computers of former aides who had departed the agency wiped because the computer technicians arrived at the office while Bloch was not present and were billing the agency for their time." See *Government Executive*, Dec 7, 2007, attached as Exhibit 14.

files on a government computer, and used government funds to transfer them to a flash drive (also bought with government funds), Mr. Bloch cannot prevent the OPM IG from examining the flash drive to determine their relevance.¹⁷

C. Abuses of Official Authority

Throughout his tenure, Mr. Bloch has engaged in a pattern of abuse of official authority. This course of conduct began within months after he began his term, when Mr. Bloch employed OSC investigative authority to promote pet causes over which the agency lacked jurisdiction. It has since escalated into a full scale and widely publicized campaign by Mr. Bloch to employ OSC's investigative authority to protect himself against accountability for his violations of law and other misconduct.

1. Misuse of Official Authority In Order to Promote Pet Causes

a. Mercury and Autism

Shortly after his term began, Mr. Bloch abused the statutory authority OSC possesses under 5 U.S.C. § 1213 to refer whistleblower disclosures by federal employees for investigation. On May 20, 2004, Mr. Bloch sent a letter to Congressional oversight committees and issued a press release offering OSC's views on a controversial matter over which it lacked jurisdiction, not to mention any expertise – whether there is a causal relationship between the use of childhood vaccines containing mercury, and the incidence of autism. See OSC press release, attached as Exhibit 15.

The circumstances surrounding Mr. Bloch's letter are extremely suspicious. Apparently, a member of Mr. Bloch's political staff, Catherine Deeds, either had a personal interest in the issue of the relationship between autism and mercury or was doing a favor for individuals affiliated with certain advocacy groups interested in the issue. These groups gathered signatures on hundreds of identical form letters accusing the Center for Disease Control of colluding with pharmaceutical companies to cover up information revealing the dangers of mercury in the vaccine supply. They submitted the form letters to OSC. See Form Letter to S. Bloch, attached as Exhibit 16. Mr. Bloch then characterized these form letters as representing "hundreds" of whistleblower "disclosures" and forwarded them to Congress on OSC letterhead with a strong statement

¹⁷ Remarkably, in several radio interviews, Mr. Bloch asserted that requiring him to give the OPM IG access to his "personal files" (stored on the government computer) would violate his right to privacy! This patently ludicrous assertion collides with OSC's routine requests to examine the government issued computers and emails of the subjects of its own investigations, including, among others, Karl Rove!

suggesting that the position of the groups was meritorious.¹⁸

Contrary to routine practice in disclosure cases, none of OSC's career staff was involved in the consideration of the form letters, the decision to transmit them to Congress or the drafting of Mr. Bloch's letter. Mr. Bloch's letter was released to the press and publicly touted by the interest groups as an authoritative government opinion to support their argument that there is a connection between the vaccines and autism, notwithstanding scientific opinion to the contrary. The collusion between Mr. Bloch and these groups is obvious, and is confirmed by the fact that the advocacy group "SAFEMINDS" issued its press release announcing Mr. Bloch's letter on May 19, 2004, the day before OSC publicly announced it.¹⁹ See SAFEMINDS press release, attached as Exhibit 17. Further, Mr. Bloch's letter continues to be cited by these groups as evidence of the correlation between mercury and autism.

b. "Intelligent Design"

In August 2005, Mr. Bloch again used his official authority and government resources to promote a pet cause unrelated to OSC's mission. One of his political deputies, Mr. McVay, issued eleven single-spaced pages of detailed "findings" on behalf of Dr. Richard von Sternberg, a research associate at the Smithsonian. See Letter from J. McVay to R. Sternberg, attached as Exhibit 18. Mr. Sternberg claimed that he had suffered retaliation for publishing an article questioning evolutionary theory and supporting the concept of "intelligent design." OSC issued its eleven pages of findings notwithstanding its admission that it lacked jurisdiction over the entire matter because, as a research associate, Dr. Sternberg was not even an employee of the Smithsonian.

Equally outrageous, Mr. McVay issued these "findings" notwithstanding that OSC never even investigated Dr. Sternberg's complaint. The findings appear to be based entirely upon OSC's reading of emails and other documents Dr. Sternberg provided. OSC did not interview anyone at the Smithsonian, including the individuals whose emails it cited in support of its "findings."

The OSC letter was very widely publicized on the internet, and in the print and television media. See Sternberg articles, attached as Exhibit 19. It was routinely characterized as providing the results of a "government investigation" finding retaliation

¹⁸ Mr. Bloch refers to having received "hundreds of disclosures from private citizens" on the issue. In fact, what Mr. Bloch received were not "disclosures" but form letters, obviously orchestrated by an interest group.

¹⁹ The media contact for "SAFEMINDS" was Joe Giganti of Veritas Media Group. Mr. Giganti is a conservative commentator who, like Ms. Deeds, is affiliated with Pro-Life groups. It seems very likely that this personal connection was the source of the letter from Mr. Bloch.

by the Smithsonian against Dr. Sternberg.²⁰

As in the case of the mercury/autism "disclosure," the Sternberg case was handled exclusively by Mr. Bloch's political staff, with no involvement by OSC's career employees. Once again, Mr. Bloch used his official authority and the imprimatur of his office to promote a personal agenda.

2. Authorizing Leak of the Investigative Report Concerning the Lurita Doan Hatch Act Investigation and Lying to Congress About it

As you know, OSC conducted an investigation of allegations that GSA Administrator Lurita Doan had violated the Hatch Act when she met with political appointees on GSA property to host a slide show given by the White House Office of Political Affairs. Mr. Bloch sent you a letter last June expressing his conclusion that Ms. Doan had in fact violated the Hatch Act.

Regardless of the validity of OSC's conclusions regarding Ms. Doan's actions, Mr. Bloch engaged in blatant misconduct in connection with this matter. First, in order to keep the public spotlight on himself and to deflect attention from the ongoing OPM investigation, he authorized the leak of OSC's findings to the press before Ms. Doan had the opportunity to respond to the report. Second, the report that OSC leaked with his approval was not redacted to protect the privacy of witnesses. Finally, and perhaps worst of all, Mr. Bloch attempted to shift the blame for the leak to Ms. Doan herself, and lied to Congress about his role in authorizing the leak.

The relevant events are as follows: On May 18, 2007, OSC delivered a copy of its investigative report (dated May 18) to Ms. Doan. On May 23, 2007, an article containing details from the report appeared on the *Government Executive* website.²¹ See *Government Executive*, May 23, 2007, attached as Exhibit 22. Mr. James Mitchell, OSC's Director of Communications, advised Mr. Bloch of the article. Mr. Bloch was surprised and angry—not that the report had been leaked—but that it had been leaked to

²⁰ For example, the "Discovery Institute" a prominent advocate of the theory of intelligent design, issued a press release entitled "Office of Special Counsel Concludes Smithsonian Created a 'Hostile Work Environment' in Effort to Oust Biologist Skeptical of Darwinism." See Discovery Institute press release, attached as Exhibit 20. That press release was picked up by numerous publications, both nationally and internationally. The *Washington Post* ran a story citing OSC's investigative "findings." See *Washington Post*, Aug. 19, 2005, attached as Exhibit 21. Dr. Sternberg appeared on the popular television show "The O'Reilly Factor" and cited OSC's "findings" on his behalf. Indeed, OSC's findings continue to this day to be cited and published by critics of Darwinian theory, most recently in the feature length film "Expelled," which contains a segment on Dr. Sternberg.

²¹ It is our understanding that *Government Executive* had obtained a copy of the report from someone within GSA who was hostile to Ms. Doan.

Government Executive (rather than some major media outlet). That same day, Mr. Mitchell, with the approval of Mr. Bloch, provided a copy of the report to the *Washington Post*, which placed it on the newspaper's website that very evening.

The version that appeared at the *Washington Post* website, however, was dated May 17th and contained some significant differences from the final May 18th report. As was later confirmed, the May 17th report that the *Washington Post* had put on its website was an earlier draft of the investigative report that Mr. Mitchell had supplied to the *Washington Post* in error, intending instead to supply the *Washington Post* with the final report.

When Mr. Mitchell became aware of his error the next morning, he quickly alerted the *Washington Post* and supplied it with the final report. In his haste, however, he neglected to redact the final report to protect witness privacy. On the morning of May 24, the *Washington Post* took down the earlier draft and replaced it with the final, unredacted report of May 18. Thus, the report that the *Washington Post* placed on its website included the names of witnesses, discussions of the performance evaluations of some of them, and extremely critical comments that Ms. Doan had made about one of her political appointees, Emily Taylor.

Immediately after Mr. Bloch authorized the leak and Mr. Mitchell effectuated it, both began to lie and dissemble about OSC's role. In a May 24th *Government Executive* article, which questioned OSC's involvement in the leak of the preliminary draft, Mr. Mitchell cited a non-existent policy under which OSC "does not comment on the process used to draft reports, or 'how specific versions may have been disseminated.'" See *Government Executive*, May 24, 2007, attached as Exhibit 23.

At the same time, Mr. Bloch was actively deceiving Ms. Doan's attorney, Michael Nardotti, concerning the circumstances of the leak. On May 24, 2007, Mr. Nardotti sent Mr. Bloch a very strongly worded letter, referring to a telephone conversation they had had the night before, complaining about the leak and pointing out that it obviously came from someone within OSC. Mr. Nardotti demanded that Bloch investigate the source of the leaks and hold the responsible individual accountable. He also stated that the leaking of the reports showed that OSC was biased and demanded that OSC turn the entire matter over to an independent investigator. See Letter from M. Nardotti to S. Bloch (May 24, 2007), attached as Exhibit 24.

Mr. Bloch, of course, did not institute any investigation of the leak. There was no need to investigate the leak because Mr. Bloch knew full well that he himself had directed his Communications Director to provide copies of the report to the press. Instead, he responded by letter the next day, stating that it was "false" to claim that OSC provided the press with the investigative report. Even more outrageously, Mr. Bloch

accused Ms. Doan herself of leaking the report as part of some "ruse" or effort to create "roadblocks" to OSC's official investigation. See Letter from S. Bloch to M. Nardotti (May 25, 2007), attached as Exhibit 25.

On May 30, Nardotti responded, pointing out inconsistencies in Mr. Bloch's letter, and his failure to directly address whether OSC had leaked the preliminary draft. Mr. Nardotti pointedly asked whether someone within OSC had leaked the May 17th draft or the May 18th final report. See Letter from M. Nardotti to S. Bloch (May 30, 2007), attached as Exhibit 26.

Later that day, Mr. Bloch sent a one-paragraph letter, this time attempting to dodge the issue in its entirety, by reminding Mr. Nardotti that the investigation was about Ms. Doan and resurrecting his blatantly false allegation that Mr. Nardotti's persistent questions about the leak of the report were not legitimate and were just an effort to divert attention from Ms. Doan's violations. See Letter from S. Bloch to M. Nardotti (May 30, 2007), attached as Exhibit 27.

Thus, Mr. Bloch clearly authorized the improper leak of the May 18, 2007 report to the press and then falsely claimed that he did not. Further, he cynically tried to shift the responsibility for the leak to Ms. Doan. Still worse, however, Mr. Bloch subsequently lied to a Congressional committee by professing to have no knowledge about how the Post came into possession of the report, by claiming that he did not authorize it, and by refusing to agree to investigate the source of the leak, supposedly on the grounds that to do so would somehow be perceived as violating the rights of the leaker! See Hearing Before the House Subcommittee on Federal Workforce, July 12, 2007, at 38-39, 76-77, 95-97 (Exhibit 3). Mr. Bloch's evasive and untruthful testimony regarding his knowledge of the leak and his role in authorizing it was clearly perjurious.

3. Launching Investigations for Self-Protection: Iglesias/U.S. Attorney Investigation

Perhaps Mr. Bloch's greatest abuse of official authority involves his recent efforts to protect himself against the consequences of his misconduct by instigating and then maintaining a series of baseless investigations of the White House. Thus, in April of 2007, Mr. Bloch made the rounds of the media announcing that he intended to investigate alleged violations of law in connection with the termination of former U.S. Attorney, David Iglesias, as well as alleged Hatch Act violations by your then-political advisor, Karl Rove. Mr. Bloch has since expanded his "investigation" to cover all of the U.S. Attorneys who were fired.

Mr. Bloch's motives for insinuating himself into these controversial and widely publicized matters were patently self-serving. The scope of the investigations Mr. Bloch

announced (not to mention the media blitz that accompanied his announcement), betrayed that it was largely an act of political grand-standing designed to give him cover against any actions that you might take to hold him accountable for his own long list of transgressions.²²

For example, the OSC's "investigation" of a claim on behalf of Mr. Iglesias under the Uniform Service Employment Rights and Restoration Act (USERRA) (which OSC itself apparently solicited Mr. Iglesias to file) is clearly without any legal foundation. Presidential appointees who have been confirmed by the Senate are not entitled to claim statutory protection against decisions regarding their continued tenure, and Mr. Bloch knows this. Further, notwithstanding Mr. Bloch's grandstanding, there was never any basis for believing that a Hatch Act violation was committed by anyone in connection with Mr. Iglesias' firing or the firings of the other U.S. Attorneys.²³

In fact, Mr. Bloch has rejected the repeated advice of career staff to stand down and/or limit the Iglesias/U.S. Attorney investigations. He has preferred to keep them open and as broad in scope as possible in order to keep himself in the public spotlight and to protect himself against any efforts by the Administration to hold him accountable for the serious acts of misconduct detailed above.

Most recently, Mr. Bloch accused the Department of Justice of impeding his investigation of the U.S. Attorney firings by declining to provide him with documents while the DOJ IG conducts its own investigation of these matters. In fact, it is standard procedure for OSC (or any other investigator conducting an administrative inquiry) to suspend its investigative activity while a potential criminal investigation is on-going. Further, in charging DOJ with obstructing his "investigation," Mr. Bloch is in conflict with the recommendations of OSC's career staff, which have counseled that OSC should stand down while the DOJ IG's investigation goes forward.

* * * * *

²² Mr. Bloch recently tried to employ this device to defend himself from questioning about the "Geeks on Call" matter. In a letter of February 6, 2008 to Representatives Davis and Waxman, he urged the Members to "look closely at the facts and circumstances surrounding . . . the entirety of the OPM investigation which I believe is being misused to impede my statutorily mandated efforts to provide independent oversight of the Executive Branch." See Exhibit 13. Mr. Bloch has made similar claims in radio interviews and letters to the *Wall Street Journal* and the *Washington Post*.

²³ Remarkably, Mr. Bloch recently requested and secured additional funding for this sham investigation by representing that such funding was needed to hire computer forensics experts.

President George W. Bush

April 29, 2008

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As the foregoing summary makes clear, Mr. Bloch's continued tenure as Special Counsel has wreaked havoc within the agency, and destroyed its credibility. In fact, Mr. Bloch has been and continues to be an embarrassment to your Administration.

Federal sector whistleblowers serve a key function. In a very real sense, they are the eyes and ears of the public. The law provides them with clear protection. It is time to replace Mr. Bloch with a Special Counsel who cares about the mission of OSC and will devote his or her energies to protecting whistleblowers rather than devising scheme after scheme to try to preserve his position.

We have repeatedly asked that you take action to address this intolerable situation and restore integrity and leadership to OSC. At this point, continued inaction on your part can only lead the public to conclude that you prefer a discredited and toothless Office of Special Counsel to an effective one. Accordingly, for one more time, my clients request that you remove Mr. Bloch from his position and provide relief to the OSC employees who were injured by the illegal and pretextual reorganization that Mr. Bloch implemented in 2005.

Sincerely,



Debra S. Katz

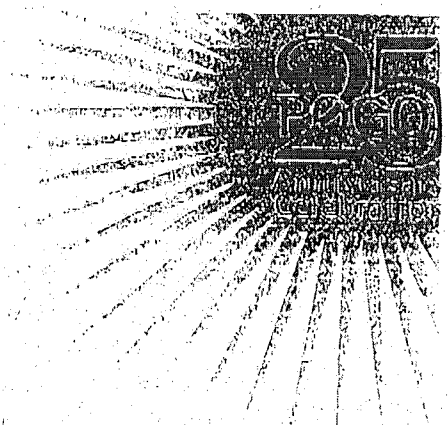
Enc. (in hand-delivered copy)

cc: Fred Fielding, White House Counsel

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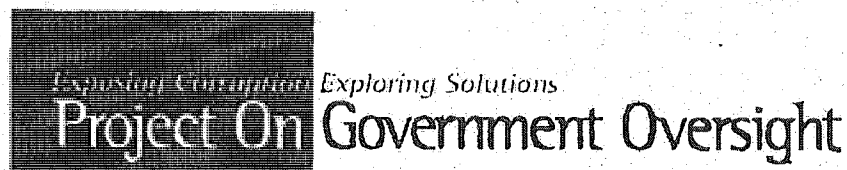
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July 17, 2008

The Honorable Joshua Bolten
Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Via facsimile: (202) 456-0192

Dear Mr. Bolten:

I am writing to urge you to remove the U.S. Special Counsel Scott Bloch from his position. Last Friday, the Office of Special Counsel's (OSC) Deputy Jim Byrne resigned. His departure removes a vital barrier protecting the OSC's staff from further retaliation and intimidation by Mr. Bloch and signals a disturbing downward spiral for the agency, which is supposed to protect whistleblowers, prosecute Hatch Act violations, and perform other vital duties.

As you know, Mr. Bloch was subject to an unprecedented FBI raid involving two dozen agents earlier this year. My organization, the Project On Government Oversight (POGO), was party to the complaint filed three years ago that resulted in the Office of Personnel Management Inspector General (OPM IG) investigation into Mr. Bloch and now the related FBI investigation.

The Special Counsel has statutory protection from being dismissed from office in order to maintain his independence. However, he can be removed for malfeasance, neglect of duty, or inefficiency. I understand malfeasance and neglect of duty might be somewhat difficult to prove conclusively without the finalized OPM IG investigation. However, two federal judges in Washington, DC, and Virginia approved invasive search warrants, which have high standards of probable cause, indication a strong belief by the judges that Mr. Bloch not only engaged in misconduct but that he committed a crime. These search warrants were executed to seize information from his office, his home, and his person.

Furthermore, it is quite simple to prove that Mr. Bloch's continued presence in the office is causing gross inefficiency at the OSC. To wit:

- Communications between Mr. Bloch and his staff are seriously impaired given that nearly 20 current and former staff members have been subpoenaed to provide evidence or appear before the Grand Jury considering Mr. Bloch's possible indictment. It is an untenable situation that witnesses continue to be subjected to the supervision of Mr.

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Bloch while they are being called upon to provide evidence to the Grand Jury concerning his wrongdoing. As previous letters to White House General Counsel Fred Fielding from our attorney Debra Katz have documented, Mr. Bloch and his deputies have repeatedly attempted to interfere and intimidate witnesses involved in the OPM IG's investigation.

- Staff at the agency have expressed concern that Mr. Bloch's private attorney is poised to depose them. This undoubtedly has created a chilling effect on staff who must interact with Mr. Bloch on a daily basis.
- In yet another sign of how the agency is being harmed by Mr. Bloch's leadership, the OSC's reauthorization bill is being held up by Congress because Mr. Bloch remains as Special Counsel. This reauthorization bill is urgently needed to enact long-overdue reforms to the agency.
- Staff at the agency report that their ability to perform many of their duties has been harmed by the shadow cast by Mr. Bloch's leadership. Other agencies are reportedly refusing to respond to OSC inquiries, preventing the OSC from conducting its statutorily required investigations and oversight.

As a result, I am imploring that you recommend to the President that he remove Mr. Bloch from office. At the very least, Mr. Bloch should be put on administrative leave pending the outcome of the investigation and Grand Jury. This is the only fair course of action for the employees of the agency and for the taxpayers who depend on a functioning OSC to ensure that the government is honest and accountable.

Sincerely,



Danielle Brian
Executive Director

cc: White House Counsel Fred Fielding

Participants:

Joie Gregor

Clay Johnson

Tony Fratto

Mike Farren

Emmet Flood

Chris Frech

Joel Kaplan

Steve Bradbury

Fred Fielding

Myriah Jordan



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Deputy Special Counsel

July 10, 2008

Scott J. Bloch, Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Mr. Bloch:

This letter serves as notice that I am resigning my career Senior Executive Service position as Deputy Special Counsel, U.S. Office of Special Counsel (OSC), effective July 19, 2008. I am grateful for the opportunities I have been afforded, and I leave with a deep admiration for the men and women of OSC who dedicate their lives to safeguarding the merit system and to protecting federal employees from prohibited personnel practices.

Upon my departure, I am obligated to note that the mission, independence, and very existence of the Office of Special Counsel are – and shall remain – at risk unless and until this agency is afforded a presidentially appointed, senate confirmed leader who is capable of putting OSC's mission and OSC's people ahead of political agendas and personal vendettas.

This agency, and the people whom we serve, deserve no less.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. M. Byrne".

James Byrne
Deputy Special Counsel

cc: OSC Director of Human Resources



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

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A handwritten signature in dark ink, appearing to read "J. M. Byrne", with a long horizontal flourish extending to the right.

James Byrne
Deputy Special Counsel

cc: OSC Director of Human Resources

Bloch

Bloch's Deputy Resigns

In a July 10 letter, Deputy Special Counsel James Byrne accused his boss of putting "political agendas and personal vendettas" above the interests of the Special Counsel's office.

- Read Byrne's Letter

NPR.org, July 18, 2008 · The White House overruled a senior executive branch official who suggested firing the man in charge of representing government whistleblowers, NPR has learned.

Special Counsel Scott Bloch has been under increasing pressure from inside and outside his office to step down, but President Bush apparently has yet to ask for his resignation despite internal advice that he do so.

Clay Johnson, the deputy director for management at the Office of Management and Budget, urged the White House to dismiss Bloch, and the White House refused, according to sources familiar with the conversations. On Friday, Johnson's office denied the account. Spokeswoman Jane Lee wrote in an e-mail: "Mr. Johnson has not given or been asked for a recommendation regarding Scott Bloch." The White House did not respond to a request for comment.

People who have talked with Johnson say he is "pained" by the situation at the Office of Special Counsel.

Bloch is the subject of a federal investigation, a private lawsuit and complaints from government oversight and whistleblower groups. He is accused of ignoring claims from the government whistleblowers he is supposed to protect, retaliating against his own employees and destroying evidence in order to obstruct a federal investigation.

Bloch's deputy, James Byrne, accused Bloch in a resignation letter made public Thursday of putting "political agendas and personal vendettas" above the interests of the Special Counsel's office. And in May, dozens of FBI agents stormed Bloch's home and office in a surprise raid. A grand jury has begun hearing testimony from witnesses about whether Bloch committed obstruction of justice.

The government watchdog group Project on Government Oversight sent a letter to White House Chief of Staff Joshua Bolten and White House Counsel Fred Fielding Thursday urging the president to remove Bloch from his position, citing "a disturbing downward spiral" for the Office of Special Counsel. The group has not received a response.

The Special Counsel serves a five-year term but can be removed earlier for "malfeasance,

Fielding, Fred F.

From: Flood, Emmet T.
Sent: Thursday, June 12, 2008 9:41 PM
To: Fielding, Fred F.
Subject: Fw: YCMTSU

BLOCH

✓

Fyi

----- Original Message -----

From: Fratto, Tony
To: Stanzel, Scott M.; Flood, Emmet T.; Mamo, Jeanie S.; Lungren, Jeffrey E.; Burck, William A.; Perino, Dana M.; Teuber, Terri M.; Jordan, Myriah L.; Frech, Christopher W.; Kim, Harold H.
Sent: Thu Jun 12 21:37:34 2008
Subject: YCMTSU

Here's your "You Can't Make This Shit Up" entry of the day...

"There'd be a negative article about Scott's involvement on something ... and [the] comment would be something like 'This Bloch guy is doing a good job.'"

OSC's Bloch Made His Subordinate Post Online Rebuttals To Negative Publicity CongressDaily
Fri. Jun 13, 2008

Scott Bloch, the embattled head of the U.S. Office of Special Counsel, whose office and home federal agents raided last month, has faced a lot of bad publicity. And he evidently doesn't like it.

On many occasions since 2006, Bloch ordered a subordinate to post comments on blogs and in the "comment" sections of online news stories using a pseudonym, current and former OSC employees told CongressDaily.

The postings have defended Bloch against online articles and comments by readers that he has perceived as negative, the sources said.

"That did go on," said a former employee who has been involved in the activity. "Bloch would suggest posting things in the comments section. ... There'd be a negative article about Scott's involvement on something ... and [the] comment would be something like 'This Bloch guy is doing a good job.'"

Two former OSC employees have gone so far as to describe Bloch as thin-skinned and "obsessed" with his press coverage. A federal grand jury is investigating whether Bloch obstructed justice by destroying files sought by the Office of Personnel Management's inspector general, who was looking into allegations that Bloch improperly retaliated against OSC employees for opposing his policies.

The former OSC employee familiar with the anonymous postings on Bloch's behalf was recently interviewed by FBI agents gathering evidence for the grand jury probe but said the agents did not ask about the issue.

Roscoe Howard, an attorney representing Bloch, said Bloch would not comment due to the continuing criminal probe. An OSC spokesman said Bloch was unavailable Thursday.

The former OSC employee, who described the Web posting operation in exchange for anonymity, said such instances might have numbered in "the double digits." Bloch "would be involved in the discussion of what should be said," the employee said. The employee suggested at least one OSC worker posted comments on the Web sites of such publications as the Washington Post, Topeka Capital-Journal, and the Lawrence Journal World. The two Kansas-based publications have written about Bloch because he is from the state.

In another instance confirmed by CongressDaily, an OSC employee who has not served in the military identified himself as "A Combat Vet" in an online response to a July 13, 2007,

article on GovExec.com. In the article, House Oversight and Government Reform Committee Republicans faulted Bloch for his use of personnel e-mail to discuss agency business.

The anonymous posting said news organizations were devoting too little coverage to OSC's enforcement of the Uniformed Services Employment and Reemployment Rights Act, which bars discrimination against people based on service in the armed services.

"Where is the coverage of USERRA?" the posting asked. "OSC helped my buddy out when he couldn't get his job back, and it doesn't seem like anybody is checking into how it helps veterans. ... Who the hell cares if Bloch sent an email about congresscritters goofing off and playing patty cake. This USERRA issue is a huge deal for us who served. Does anyone give a crap?"

"At the time, public affairs officials at OSC, which enforces federal workplace rights, were urging reporters to cover USERRA enforcement cases."

During the hearing described in the article, House Oversight and Government Reform ranking member Tom Davis, citing an e-mail Bloch had sent, accused him of acting inappropriately in distributing to several people news articles about OSC investigations of federal officials. Davis offered similar criticism Thursday.

"A public official should be accountable to the public," Davis said in a statement. "To secretly use the resources and personnel of his office -- on government time -- to comment on negative press reports is improper and deprives the public of accountability."

"If true, this could constitute an unlawful use of appropriated funds to publish covert propaganda," Davis said.

"This is further evidence that Scott Bloch is unfit for his office and should resign, be fired or at least be placed on administrative leave."

Davis added that he would ask House Oversight and Government Reform Chairman Henry Waxman "to initiate an investigation into this activity." by Dan Friedman

Exploring Solutions
Project On Government Oversight



July 17, 2008

The Honorable Joshua Bolten
Chief of Staff
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Via facsimile: (202) 456-0192

Dear Mr. Bolten:

I am writing to urge you to remove the U.S. Special Counsel Scott Bloch from his position. Last Friday, the Office of Special Counsel's (OSC) Deputy Jim Byrne resigned. His departure removes a vital barrier protecting the OSC's staff from further retaliation and intimidation by Mr. Bloch and signals a disturbing downward spiral for the agency, which is supposed to protect whistleblowers, prosecute Hatch Act violations, and perform other vital duties.

As you know, Mr. Bloch was subject to an unprecedented FBI raid involving two dozen agents earlier this year. My organization, the Project On Government Oversight (POGO), was party to the complaint filed three years ago that resulted in the Office of Personnel Management Inspector General (OPM IG) investigation into Mr. Bloch and now the related FBI investigation.

The Special Counsel has statutory protection from being dismissed from office in order to maintain his independence. However, he can be removed for malfeasance, neglect of duty, or inefficiency. I understand malfeasance and neglect of duty might be somewhat difficult to prove conclusively without the finalized OPM IG investigation. However, two federal judges in Washington, DC, and Virginia approved invasive search warrants, which have high standards of probable cause, indication a strong belief by the judges that Mr. Bloch not only engaged in misconduct but that he committed a crime. These search warrants were executed to seize information from his office, his home, and his person.

Furthermore, it is quite simple to prove that Mr. Bloch's continued presence in the office is causing gross inefficiency at the OSC. To wit:

- Communications between Mr. Bloch and his staff are seriously impaired given that nearly 20 current and former staff members have been subpoenaed to provide evidence or appear before the Grand Jury considering Mr. Bloch's possible indictment. It is an untenable situation that witnesses continue to be subjected to the supervision of Mr.

666 11th Street, NW, Suite 900, Washington, DC 20001
(202) 347-1122 www.pogo.org

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Los Angeles Times

July 18, 2008 Friday
Home Edition

SECTION: MAIN NEWS; National Desk; Part A; Pg. 14

LENGTH: 542 words

HEADLINE: The Nation;
Special counsel official quits in protest;
His resignation letter accuses his boss, Scott J. Bloch, of having 'political agendas and personal vendettas.'

BYLINE: Tom Hamburger, Times Staff Writer

DATELINE: WASHINGTON

BODY:

James M. Byrne, second in command at the embattled Office of Special Counsel, resigned his post effective Saturday after leaving his boss, Scott J. Bloch, a stinging letter suggesting that Bloch's "political agendas and personal vendettas" were preventing the agency from fulfilling its mission.

The two-paragraph letter, obtained by The Times, was sent to Bloch last week at a time when the Bush appointee faces a Justice Department inquiry that includes allegations of illegally erasing information on his government computer. James Mitchell, a spokesman for the independent agency, declined to comment on the matter.

Among other responsibilities, the Office of Special Counsel is charged with enforcing the Hatch Act, which restricts electoral campaign activities by federal employees. Byrne, a former Justice Department prosecutor, led a task force investigating the politicization of executive branch agencies during the Bush administration.

When the investigation was first announced, some outside advocacy groups challenged whether Bloch, a Republican appointee with a controversial record, would conduct a thorough, aggressive inquiry. Byrne, who has a background in high-profile criminal investigations, gave the team experience and credibility.

Bloch has drawn attention almost since President Bush appointed him to run the Office of Special Counsel. In 2006, Bloch announced he was investigating presidential advisor Karl Rove in connection with the probe of executive branch agencies. He also looked into the firings of U.S. attorneys by the Justice Department.

Bloch has been dogged by complaints that he retaliated against, harassed and intimidated employees of the agencies. In May, federal agents raided his home and office as part of a federal investigation into those charges.

During his tenure with Bloch, Byrne oversaw some well-publicized investigations. His inquiry into political briefings at the General Services Administration was followed by the resignation of the former chief of the agency, Lurita Alexis Doan.

In addition, his task force was actively investigating complaints about politicization and other problems at the Justice Department, including in some U.S. attorneys' offices.

Under Byrne's leadership, the Office of Special Counsel also pursued an investigation of Federal Aviation Administration decision-making inspired by whistle-blowers' complaints.

In his departing letter, Byrne chastised his boss but praised the agency's staff.

His concerns about Bloch were echoed in more detail Thursday by an outside reform advocacy group, the Project on Government Oversight. The organization's executive director, Danielle Brian, wrote White House Chief of Staff **Joshua B. Bolten** that Byrne's departure "removes a vital barrier protecting the OSC's staff from further retaliation and intimidation by Mr. Bloch and signals a disturbing downward spiral for the agency."

Her letter said that more than 20 employees had been subpoenaed to appear before a grand jury investigating Bloch's behavior.

"It is an untenable situation that witnesses continue to be subjected to the supervision of Mr. Bloch while they are being called upon to provide evidence to the grand jury concerning his wrongdoing," she wrote.

--

tom.hamburger@latimes.com

LOAD-DATE: July 18, 2008

GOVERNMENT OPERATIONS

Special Counsel Bloch Under Mounting Pressure To Resign

By Dan Friedman

Scott Bloch, the embattled head of the U.S. Office of Special Counsel, faces new pressure from within and outside the agency to resign.

The FBI raided the small agency's offices and Bloch's home in May seeking evidence that he destroyed evidence sought by investigators probing charges that he retaliated against former employees. A grand jury in Washington has subpoenaed at least 17 current and former OSC employees and heard testimony from several, according to people involved in the case.

The raid sparked quick calls for Bloch's resignation from several House Republicans, including **Oversight and Government Reform ranking member Tom Davis**, long a critic of Bloch's investigative tactics.

But OSC employees said that with the investigation sapping agency morale, many staffers are rebelling against Bloch. An employee and a nonprofit watchdog group said some federal agencies are ignoring requests from OSC investigators.

Jim Byrne, Bloch's top deputy, who agency employees speculated would become acting special counsel if Bloch stepped down, recently announced he was leaving the agency. Byrne's July 9

resignation letter to Bloch, obtained by *CongressDaily*, includes a scathing assessment of his former boss.

"Upon my departure, I am obligated to note that the mission, independence and very existence of the Office of Special Counsel are — and shall remain — at risk unless and until this agency is afforded a presidentially-appointed, senate-confirmed leader who is capable of putting OSC's mission and OSC's people ahead of political agendas and personal vendettas," Byrne wrote.

"This agency, and the people whom we serve, deserve no less," he added.

OSC is charged with enforcing federal workplace laws, including whistle-blowers protections, anti-discrimination statutes and the Hatch Act, a statute barring federal employees from using federal resources for partisan politics.

Byrne's resignation was cited Thursday by the nonprofit Project on Government Oversight in a letter to White House Chief of Staff Bolten urging that President Bush fire Bloch. POGO and other groups that advocate for federal whistle-blowers have long accused Bloch of arbitrarily dismissing whistle-blower cases filed with his office to improve clearance rates.

Brian said Bloch's continued lead-

ership of the agency puts staffers asked to provide evidence against him in the grand jury probe in "an untenable situation" while they still must report to him.

According to POGO and an OSC employee, other agencies are refusing to respond to OSC inquiries due to Bloch's loss of credibility.

The Treasury Department and other agencies, for example, have ignored OSC inquiries in a 15-month old probe into Hatch Act violations by Bush Administration officials, the employee said.

Bloch has a fixed term intended to ensure his independence. He can be fired for malfeasance, inefficiency or neglect of duty. POGO Executive Director Danielle Brian argued warrants issued in the criminal investigation indicate that Bloch engaged in misconduct serious enough to allow his ouster.

Current and former OSC employees speculated that Bloch might be planning to sue the White House if it fires him.

In addition to a criminal lawyer, Bloch has been represented by an attorney from the conservative nonprofit group Judicial Watch, the employees noted.

An OSC spokesman declined to comment Thursday.

POLITICS

Most Dem House Frosh Appear In Healthy Fundraising Shape

By Erin McPike

The freshmen members who gave Democrats their House majority two years ago appear to be in good financial shape at the end of the second quarter, and their fundraising success may allow the Democratic Congressional Campaign Committee to spend more money on open races or challenging Republican incumbents.

Five of those Democratic freshmen have more than \$2 million in their campaign chests, with **Rep. Kirsten Gillibrand** of New York's 20th District leading the way with \$2.8 million for her re-election effort.

She will likely face former New York Secretary of State Sandy Tread-

well. Republicans see the race as a pickup opportunity.

Although he has a primary, Treadwell has less than half of Gillibrand's war chest with \$1.3 million on hand

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after putting more than \$900,000 of his funds into the race in the second quarter.

In Arizona's 8th District, **Rep. Gabrielle Giffords** is in a competitive match to return for a second term against Republican state Senate

President Tim Zee, but she has just under \$2.1 million on hand compared to his \$688,000.

Pennsylvania Republicans are heavily pushing businessman Tom Manion

in his race against Democratic **Rep. Patrick Murphy** in the 8th District. Murphy has more than four times what Manion has in the bank with his \$2.2 million to Manion's \$505,000.

continued on page 9

Bakke, Mary Beth

From: Farren, J. Michael
Sent: Saturday, July 19, 2008 1:36 PM
To: Fielding, Fred F.; Flood, Emmet T.; Burck, William A.
Cc: Farren, J. Michael
Subject: NPR Article - inserted into e-mail message

Bloch

I had difficulty accessing the NPR link, so here is the article inserted in the e-mail.

Mike

P.S. It is good to finally understand where Bill gets his news and commentary.

Bush Shuns Advice To Fire Special Counsel

by Ari Shapiro

Bloch's Deputy Resigns

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Read Byrne's Letter

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