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002	Report	Report of Investigation	43	08/11/2008	P6/b6; b7c;
003	Letter	[Letter] - To: Scott Bloch - From: Fred Fielding	1	08/01/2008	P6/b6;

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REPORT NO. D-2008-TAD-005

Inspector General

United States Department of Defense

POLICY AND OVERSIGHT

Alleged Flawed Procurement of New Orleans Temporary Outflow Canal Pumps

May 14, 2008

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Technical Assessment Directorate
Department of Defense Inspector General
400 Army Navy Drive (Room 846)
Arlington, VA 22202-4704

Acronyms

ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
CO	Contracting Officer
COR	Contracting Officer's Representative
DOD	Department of Defense
ERDC	Engineer Research and Development Center
FAR	Federal Acquisition Regulation
GAO	Government Accountability Office
HI	Hydraulic Institute
HPU	Hydraulic Power Unit
IG	Inspector General
ITR	Independent Team Report
MFR	Memorandum for Record
MIPR	Military Interagency Procurement Request
NOAA	National Oceanic and Atmospheric Administration
OIG	Office of the Inspector General
OSC	Office of Special Counsel
QA	Quality Assurance
QARs	Quality Assurance Reports
QC	Quality Control
RFP	Request for Proposal
USACE	United States Army Corps of Engineers

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

MAY 14 2008

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

Re: OSC File No. DI-07-2724

Dear Mr. Bloch:

This is in response to your September 21, 2007, letter to the Secretary of Defense regarding "serious allegations which cast doubt on the integrity of costly pumping equipment installed in three main structures by USACE and its ability to protect New Orleans from further flooding," pursuant to 5 U.S.C. § 1213.

We have reviewed the allegations, prior reviews, and project documentation and interviewed the complainant and U. S. Army Corps of Engineers' project personnel. Our review did not find reasonable grounds to believe that there were criminal violations or deficiencies in the pump acquisition that constituted a danger to public health or safety.

Our report of investigation is enclosed. By memorandum from the Secretary of Defense dated February 9, 1998 (copy enclosed), the DoD Inspector General has been delegated authority to respond to requests for investigations under 5 U.S.C. § 1213.

If you have any additional questions regarding this matter please contact Mr. John R. Crane at (703) 604-8234.

Sincerely,

Claude M. Kicklighter

Enclosures: As stated

cc: Chief of Engineers, U.S. Army Corps of Engineers
Inspector General, Department of the Army

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c/brick

THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301

FEB 9 1998

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Delegation of Authority to the Inspector General

In accordance with the authority contained in Title 10, United States Code (U.S.C.), Section 113, I hereby delegate to the Inspector General, Department of Defense, full power and authority to act for the Secretary of Defense to respond to requests for investigations under Title 5, U.S.C. Section 1213 from the Special Counsel, Office of Special Counsel, relating to allegations of violations of law, gross mismanagement and certain other matters.

The authority delegated herein may not be redelegated.

William S. Cohen

U02010 /98

Department of Defense Office of the Inspector General

Report No. D-2008-TAD-005 **May 14, 2008**

Alleged Flawed Procurement of New Orleans Temporary Outfall Canal Pumps

Introduction and Background

On September 21, 2007, the U.S. Office of Special Counsel (OSC) referred allegations to the Secretary of Defense concerning the United States Army Corps of Engineers (USACE) installation of pumping equipment in three main structures to protect New Orleans from further flooding. The OSC is authorized by 5 U.S.C. § 1213(a) and (b) to receive disclosures of information from Federal employees alleging violations of law, rule, or regulation, gross mismanagement, gross waste of funds, and abuse of authority, or a substantial and specific danger to public health or safety. When the Special Counsel finds that there is a substantial likelihood that one of these conditions exists, he is required to advise the appropriate agency head, and the agency head is required to conduct an investigation of the allegations and prepare a report, pursuant to 5 U.S.C. § 1213(c) and (g).

In this case, the Special Counsel concluded that there was a substantial likelihood that the information provided by a Federal employee disclosed allegations covered by 5 U.S.C. § 1213, and referred the matter to the Secretary of Defense for investigation. The Special Counsel summarized the whistleblower allegations as follows:

> (1) the costly pumping equipment at three "outfall gated canal closure structures," which is part of the flood protection design to protect New Orleans, was inherently flawed due to poor pumping and hydraulic systems designs;
>
> (2) pumping equipment that had previously malfunctioned under favorable contractor testing conditions, and subsequently shown to be defective, was knowingly installed by USACE employees and . . . [the contractor] personnel; and
>
> (3) USACE employees and . . . [the contractor] personnel circumvented contract requirements related to contract modification and notifications at the expense of public safety and proper contract oversight.

Prior to Hurricane Katrina, the New Orleans Sewerage and Water Board pumped rainwater from the city into three drainage canals at 17th Street, London Avenue, and Orleans Avenue. These three canals flowed into Lake Pontchartrain unrestricted and while they were sufficient to prevent some, but not all, flooding from rainfall events, they were vulnerable to storm surges during a hurricane. The floodwalls lining both sides of the canals were designed to protect residents from surges in Lake Pontchartrain driven by storms up to the "Standard Project Hurricane," roughly equivalent to a fast-moving category 3 hurricane. During Hurricane Katrina in August 2005, however, several breaches occurred in the floodwalls. This allowed a significant amount of water from Lake Pontchartrain to enter the city of New Orleans.

The United States Army Corps of Engineers (USACE) took action to restore New Orleans' flood protection to a pre-Katrina level by June 1, 2006, the beginning of the next hurricane season. The USACE considered strengthening the drainage canal floodwalls but decided to postpone this effort due to cost and time constraints. Instead, USACE decided to install three interim closure structures at the points where the canals meet Lake Pontchartrain. These closure structures, which remain open during normal weather periods, would be closed during major storm events to prevent a Lake Pontchartrain storm surge from entering the canals, breaching the floodwalls, and overflowing into the city. However, the closures would also prevent rainwater in the canals from flowing into the lake. Because the gates remained closed during a storm surge, large capacity pumping systems were needed to pump water out of the canals and into the lake.

The National Oceanic and Atmospheric Administration (NOAA) created storm event rainfall models for 10, 50, and 100-year storm events for the New Orleans canal system. The storm model used historical data to determine the average of the worst storms that have occurred every 10, 50, and 100 years. The statistical data was then used to predict an event that has a 1% probability of being equaled or exceeded in any year.

The Interim Closure Structure's Temporary Pumping System was designed to pump water for a 10-year rainfall event; not a 50-year or 100-year rainfall event like Katrina. A permanent pump system is planned to be completed by 2012 and will be designed to handle a 100-year storm event.

The USACE initiated the procurement of 34 large capacity hydraulic pumping systems to provide pumping capacity by June 1, 2006. Six additional pumps were procured to supplement the pumping capacity at the 17th Street Canal, the largest canal. The USACE stated that additional analysis in mid 2006, determined that a significant additional pumping capacity would be required at the 17th and London Avenue Canals to meet the 10-year rainfall event. Therefore contracts were let in 2007 for 19 direct-drive pumps to meet the 10-year rainfall event.

Each pumping unit consists of two major mechanical components; the hydraulic power unit (HPU), which is located on an elevated equipment platform, and the water pump, located in the canal on the protected side of the closure structures. The two components are connected by hydraulic lines. The water discharge piping runs from the water pump around the closure structure and then discharges into Lake Pontchartrain. The following terms are used in this report to distinguish components of the New Orleans Outflow Canal Pumps:

Hydraulic Pumping System

1. Pumping Unit
    a. Hydraulic Power Unit (HPU)
    b. Water Pump
2. Hydraulic Lines
3. Water Discharge Piping

Each pumping unit underwent testing at the factory and in the field. Problems were continuously encountered and corrected throughout the acquisition process. Final contractual acceptance testing was completed on September 15, 2007.

Conduct of the Investigation

We began the investigation on October 26, 2007, based on information provided by the Office of Special Counsel, which included the "Whistleblower Disclosure Affidavit" dated August 13, 2007; a Memorandum for Record (MFR) dated May 3, 2006, entitled "Defective Pumping Equipment," a "Declaration of … [the complainant]," dated October 13, 2006, and a "Declaration of … [the complainant],"dated April 23, 2007.

Based on the information described above, as well as a subsequent interview with the complainant, we categorized the specific allegations into the following five areas in order to cover the full range of concerns: Design, Testing, Installation, Operational Capabilities, and Contract Issues. Specific allegations in each category were then addressed during our fieldwork.

The interview with the complainant included the USACE, Los Angeles District counsel, who participated as an observer at the request of the complainant. During our interview, the complainant provided shop inspection reports, the contractor Quality Control (QC) reports, the complainant's testing documentation detailing test results of most pumps, and a MFR dated May 29, 2006, entitled "Implementation of New Corrective Measures to Correct Pumping Equipment Deficiencies."

We also interviewed personnel serving with the New Orleans District USACE, including the Project Manager, the Assistant Project Manager, the Contracting Officer (CO), and the Resident Engineer / Contracting Officer's Representative (COR). They provided contract documentation including the contractor proposal and the 33 contract modifications, New Orleans Military Interagency Procurement Request (MIPR) to the Jacksonville district for QC services,[1] USACE and Hydraulic Institute (HI) standards, storm event studies, operational test procedures, test logs, USACE's Engineer Research and Development Center

[1] The USACE New Orleans office issued a MIPR to the Jacksonville district office to obtain quality control services at the contractor's production facility in Deerfield, Florida.

(ERDC) capacity test reports, USACE's Quality Assurance Reports (QARs) at the installation sites, and pump maintenance logs. Meetings were held with USACE Headquarters and Government Accountability Office (GAO) Headquarters.

As part of our work, we examined other studies and evaluations of matters concerning post-Katrina flood control in New Orleans. Some of these studies specifically addressed the allegations made by complainant and will be referenced in this report when appropriate. Those studies included the following:

- U.S. Army Audit Agency, "Contracts of the Hurricane Protection System in New Orleans," (A-2006-0198-FFD) August 22, 2006

- U.S. Army Corps of Engineers, "Final Report MVN [Mississippi Valley, New Orleans] Outfall Canal Pumps," *Independent Team Report (ITR)*, May 11, 2007

- Government Accountability Office, "U.S. Army Corps of Engineers' Procurement of Pumping Systems for the New Orleans Drainage Canals," (GAO-07-908R) May 23, 2007

- U.S. Army Corps of Engineers, "MVN Outfall Canal Pump Report," *Memorandum for Record (MFR)*, June 4, 2007

- U.S. Army Audit Agency, "Contracts to Restore and Enhance the Southern Louisiana Hurricane Protection System," (A-2007-0216-FFD) September 11, 2007

- Government Accountability Office, "Army Corps of Engineers Known Performance Issues with New Orleans Drainage Canal Pumps Have Been Addressed, but Guidance on Future Contracts Is Needed," (GAO-08-288) December 31, 2007

Summary of Evidence and Analysis

As discussed above, we categorized allegations concerning the Interim Closure Structure, Pumping Station Project, into five issue areas: Design, Testing, Installation, Operational Capabilities, and Contract Issues. We assigned numbers to the allegations for ease of reference.

Design Allegations

Allegation #1: Flawed design allowed air to enter into Denison hydraulic pumps on the HPUs causing damage and subsequent failure of the pumps.

Facts: The contract states:

> The work under this section shall consist of providing all pumping equipment including the hydraulically driven pumps, diesel drive units, and all piping, appurtenances, mechanical and electrical system as shown on the drawings and as specified herein.

It goes on to state:

> The supplier of the pumping equipment mentioned above shall assume responsibility for the proper functioning of the hydraulic motors, pumps, and hydraulic drive units as a complete system

The clause concerning the Contractor's obligation under Warranty of Supplies of a Noncomplex Nature, states:

> All supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract...

The USACE stated that the Denison hydraulic pump design used in this acquisition was a standard design. The December 31, 2007, GAO report stated:

> ...according to the Lake Borgne Levee District official, this pump has been successfully used for about 20 years without having to prime the pumps prior to start-up.

The design required a prescribed start-up procedure for the HPU. The operating procedure required the operator to start-up the HPU at a slow speed and gradually increase it to the normal operating speed. Doing so would properly dissipate air that entered the hydraulic pipe whenever the suction pipe was opened for repairs and maintenance. If operators did not follow prescribed procedures for the initial start-up of the hydraulic power unit (i.e., conducted a rapid run-up), trapped air would cause a "dry run" and tear up the hydraulic pump.

The problem was addressed in the December 31, 2007, GAO report as follows:

> Corps officials from the New Orleans District emphasized to us that the redesign was requested to more adequately meet their needs, not because of concerns about the pumping systems operating as intended. ...[the contractor] subsequently agreed to modify the design of the hydraulic intake line at the request of the Corps. According to Corps officials, by the end of July 2007 and at its own expense...[the contractor] had redesigned and reinstalled the new flooded suction design on all 40 pumping systems.

The June 4, 2007, MFR and May 11, 2007, ITR also addressed this issue and made recommendations that have since been implemented.

This air intake problem first occurred during factory testing and surfaced again in June-July 2006 after the water pump systems were installed at sites. The contractor provided a temporary solution by first installing a safety valve on the hydraulic intake pipe to bleed the trapped air. The problem was resolved permanently when suction pipes were submerged in oil and moved to a "gravity feed" position in the hydraulic tank. On July 12, 2006, a no cost contract modification was issued that required the contractor to modify all existing hydraulic tanks to a flooded intake for the hydraulic pumps. After the implementation of the modification, each of the hydraulic pumps was tested prior to acceptance.

Analysis: The allegation was not substantiated. The hydraulic pump design was a standard design that required a prescribed start-up procedure. The air intake problem arose when the operator did not follow the prescribed hydraulic power unit start-up procedure subsequent to suction pipe flange repairs. The possibility of damage from improper start-up was eliminated by implementing a no cost modification that required that the suction pipes be moved to a "gravity feed" position in the hydraulic tanks that submerged intake pipes in the hydraulic oil tank thus preventing the air from entering into the pump. We concluded that this was a reasonable approach to eliminate the risk of damage and was accomplished at no additional contract cost to the Government.

Allegation #2: The complainant alleged:

> While trying to meet the contractually required testing requirements the pumping equipment experienced voluminous severe hydraulic system component failures, and ultimately, catastrophic pump assembly failures.

The complainant went on to state that failure occurred because the HPU components, including cams, hoses and piping were not designed to operate at 3000 pound/square-inch (psi) hydraulic pressure as required.

Facts: The contract explicitly states:

> All reinforced supply hose … shall have a minimum safe working pressure of 3,000 psi.

During April 2006, HPUs and the water pumps were tested together at the contractor facility. The tests were observed by the USACE representatives from the Jacksonville District quality assurance team including the complainant. A number of test failures were attributed to improper functioning of Denison hydraulic pump units. The problems identified with the hydraulic pump components were: inappropriate cam and hydraulic hose sizes, seals, o-ring failures, and excessively hot hydraulic oil. These discrepancies were reported by the complainant and were acknowledged and addressed in the ITR as follows:

> b. 12 April first initial wet test and within 95 minutes there is a failure of pumping components.
>
> c. 13 April determined cam rings in hydraulic oil pump were wrong size causing failures. Originally the hydraulic oil pumps had cams of type no. 66 & 42;...[the contractor] replaced the 42 with a 50 to increase oil flow to the Rineer motor [water pump motors]. Corps personnel discovered that the 50 cam could not handle a continuous running pressure above 3000 psi. The cams were then at Denison's request to replace all hydraulic oil pumps with type 72 & 45, which Denison later indicated will run satisfactorily at a continuous running pressure of 3200 psi...

The ITR discussed the cam size issue further and stated:

> Also, sometime in July 2006, it was also found that...[the contractor] had installed cams that would not operate at pressures >3000 psi, the current system pressure being developed ranges from 3000 to 3200 psi. They had to replace the cams in the hydraulic system that would work for pressures >3000 psi. The current hydraulic systems now have the proper cams in place according to the manufacturer...

The ITR also addressed the flexible hose problem; it stated that the hydraulic oil high pressure hoses failed and the flexible hydraulic hoses that were below the water line were replaced with rigid piping. This corrected corrosion issues with the galvanized quick connects under water.

USACE representatives told us that some of the 4-inch diameter intake hoses attached to hydraulic pumps were rated for water use but were not rated for hydraulic oil. The contractor replaced the water hoses when the problem was brought to their attention. Some of the hyper extended o-rings/seals and improperly installed seals on the water pump motors were also replaced at installation sites. All Denison pumps were 100 percent inspected at the sites for defective parts. All inappropriately sized cams were replaced at the factory as well as at installation sites. No underrated components were allowed to remain on the HPUs.

Analysis: The allegation was substantiated. HPUs initially failed factory tests due to pump component failures. The cams, hoses, o-rings and seals failed because they were under rated and did not meet the 3000 psi requirement, were of inappropriate size, were incorrectly installed, or had manufacturing defects. We concluded that reasonable corrective actions were taken when problems were detected during factory tests, during 100 percent field inspection of the HPUs, and during acceptance tests conducted in the field. Corrective actions for the above items were accomplished at no additional cost to the Government.

Testing Allegations

Allegation #3: Factory testing for the hydraulic pump, and water pump was incomplete and defective equipment was shipped to the sites.

Facts: The original contract called for a performance test that measured pumping capacity. USACE representatives stated that they had problems performing these tests and obtained the services of an outside consultant to investigate these issues. The consultant reported that it was not a normal practice to test the capacity of every pump in the same production run. Variation in performance between identical pumps is expected to be slight based on manufacturing tolerances. Based on that assessment, USACE decided to replace the performance test with a 5-hour endurance test, which focused on the HPU. Each HPU was connected to a water pump for the test. Accordingly, the contract modification backup documentation stated:

> The prior testing required a 1 hour run test per pump and drive unit which was being conducted simultaneously, as well as two full size, seven point tests on two pumps, the new procedures requires 5 hours per drive unit as well as a 24 hour run test on one drive unit and pump combination.

The 5-hour test was later reduced to 3-hours based on the recommendations from USACE engineers and the consultant who stated that there would be no benefit to conducting the test for longer than 3 hours.

The contract modification deleted the requirement for testing each hydraulic pumping system. However, because there were numerous problems with the HPU during the factory test, the USACE decided to test every HPU, but test only a sample of water pumps. Ultimately, 9 water pumps were not tested.

The contractor's quality control forms documented that each of the HPUs completed the 3-hour factory test before being shipped. However, our review of the complainants' documentation and the Jacksonville shop inspection reports revealed that the Government identified one unit as not accepted. The Jacksonville shop inspection states:

> This DU was previously tested on 4/29/06 at 1955 Hrs. The unit shut down during the test for no apparent reason. CAT personnel troubleshot the unit and found a burned fuse and replaced it. When the engine was turned on it went through the automatic throttle, but could not hold the 1800 RPM. Also, the auto accumulator solenoid valve was not holding the pressure due to a possible internal leak. The pumps have to be engaged manually. Therefore, this engine is not acceptable.

Despite the failed test, the HPU was shipped to the installation site. When the USACE found out that the pump was shipped without the Government's approval of the testing, the project manager reviewed the issues found during factory tests and decided to correct the problems with the unit at the installation site rather than sending it back to the factory. After repairs were made, that pump completed the acceptance test in the field and accumulated a total of 25 hours as of March 2008.

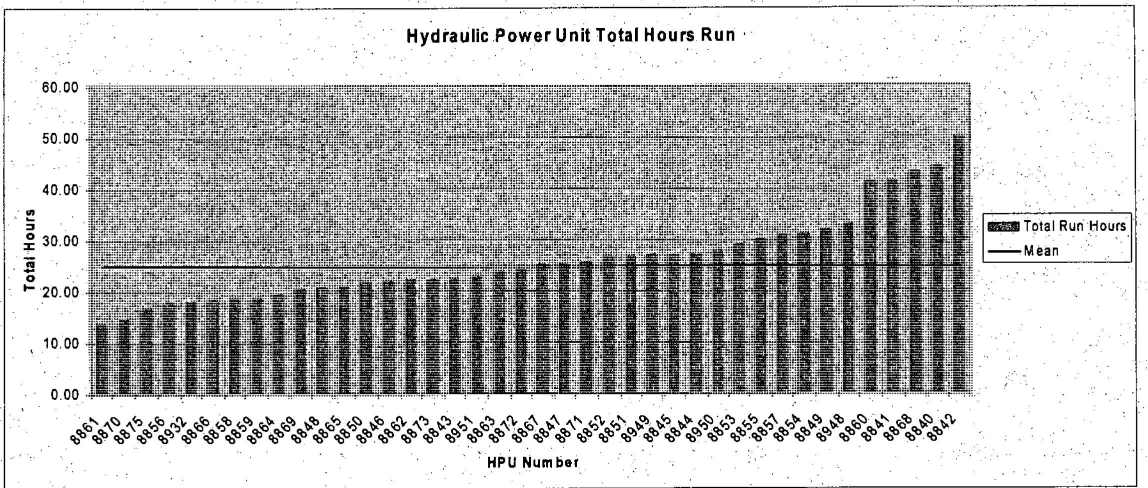
Analysis: The allegation was partially substantiated. The Jacksonville shop inspection reports show that one HPU did not pass the 3-hour factory test. We believe that the project manager's decision not to return the unit back to the factory and to correct all the problems with this pump at the site was reasonable, under the circumstances, because repairs could be accomplished in the field without incurring the delay and expense of returning the unit to the factory. Ultimately, this HPU passed the acceptance test at the site and logged more than 25 running hours. Testing of other units was accomplished as specified by the contract modification.

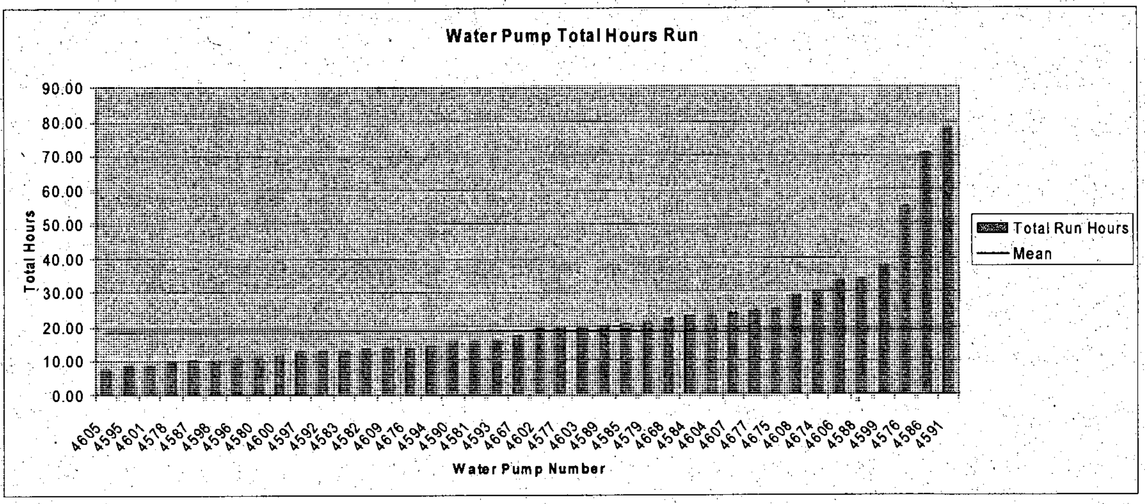
Allegation #4: The complainant alleged:

> New Orleans TFG pump team personnel were fully aware of the voluminous pumping equipment failures at the contractor testing facility, and were also fully aware that the more the pumping equipment was run the more it experienced catastrophic failures of the pump assemblies and the hydraulic systems components.

Facts: Although the factory and installation testing of the hydraulic pumping systems revealed numerous problems, the USACE and the contractor took corrective actions by performing inspections and fixing the problems as they found them. Confidence in the reliability of the hydraulic pumping systems has grown with the number of hours that have been accumulated from the 3-hour factory tests, the on site operational tests, the 2-hour on site acceptance tests, and subsequent maintenance runs.

As of the end of March 2008, the HPUs have run from 13 to 50 hours, with an average of 24 hours, and the water pumps have run from 7 to 77 hours, with an average of 18 hours. Beside the vigorous 3-hour factory tests, 2-hours acceptance test, and accumulated total running hours, the USACE also ran continuous 12-hour tests on two hydraulic pumping units at 1000 psi at the factory and a continuous 36-hour test on one HPU at 3000 psi at the site. See charts below.





The hydraulic pumping systems are now operational and managed by the New Orleans District Operation Division. The systems exercised periodically to ensure their readiness. Logs are kept with problems each pump encounters. Confidence in the reliability of the hydraulic pumping systems is also supported by the low number of problems encountered by the New Orleans District Operation Division as documented in their maintenance log files. We reviewed these files and only found routine maintenance items.

Analysis: The allegation was not substantiated. Although the factory testing of the HPU revealed several problems with specific components of the hydraulic pumping system, the USACE and the contractor took appropriated actions to correct known performance problems. Additionally, the average total running hours of each hydraulic pumping system up to March, 2008, gives us additional confidence that the system will reliably operate when needed.

Allegation #5: The complainant alleged:

> Appropriate and sufficient field testing requires delineating specific and befitting operating parameters with suitable engineering testing formulation, field engineering oversight, and record keeping - to date, to my knowledge, this has not occurred. Simply turning one, a couple, or a few pumps on for 15 to 45 minutes, under unknown conditions, with minimal oversight, and with no record keeping of the conditions, parameters, or oversight is not sufficient. The pumping equipment failures I witnessed most often became evident after hours of run time under normal operational speeds and pressures. At a minimum, real event operating conditions (as in a hurricane, i.e., full operating speeds and pressures) and run times (12 to 24 hours or more) should be applied for any field testing to ensure the pumping equipment operates as intended, and design defects have been mitigated properly.

Facts: The USACE prepared a test plan for the final acceptance of the hydraulic pumping systems in the field. The plan included the requirement to run for a minimum of 2 hours continuously with engine speeds of 1800 rpm and hydraulic pressure of 3,200 psi. The testing monitor was to verify a steady state condition with engine rpm, hydraulic system pressure, hydraulic oil temperature, engine jacket water temperature, canal level, ambient conditions, and no leaks from hydraulic and fuel systems.

The final acceptance tests for each hydraulic pumping system were conducted in the field by the contractor with oversight by USACE. USACE documented the tests with quality assurance reports (QARs) which recorded the testing parameters including pump speeds, run times, temperature, and deviations from test procedures. The 40 systems were accepted by the Government. The QARs documented that 4 of the hydraulic pumping systems were accepted with only 1.5 hours of testing and 6 systems were accepted with reduced speeds for the last half hour of the 2-hour tests, 1400 rpms instead of the required 1800. The reduced run times and speeds for the acceptance tests were caused by the canals running out of water, rather than an actual or anticipated equipment failure. USACE personnel stated that they accepted the systems with reduced hours and speeds because performance was demonstrated in the first 45 minutes by reaching steady state conditions.

In addition to the acceptance test for the hydraulic pumping systems, the USACE also performed a 36-hour test to prove that the HPU would function for that period of time. This test was performed with a HPU connected to a rented water pump in the canal.

Analysis: The allegation was partially substantiated, in that test runs were shorter than the 12 to 24 hours recommended by the complainant. However, the USACE did develop a test plan and recorded in QARs the extent to which each pumping system met the test requirements. Due to the limitation of the water level in the canal, the test procedures performed by the USACE and contractor were adjusted, but sufficient to demonstrate that the hydraulic pumping systems will function as designed. The 36-hour test on the HPU and the additional run hours on the hydraulic pumping systems provide additional evidence that these hydraulic pumping systems will meet endurance requirements.

Installation Allegation

Allegation #6: Defective and untested pumping equipment was installed.

Facts: As discussed above, 9 water pumps were not factory tested prior to installation and one HPU was received at the site without Government approval of the 3 hour factory testing. Problems identified at the factory testing included undersized gear oil circulation motors, hydraulic motor vibrations, suspect pipe welds, and lower than expected pumping capacity. Under the contract, final acceptance of the hydraulic pumping systems was not at the factory. It occurred in the field after, final acceptance testing.

Additional hydraulic pumping system issues were identified and corrected in the field, including hydraulic oil with foreign contamination (metal shavings and a jello like substance). We found that the problems were solved and that the systems are now fully operational.

The December 31, 2007 GAO Report addressed the issue as follows:

> Each pumping system has been successfully tested on site ... providing greater assurance that they perform as designed during future hurricane seasons...the Corps stated that all of the outstanding repairs have been completed and on-site testing indicates that the Hydraulic pumping systems are fully operational. Final acceptance of the pumping systems is expected to be completed early in calendar year 2008.

Analysis: The allegation was partially substantiated. All HPUs were tested at the factory before shipping. However, as noted above, one HPU failed factory test but was shipped to the site and 9 water pumps were not tested at the factory. However, all defects related to these problems were fixed at the installation sites. Indeed, the USACE has taken extensive corrective actions to fix the problems at the sites from April 2006 until May 2007. All 40 HPUs are in place and have been successfully installed and tested. We consider this approach reasonable in view of the urgency of achieving an immediate improvement to New Orleans' flood control protection and the unprecedented capacity of these individual pumping units.

Operational Capability Allegation

Allegation #7: USACE allowed less than full designed capacity performance as called out in the contract.

Facts: The contract stated that the pump shall be able to operable through the entire range and within a tolerance of 0 to plus 5% of capacity in gallons/minute (gpm) at a given Total Dynamic Head in feet of water. The required capacity in this operable range is specified in the following chart from the contract:

Design Condition Design Point	Max Head	Operating Point	Low Head Design Point
Flow	85,000 gpm	98,000 gpm	105,000 gpm
Total Dynamic Head (TDH)	16.8 FT.	12.1 FT.	8.5 FT.
%efficiency	80%	81%	80%
Max. Speed	400 RPM	400 RPM	400 RPM
Max. Horse Power (HP)	720	690	640

The Request for Proposal (RFP) required and the contractor provided a certified pump curve based on model studies identifying that the pumps proposed met contract requirements. The original contract required a full scale capacity test on each pump. Following the initial full size factory tests, USACE's pump testing consultant traveled to the contractor's facility to assess testing issues and production delays. The consultant's report stated:

> I recommended dropping the pump performance tests and adding an endurance test for three main reasons. First, there was expected to be only slight variations in pump performance considering they were all manufactured to be identical. Secondly, I had a low confidence level in the validity of the current performance tests and third we needed endurance testing to weed out mechanical problems before the pumps are shipped to New Orleans.

The USACE initiated a contract modification to implement these recommendations and replace the full scale capacity test with a model test.

In order to validate the contractor's original model test results, a full scale factory test was performed by the contractor in conjunction with ERDC in December 2006. The test results indicated that at the specified operating total dynamic head conditions, the measured discharge capacity was less than required as shown in the following chart:

TDH	Required Capacity	Actual Capacity	% Reduction
16.8 ft	85,000 gpm	82,960 gpm	6.5%
12.1 ft	98,000 gpm	93,982 gpm	4.1%
8.5 ft	105,000 gpm	98,280 gpm	2.4%

USACE stated that the accuracy of the instrumentation for this test was +/- 5%.

Because the original model test was not witnessed by the Government, the USACE and the contractor agreed to perform an additional model test to ensure the accuracy of the measured capacity of the pumping systems. The model test was conducted by the contractor in cooperation with USACE's ERDC in September 2007. The model test revealed that the hydraulic pumping systems' capacity was 1.4 percent less than required by the contract. The USACE stated that the deficit did not have significant impact because the 1.4 percent was within the testing equipment margin of error and the interim system comprised of both the hydraulic and direct drive pumping systems still exceeded the 10-year event system design criteria.

Model testing was considered more accurate for pumping capacity. The use of a model test is standard practice for a pump of this size according to both the USACE Engineering Manual 1110-2-3105 and the HI Standard, ANSI/HI 2.6-2000.

Analysis: The allegation was substantiated. The model testing did show that the hydraulic pumping systems' capacity was 1.4 percent less than required by the contract. However, the USACE stated that the deficit did not have significant impact because the 1.4 percent was within the testing equipment margin of error and the interim system comprised of both the hydraulic and direct drive pumping systems still exceeded the 10-year event system design criteria. Because the total system is capable of meeting the 10-year event design criteria, we find no basis to recommend equipment redesign or upgrade.

Contract Issues Allegations

Allegation #8: The complainant alleged:

> The Task Force Guardian ACE [USACE] team violated Federal procurement regulations with numerous and consequential unauthorized commitments, acted with implied authority without the knowledge or consent of the Contracting Officer, failed to take corrective action when knowledge of contracting improprieties were made evident, and refused to implement contract administration actions ordered by Contracting Officer to mitigate pumping design deficiencies

Facts: The USACE contracting officer stated that she was in constant contact with the USACE team. We reviewed numerous emails, memorandums, records of daily phone calls, and documentation of meetings with the USACE project manager that confirmed continual contact throughout the entire process of the testing and delivery of the hydraulic pump system to the three sites. We found evidence that the USACE team addressed each of the problems identified in those records, both at the factory and on site. As a result, of the continuous involvement of the contracting officer, 33 modifications were made to the contract from February 15, 2006 to November 13, 2007. For example the modifications involving funds included specification changes to hydraulic piping and hose. Additionally, revisions of testing procedures were made at no cost to the Government.

The December 31, 2007 GAO report stated:

> We found much of the documentation that the ITR specifically cited as missing - including request for proposals, independent government estimates, certified cost or pricing data, technical analyses, and price negotiation memorandums - was not required, because documentation was not relevant to the contract modifications in question...our review found that, for the most of the contract modifications, there was evidence of some analysis by the Corps and extensive back and forth discussion, usually by e-mail, between officials form the Corps and ... [the contractor].

Analysis: We found insufficient evidence to support the allegation. Documentation confirmed continual interaction between the contracting officer and other members of the USACE team throughout the acquisition process. The contracting officer stated that she was in daily contact with the project manager throughout the duration of the project. The Jacksonville quality control team provided technical support for the USACE team by providing oversight of the factory testing.

Allegation #9: USACE team personnel did not engage in usual and customary Corps of Engineers contract administration practices or conduct project oversight and documentation that would ensure even minimum requirements could be met to protect the Government's interests.

Facts: The contract stated:

> The field test shall be witnessed by the Government . . . Start-up tests and demonstration shall be performed by the pump manufacturer's representative and the Contractor, and witnessed by the Government...

The contract also required full size factory testing witnessed by the Government prior to shipment of the pumps. However, we found that the process for Government sign-off on the factory testing and designation of who had the authority to approve that the equipment was ready for shipment was not formalized.

The contract administration and documentation issue was extensively addressed by the MFR, ITR and the GAO reports. These reports found numerous deficiencies in contract documentation.

The June 4, 2007, MFR has addressed documentation, contract administration and oversight issues partially. It stated:

> My expectation is that the team should document their ongoing contract procurement actions even while working under crisis conditions. I will form a team to help them bring the documentation file up to date. An improvement in future operations would be to deploy a contract administration team to work along side the project delivery team, with the sole focus of performing and assuring correct and complete contract actions and documentation." It further stated: "Meanwhile our team of engineers worked with the manufacturer in the factory to adjust/retrofit/improve the pumps in actual field conditions daily to assure that the pumps reached the required level of reliability.

The ITR found certain key elements of the solicitation documents missing from the contract files. The ITR also noted several change orders (contract modifications) with apparent missing documentation.

The December 31, 2007 GAO report also stated:

> Contract files for the pumping systems, although incomplete at the time of the ITR review, now contain the required documentation for the type of contract and value of the associated modifications. In a number of cases, Corps officials inserted required documentation in the contract files several months after modifications were issued and only after the ITR reported its findings. The ITR correctly noted the absence of some required documentation. However, we found much of the documentation that the ITR specifically cited as missing—including requests for proposals, independent government estimates, certified cost or pricing data, technical analyses, and price negotiation memorandums—was not required, either because documentation was not relevant to the contract modifications in question . . . Further, the contract itself was not written as precisely as it should have been. Specifically, the original factory test requirements were ambiguous, there were limited provisions for on-site testing, and there were no criteria for acceptance of the pumping systems by the government.

GAO recommended that the USACE:

> Take steps, through additional guidance or otherwise, to reinforce the importance of adherence to sound acquisition practices even during expedited procurements, including ensuring that important contract provisions, such as any required testing, are clear and that the contractor and the government understand what conditions or criteria must be met for successful completion of the contract.

DoD (and the Army) concurred with the recommendation and stated that USACE will review and revise, as necessary, current policies and regulations to ensure that a reasonable period of time is identified for completing and filing contract documents.

We found evidence of Government's project oversight during factory and on-site testing of the pumping systems. The complainant herself was a member of the factory test oversight and site installation teams. Although a supply contract did not require appointment of a contracting officer's representative (COR), USACE appointed the on-site resident engineer as the COR for the pump contract. The USACE stated that a COR was not appointed at the factory, as there was a shortage of qualified personnel.

Analysis: The allegation concerning inadequate documentation was substantiated. Several audits and examinations found significant deficiencies in contract documentation. We consider it appropriate that the Army has taken actions to emphasize the future need for proper documentation, despite project urgency. We found that USACE provided ample project oversight at the factory as well as at the installation sites.

Allegation #10: Original bidders for the contract would not have been rejected if the requirement for factory load testing that was subsequently deleted from the contract had not been in the Request for Proposal.

Facts: The December 31, 2007 GAO Report addressed the issue as follows:

> The testing specifications used for the RFP were nearly identical to those published by ... [the winning contractor], which included an open sump test requirement. After the other manufacturers complained that the open sump test requirement was restrictive because only ... [the winning contractor] had an open sump, the Corps amended the RFP to delete this requirement. This open sump test requirement was incorporated into the contract at the time of award, however, because it was offered by ... [the winning contractor] as part of its proposal.

USACE representatives stated that the open sump test requirement was deleted from the RFP and was not a factor in the source selection. It, therefore, had no effect on the original bidders' ability to compete. According to the contracting officer, who was also the Source Selection Official, neither the full scale open sump test nor the contractor facilities was a factor in the final selection of the pump manufacturer. During the source selection, each contractor was judged only on its technical approach, project management expertise, past performance, and small disadvantaged business initiatives. The winning contractor was rated significantly higher on the selection criteria.

The winning contractor's proposal included the conduct of full scale performance testing at the factory and therefore, it was left in the contract.

Analysis: The allegation was not substantiated. Indeed, the requirement for open sump testing that some bidders found objectionable was deleted from the RFP in order to enhance competition. Moreover, the Source Selection Official stated that test facilities were not a factor in judging the bidders.

Allegation #11: The complainant alleged:

> The Task Force Guardian ACE [USACE] team refused to hold the contractor responsible for providing accurate and truthful quality control documentation for pumping equipment, and refused to hold contractor responsible for engaging in misleading and deceptive actions to conceal actual number and nature of failures.

Facts: The contract required the contractor to provide test documentation as follows:

> The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

Documentation from the complainant and from the Jacksonville shop inspection reports show problems and corrections at the factory that were not all recorded in the contractor's factory quality control reports. However, the USACE was informed of the problems and corrections were made to address pumping system problems.

Analysis: The allegation was partially substantiated. The contractor's documentation did not include every problem and correction. However, the Jacksonville QC team also provided documentation and USACE took corrective actions when they became aware of the problems. We found insufficient evidence to conclude that the contractor engaged in deception to conceal equipment failures. We agree with the December 31, 2007, GAO report recommendation:

> Develop procedures to ensure that any contract related documentation, including that related to contract pricing, is completed and filed within a reasonable period of time.

Allegation #12: The USACE team personnel refused to hold the contractor responsible for hydraulic oil with foreign object contamination (metal shavings, etc.), and hydraulic pipe flushing procedures that caused hydraulic oil to solidify within the hydraulic system.

In the complainant's October 13, 2006 Declaration the complainant alleged:

> We have had issues of the hydraulic oil in the hydraulic system of the pumps in the field turning to a Jell-O (like Jell-O shots) consistency and requiring every part of every pumping equipment component to be flushed and refilled...during an inspection of the hydraulic reservoir there was discovered a large amount of hydraulic oil in the bottom that had turned to a Jell-O like consistency (4" thick slab about 1.5' x 4'). In addition, during the inspection of the Denison hydraulic pumps there was observed large number of pumps that had a jelly like substance through out their internal workings. It was later discovered by our testing lab that the Jell-O like substance was caused by a reaction of calcium and water within the hydraulic oil. The calcium was introduced by the pickling compound used in the hydraulic piping provided by [...the contractor] and the water was present by virtue of the hydraulic system not being 100% contained [...the contractor's] own flushing procedure caused the pickling compound to be introduced to the hydraulic oil, and the subsequent introduction of water caused the reaction to occur. [...The contractor] stated during a meeting on this subject that they did not feel it necessary to rectify this problem and would not take measures to correct it. When I asked [...the contractor] if the jell-O like hydraulic oil met the specifications of the hydraulic oil required by the Denison hydraulic pump and Rineer motors, they did not answer. My understanding was the government was to bear the cost of flushing/cleaning/refilling all the hydraulic pumping systems because [...the contractor] refused to do so (a day before I left New Orleans three contracts were being awarded to outside contractors to perform the needed flushing/cleaning/refilling). This cost, and all associated costs, should be born by [...the contractor].

Facts: The contract incorporated several FAR clauses by reference and stated:

> All supplies furnished under this contract will be free from defects in material or workmanship and will conform to all requirements of this contract.

The contract stated that the contracting officer may require, by written notice, the prompt correction or replacement of any supplies. Even though the contract does not specifically mention hydraulic oil, the above clause applies to the hydraulic oil.

Numerous impurities were noticed in the hydraulic system installed at the sites. The impurities were attributed to slag from welding operations and metal shavings from sawing and pipe cutting operations entering hydraulic pipes during the building of pipe racks by the on-site contractors.

Additionally, a jelly like substance in the hydraulic fluid reservoirs, on the tank filters, and hydraulic pumps located at Orleans and London Avenue canals was observed. Testing of the filter indicated a high level of Calcium, Boron, and Silicon, which was believed to be the result of the oils used in the pickling process. Additionally, the suction strainers and hydraulic fluid reservoirs contained large amounts of metal particles. USACE personnel informed us that the hydraulic pump units were shipped to the New Orleans sites with hydraulic oil in the reservoirs. During installation of HPUs additional hydraulic fluid from a local supplier was added. When the two hydraulic fluids mixed, a jello like substance formed. An analysis of the hydraulic fluids revealed that the two hydraulic fluids had different consistencies. The contractor replaced the hydraulic fluid but insisted that the hydraulic system was clean and did not require further flushing and cleaning. The contract did not specify a specific procedure for flushing and cleaning the hydraulic pipes. Therefore, the USACE decided that long-term reliability would be best served by requiring a cleaning process that was not specified in the contract. In July 2006 two contract modifications were issued to implement new cleaning and flushing of hydraulic piping at the three installation sites.

Analysis: The allegation was not substantiated. The USACE enforced contract provisions. The contractor replaced the contaminated hydraulic fluid that had turned into jell-O like substance but insisted that the hydraulic system was clean and did not require further flushing and cleaning. The USACE realized that the contract did not specify a specific procedure for flushing the hydraulic pipes. Therefore, USACE determined that for long term reliability the system required a more thorough cleaning to prevent metal particles and other impurities from getting into the hydraulic pump units. The additional cleaning was accomplished through contract modifications at Government expense.

Allegation #13: The hydraulic piping supplied by the contractor is not in accordance with accepted industry standards.

Facts: Sub-section 2.4 of the contract stated the hydraulic piping requirements as follows:

> Hydraulic lines connecting the power unit to the pumping unit shall be a combination of black steel pipe and reinforced hose and shall be installed in accordance with the drawings and as specified herein. Supply pipe shall be ASTM A106, Schedule 80 seamless black steel pipe, and return pipes shall be ASTM A106, Schedule 40 seamless black steel pipe...

USACE representatives stated that the contractor supplied the pipes to the standards specified in the contract. The contract required pipe meeting American Society for Testing and Materials (ASTM) A106. ASTM A106 is a material properties specification which is verified by mill certifications. The properties identified in ASTM A106 are used in the formulas of the American Society of Mechanical Engineers (ASME) codes B31.1 and B31.3 to determine the pipe size.

However, the ITR stated, "The hydraulic piping does not meet the requirements of ASME B31.1..." and recommended, "...that a certified hydraulic systems inspector determine if the system is free of shock loading and certify that the system as built is safe to operate for the intended use."

In response to the recommendation made in the ITR, USACE hired a professional engineer who performed an evaluation to determine the suitability of the hydraulic piping system design and construction. The consultant was advised by an ASME representative that code B31.3, not code B31.1, was the proper code for this application. Using the formulas found in ASME code B31.3 and the properties of ASTM A106 pipe, the consultant determined that the piping was in accordance with the appropriate industry standard. In addition, he tested the installed piping system at 1.5 times the design pressure (4500 psi) and observed no failure in piping and found the system working satisfactorily. The professional engineer concluded that the hydraulic piping system, design, and construction were suitable for transmitting power from the diesel engine to the vertical water pumps. Shock loading in the drive was not an issue. There were no rapid closing valves in the oil power system. Engineering calculations indicated that the pipe envelope did not present a safety hazard. In summary, the professional engineer found the existing hydraulic pipes adequate.

In addition, another consultant analyzed the adequacy of the ASTM A106 Schedule 80 black steel pipe used as hydraulic conduits for the pumps. He stated in his report:

> Based on the above observations and ...[the contractor representative] e-mail dated May 18, 2006, we believe that the 3" diameter Sch. 80 seamless black steel pipe is adequate for the hydraulic conduits for the hydraulic pumps at the 17th Street Canal Interim Pump Station.

Analysis: The allegation was not substantiated. The hydraulic pipes supplied by the contractor met the contractual specifications and accepted industry standards. The ASME advised that the correct standard for this purpose was ASME B31.3.

Allegation #14: The complainant alleged:

> ...they [the contractor] referred to my mandated 100% presence for pump testing oversight by USACE QA [Quality Assurance] personnel, including full QA and photographic documentation of all ongoing pump equipment testing, to be excessive, unnecessary, and somehow detrimental to getting pumps delivered to the city of New Orleans.

Facts: The USACE representatives told us that the contract did not specify the extent of oversight during factory testing. The contract states:

> Full size factory testing shall be witnessed by the Government prior to shipment of the pumps.

The contract also includes by reference FAR 52.246-2 which states:

> The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not

> unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

In response to the contractor's expressed concerns regarding the complainant's oversight activities, USACE assessed the issue and included the following statement in a contract modification:

> Inspectors are to be notified of the initiation of test with enough time to travel between test sites and witness the beginning and ending of all tests, even if only one inspector is on duty at that time.

Analysis: We confirmed that the contractor raised objections to the complainant's rigorous oversight activities because the original contract intent was not clear regarding the extent to which Government representatives would be involved in pump testing. We concluded that USACE management reasonably attempted to balance the need for Government involvement in testing with the need to avoid the type of interference which could slow production. The USACE decision to modify the contract to require the Government representative to witness the beginning and end of each test was an acceptable approach.

Conclusion and Actions Taken or Planned

The New Orleans Temporary Outfall Canal Pumps were procured and installed under emergency conditions. The project team made many hurried decisions that sometimes left protocol and documentation lacking. However, our review revealed a dedicated effort by committed professionals, including the complainant, to procure, debug, and install a temporary outfall canal pumping system to help protect the people of New Orleans. According to information we obtained, this was the largest pumping system ever procured by the USACE, having a 60-inch water pump diameter. The largest pumps previously procured by the USACE had a 42-inch diameter.

As indicated in this report, we found several of the allegations were substantiated. Testing at the factory and on-site disclosed numerous deficiencies that were corrected by the contractor at no cost to the Government, or through contract modification when necessary. Furthermore, the effort to produce and install the pumping systems on an expedited basis resulted in the failure to properly document the contract files. However, we consider these deficiencies performance-related shortcomings that did not rise to the level of a serious violation of law or regulation, abuse of authority, or gross mismanagement. Nor did they result in a gross waste of funds or a danger to public health or safety. Accordingly, we found insufficient basis to make a referral to the Attorney General pursuant to Section 4(d) of the IG Act or to recommend disciplinary action against any Government employee.

The Army is implementing recommendations that were made by the GAO to improve the management of future expedited projects as set forth below. We make no additional recommendations.

GAO REPORT 08-288, 'ARMY CORPS OF ENGINEERS: KNOWN PERFORMANCE ISSUES WITH NEW ORLEANS DRAINAGE CANAL PUMPS HAVE BEEN ADDRESSED, BUT GUIDANCE ON FUTURE CONTRACTS IS NEEDED,' DATED DECEMBER 31, 2007, (GAO CODE 360879)

DEPARTMENT OF DEFENSE RESPONSE TO THE RECOMMENDATIONS

Recommendation 1: We recommend that the Secretary of Defense require the Chief of Engineers to:

Take steps, through additional guidance or otherwise, to reinforce the importance of adherence to sound acquisition practices even during expedited procurements, including ensuring that important contract provisions, such as any required testing, are clear and that the contractor and the government understand what conditions or criteria must be met for successful completion of the contract.

DOD RESPONSE: CONCUR: The U.S. Army Corps of Engineers will send a memo to all Corps offices reinforcing the importance of adherence to sound engineering practices even during expedited procurements. The memo will relate lessons learned and emphasize the need for technical specifications, such as those required for equipment testing, to be clear so that the contractor and the government understand what conditions or criteria must be met for successful completion of the contract. The anticipated date to transmit the memo is 14 March 2008.[2]

Recommendation 2:
Develop procedures to ensure that any contract related documentation, including that related to contract pricing, is completed and filed within a reasonable period of time.

DOD RESPONSE: CONCUR: The U.S. Army Corps of Engineers will review and revise, as necessary, current policies and regulations to ensure that a reasonable period of time is identified for completing and filing contract documents. Estimated completion date is 30 May, 2008.[3]

[2] The memo was distributed to all USACE districts and divisions on February 25, 2008
[3] The USACE completed revisions of policies and regulations on February 27, 2008

Withdrawal Marker
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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Response by Maria Garzano	44	N.D.	P6/b6; b7c;

This marker identifies the original location of the withdrawn item listed above. For a complete list of items withdrawn from this folder, see the Withdrawal/Redaction Sheet at the front of the folder.

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Counsel's Office, White House

SERIES:
Fielding, Fred - General Files

FOLDER TITLE:
Office of Special Counsel Reports & Scott Bloch Issues [9]

FRC ID:
11293

OA Num.:
10820

NARA Num.:
10382

FOIA ID and Segment:
2014-0441-F
2014-0210-F

RESTRICTION CODES

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P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 2, 2008

The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-0177

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter, report, and whistleblower's comments to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

William E. Reukauf

William E. Reukauf
Acting Special Counsel

Enclosures

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 2, 2008

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-0177

Dear Mr. President:

The Office of Special Counsel received a whistleblower disclosure from Mr. David Lubbers, Jet Engine Mechanic, Department of the Navy (Navy), Fleet Readiness Center Southeast (FRCSE), Naval Air Station, Jacksonville, Florida. Mr. Lubbers, who consented to the release of his name, alleged that Navy employees were repairing jet engines and disposing hazardous material improperly and, consequently, creating a substantial and specific danger to public health and safety.

Mr. Lubbers' allegations were referred to the Honorable Donald C. Winter, Secretary of the Navy, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). On August 28, 2008, Secretary Winter submitted his agency report, which did not substantiate Mr. Lubbers' allegations.

While the agency report failed to substantiate the allegations, the investigation revealed that there were errors in how bearings were identified in Navy jet engine repair guidelines. The Secretary opined that these errors might have contributed to a misunderstanding about how mechanics were required to follow authorized procedures. Specifically, sections of the Navy manual on applicable repair and cleaning procedures "incorrectly identified afterburning variable exhaust nozzle rollers as if they were bearings."

The agency report further found that the Navy employs several jet engine cleaning processes. However, FRCSE utilizes an alternative, yet equivalent, method of cleaning the jet engines, which had been previously approved as a cost-effective method saving the government money. Specifically, FRCSE uses Blue Gold detergent, which has been approved as environmentally friendly and safe, and utilizes in-house FRCSE Engine Shop manual labor to perform the cleaning duties instead of sending engine parts, such as the fan stator vanes or blades, to a separate unit, the FRCSE Clean Shop, which is located in another building. Given that sending the engine parts to the FRCSE Clean Shop would dramatically increase the turn-around time, using FRCSE Engine Shop employees increases efficiency and saves money.

Mr. Lubbers provided comments on the agency report. He commended the investigators' professionalism. He also stated that the investigation produced a more receptive work environment among FRCSE employees who raise management and safety concerns and, as a result of safety inquiries, managers procured specialized tools to repair engines properly. However, Mr. Lubbers remains frustrated that, to date, he has not received a response to his request for engineering information concerning the cleaning process. Mr. Lubbers further objected to his supervisor's assertion that he did not want to clean engine parts because he did not want to get his hands dirty. Mr. Lubbers also reiterated that he stands by his disclosures and concerns about proper engine maintenance and disposal.

I have reviewed the original disclosure, the agency report, and Mr. Lubbers' comments. Based on that review, I have determined that the agency report contains all of the information required by statute, and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the agency report and Mr. Lubbers' comments to the Chairmen of the Senate Committee on Armed Services and the House Armed Services Committee, and to the respective Committees' Ranking Member. I have also filed copies of the agency's redacted report and Mr. Lubbers' comments in our public file and closed the matter.

Respectfully,

William E. Reukauf

William E. Reukauf
Acting Special Counsel

Enclosures

THE SECRETARY OF THE NAVY
WASHINGTON, D.C. 20350-1000

28 Aug 08

Mr. Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Dear Mr. Bloch,

Thank you for your letter requesting an investigation of alleged improper repair and cleaning of aircraft jet engine parts, and improper disposal of engine cleaning by-products, at Fleet Readiness Center Southeast (FRCSE), Jacksonville, Florida (Office of Special Counsel (OSC) File No. DI-08-0177).

The inquiry led by the Naval Inspector General (NAVINSGEN) determined these allegations to be unsubstantiated. The inquiry did reveal some sections of the applicable repair and cleaning procedures manual incorrectly identified afterburner variable exhaust nozzle rollers as if they were bearings. This error may have contributed to Complainant's belief that artisans were not following authorized procedures. The manual was revised during the course of the inquiry to avoid any confusion in the future.

I am enclosing two versions of the report of investigation. The first contains names of witnesses and is for your official use. I understand that you will provide a copy of this version to the Complainant, the President, and the House and Senate Armed Services Committees for their review.

The second version excludes the names of witnesses and is suitable for release to the general public. As has been the case with other reports that the Department of the Navy has provided to your office since September 11, 2001, I request that you make only this redacted version available to members of the public.

Again, thank you for bringing this matter to our attention. If I may be of any further assistance, please let me know at your earliest convenience.

Sincerely,

28AUG08

Donald C. Winter

AASN
RELEASE

Enclosures:
As stated

Flood, Edward

From: Flood, Edward
Sent: Sunday, August 31, 2008 2:03 PM
To: Flood, Edward
Subject: FILE READ FW: OSC 0177 Signed Out
Attachments: OSC 0177 JAX Jet Engines Final Report 11 Aug 08 FOUO.pdf; OSC 0177 JAX Jet Engines Final Report 11 Aug 08 PubRel.pdf

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From: Lippolis, Lawrence (AAUSN-NAVIG) [mailto:lawrence.lippolis@navy.mil]
Sent: Friday, August 29, 2008 11:01 AM
To: McMullen, Catherine; Flood, Edward
Subject: OSC 0177 Signed Out

Catherine, Ed - SECNAV Admin just called to tell me SECNAV has signed out the report. They are going to upload a scanned copy of his letter to our Tasking system, hopefully before they leave the office today. I will be able to download it and email it to you as soon as I am notified of this action. They are going to send me the original and I will mail it to your office along with the other "hard copies" next week.

Attached are the "final" versions of the report (redacted and unredacted) in pdf format.

Hope you have a great holiday weekend. Best regards, Larry

<<OSC 0177 JAX Jet Engines Final Report 11 Aug 08 FOUO.pdf>> <<OSC 0177 JAX Jet Engines Final Report 11 Aug 08 PubRel.pdf>>

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Report of Investigation	43	08/11/2008	P6/b6; b7c;

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COLLECTION:
Counsel's Office, White House
SERIES:
Fielding, Fred - General Files
FOLDER TITLE:
Office of Special Counsel Reports & Scott Bloch Issues [9]
FRC ID:
11293
OA Num.:
10820
NARA Num.:
10382

FOIA ID and Segment:
2014-0441-F
2014-0210-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

This Document was withdrawn on 8/30/2016 by erl

Thank you very much for looking into this matter and providing me the opportunity to respond to the findings.

First I would like to commend all involved in this investigation on their professionalism. This investigation did produce some positive results, one of which was a clear change in the way the F414 program conducts it's business. The program is more in tuned to listening to concerns in the way production is being performed instead of punishing the individual raising the concern. (I say this because I was completely removed off of the F414 shop floor in September of 2007 and forced to work in a Production Control capacity until the beginning of January 2008 when I was returned to work on the F414 shop floor and on that same day was contacted by the Investigator General requesting that I come in and provide testimony on my complaint.) Another positive result of this investigation was the complete turn around on the Bearing issue. Never before, this investigation, did the artisan ever refurbish bearings in the F414 shop for the simple reason that, the F414 shop never had the Proper tooling to complete the task (specially locally manufactured vicesgrip) but also that we didn't have Pyrolube in the building for the purpose of packing and assembling the bearings as the Publication required.

Engineers made false claims of having conversations with me and providing me with verbal instructions. If these claims held even an ounce of water, I would not have been able to follow them without official written instructions. To this point I still had not received any response to my Request for Engineering Information (REI) concerning the in shop cleaning process I had sent to June Brooks and the question had not been answered about the e-mail I provided the investigators from my supervisor saying that he knew the process was incorrect but that it was a funding issue that prevented the shop from correctly cleaning the engine parts. My supervisor also falsely claimed that the reason I didn't want to do any parts cleaning was because "I didn't want to get my hands dirty".

I confidently stand on the testimony I provided to the Investigators and I am not discouraged by the flawed findings of the investigation. All of the concerns that where being investigated still exist.

V/R David P. Lubbers

Jamil Jaffer
B. Burck

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

FACSIMILE COVER SHEET

TO:

Name: The Honorable Fred Fielding	
Title: Counsel to the President	
Organization: The White House	
Office / Location: Washington, D.C.	
Telephone: (202) 456-2632	**Fax:** (202) 456-6279

FROM:

Name: William E. Reukauf, Acting Special Counsel	
Organization: Office of Special Counsel	
Office / Location: Washington, D.C.	
Telephone: (202) 254-3636	**Fax:** (202) 653-5151

Date: December 10, 2008	**Number of pages, including this cover sheet: 12**

Message: Original and enclosures to follow by Federal Express delivery

If you did not receive the total number of pages shown, please call Denise Toney at (202) 254-3632.

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 10, 2008

The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-06-645 and DI-06-1904

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter, report, and comments to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

William E. Reukauf

William E. Reukauf
Acting Special Counsel

Enclosures

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 10, 2008

The President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-06-1645 and DI-06-1904

Dear Mr. President:

The Office of Special Counsel received disclosures from Ronald Mansfield and Emmitt Robinson, whistleblowers at the Department of the Army, XVIII Airborne Corps and Fort Bragg Office of the Inspector General, Fort Bragg, North Carolina. Mr. Mansfield and Mr. Robinson alleged that Colonel James Huggins, XVIII Airborne Corps and Fort Bragg Inspector General, breached his duty and violated his ethical obligations as Inspector General by arbitrarily and capriciously delaying, hindering, or failing to order investigations into his colleagues of similar rank.

The whistleblowers' allegations were referred to the Honorable Francis J. Harvey, Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary tasked the Honorable Ronald J. James, Assistant Secretary of the Army, Manpower and Reserve Affairs, with conducting the investigation. Assistant Secretary James delegated the authority to conduct the investigation to the U.S. Army Forces Command Office of the Inspector General. We received a report dated December 21, 2007.

As discussed in the attached Analysis of Disclosures, the agency investigation did not substantiate the whistleblowers' allegations. Mr. Mansfield and Mr. Robinson declined to provide comments on the report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting to you the agency's report

I have reviewed the original disclosures and the agency's report. Based on that review, I have determined that the agency's report contains all of the information required by statute.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the report to the Chairmen and Ranking Members of the House and Senate Committees on Armed Services. I have also filed copies of the agency report in our public file and closed the matter.

Respectfully,

William E. Reukauf

William E. Reukauf
Acting Special Counsel

Enclosures

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Analysis of Disclosures, Agency Investigation and Reports, and Comments of the Acting Special Counsel

OSC File Nos. DI-06-1645 & DI-06-1904

Summary

Ronald Mansfield, Deputy XVIII Airborne Corps and Fort Bragg Inspector General, and Emmitt Robinson, Assistant Inspector General, who consented to the release of their names, alleged that Colonel (COL) James Huggins, XVIII Airborne Corps and Fort Bragg Inspector General, Department of the Army, Fort Bragg, North Carolina, breached his duty and violated his ethical obligations as Inspector General by arbitrarily and capriciously delaying, hindering, or failing to order investigations into his colleagues of similar rank. Messrs. Mansfield and Robinson contend that these actions demonstrated an abuse of authority and a violation of the due process regulations in Army Regulation 20-1 (AR20-1), Inspector General Activities and Procedures.

The Honorable Francis J. Harvey, Secretary of the Army, tasked the Honorable Ronald J. James, Assistant Secretary of the Army, Manpower and Reserve Affairs, to investigate Mr. Mansfield's and Mr. Robinson's allegations. Assistant Secretary James, in turn, tasked the Department of the Army Inspector General with investigating the allegations. The investigation was conducted by the U.S. Army Forces Command (FORSCOM) Office of Inspector General (OIG). The FORSCOM OIG concluded that none of the allegations were substantiated. On December 21, 2007, Assistant Secretary James reviewed and approved the OIG's report. OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblowers' Disclosures

First, Mr. Mansfield and Mr. Robinson alleged that COL Huggins ignored the requirements of AR20-1 and the substantial and preponderant evidence of reprisal in the case of Sergeant First Class (SFC) Shacondra Clark. Dragon Brigade Commander COL Richard Hooker refused to provide SFC Clark with a Complete-the-Record Non-Commissioned Officer Evaluation Report (NCOER) in retaliation for requesting assistance from the OIG and reporting contracting improprieties. The whistleblowers further alleged that COL Hooker delayed the issuance of SFC Clark's Annual NCOER so as to downgrade her duty position from the Brigade S-4 Noncommissioned Officer in Charge (NCOIC) to the Battalion S-4 NCOIC.

Second, Mr. Robinson alleged that Command Sergeant Major (CSM) James Jordan insinuated that he could have transferred SFC Amelia Wilson in reprisal for reporting to the OIG and CSM Jordan that her Unit First Sergeant was mistreating her. Instead of treating the matter as a possible whistleblower reprisal and conducting an investigation consistent with the requirements of AR20-1, COL Huggins directed Mr. Robinson to speak with CSM Jordan about the Whistleblower Protection Act and the right of every individual to register a complaint with the Inspector General.

Third, Mr. Robinson alleged that COL Huggins delayed an investigation into Battalion Commander Lieutenant Colonel (LTC) Jochen Thomas's physical assault of Staff Sergeant (SSG) Victoria Perez and his inappropriate relationship with a female Staff Sergeant. Mr. Robinson explained that when SSG Perez informed the OIG of these allegations, COL Huggins was reluctant to order an investigation even though a preliminary analysis uncovered sufficient evidence to warrant further investigation. After a delay, COL Huggins eventually signed the request for a Commander's Inquiry, which substantiated the allegation that LTC Thomas engaged in an improper relationship with a female Staff Sergeant.

Fourth, although COL Huggins eventually agreed to an investigation of LTC Thomas, the preliminary analysis into SSG Perez's allegations provided sufficient evidence to warrant an investigation into allegations that 35th Signal Brigade Commander COL Brian Ellis had prior knowledge of LTC Thomas's misconduct and covered up SSG Perez's complaint. Mr. Robinson alleged that COL Huggins abused his authority by not ordering an investigation into COL Ellis, thereby protecting his colleague.

Fifth, Mr. Robinson alleged that COL Huggins delayed investigating a report that LTC Chuck Gabrielson, Commander of the 327th Signal Battalion, had condoned the consumption of alcohol while deployed in Louisiana. When presented with a request for a Commander's Inquiry, COL Huggins was reluctant to sign the request, stating that he did not want to burden units while they were preparing for deployment. Mr. Robinson asserted that COL Huggins was attempting to protect LTC Gabrielson.

Department of the Army Report

On December 6, 2006, the whistleblowers' allegations were forwarded to the FORSCOM OIG for investigation. The report did not substantiate the whistleblowers' first allegation that COL Huggins ignored the requirements of AR20-1 and the substantial and preponderant evidence of reprisal in the case of SFC Clark. COL Hooker properly applied the Army Regulation governing NCOERs. SFC Clark was not authorized to receive a Complete-the-Record NCOER for the period between December 2004 and August 2005, because she had already received an Annual NCOER for service in essentially the same duty position. The Army OIG and the Department of Defense OIG agreed with the decision that not providing SFC Clark with a Complete-the-Record NCOER did not constitute whistleblower reprisal and that further investigation was not warranted. SFC Clark received high marks on both her 2005 Annual NCOER and 2004 Annual NCOER, and the delay in issuing SFC Clark's annual evaluation did not constitute either an unfavorable personnel action or the withholding of a favorable personnel action.

The report did not substantiate the second allegation that CSM Jordan insinuated that he could have transferred SFC Wilson to another unit in reprisal for reporting to both the OIG and CSM Jordan that her Unit First Sergeant was mistreating her. On September 1, 2004, SFC Wilson visited the Fort Bragg OIG. She complained that her chain of command mistreated soldiers across the board, specifically referring to Captain (CPT) Brian Jorgenson and First Sergeant (1SG) James Fulton. SFC Wilson alleged that she was removed from her position as a platoon sergeant and had her NCOER downgraded in reprisal for making a complaint to the Brigade Equal Opportunity (EO) representative in July 2004. The complaint was deemed not to be EO-appropriate and SFC Wilson's allegations were forwarded to her company leadership, including CPT Jorgenson and 1SG Fulton. On August 26, 2004, SFC Wilson received an NCOER from CPT Jorgenson and 1SG Fulton that reflected a downgrade in the evaluation of her performance of duty as platoon sergeant. SFC Wilson subsequently refused an order to report to company formation and sought an audience with CSM Ronald Pflieger. Due to SFC Wilson's failure to follow the order, 1SG Fulton requested that SFC Wilson be removed from B Company and assigned to a lesser position in C Company. The request was granted the next day.

In her September 1, 2004, complaint to the Fort Bragg OIG, SFC Wilson made no allegations against CSM Jordan. SFC Wilson did not make any allegations against CSM Jordan until November 23, 2004, during sworn testimony in which she stated, "if I keep complaining, running to the IG, that [CSM Jordan said he would] move [me] off Fort Bragg because [I] wasn't Fort Bragg material anyway." On October 28, 2005, the Fort Bragg OIG began to investigate SFC Wilson's reprisal allegations. SFC Wilson was re-interviewed on December 1, 2005, after returning from a deployment in Iraq. SFC Wilson denied that any Army official reprised against her for making a protected communication, and stated that she had been informed of her pending reassignment from B Company to C Company before her protected communication with the Brigade EO representative. She explained that the reassignment was not taken in response to her protected communication. Rather, it was based on her poor working relationship with 1SG Fulton. SFC Wilson made no mention of CSM Jordan during this testimony or in her written questionnaire responses related to the testimony.

There was no evidence in SFC Wilson's four Inspector General case files that COL Huggins was ever informed of the outcome of the November 23, 2004, interview—the only interview in which SFC Wilson made an allegation against CSM Jordan. COL Huggins deployed to Iraq on January 24, 2005, and did not return to Fort Bragg until January 21, 2006, by which point the Fort Bragg OIG had declined to take further action on SFC Wilson's retaliation allegations. Because COL Huggins was never informed of SFC Wilson's specific allegations against CSM Jordan, he had no basis on which to direct Mr. Robinson to take any action with regard to CSM Jordan.[1]

The report did not substantiate the third allegation that COL Huggins delayed an investigation into Battalion Commander Lieutenant Col. (LTC) Jochen Thomas's alleged physical assault of SSG Perez or his inappropriate relationship with a female Staff Sergeant. SSG Perez initially made her complaint about the physical assault by LTC Thomas to the Fort

[1] The report found that the Fort Bragg OIG erred in failing to address SFC Wilson's allegation of reprisal against CSM Jordan during the course of her December 1, 2005, interview. As a result, the Inspector General of the Army will direct the Fort Bragg OIG to reopen SFC Wilson's case to properly address and resolve the potential allegations of reprisal against CSM Jordan.

Bragg OIG on October 19, 2004. The assault occurred while SSG Perez and LTC Thomas were deployed in Iraq in October 2003. SSG Perez had previously reported the incident to COL Bryan Ellis, who conducted an inquiry and determined that the assault was merely a verbal altercation. SSG Perez also alleged that LTC Thomas was engaged in an inappropriate relationship with SSG Renee Nolin. The case notes in SSG Perez's file indicate that the allegations appeared to have merit. On November 22, 2004, COL Huggins submitted a written request to Lieutenant General (LTG) John Vines that LTG Vines direct the Fort Bragg OIG to investigate the allegations made against LTC Thomas. LTG Vines signed the request on the same day he received it.

Based on the interviews conducted during the Fort Bragg OIG investigation, Mr. Robinson believed that there was a strong possibility that the allegations were true, that COL Ellis knew about them, and that COL Ellis never interviewed key witnesses to the case. After Mr. Robinson's interviews, COL Michael Schneider was appointed to conduct an investigation into SSG Perez's allegations on December 17, 2004. LTG Vines approved the findings in COL Schneider's report on January 26, 2005. The report determined that there was insufficient evidence to establish that LTC Thomas had engaged in adultery with SSG Renee Nolin, but the report did find that they engaged in an inappropriate relationship. The report also found that LTC Thomas had assaulted and mistreated SSG Perez. LTC Thomas was issued a reprimand and removed from command on January 26, 2005.

During his interview with the FORSCOM OIG, Mr. Robinson stated that COL Huggins refused to sign Temporary Assistant Inspector General John Hains's request for a Commander's Inquiry into SSG Perez's allegations. Mr. Robinson did not know why COL Huggins refused to do so, but he heard COL Huggins say that he did not want to saddle units with distractions while they are preparing for deployment. Mr. Mansfield corroborated Mr. Robinson's assertion that COL Huggins did not want to burden the 35th Signal Brigade as it prepared for deployment and that COL Huggins directed the closure of the case. Mr. Mansfield stated that it was not until the Fort Bragg OIG learned about an alleged altercation between LTC Thomas and SSG Jason Nolin,[2] that COL Huggins allowed Mr. Mansfield to seek a Commanding General's directive for investigation.

Mr. Hains confirmed that he interviewed SSG Perez about her assault complaint. He initially told her that the allegations were without merit and the Fort Bragg OIG would not investigate them further because they had already been investigated. Mr. Hains proceeded to return the case to Mr. Robinson as a matter for the Assistance section. However, SSG Perez returned again and raised for the first time the allegation about an inappropriate relationship between LTC Thomas and SSG Renee Nolin and the public altercation between LTC Thomas and SSG Jason Nolin. SSG Perez did not have firsthand knowledge of the inappropriate relationship so Mr. Hains and Mr. Robinson conducted follow-on interviews of SSG Renee Nolin and SSG Jason Nolin. Mr. Hains stated that he did not receive any pressure from COL Huggins not to report allegations against LTC Thomas during this inquiry. Mr. Hains further stated that he had no recollection of playing any role in requesting the Commander's

[2] SSG Jason Nolin is SSG Renee Nolin's husband.

Inquiry into SSG Perez's allegations, and he had never been prevented from reporting allegations against field grade officers to the appropriate authority.

LTC Mark Childress testified that COL Huggins was disgusted with LTC Thomas's behavior, viewing it as unacceptable. LTC Childress did not perceive that COL Huggins tried to influence the investigation in any inappropriate manner.

COL Huggins recalled learning about SSG Perez's allegations around the same time he underwent a two-week TDY trip to Iraq between October 25 and November 4, 2004. COL Huggins discussed SSG Perez's allegations with COL Ellis in early November 2004. COL Ellis viewed the allegations as serious enough to warrant a search for a replacement in the event that the inappropriate relationship was substantiated. COL Huggins did not recall his staff advising him to refer the improper relationship to COL Ellis for investigation. Even if he had received such advice, COL Huggins said that he would not have concurred with it, because COL Ellis was "too close" to the matter as LTC Thomas's direct superior. COL Huggins denied ordering the case closed as an Assistance matter and telling anyone not to investigate it. COL Huggins thought Mr. Mansfield was trying to stall the inquiry long enough to delay its resolution until the 35th Signal Brigade's deployment to Iraq. COL Huggins stated that he made it very clear to Mr. Mansfield to move forward on the case so that the Commanding General and Brigade Commander would have sufficient facts to make an informed decision on LTC Thomas's status before the unit's deployment.

COL Ellis testified that COL Huggins brought SSG Perez's allegation about the inappropriate relationship between LTC Thomas and SSG Nolin to his attention in early-to-mid November 2004. COL Huggins told COL Ellis that the Fort Bragg OIG had received unfavorable information about LTC Thomas. COL Ellis offered to investigate the matter, but COL Huggins advised him not to do anything, because COL Huggins intended to seek the Commanding General's advice on the matter.

The report concluded that the allegation that COL Huggins blocked the referral of SSG Perez's allegations was not supported by the evidence. Only slightly more than a month elapsed between the receipt of SSG Perez's complaints on October 19, 2004, and COL Huggins's referral to the highest levels of the chain of command at Fort Bragg on November 22, 2004. The report determined that this length of time was not unreasonable considering that COL Huggins was in Iraq for two of the weeks during this period. COL Huggins also relied on information derived from interviews which took place during this period. Rather than having COL Ellis investigate the allegations, COL Huggins decided the allegations should be investigated at a more senior level, a decision which the report found to be both reasonable and prudent.

The report did not substantiate the fourth allegation that COL Brian Ellis had prior knowledge of LTC Thomas's misconduct, that he covered up SSG Perez's complaint, and that COL Huggins abused his authority by not ordering an investigation into COL Ellis. On June 2, 2004, COL Ellis appointed an officer to inquire into SSG Perez's assault allegation against LTC Thomas. The officer determined that because LTC Thomas had no intent to cause

SSG Perez bodily harm, there was no assault.[3] COL Ellis was not aware of the allegation regarding the inappropriate relationship between LTC Thomas and SSG Nolin until November 2004 when COL Huggins informed him of it. COL Ellis immediately offered to investigate the allegation of the inappropriate relationship, but COL Huggins believed it would be more appropriate to be addressed at the Commanding General level.

The report acknowledged a discrepancy between COL Huggins's claim that COL Ellis had told him (COL Huggins) in November 2004 that there had been previous perceptions of an inappropriate relationship and he (COL Ellis) had conducted a Commander's Inquiry into it. In contrast, COL Ellis testified that he had not previously conducted any type of Commander's Inquiry into the allegation of an inappropriate relationship involving LTC Thomas. The report proffered two possible explanations. First, COL Huggins may have misunderstood COL Ellis's statement that he had directed an investigation into allegations of misconduct against LTC Thomas by interpreting it to include both the assault and the inappropriate relationship when only the assault was investigated. Second, even if COL Huggins's recollection is correct, COL Huggins would have had every reason to believe that COL Ellis had acted appropriately, and COL Huggins would have had no basis on which to assert that COL Ellis covered up LTC Thomas's misconduct.

The evidence indicated that that there was no cover-up of COL Ellis's failure to investigate the inappropriate relationship allegation, because he was not aware of it. Rather, COL Huggins ordered Mr. Mansfield to quickly investigate the allegations so that the Commanding General and COL Ellis could make an informed decision regarding LTC Thomas before his unit deployed.

The report did not substantiate the fifth allegation that COL Huggins delayed investigating a report that LTC Gabrielson condoned the consumption of alcohol while deployed in Louisiana. COL Huggins was allegedly reluctant to sign a request for a Commander's Inquiry, stating that he did not want to burden units while they were preparing for deployment. Mr. Robinson alleged that COL Huggins wanted to protect LTC Gabrielson.

On April 23, 2004, PFC Michael Columbus registered a complaint to the Fort Bragg OIG that he had been assaulted by three non-commissioned officers on April 2, 2004, during a rest and relaxation trip to New Orleans, Louisiana. It was determined that the troops' consumption of alcohol was a factor in the assault. On April 29, 2004, COL Huggins referred the assault allegations to COL Ellis for a Commander's Inquiry. It was not determined until the Commander's Inquiry that LTC Gabrielson approved the troops' consumption of alcohol in violation of XVIII Airborne Corps policy. In the request for a Commander's Inquiry, COL Huggins specifically directed COL Ellis to determine who authorized the consumption of alcohol during the trip.

[3] COL Schneider's subsequent investigation of this allegation determined that intent to commit bodily harm is not an element of assault under Article 128 of the Uniform Code of Military Justice. As a result, COL Schneider's report determined that LTC Thomas had committed assault based upon the same facts as this inquiry.

The Investigating Officer's report, which was completed on May 24, 2004, substantiated the allegation that LTC Gabrielson permitted his soldiers to consume alcohol. On September 4, 2004, COL Ellis asked the Commanding General for authority to to take administrative action against LTC Gabrielson. The Commanding General granted COL Ellis's request on September 8, 2004, and COL Ellis issued LTC Gabrielson a Memorandum of Admonishment on September 9, 2004.

During his interview with FORSCOM OIG, Mr. Mansfield testified that COL Huggins would not have agreed to refer PFC Columbus's allegations for investigation absent Mr. Hains's insistence. Mr. Hains testified that he learned that LTC Gabrielson was involved only after he received the Investigating Officer's May 24, 2004, report. When Mr. Hains informed COL Huggins that he was going to include the finding against LTC Gabrielson in the Fort Bragg OIG Report of Investigative Inquiry (ROII), COL Huggins "was not happy," but COL Huggins never interfered with Mr. Hains's decision to include the information in the final ROII. COL Huggins testified that he did not delay the investigation into these allegations and would never have tried to protect LTC Gabrielson. The agency's report concluded that there is no evidence that COL Huggins hesitated to refer the allegation regarding alcohol consumption to COL Ellis or that COL Huggins had any interest in protecting LTC Gabrielson.

Mr. Mansfield alleged that COL Huggins removed Mr. Hains in part for Mr. Hains's persistence in pursuing PFC Columbus's allegation. The FORSCOM OIG conducted an investigation into this additional issue sua sponte. Mr. Hains believed that this incident played a role in his dismissal at the end of his probationary period of employment with the Fort Bragg OIG. The FORSCOM OIG's investigation determined that Mr. Mansfield visited the Fort Bragg civilian personnel office and requested assistance in terminating Mr. Hains. Prior to the termination being completed, Mr. Hains voluntarily returned to his prior position at the XVIII Airborne Corps G-3. The FORSCOM OIG's interviews of Ms. Christine Potter, Chief, FORSCOM/Installation Management Agency Team, Fort Bragg Civilian Personnel Advisory Center and Mr. Michael Larson, Fort Bragg Attorney-Adviser, revealed that COL Huggins had no involvement in the effort to terminate Mr. Hains's employment with the Fort Bragg OIG. COL Huggins was deployed to Iraq at the time of Mr. Hains's termination. The FORSCOM OIG concluded that Mr. Mansfield appeared to have engineered the effort to terminate Mr. Hains.

The Whistleblowers' Comments

Messrs. Mansfield and Robinson were provided copies of the agency's report on February 4, 2008, and given the opportunity to comment on it. On May 2, 2008, Mr. Mansfield declined to comment on the report. Mr. Robinson requested six months to draft his comments. At the end of that period, he did not respond to multiple requests for his comments, which were due August 4, 2008.

Acting Special Counsel's Findings

Based on my review of the original disclosures and the report, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Scott Bloch - From: Fred Fielding	1	08/01/2008	P6/b6;

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Fielding, Fred - General Files

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OA Num.:
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Appendix of Attached Material

1. Letter to White House Counsel Fred Fielding from Avi Kumin, Partner at Katz, Marshall & Banks (July 31, 2008)
2. Letter to Special Counsel Scott Bloch from Chairman Henry Waxman, Committee on Oversight and Government Reform (July 28, 2008)
3. Letter to Chairman Henry Waxman, Committee on Oversight and Government Reform, from Ranking Member Tom Davis (July 21, 2008)
4. Letter to White House Chief of Staff Josh Bolten from Danielle Brian, Executive Director, Project on Government Oversight (July 17, 2008)
5. Letter to Special Counsel Scott Bloch from James Byrne, Deputy Special Counsel for the Office of Special Counsel (July 10, 2008)
6. Letter to President George W. Bush from Debra Katz, Partner at Katz, Marshall & Banks (April 29, 2008)
7. Letter to President George W. Bush from Debra Katz, Partner at Katz, Marshall & Banks (November 28, 2007)
8. Letter to White House Counsel Fred Fielding from Debra Katz, Partner at Katz, Marshall & Banks (October 10, 2007)
9. Letter to Chairman Joseph Lieberman and Ranking Member Susan Collins, Senate Committee on Homeland Security and Governmental Affairs from Danielle Brian, Executive Director, Project on Government Oversight (October 10, 2007)
10. Letter to Chairman, Joseph Lieberman and Ranking Member Susan Collins, Senate Committee on Homeland Security and Governmental Affairs from Danielle Brian, Executive Director, Project on Government Oversight (January 10, 2005)
11. NPR article by Ari Shapiro, "FBI Raids Special Counsel Office, Seizes Records" (May 6, 2008)
12. NPR article by Ari Shapiro, "Special Counsel Case May Extend Far Beyond Bloch" (May 7, 2008)
13. Associated Press article, "Special Counsel's Office Amid Obstruction Probe" (May 6, 2008)
14. Los Angeles Times article by Richard B. Schmitt and Tom Hamburger, "Federal Agents Raid Special Counsel's Office" (May 7, 2008)

KATZ, MARSHALL & BANKS, LLP

Avi Kumin, Partner
kumin@kmblegal.com

July 31, 2008

Fred Fielding, Esquire
White House Counsel
The Office of Counsel to the President
1600 Pennsylvania Ave.
Washington, D.C. 20580

Re: Office of Personnel Management Office of Inspector General's Investigation of Special Counsel Scott J. Bloch

Dear Mr. Fielding:

I am writing to request that you instruct the Office of Personnel Management's Office of Inspector General (OPM IG) to issue a prompt and final determination to their investigation of the complaint filed in 2005 by my clients, a group of career employees of the U.S. Office of Special Counsel (OSC). As my law partner Debra Katz and I have previously advised you, our clients' complaint reported numerous instances of unlawful whistleblower reprisal, politically and religiously-based hiring for career positions, discrimination on the basis of sexual orientation or perceived sexual orientation, and other illegal acts by Special Counsel Scott Bloch. Despite the fact that OPM IG appears to have completed its investigation long ago – no interviews or other investigation regarding my clients' underlying complaint have occurred for at least the past six months, and perhaps the past year – OPM IG has still not released its findings.

As was widely reported in the media on Monday, July 28, the Department of Justice's Office of Inspector General recently concluded that political appointees at DOJ violated the law and DOJ hiring policy by using a pro-Republican political litmus test to hire for hundreds of non-political civil service positions. The DOJ IG investigation began in early- to mid-2007, after the firing of nine U.S. attorneys in December 2006, and completed within approximately one year. By contrast, my clients have now waited nearly three-and-a-half years for redress.

A final report of investigation in the OSC complaint is urgent not only for my clients, but for a full public understanding of the issues raised by the DOJ report, since many of the issues raised in my clients' complaints mirror what occurred at DOJ. Just as DOJ's Inspector General reported that political officials had hired numerous lesser-qualified attorneys because they attended the Christian, conservative Regent University Law School, my clients' complaint reported that OSC officials hired several career employees primarily because they attended the Christian, conservative (and at the time only provisionally accredited) Ave Maria Law School. Just as the DOJ IG report concluded that officials fired or refused to hire employees based on their sexual orientation or perceived sexual orientation, my clients reported years ago that Mr. Bloch fired them because of their perceived sexual orientation or perceived support for enforcing sexual orientation protections for federal government employees. Just as the DOJ IG report concluded that officials there had based their non-political hiring on their political loyalties, my client's complaint about OSC raised significant evidence that Mr. Bloch and his staff evaluated whistleblower and Hatch Act investigations based on partisan politics. Even one of Mr. Bloch's top deputies, James Byrne, in announcing his resignation earlier this month, concluded that "the independence and very existence of the Office of Special Counsel are – and shall remain – at risk" because of Mr. Bloch's "political agendas and personal vendettas." The lack of a final resolution from OPM IG thus harms not only the specific complainants in that case, but hinders the public's understanding of the scope of this problem in other federal agencies, and what must be done to appropriately address it.

Not only does the lack of a finding by OPM IG delay important remedial changes within OSC, it will hamper redress for DOJ employees, as well. The typical avenue of redress for federal career employees denied positions because of their political views or perceived sexual orientation, such as the hundreds of employees at DOJ, is to file a complaint with the OSC. This represents nothing more than a farce if their complaints are determined at OSC by officials who have themselves engaged in the same political litmus tests, discrimination on the basis of sexual orientation, and refusal to abide by federal civil service laws. Aggrieved employees at DOJ, OSC, and other federal agencies deserve to know whether their cases are in fact being determined on these unlawful grounds, and how the Bush Administration intends to address the matter. That can only be accomplished by release of OPM IG's final report.

While we understand that Mr. Bloch is currently being investigated by a grand jury regarding possible criminal conduct, there is no reason that such a proceeding should delay the issuance of a final resolution by OPM IG regarding my clients. The issuance of a final resolution to OPM IG's civil investigation would not adversely affect the criminal proceedings. Moreover, waiting for the end of the criminal investigation into Mr. Bloch would, if Mr. Bloch is indicted, seem to suggest that OPM IG should wait until after preparation for a trial, through the trial itself, and then until after possible appeals of the trial result before issuing its report of investigation – a delay of several years further, and an obviously unfair and completely untenable result.

As the Supreme Court and the federal Courts of Appeal have long recognized, "justice delayed is justice denied." <u>Rohr Indus., Inc. v. Washington Metro. Area Transit Auth.</u>, 720 F.2d 1319, 1327 (D.C. Cir. 1983); <u>accord Guardians Ass'n v. Civil Serv.</u>

KATZ, MARSHALL & BANKS, LLP

Comm'n of City of New York, 463 U.S. 582, 627 (1983). I appreciate your efforts to help bring my clients' long wait for justice to an end.

I look forward to hearing from you.

Sincerely,

Avi Kumin

cc: Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee
Senator Susan Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee
Senator Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Senator Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee
Rep. Henry Waxman, Chairman, House Oversight and Government Reform Committee
Rep. Tom Davis, Ranking Member, House Oversight and Government Reform Committee
Rep. Danny K. Davis, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Rep. Kenny Marchant, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Clay Johnson III, Deputy Director for Management, Office of Management and Budget
Patrick E. McFarland, Inspector General, Office of Personnel Management

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

www.oversight.house.gov

July 28, 2008

The Honorable Scott J. Bloch
Special Counsel
Office of Special Counsel
1730 M Street NW, Suite 300
Washington, DC 20037-1350

Dear Mr. Bloch:

I am writing to express my concern about the effectiveness of the Office of Special Counsel (OSC). OSC's primary mission is "to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, particularly reprisal for whistleblowing." I know that you have dedicated several years of your professional career to OSC and value the interests of the agency.

Over the past several months, however, it has become clear OSC's mission is not being served as effectively as it could be. Earlier this month, your top deputy, James Byrne, the most senior career official at OSC, resigned his Senior Executive Service position. In Mr. Byrne's resignation letter, he stated that "the mission, independence, and very existence of the Office of Special Counsel are — and shall remain— at risk." He also called for your replacement.[1]

The mission of the agency should be the paramount consideration. It is for this reason that I have concluded that OSC would be better served with new leadership and urge you to step down as the Special Counsel. Such a step would be in the best interests of the agency and federal employees it is charged to protect.

Sincerely,

Henry A. Waxman

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

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[1] Letter from James Byrne, Deputy Special Counsel, to Scott J. Bloch, Special Counsel, Office of Special Counsel (July 10, 2008).

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

ONE HUNDRED TENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

July 21, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
2157 Rayburn Building
Washington, D.C. 20515

Mr. Chairman:

I write to restate my request the Committee investigate the unethical, and quite possibly illegal, activities of U.S. Special Counsel Scott Bloch and that you join me in calling for Mr. Bloch's immediate resignation or removal from this critical position.

According to recent reports, Mr. Bloch's top deputy, James Byrne, resigned because, as he told the Associated Press, Mr. Bloch has taken to putting "political agendas and personal vendettas" ahead of the agency's mission and independence. In his letter of resignation, Mr. Byrne said, "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 and personal vendettas." For those of us dedicated to an ethical, open government workplace in which employee rights are protected, that ought to be all that needs to be said to trigger an in-depth investigation and a call for new leadership at the OSC.

As you know, Mr. Bloch's second-in-command is just the latest in a long line those within the agency who are uncomfortable with their leader's policies and practices. A group of current and former agency employees filed a complaint against Bloch in 2005, accusing him of retaliation through intimidation and involuntary transfers. His office is under federal investigation reportedly for destroying evidence that he retaliated against his own staff. Officials also want to know why he brought in a private firm with no previous connection to government IT work to perform an extensive wipe on the hard drive of his computer. He also is accused of pursuing an anti-gay agenda, refusing to protect federal workers from discrimination based on sexual orientation.

Mr. Chairman, with all due respect, I wonder if we are approaching the point where people will have to question why the Committee has turned a blind eye to Mr. Bloch's apparent transgressions when others have become targets of the Committee's investigative attentions based on far less substantial claims. Surely, his cooperation in the Committee's prosecution of GSA Administrator Doan should not earn Mr. Bloch permanent immunity from scrutiny of his own misdeeds. Notwithstanding what other committees may decide to do, this matter is under our direct jurisdiction. The Bloch cover-up is a lingering embarrassment and damages the Committee's credibility.

Please focus the Committee's oversight on restoring integrity to the Office of Special Counsel. I look forward to your response.

Sincerely,

Tom Davis
Ranking Member

Exposing Corruption Exploring Solutions

Project On Government Oversight

POGO 25 Anniversary Celebration

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.

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

Danielle Brian
Executive Director

cc: White House Counsel Fred Fielding

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

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,

J. M. Byrne

James Byrne
Deputy Special Counsel

cc: OSC Director of Human Resources

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.

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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]

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[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

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[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

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[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;

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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

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[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]

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[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

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[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

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[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

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[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.

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[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

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By Telecopier and Hand-Delivery
November 28, 2007

President George W. Bush
White House
1600 Pennsylvania Ave.
Washington, D.C. 20580

Re: Malfeasance and Illegal Misconduct by Special Counsel Scott Bloch

Dear Mr. President:

For the last two and one half years, I have been representing a group of public interest organizations as well as a number of current and former employees of the United States Office of Special Counsel (OSC) in connection with a complaint filed against Special Counsel Scott Bloch, which is under investigation by the Office of Personnel Management's Inspector General (OPM IG). The initial complaint, filed in April of 2005, alleged violations of federal personnel laws, including retaliation against internal whistleblowers, the purging of existing career staff and their replacement with political cronies, illegal gag orders, and the wholesale dismissal of over 1000 whistleblower disclosures without investigation. I have since amended the complaint several times, as Mr. Bloch and/or his political staff have continually obstructed the IG's investigation, made false statements to Congress, and engaged in other improper and illegal activity, all of it directly antithetical to the mission of OSC, which is to protect the merit-based civil service, and to investigate and prosecute agency officials who retaliate against whistleblowers.

The OPM IG investigation has dragged on for several years, while Mr. Bloch has systematically destroyed OSC, and any credibility it once had. While Mr. Bloch has boasted of his efficiency in clearing out "backlogged" cases, the number of employees receiving relief from OSC has plummeted. Experienced career staff have left in unprecedented numbers and OSC is widely viewed as an ineffective, highly politicized, and even corrupt institution.

Today's *Wall Street Journal* contains a report confirming what my clients and other sources within OSC have been saying since the OPM IG investigation began: that Mr. Bloch and his political henchmen have continuously obstructed the investigators' efforts to get at the truth. Mr. Bloch apparently hired "Geeks on Call" in December 2006 to do a sophisticated, Department of Defense-level "wipe" of his computer hard drive, and the hard drives of two of his political deputies. He claims that he did so to eradicate "viruses" on the computers This assertion is ludicrous; the procedure that "Geeks on Call" employed is used to wipe hard drives and delete all information previously stored, not to address viruses. Further, OSC has its own IT department, which would have been responsible for addressing any "virus" issue; OSC does not use "Geeks on Call" to service its computers.

Tellingly, the *Wall Street Journal* article quotes Mr. Bloch as defending himself with a claim that the OPM IG has a "conflict of interest" in pursuing its investigation of Mr. Bloch while his office supposedly is conducting an investigation of White House. This claim by Mr. Bloch confirms what we have repeatedly pointed out in correspondence with the White House Counsel, with Clay Johnson, Deputy Director of OMB, and with members of Congress -- that Mr. Bloch launched his supposed investigation of the White House to insulate himself from the OPM IG investigation. (I am enclosing for your ease of reference a letter dated October 10, 2007, to White House Counsel Fred Fielding, outlining these concerns.) The fact that Mr. Bloch -- caught red-handed destroying evidence and obstructing justice -- has now himself openly attacked the ability of the OPM IG to conduct an impartial investigation speaks volumes. Mr. Bloch continues to cling to his strategy of using his "investigation" of the White House to insulate himself from his own misdeeds.

Enough is enough Mr. President. By law, you may remove the Special Counsel for neglect, inefficiency or malfeasance in office. 5 U.S.C. Sec. 1211. Obstruction of justice, making untruthful statements to Congress, retaliating against whistleblowers, purging career staff, using official authority for personal and political reasons, and the systematic destruction of OSC's effectiveness and credibility certainly constitute malfeasance. We urge you, therefore, to remove Mr. Bloch from his office, and to provide full relief to the talented and highly qualified employees that Mr. Bloch illegally drove out of the agency, who have brought his continued misconduct to light, and who continue to wait for justice.

Sincerely,

Debra S. Katz

Debra S. Katz

Enc.

cc: Fred Fielding, White House Counsel
Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee
Senator Susan Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee

Senator Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Senator Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee
Rep. Henry Waxman, Chairman, House Oversight and Government Reform Committee
Rep. Tom Davis, Ranking Member, House Oversight and Government Reform Committee
Rep. Danny K. Davis, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Rep. Kenny Marchant, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Clay Johnson III, Deputy Director for Management, Office of Management and Budget
Patrick E. McFarland, Inspector General, Office of Personnel Management

KATZ, MARSHALL & BANKS, LLP

Debra S. Katz, Partner
Direct Dial: 202-299-1143
katz@kmblegal.com

October 10, 2007

Fred Fielding, Esquire
White House Counsel
The Office of Counsel to the President
1600 Pennsylvania Ave.
Washington, D.C. 20580

Re: PCIE Referral of Complaint Against Scott J. Bloch, Special Counsel, Office of Special Counsel (OSC) to White House Counsel

Dear Mr. Fielding:

I am writing on behalf of my clients, a group of career OSC employees and four public interest organizations, who filed a Complaint of Prohibited Personnel Practices Against U.S. Special Counsel Scott J. Bloch ("OSC Complaint") with President George W. Bush in March 2005. This OSC Complaint was assigned for investigation to Patrick McFarland, the Inspector General for the Office of Personnel Management, in April 2005. I am writing to request that you direct the OPM IG to provide you with an interim report or substantive briefing regarding what its investigation has uncovered to date, and to explain the reasons for its long delay in concluding this investigation.

It is our view that despite the diligent efforts of the OPM IG's staff, Mr. Bloch has succeeded in obstructing and delaying this investigation for over almost two and half years. He has done so repeatedly, as I believe the OPM IG would confirm, both personally and through members of his political staff, and most recently by directing his former and current political staff to refuse to answer questions about Mr. Bloch's various misdeeds. We understand that Mr. Bloch (though his political staff) has interposed frivolous claims of "attorney client" privilege in an effort to prevent the IG from getting at the truth.

Mr. Bloch has also greatly delayed this investigation by throwing up smoke screens to make himself "bullet proof," including the launching of a widely publicized investigation concerning alleged violations of law in connection with the termination of a former U.S.

Attorney, David Iglesias, and alleged Hatch Act violations by the President's political Advisor Karl Rove.[1]

In fact, our concerns about having Mr. Bloch lead these efforts were recently confirmed when OSC conducted a Hatch Act investigation of GSA Administrator Lurita Doan. Because of Mr. Bloch's involvement and actions, the focus was shifted from the allegations against Ms. Doan to Mr. Bloch's own credibility. Thus, in an act that could only have been motivated by Mr. Bloch's desire to protect himself, Mr. Bloch authorized James Mitchell, his Director of Communications, to leak OSC's investigative report to the press, before Ms. Doan had an opportunity to respond to it. Mr. Mitchell accidentally released a preliminary draft of the report, rather than the final one, to the *Washington Post* and the *Los Angeles Times*. Upon learning of his error (after the *Washington Post* had already published the preliminary report on its website), Mr. Mitchell gave the media copies of the final report, but failed this time to redact the names of employees whose work and competence Ms. Doan was said to have questioned in her interviews with OSC.

During OSC's Reauthorization hearing, Mr. Bloch did not own up to his actions under intense questioning by members of the House Subcommittee on the Federal Workforce, Postal Service and the District of Columbia. Instead, he testified (untruthfully) that he did not know whether OSC was the source of the leak. Contrary to his testimony, Mr. Bloch was well aware of how the report had been leaked because he himself authorized it. His untruthful testimony and evasive responses to questions asked by the Subcommittee further undermined the credibility of the Doan investigation. In fact, to date, the President has not taken any action in response to OSC's report; had a credible Special Counsel overseen this investigation it is far less likely that the President would have felt free to simply ignore OSC's findings.

Given OSC's critical role in protecting the merit system and enforcing the Hatch Act, it is unacceptable that after more than two years, the OPM IG has still not completed its investigation of the charges lodged against Mr. Bloch. We believe that to a large degree this is the result of Mr. Bloch's own obstruction of the investigation. For all of these reasons we believe the OPM IG should issue an interim report at this time. Mr. Bloch should not be permitted to benefit by his obstruction of the IG's investigation, including through the invocation of frivolous claims of privilege, and other high-profile gambits.

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[1] At this point, Mr. Bloch cannot be trusted to oversee <u>any</u> investigation, much less a sensitive investigation of alleged Hatch Act violations by high level political appointees. Regardless of the outcome of those investigations, they will not be considered credible. As I explained in my letter to you dated April 25, 2007, multiple conflicts of interest preclude Mr. Bloch from being entrusted with responsibility for these important investigations, while he himself is also being investigated, essentially at the direction of the White House.

Mr. Bloch's end-game here is obvious. He intends to play out the clock through the end of the President's term and avoid any responsibility or consequences for his misconduct. Is the White House content to let that happen?

I look forward to hearing from you.

Sincerely,

Debra S. Katz /Esq./

Debra S. Katz

Cc: Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee
Senator Susan Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee
Senator Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia
Senator Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee
Rep. Henry Waxman, Chairman, House Oversight and Government Reform Committee
Rep. Tom Davis, Ranking Member, House Oversight and Government Reform Committee
Rep. Danny K. Davis, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Rep. Kenny Marchant, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia
Clay Johnson III, Deputy Director for Management, Office of Management and Budget
Patrick E. McFarland, InspectNALor General, Office of Personnel Management

October 10, 2007

Senator Joseph Lieberman, Chairman
Senate Committee on Homeland Security and Governmental Affairs
Senate Dirksen 340
Washington, DC 20510

Senator Susan Collins, Ranking Member
Senate Committee on Homeland Security and Governmental Affairs
Senate Dirksen 344
Washington, DC 20510

Re: U.S. Office of Special Counsel

Dear Senators Lieberman and Collins:

As you know, the U.S. Office of Special Counsel (OSC) has been lobbying Congress to appropriate an additional three million dollars to OSC for FY 2008, purportedly to fund Hatch Act investigations of allegations that the White House conducted improper political briefings on-site at a number of federal agencies. We write to you now to urge that you not support the provision of any additional monies to OSC for this or any other purpose, pending the completion of an investigation being conducted by the Inspector General for the Office of Personnel Management (OPM IG) into allegations of serious misconduct by Special Counsel Scott Bloch. We further ask that you require the OPM IG to provide you with an interim report or substantive briefing regarding what its investigation has uncovered.

Our organizations recognize the importance of ensuring the enforcement of the Hatch Act's prohibitions. But it is precisely because we value the Hatch Act's safeguards against mixing politics with governance that we urge you not to support additional appropriations to OSC while Mr. Bloch is the Special Counsel.

During the almost four years that Mr. Bloch has served as Special Counsel, OSC's credibility as an impartial investigative agency has reached an all time low. Mr. Bloch has developed a reputation for using the authority of his office to promote his own personal agendas, rather than OSC's mission. Beginning with the first few months of his term, Mr. Bloch has been a lightening rod for controversy. He has continuously faced allegations of mismanagement, misconduct, retaliation, and, ironically, politicization of OSC. These accusations have come from career OSC staff, from our groups, and from both sides of the aisle in Congress. As noted, Mr. Bloch has been the subject of an OPM IG investigation, ordered by the President's Council on Integrity and Efficiency (PCIE), for over two years. As we believe the OPM IG would confirm, Mr. Bloch has obstructed that investigation repeatedly either personally or through members of his political staff. In fact, his former and current political staff have refused to answer questions about Mr. Bloch's various misdeeds, because Mr. Bloch (though his political staff) has interposed claims of "attorney client" privilege in an effort to prevent the IG from getting at the truth.

Moreover, there is no guarantee that any additional monies provided to OSC would be used for its intended purpose. Shortly before Special Counsel Bloch arrived at OSC, Congress approved five additional slots for career staff positions in OSC's Disclosure Unit (DU). The slots were authorized by Congress in order for OSC to better meet the demands of a post-September 11 increase in the number of whistleblower disclosures submitted to the agency. Mr. Bloch did not fill these positions, instead opting to double the size of OSC's political staff. Now, after failing for the entirety of Bloch's term to fill this unmet need, OSC asked that Congress increase the time period from 15 to 45 days for OSC to respond to disclosures of waste, fraud and abuse submitted to the DU.

In addition, OSC simply cannot take on any more responsibilities without further abandoning its primary constituency: government whistleblowers. A recent news article noted that "OSC reassigned eight of its staff to handle the [Hatch Act] investigation." With the number and percentage of federal employees helped by OSC already at all-time lows, the immediate effect of OSC's new "broad-based" investigation will be further deterioration of the quality of service that employees can expect when they turn to OSC for assistance.

At this point, Mr. Bloch cannot be trusted to oversee <u>any</u> investigation, much less a sensitive investigation of alleged Hatch Act violations by high level political appointees. Regardless of the outcome of those investigations, they will not be considered credible. As we explained in the attached letter of April 25, 2007 to White House Counsel Fred Fielding, multiple conflicts of interest preclude Mr. Bloch from being entrusted with responsibility for these important investigations, while he himself is also being investigated, essentially at the direction of the White House.

In fact, our concerns about having Mr. Bloch lead these efforts were recently confirmed when OSC conducted a Hatch Act investigation of GSA Administrator Lurita Doan. In that matter, because of Mr. Bloch's involvement and actions, the focus was shifted from the allegations against Ms. Doan to Mr. Bloch's own credibility. According to the enclosed letter from Attorney Debra Katz, who represents the OSC employees who initiated the PCIE investigation and our organizations in that matter, Mr. Bloch authorized James Mitchell, his Director of Communications, to leak OSC's investigative report to the press, before Ms. Doan had an opportunity to respond to it. This action would be a serious breach of Ms. Doan's rights and underscore the lack of professionalism which has permeated Mr. Bloch's tenure. During OSC's Reauthorization hearing, Mr. Bloch denied his action under intense questioning by members of the House Federal Workforce Subcommittee, testifying that he did not know whether OSC was the source of the leak.

As the foregoing discussion illustrates, given OSC's critical role in protecting the merit system and enforcing the Hatch Act, it is unacceptable that after more than two years, the OPM IG still has not completed its investigation of the charges lodged against Mr. Bloch. Despite the delays, it has refused to interview witnesses to Mr. Bloch's abdication of responsibility and has failed to keep pace with new developments at the Office. We believe that to a large degree this is the result of Mr. Bloch's own obstruction of the investigation.

For all of these reasons we believe Mr. Bloch should not be given more money or authority unless and until the OPM IG investigation has reached its conclusion.

Finally, as is also explained in the attached letter to White House Counsel Fielding, for all of these reasons we believe the OPM IG should issue an interim report to you at this time. Mr. Bloch should not be permitted to benefit by his obstruction of the IG's investigation, including through the invocation of frivolous claims of privilege, and other high-profile gambits. Mr. Bloch's end-game here is obvious. He intends to run out the clock through the end of the President's term and avoid any responsibility or consequences for his misconduct. Neither the White House nor Congress should allow this to happen.

Thank you for your consideration of our concerns.

Sincerely,

Tom Devine

Tom Devine, Legal Director
Government Accountability Project

Jeff Ruch

Jeff Ruch, Executive Director
Public Employees for Environmental Responsibility

Danielle Brian

Danielle Brian, Executive Director
Project On Government Oversight

cc:

Chairman Henry Waxman and Ranking Member Tom Davis, House Committee on Oversight and Government Reform

Chairman Daniel Akaka and Ranking Member George Voinovich, Senate HSGAC Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Chairman Danny K. Davis and Ranking Member Kenny Marchant, House Oversight and Government Reform Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia

Chairman Richard Durbin and Ranking Member Sam Brownback, Senate Appropriations Subcommittee on Financial Services and General Government

Chairman Jose Serrano and Ranking Member Ralph Regula, House Appropriations Subcommittee on Financial Services and General Government

January 10, 2005

Joint POGO, PEER, GAP letter to members of Congress regarding U.S. Special Counsel, Scott Bloch's retaliation against employees.

Hon. Susan Collins, Chair
Senate Committee on Governmental Affairs
SD- 340 Dirksen Senate Office Building
Washington, D.C. 20510-6250

Hon. Joseph Lieberman
Ranking Minority Member
Senate Committee on Governmental Affairs
SH-604 Hart Senate Office Building
Washington, D.C. 20510

January 10, 2005

Dear Senators Collins and Lieberman:

On behalf of our organizations, Public Employees for Environmental Responsibility (PEER), the Government Accountability Project (GAP), and the Project on Government Oversight (POGO), we are writing to alert you to the latest in a series of efforts by Special Counsel Scott Bloch that threaten to undermine the United States Office of Special Counsel's (OSC) vital mission. Taxpayers and public servants within the government depend on the OSC. As a practical matter, in many instances there is no alternative to defend the merit system against retaliation against whistleblowers; patronage, old boy networks and buddy system hiring practices; or any other threats to America's merit system, which has sustained a non-partisan, professional civil service in our nation for over 130 years. Unfortunately, Mr. Bloch's current pattern of leadership threatens to transform the OSC from an independent agency whose mission is to protect the merit system, into a role model for destroying it.

In light of Mr. Bloch's most recent actions, described in detail below, we strongly urge that you conduct oversight hearings and order an independent investigation of Mr.

Bloch's illegal personnel practices and the culture of fear he has created at OSC. We also believe Congress should consider whether continued efforts to amend the Whistleblower Protection Act should be modified to compensate for the weak link that the OSC has become under Mr. Bloch's anti-leadership. For all practical purposes, his office is the only remedy available for emergency interim relief, or any at all against common forms of harassment. For now, whistleblowers or others who need and deserve that support have nowhere to go.

On Thursday, January 6, 2004, without notice or warning, Mr. Bloch directed the involuntary geographic reassignment of twelve career OSC employees (approximately 20 percent of the legal and investigative team at headquarters, including two of the four career senior executives at OSC). Seven employees, including one of the two career senior executives, as well as the Director of OSC's alternative dispute resolution (ADR) program, have been directed to report to a newly created field office in Detroit, Michigan. Four others are being told that they are being transferred to fill vacancies in OSC's existing Dallas field office. The twelfth employee, a career senior executive who has been with OSC since 1983, has been reassigned to head the existing Oakland field office. Among other duties he has discharged over the last twenty years, with consistently outstanding performance appraisals, this career executive has served as Acting Special Counsel for extended periods of time during vacancies in that position. He has also been in charge of enforcement of the Hatch Act for many years, through the terms of several Special Counsels. The Oakland field office has a staff of only approximately six employees. Further, like the Dallas field, the Oakland field office has been headed successfully for many years by an experienced grade 15 manager.

Mr. Bloch advised the affected employees that they must to report to their new assignments within 60 days. He has advised them that they will be fired if they do not indicate their willingness to relocate within ten days.

In a January 7th press release filled with misleading statements, which Mr. Bloch issued as the media and others began making inquiries, he asserted that the new Detroit field office was created "after extensive discussions with staff and an outside assessment team's review of the Agency's structure." In reality, however, none of the affected staff, including the affected senior executives, was notified in advance, let alone a party to "discussions" about the move. Indeed, notwithstanding that he met privately with OSC's senior staff at the end of November and during the month of December, to discuss the possibility of making organizational changes, he never hinted that he intended to open a new field office, much less that two of OSC's career senior executives would be geographically relocated. Further, when Mr. Bloch announced the reassignments, he told the staff that office space had already been leased in Detroit, thus demonstrating that this move has been contemplated for at least a number of weeks, and likely a number of months, before it was announced to anyone outside Mr. Bloch's circle of political appointees.

Finally, contrary to the insinuation in the press release, the assessment team did not recommend the creation of a new field office in Detroit or anywhere else. In fact, the team effusively praised the work of the Oakland field office, which, as noted above, has been successfully run for over 20 years by a grade 15 employee who reported to the same senior executive in Washington, D.C. who is now being directed to relocate to Oakland. The assessment team also suggested reducing the layers of management in OSC's investigation and prosecution divisions; under Mr. Bloch's reorganization, the layers of management have been increased, as field offices headed by senior executives will now be reporting to yet another senior executive in headquarters.

There are still more reasons to question the bona fides of the management justification offered for this "reorganization." Under the new structure, assuming that they accept the forced geographic reassignments to Detroit and Oakland, the two career senior executives with the most litigation experience will be reporting to the career senior executive at headquarters with the least litigation experience. OSC's Hatch Act Unit will, for the first time in OSC's history, report directly to a political deputy. Further, OSC's highly successful ADR program will inexplicably be run out of Detroit.

In fact, the way that the "reorganization" is being implemented leads to the inescapable conclusion that existing career staff are being purged. Mr. Bloch did not ask for volunteers to transfer to the new Detroit field office, or to the existing Oakland and Dallas field offices. Employees who have been ordered to relocate have been told that they are not permitted to switch assignments with others who might be willing to take their places. Further, there are at least eleven current vacancies at OSC headquarters. It is unclear why at least some portion of the staffing-up of the new and existing field offices could not be accomplished by moving those vacancies to the field and filling them there.

Indeed, the method Mr. Bloch has chosen to staff the new field office and fill vacancies in the Dallas field office is fiscally imprudent, if not an act of gross waste and mismanagement. Relocating a single employee can be quite expensive, much less moving a dozen of them. It would be less expensive to hire new staff to fill the vacancies in Dallas and to staff the new office in Detroit, than it is to move twelve incumbent employees halfway across the country for that purpose.

Moreover, Mr. Bloch has given the affected employees virtually no time to decide whether to accept the reassignment; nor has he given those employees who might decide (however, reluctantly) to do so, sufficient time to relocate. Many of the affected employees have homes, spouses and family in the Washington, D.C. area. It is completely unreasonable, cruel, and inconsistent with the practice at other agencies, to conduct a geographic reassignment in this absurdly short time frame.

Equally, if not more disturbing, there is every reason to believe that the employees directly affected by the "reorganization" have been deliberately targeted to make way for Mr. Bloch's own hand-picks. Virtually all of the employees affected are individuals who either work under, or have themselves dared to engage in even mild private discussions with Mr. Bloch over the advisability of management and policy decisions he has made over the last twelve months. Mr. Bloch has hired a number of career employees himself over the last year, but he has broken with past OSC practice by hiring them non-competitively, without even involving the career supervisors to whom they would report. Not a single one of Mr. Bloch's personal picks, so selected, is being forced to move.

As you may be aware, despite the fact that he has been in his position for only slightly over a year, Mr. Bloch has already received some very unfavorable attention (as well as a public rebuke by the White House) for suggesting that federal employees are not protected against discrimination based on sexual orientation, and for issuing a gag order to OSC staff, directing them not to speak to anyone outside of the agency about agency policies. In the wake of these incidents, Mr. Bloch (whose job it is to protect whistleblowers) has been publicly quoted as deriding what he calls "leakers" at OSC. Even before this latest purge, OSC staff, whose morale is now at an all-time low, were living in a culture of fear.

Thus, Mr. Bloch is widely perceived by his staff as a dictatorial figure that considers any dissent (even when expressed internally) to be an act of "disloyalty." A significant number of OSC employees are actively searching for new jobs. As a result of Mr. Bloch's management style, several months ago, OSC's long time Director of Human Resources, who was in charge of personnel issues and procurement, retired abruptly, with less than a week's notice. A senior personnel management specialist who worked directly for her, resigned at the same time. These resignations, coming at around the time that Mr. Bloch appears to have been planning his "reorganization" appear to be highly suspicious.

As we hope the foregoing makes clear, something is desperately wrong at the Office of Special Counsel. Ironically, were these abuses of the merit system taking place at any other agency, the proper recourse would be to file a complaint with OSC. If an Inspector General were abusing his position, the proper recourse would be to file a complaint with the Integrity Committee of the President's Council on Integrity and Efficiency (of which Mr. Bloch is a sitting member). Because these remedies are not available for OSC's employees, it is imperative that Congress step in to direct that an outside review be conducted (perhaps by the Government Accountability Office). On behalf of our organizations, and the public interest we urge you to take whatever immediate action you can to secure such an outside review, to be completed before Mr. Bloch can go ahead with the forced reassignments.

Mr. Bloch's in-house betrayal of the merit system also illustrates why Congress should consider structural reform for civil service remedies as well. It goes to the heart of why his office exists. In 1976 a massive, blue ribbon report by the Ink Commission recommended the Office of Special Counsel's creation in response to the same type of scorched earth attacks on the merit system during Watergate era coverups that Mr. Bloch is now using against his own staff. Federal employees can hardly count on Mr. Bloch to prosecute others for using the same harassment tactics he is perfecting against his own staff.

A structural solution is imperative. For temporary relief or long-term harassment like loss of duties, federal employees realistically have nowhere to turn besides the Office of Special Counsel, or individual congressional offices. OSC employees literally have nowhere to enforce their rights against retaliation in this dispute. They would not even have technical jurisdiction at the MSPB until months after the purge reassignment was a completed fait accompli. Unlike EEO victims or corporate whistleblowers since passage of the Sarbanes-Oxley law, federal workers do not have access to court when there is no action at the administrative level.

The OSC is so fundamental for good government that the Special Counsel's commitment to the merit system must be beyond any credible challenge. By any credible standard, Mr. Bloch has flunked that test. This is not the first time the OSC has turned on its mission. The Whistleblower Protection Act was sparked by analogous purges from Alex Kozinski, whose abuses of power also directly caused 43 Senators to vote against his appellate court nomination. The current OSC fiasco illustrates why this remedies gap is an Achilles heel for the merit system. If the Office is to continue, Congress needs to consider structural reforms to impose accountability for the OSC, and fallback remedies such as those available for corporate workers and discrimination victims.

Sincerely,

Danielle Brian
Executive Director
Project on Government Oversight

Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility (PEER)

Tom Devine
Legal Director

The Government Accountability Project

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August 1, 2008

Nation

FBI Raids Special Counsel Office, Seizes Records

by Ari Shapiro

Listen: Ari Shapiro Discusses the Raid on 'Day to Day'

add

Scott Bloch has been special counsel since 2004. U.S. Office of Special Counsel

NPR.org, May 6, 2008 · FBI agents on Tuesday raided the offices of Special Counsel Scott J. Bloch, who oversees protection for federal whistle-blowers. The agents seized computers and shut down e-mail service as part of an obstruction of justice probe, as first reported by NPR News.

A grand jury in Washington issued subpoenas for several OSC employees, including Bloch, according to NPR sources who spoke on condition their names not be used. Bloch's home was also searched.

Those developments came about on a Tuesday morning that had seemed no different from any other weekday in the Washington headquarters of the Office of Special Counsel. But at 10 a.m., the OSC's national e-mail system went down, and the FBI arrived.

A half-dozen FBI agents swarmed into the OSC's Washington offices, grabbing documents and seizing computers. By 1 p.m., more than 20 agents had arrived in the agency's D.C. bureau.

One official close to the investigation said that today's action was "significant" and that other field offices would also be included in the investigation.

The focus of the probe appears to be Special Counsel Bloch, who was appointed by President Bush in 2004. Bloch has been a controversial figure ever since taking over the Office of Special Counsel, which, among other things, ensures that federal whistle-blowers get the protection they need.

One of Bloch's first official actions was to refuse to investigate any claims of discrimination based on sexual orientation. When the news of his refusal was leaked to the press, career employees in his office say, Bloch blamed them for the leak. He retaliated, the employees said, by creating a new field office in Detroit and forcing them either to accept assignments there or resign.

This morning, FBI agents in Washington took Bloch into a separate room at OSC to interview him, while additional investigators searched his office. They also arrived at his home in Alexandria, Va., with a search warrant.

The Office of Personnel Management's inspector general has been looking into allegations that Bloch retaliated against career employees and obstructed an investigation. Sources close to the probe said the FBI's raid this morning was related to work the inspector general had already done.

In addition to concerns about obstruction of justice, investigators are also looking into whether Bloch violated the Hatch Act, a congressional mandate that prohibits employees from using their offices for partisan political purposes.

Bloch has admitted to hiring Geeks on Call — a computer servicing company — to purge his computer and two of his deputies' computers, sources said. But he said the computers contained a virus, which necessitated a purge. Investigators are looking into whether the purge was meant to destroy evidence related to the current investigation.

OSC employees for months have called on President Bush to ask for Bloch's resignation. The White House today declined to comment on the developments, as did Bloch's lawyers and the FBI.

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August 1, 2008

Politics

Special Counsel Case May Extend Far Beyond Bloch

by Ari Shapiro

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In Depth

May 7, 2008
Federal Agents Investigate Whistleblower Agency

May 6, 2008
FBI Raids Special Counsel Office, Seizes Records

Day to Day, May 7, 2008 · The federal inquiry into Special Counsel Scott J. Bloch, who oversees protection for federal whistle-blowers, appears to be broader than originally believed.

Sources close to the investigation tell NPR that subpoenas issued Tuesday sought documents and information on a wide range of subjects, including a 2004 investigation into Condoleezza Rice, who was then President Bush's national security adviser and is now secretary of state.

FBI agents raided Bloch's home and office on Tuesday morning. The agents seized computers and shut down e-mail service as part of an obstruction of justice probe, as first reported by NPR News.

Multiple sources say a grand jury in Washington issued 17 subpoenas, including several for Office of Special Counsel employees. The sources described the investigation on condition that their names not be used.

The first OSC employees to appear before the grand jury are scheduled to testify next Tuesday.

One subpoena demanded information about Bloch's 2004 investigation into whether Rice violated the Hatch Act by using federal money to campaign for President Bush's re-election. Bloch found no wrongdoing by Rice.

Another subpoena focused on Lurita Doan, who resigned last week as head of the General Services Administration. Bloch's office had been investigating Doan. The White House asked her to resign amid accusations that she gave contracts to friends and abused her office for political purposes.

The man handling the OSC inquiry has an unusual background for a federal prosecutor: NPR has learned that James Mitzelfeld is the man who signed off on the subpoenas.

In 1994, Mitzelfeld won a Pulitzer Prize as a reporter for *The Detroit News*, where he uncovered spending abuses at Michigan's House Fiscal agency. Mitzelfeld went on to work in Detroit's U.S. attorney's office; he is now at the U.S. attorney's office in Washington, D.C.

Mitzelfeld also subpoenaed information about a woman at OSC named Rebecca McGinley. According to sources, the subpoena refers to a problem with compensatory time that McGinley logged during a special assignment a year and a half ago.

Despite the stream of subpoenas, no one has been charged with a crime in the case.

Bloch has been a controversial figure ever since taking over the Office of Special Counsel in 2004. One of his first official actions was to refuse to investigate any claims of discrimination based on sexual orientation.

When the news of his refusal was leaked to the press, career employees in his office say, Bloch blamed them for the leak. He retaliated, the employees said, by creating a new field office in Detroit and forcing them either to accept assignments there or resign.

The Office of Personnel Management's inspector general has been looking into allegations that Bloch retaliated against career employees and obstructed an investigation.

Bloch has admitted to hiring Geeks on Call — a computer servicing company — to purge his computer and two of his deputies' computers. But he said the computers contained a virus, which necessitated a purge. Investigators are looking into whether the purge was meant to destroy evidence related to the current investigation.

OSC employees for months have called on President Bush to ask for Bloch's resignation. The White House has declined to comment on the developments, as did Bloch's lawyers.

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What is this?

Special counsel's office raided amid obstruction probe

May 6, 2008 6:48 PM ET

WASHINGTON (AP) - Federal agents raided the office and home of U.S. Special Counsel Scott Bloch on Tuesday while investigating whether the nation's top protector of whistle-blowers destroyed evidence potentially showing he retaliated against his own staff.

Computers and documents were seized during the raid on the special counsel's downtown office, according to two law enforcement officials who spoke on condition of anonymity because of the ongoing inquiry. At least 20 agents were still on the scene as of mid-afternoon Tuesday.

Bloch's home, in a Virginia suburb of Washington, also was raided, the officials said.

FBI spokesman Richard Kolko confirmed that agents with the FBI and White House Office of Personnel Management executed "a number of court authorized federal search warrants today" but declined further comment.

Jim Mitchell, communications director with the Office of the Special Counsel, confirmed the search of Bloch's work area and computers. He said the office was cooperating with the investigation.

"We do not yet know what this is about," Mitchell said in a statement, adding that "we are continuing to perform the independent mission of this office."

The raids mark the latest twist in what critics describe as Bloch's bizarre tenure at the head of the federal agency responsible for protecting the rights of federal workers and ensuring that government whistle-blowers are not subjected to reprisals.

He has been on the hot seat since he took office in 2004, in part for closing hundreds of whistle-blower cases allegedly without investigating them.

"It's like finding out that your town fire chief is an arsonist," said Jeff Ruch, executive director of Public Employees for Environmental Protection, a whistle-blower group.

"It's just sort of jaw-dropping how bizarre this entire episode has been."

A group of current and former Office of Special Counsel workers filed a complaint against Bloch in 2005, accusing him of retaliating against those who opposed with his policies through intimidation and involuntary transfers. 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.

A year later, in December 2006, Bloch paid $1,149 in taxpayer money to have an outside tech company, Geeks on Call, scrub his government laptop computer, according to transcripts of an interview he gave to House investigators in March. At that time, Bloch told the House Oversight and Government Reform Committee staff that the data wipe was done to protect government and personal information on the computer, not to destroy it.

Rep. Tom Davis of Virginia, the top Republican on the House panel, asked Democrats to subpoena Bloch for his sworn testimony and personal e-mails that could clarify what was destroyed. He suggested Bloch "misused his government computer for personal business."

"The e-mails were essential in determining whether Mr. Bloch had used his computer for inappropriate purposes," Davis wrote in a letter Tuesday to House Oversight Committee Chairman Henry Waxman, D-Calif.

Tuesday's raids were done in connection to a criminal investigation of whether Bloch obstructed justice and, potentially, lied to Congress, according to the law enforcement officials.

Bloch has denied any wrongdoing. In the meantime, he has opened an investigation into whether former White House deputy political director and Karl Rove protege J. Scott Jennings violated the Hatch Act by making a presentation to political employees at the General Services Administration. The Hatch Act prohibits federal employees from engaging in political activities with government resources or on government time.

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

Whistle-blower groups demanded that Bloch follow suit, and called on the White House to secure his resignation immediately. White House spokesman Tony Fratto declined comment.

"The fact is, this office is not functioning, this office does not protect whistle-blowers and this office is not meeting its mission," said Debra Katz, an employment lawyer representing the Special Counsel employees who filed the 2005 complaint. "President Bush needs to just tell this man that he needs to resign. There has been misconduct and he should not be allowed to continue his mission."

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THIS STORY HAS BEEN FORMATTED FOR EASY PRINTING

Federal agents raid special counsel's office

The Boston Globe

Computers, files seized About 17 others subpoenaed, too

By Richard B. Schmitt and Tom Hamburger, Los Angeles Times | May 7, 2008

WASHINGTON - Federal agents yesterday swarmed the home and office of the Bush administration official responsible for protecting government whistle-blowers as part of an investigation into whether the official retaliated against his employees and obstructed justice.

More than a dozen agents participated in the daylong raid, temporarily shutting down the e-mail and computer systems of the Office of Special Counsel, and confiscating several desktop computers, including that of Scott J. Bloch, the agency head. Bloch's home in suburban Virginia also was raided, and agents from the FBI and the Office of Inspector General for the Office of Personnel Management were seen carting off boxes of documents into unmarked government sedans.

The series of events made for another strange chapter in the career of a conservative lawyer loyal to President Bush who ended up defying expectations as well as his administration bosses.

Bloch came to Washington from Kansas in 2001 and worked on the president's faith-based initiatives in the Justice Department. Because of his background in employment law, he was later recommended for the Office of Special Counsel. He brought notoriety to the obscure government agency by raising questions about the rights of gay federal workers and alienating career staff through a series of policy and personnel moves.

The agency is charged with enforcing discrimination bans, whistle-blower protections, and the Hatch Act, the 1939 statute that limits use of government resources for campaign purposes.

While administration figures began raising questions about his management, he opened high-profile investigations of prominent figures at the White House and Justice Department. Now the process has come full circle with the FBI - an arm of the Justice Department - investigating him.

"The Bush administration has been unable to make up its mind whether to ignore him or to act against him," said Tom Devine, legal director for the Government Accountability Project, an advocacy group for whistle-blowers. "Mr. Bloch is finally being held accountable for the same cover-ups that he is supposed to be policing. It is a very positive step."

The FBI confirmed the raid, saying that agents yesterday had "conducted a number of court-authorized federal search warrants" related to the Office of Special Counsel, but declined to elaborate.

Bloch has denied any wrongdoing. His office issued a brief statement saying, "We are cooperating with law enforcement. We do not yet know what this is about. Meanwhile, we are continuing to perform the independent mission of this office."

The testimony of Bloch and other employees in the office is being sought by a federal grand jury.

Bloch, who grew up in Los Angeles and was the son of a television writer, has run the independent agency since 2003.

Since 2006, the Office of Personnel Management has been investigating allegations that he retaliated against employees at the agency who disagreed with his views on subjects such as whether federal law prohibits discrimination based on sexual preference. The probe was launched after a group of current and former Office of Special Counsel workers filed a complaint alleging that Bloch had retaliated against them through intimidation and transfers.

The probe gained traction late last year in the wake of a published report that he had hired a private computer repair company, Geeks on Call, to clean his office computer. Bloch has told congressional investigators that he called the company to eliminate a computer virus that was threatening the system. Critics have suggested that he might have been purging the system of information of potential interest to investigators - a charge he has denied.

Just a week ago, a lawyer representing public interest organizations and employees of the Office of Special Counsel wrote to Bush asking that Bloch be removed because of "his unbroken record of misconduct and malfeasance." The 17-page letter by

Debra S. Katz claimed that Bloch had launched high-profile inquiries against the administration to keep himself in the spotlight and insulate himself from administration efforts to hold him accountable.

In one of his first official acts, Bloch ordered his staff to remove references to the agency's jurisdiction over "sexual orientation discrimination" from its website and publications.

Complaints began to surface from the office that Bloch had used harassment and intimidation against employees who balked at his initiatives.

But Bloch's office also was credited for its handling of complaints from whistle-blowers at the Federal Aviation Administration. ■