

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Draft	[Draft Letter] - To: Scott Bloch - From: Emmet Flood	2	N.D.	P5;
002	Email	Scott Bloch -- OSC - To: Emmet Flood, et al. - From: Kenneth Lee	4	09/17/2007	P5;
003	Letter	[Letter - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
004	Letter	[Letter - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
005	Letter	[Letter] - To: Randy Falco - From: Tom Davis	1	07/19/2007	P6/b6;
006	Email	Revised Draft of USA Summary - To: Emmet Flood, et al. - From: Michael Scudder	1	03/16/2007	P5;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Flood, Emmet

FOLDER TITLE:

N.E006.C, OSC, Scott Bloch [2]

FRC ID:

60585

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]

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

Deed of Gift Restrictions

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- B. Closed by statute or by the agency which originated the document.
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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- 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.

Withdrawal Marker

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For a complete list of items withdrawn from this folder, see the
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Counsel's Office, White House

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Flood, Emmet

FOLDER TITLE:

N.E006.C, OSC, Scott Bloch [2]

FRC ID:

60585

OA Num.:

14443

NARA Num.:

14232

FOIA IDs and Segments:

2014-0441-F

2014-0210-F

RESTRICTION CODES

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Facsimile Cover Sheet

To: Fred Fielding, Esquire

From: Debra S. Katz, Esquire

Date: November 28, 2007 Time: 11:20am

Fax No.: (202) 456-6279

DOCUMENTS	NUMBER OF PAGES (Includes cover page)
Malfeasance and Illegal Misconduct by Special Counsel Scott Bloch.	7

COMMENTS:

Please see the attached correspondence sent to you on behalf of Debra S. Katz.

If you have a problem with the transmission of this fax, please call (202) 299-1140.

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KATZ, MARSHALL & BANKS, LLP

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

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,

President George W. Bush

November 28, 2007

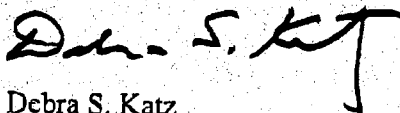
Page 2

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

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

President George W. Bush

November 28, 2007

Page 3

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.

Fred Fielding, Esquire
October 10, 2007
Page 2

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.

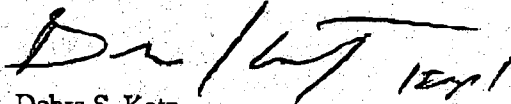
¹ At this point, Mr. Bloch cannot be trusted to oversee any investigation, much less a sensitive investigation of alleged Hatch Act violations by high level political appointees. Regardless of the outcome of those investigations, they will not be considered credible. As I explained in my letter to you 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.

Fred Fielding, Esquire
October 10, 2007
Page 3

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

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
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Clay Johnson III, Deputy Director for Management, Office of Management and Budget
Patrick E. McFarland, Inspector General, Office of Personnel Management



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1100

OFFICE OF
THE INSPECTOR GENERAL

November 15, 2007

TB:
Ernest Flood

Honorable Clay Johnson III
Deputy Director for Management
Office of Management and Budget
Washington, DC 20503

Dear Mr. Johnson:

This letter provides you further information regarding my office's investigation of the March 3, 2005 (as amended March 31, 2005) complaint of prohibited personnel practices against Special Counsel Scott Bloch. By letter dated September 28, 2007, we identified actions on the part of Mr. Bloch and certain former U.S. Office of Special Counsel (OSC) officials that have hindered our ability to perform the investigation. Since that time, as we have continued to review material in furtherance of our investigation, we have developed additional information indicating that Mr. Bloch has not respected his recusal obligations. You had previously advised him that his failure to do so would constitute inefficiency, neglect of duty and malfeasance in office.

In a letter to you of March 4, 2005—the day after the original complaint against him was filed—Mr. Bloch informed you that he had recused himself from any participation in this matter and would “fully cooperate with” an investigation. During the period in which jurisdictional issues regarding the case were being considered, you honored Mr. Bloch's recusal commitment by declining to involve him in these matters. Subsequently, in your February 21, 2006 letter to Mr. Bloch, confirming that our office would be conducting an investigation, you advised Mr. Bloch that his recusal decision was correct in light of U.S. Office of Government of Ethics (OGE) rules. You stated that he should act in conformity with his expressed commitment to refrain from any involvement in OSC's handling of the U.S. Office of Personnel Management – Office of the Inspector General (OPM-OIG) investigation, and you identified a broad range of actions that would violate the recusal. These included involvement in preliminary discussions, interim evaluations, review or approval at intermediate levels, supervision of subordinates working on a matter, assigning work, even on an *ad hoc* basis, or taking part in decisions concerning who should work on a matter, how a matter should be handled, and whether a matter should be acted upon.

We have identified instances spanning the entirety of this investigation in which Mr. Bloch became involved, in a personal and substantive manner, with OSC's dealings with our office and its responses to our investigation. The following paragraphs identify a number of these situations. They illustrate that Mr. Bloch repeatedly ignored both his

own assurances of his recusal and your confirmation of the necessity for him to do so, and demonstrate that he was continuously involved in OSC's decisionmaking processes regarding this case. On numerous occasions, he used his access to OSC personnel resources as a means of facilitating his opposition to the investigation. Further, it should be noted that Mr. Bloch's violations continued, and to some extent even intensified, after he received your guidance about recusal during 2006.

1. In 2005 and 2006, Mr. Bloch participated in OSC's decision-making process with respect to its negotiations regarding the Economy Act agreement on which the investigation is based. In this connection, he informed the OSC employee who was negotiating the agreement with our office of his views regarding the amount of funding that should be made available through the agreement, and provided guidance to other OSC employees about handling the negotiations with the OPM-OIG.
2. Also in 2005, Mr. Bloch issued to our respective offices his personal response to the complaint against him. He directed the input of all staff of the Immediate Office of the Special Counsel, as well as at least one OSC senior career executive, in researching, editing, and reviewing this extensive (50 page) document.
3. In March 2006, an OSC attorney, with the assistance of senior OSC management officials, prepared a document titled "Conflict of Interest of OPM and the OPM IG in the Complaint Against Scott Bloch," which represented itself as "Mr. Bloch's position" in respect to the OPM-OIG's ability to conduct an impartial investigation. In turn, this was attached to a letter drafted by one of Mr. Bloch's special assistants, proposing that our office and the OPM Director recuse themselves from any participation in the investigation of Mr. Bloch. You will note that this document was prepared notwithstanding the fact that your February 21, 2006 letter stated that your office had concluded that "alleged conflicts of interest relating to OPM" did not raise "an actual conflict or an appearance of conflict that would prevent OPM from conducting this investigation."
4. As summarized in our September 28, 2007 letter to you, when the OPM-OIG began to interview OSC employees in June 2006, Mr. Bloch requested that affidavits be obtained from the interviewees regarding the actions of our investigators and the questions that they asked. The Acting Deputy Special Counsel informed Mr. Bloch that these actions were contrary to the terms of his recusal. The Acting Deputy Special Counsel also instructed the Special Assistant to refrain from further contacts with the employees. However, Mr. Bloch then asked two employees of the Immediate Office of the Special Counsel, in lieu of taking affidavits, to report to him any information about the investigation that they could obtain by speaking with the employees who had been interviewed.
5. As our office's investigation proceeded during 2006, Mr. Bloch repeatedly requested members of his immediate staff to obtain specific items of information

for him regarding the status of the investigation, such as investigative plans, interview schedules, and topics likely to be of interest to the investigators.

6. Our requests for information and documents from OSC have primarily been communicated through written requests to the Deputy Special Counsel. However, in August 2007 we exercised OSC's subpoena authority—which we believe to have been delegated to us through the March 2006 Economy Act agreement—in connection with four requests. Upon being served with a subpoena for records in his possession, Mr. Bloch directed the Deputy Special Counsel to inform us that subpoena authority had not been delegated to our office.
7. In response to requests made both via subpoena and by request to the Deputy Special Counsel, Mr. Bloch directed the Deputy Special Counsel to refuse to turn over various documents that include e-mails and attachments from several OSC employees.

As we informed you in our September 28, 2007 correspondence, the deletion, destruction, and refusal of access to OSC documents have hampered our ability to thoroughly investigate this case, and it has now become evident that Mr. Bloch's recusal violations contributed significantly in this regard. We are working to overcome these obstacles, and may provide you further information about recusal matters if it becomes possible to do so within the context of the pending criminal proceedings of which we have previously notified you.

If you have any questions, please do not hesitate to contact me on (202) 606-1200.

Sincerely,



Patrick E. McFarland
Inspector General

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CHAIRMAN

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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

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September 17, 2007

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Your August 31, 2007 response to the Committee's request for information is entirely inadequate and raises additional serious concerns. First of all, I know of no authority for the proposition that consultations between your office and the White House or other agencies may be withheld from Congress as "confidential." As Congress's principal investigative Committee (and the Committee of jurisdiction over your office), the Committee on Oversight and Government Reform has important oversight and legislative interests in such consultations.

Second, as you observed in your letter, you are engaged in pending investigations regarding "political briefings." Investigations of matters on which you had previously given advice would be entirely improper.

Finally, we question the internal review that you claim to have conducted. Sources familiar with contacts between White House staff and your office have told Committee staff that lawyers from the White House Counsel's office conferred with Amber Bell Vail and Ana Galindo-Marrone from your Hatch Act unit regarding the content of PowerPoint slides used by officials from the Office of Political Affairs. Ms. Vail and Ms. Galindo-Marrone, according to our sources, provided advice regarding the content of White House political presentations.

In light of these concerns, please responds to the following questions:

1. Did your internal review include any inquiry of Ms. Vail or Ms. Galindo-Marrone in advance of preparing your August 31, 2007 letter to the Chairman?

The Honorable Scott J. Bloch
September 17, 2007
Page 2

2. If so, did Ms. Vail or Ms. Galindo-Marrone deny providing guidance to officials from the White House Counsel's office on political briefings?
3. Did you conduct any review of email between members of the Hatch Act unit and White House staff? If not, why not?
4. Do Ms. Vail or Ms. Galindo-Marrone have any role in OSC's current investigation into whether the political briefings by the White House Office of Political Affairs violated the Hatch Act? If so, what is their role?
5. Does OSC have a policy to wall off staff from matters on which they previously gave advice, even if that advice was communicated orally and not memorialized in writing?
6. On what legal authority do you assert that consultations with the White House or agencies may be withheld from Congress as "confidential?"

Please respond no later than September 24, 2007. If you have any questions regarding this request, please contact Keith Ausbrook at 202-225-5074.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Davis", with a stylized, cursive script.

Tom Davis
Ranking Member

Withdrawal Marker

The George W. Bush Library

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Counsel's Office, White House

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Flood, Emmet

FOLDER TITLE:

N.E006.C, OSC, Scott Bloch [2]

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60585

OA Num.:

14443

NARA Num.:

14232

FOIA IDs and Segments:

2014-0441-F

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

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- 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.

*Pls stop for draft response
ASAP
-> 10-11-07*

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

October 9, 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 OMB 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.

Fred Fielding, Esquire

October 9, 2007

Page 2

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

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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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Fred Fielding, Esquire

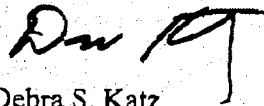
October 9, 2007

Page 3

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I look forward to hearing from you.

Sincerely,



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, Inspector General, Office of Personnel Management



Facsimile Cover Sheet

To: Mr. Fred Fielding, Esquire - White House Counsel

From: Ms. Debra S. Katz

Date: October 9, 2007 Time: 4:05 pm

Fax No.: (202) 456-6279

DOCUMENTS	NUMBER OF PAGES (Includes cover page)
	4

COMMENTS:

Please see the attached letter on behalf of Daniel B. Edelman.

If you have a problem with the transmission of this fax, please call (202) 299-1140.

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KATZ, MARSHALL & BANKS, LLP

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

October 9, 2007

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

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Office of Special Counsel (OSC) to White House Counsel

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October 9, 2007

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 KATZ, MARSHALL & BANKS, LLP

Fred Fielding, Esquire

October 9, 2007

Page 3

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Debra S. Katz

Cc: Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee
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Patrick E. McFarland, Inspector General, Office of Personnel Management



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To: Mr. Fred Fielding, Esquire - White House Counsel

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Stanzel, Scott M.

From: Friedman, Daniel [dfriedman@nationaljournal.com]
Sent: Thursday, September 20, 2007 7:14 PM
To: Stanzel, Scott M.
Subject: FW: Question re OSC contacts
Attachments: September 17 letter from Davis (2).pdf

Scott,

Here you go – I had written out your first name: Per our conversation, here is the letter from Davis to Special Counsel Bloch. See the third paragraph where Davis cites sources who say two Office of Special Counsel employees at some point gave the White House guidance on the PowerPoint presentations WH officials gave at federal agencies. I want to see whether you guys can confirm that this occurred. And if so, when? And what did OSC tell the Counsel's office about the briefings? Did they okay them?

Davis has declined to elaborate and OSC hasn't responded.

I ask you because OSC's investigation has gotten a lot of coverage. And news that employees in the office had previously okayed the briefings, if that is what occurred, would seem to undercut their investigation. Also Davis hasn't said who his "sources" are, but it seems possible its WH officials. Thanks for your time.

Deadline is 1:30pm Friday.

Regards,

Dan Friedman
Reporter
CongressDaily
202.484.2833
dfriedman@nationaljournal.com

9/21/2007

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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JIM JORDAN, OHIO

September 17, 2007

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Your August 31, 2007 response to the Committee's request for information is entirely inadequate and raises additional serious concerns. First of all, I know of no authority for the proposition that consultations between your office and the White House or other agencies may be withheld from Congress as "confidential." As Congress's principal investigative Committee (and the Committee of jurisdiction over your office), the Committee on Oversight and Government Reform has important oversight and legislative interests in such consultations.

Second, as you observed in your letter, you are engaged in pending investigations regarding "political briefings." Investigations of matters on which you had previously given advice would be entirely improper.

Finally, we question the internal review that you claim to have conducted. Sources familiar with contacts between White House staff and your office have told Committee staff that lawyers from the White House Counsel's office conferred with Amber Bell Vail and Ana Galindo-Marrone from your Hatch Act unit regarding the content of PowerPoint slides used by officials from the Office of Political Affairs. Ms. Vail and Ms. Galindo-Marrone, according to our sources, provided advice regarding the content of White House political presentations.

In light of these concerns, please responds to the following questions:

1. Did your internal review include any inquiry of Ms. Vail or Ms. Galindo-Marrone in advance of preparing your August 31, 2007 letter to the Chairman?

The Honorable Scott J. Bloch

September 17, 2007

Page 2

2. If so, did Ms. Vail or Ms. Galindo-Marrone deny providing guidance to officials from the White House Counsel's office on political briefings?
3. Did you conduct any review of email between members of the Hatch Act unit and White House staff? If not, why not?
4. Do Ms. Vail or Ms. Galindo-Marrone have any role in OSC's current investigation into whether the political briefings by the White House Office of Political Affairs violated the Hatch Act? If so, what is their role?
5. Does OSC have a policy to wall off staff from matters on which they previously gave advice, even if that advice was communicated orally and not memorialized in writing?
6. On what legal authority do you assert that consultations with the White House or agencies may be withheld from Congress as "confidential?"

Please respond no later than September 24, 2007. If you have any questions regarding this request, please contact Keith Ausbrook at 202-225-5074.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Davis", written in a cursive style.

Tom Davis
Ranking Member

KATZ, MARSHALL & BANKS, LLP

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

April 25, 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:

By letters dated March 3, 2005, and March 31, 2005, I advised President George W. Bush that I had filed a Complaint of Prohibited Personnel Practices Against U.S. Special Counsel Scott J. Bloch ("OSC Complaint") on behalf of a group of career OSC employees and four public interest organizations. Upon filing of the OSC charge, we requested that Mr. Bloch refer the OSC Complaint to the President's Council on Integrity and Efficiency ("PCIE") for an independent investigation. By letter dated April 29, 2005, then White House Counsel Harriet Miers referred the complaint to PCIE. Thereafter, the Chairman of the PCIE (and OMB Deputy Director), Clay Johnson, assigned the matter to Patrick McFarland, the Inspector General for the Office of Personnel Management. The investigation has been ongoing for almost two years now, and appears to be nearing completion.

We are writing to you now to request that you take immediate action to require Mr. Bloch to recuse himself and OSC from any involvement in his widely publicized and newly-launched investigation concerning alleged violations of law in connection with the termination of former U.S. Attorney, David Iglesias, alleged Hatch Act violations by the President's political advisor Karl Rove, and related matters. Multiple conflicts of interest will result if Mr. Bloch continues to lead an investigation of high level officials in the White House while he himself is being investigated, essentially at the direction of the White House.

First, the ongoing investigation of Mr. Bloch compromises his own impartiality in leading the investigation of Mr. Rove and other White House officials. On the one hand, the pending charges against Mr. Bloch supply him with an incentive to whitewash violations of the law in the hopes of currying favor. On the other hand, were he to make

Fred Fielding, Esquire

April 25, 2007

Page 2

findings of violations, his findings could be viewed as an act of retribution and/or coercion to prevent the President from taking appropriate action against him, which he would surely portray as retaliation. If Mr. Bloch's investigation of White House officials is still underway when OPM completes its own investigation of Mr. Bloch (as appears to be certain), the White House will be put in the position of having to make a decision about Mr. Bloch's continued tenure, while it is itself being investigated by Mr. Bloch.

In fact, we believe that it is obvious that Mr. Bloch launched this wide-ranging inquiry in an attempt to deflect attention from his own serious acts of misconduct and obstruct the investigation that is being conducted by the OPM IG at the direction of the PCIE. While OSC, to be sure, has the authority to investigate violations of the Hatch Act, the scope of the investigation Mr. Bloch has announced (not to mention the media blitz that accompanied its announcement), betrays that is largely an act of political grandstanding. In fact, the OSC's "investigation" of a claim on behalf of Mr. Iglesias under USERRA (which OSC itself apparently solicited Mr. Iglesias to file) is clearly without any legal foundation. As you well know, Presidential appointees who have been confirmed by the Senate are not entitled to claim statutory protection against decisions regarding their continued tenure.

Moreover, there are many additional reasons to believe that Mr. Bloch's real motives here have nothing to do with enforcing the Hatch Act, and everything to do with his desire to try to immunize himself against any adverse consequences to him that may result from the findings of the IG investigation, including the possibility of his removal by the President. Indeed, Mr. Bloch's own handling of Hatch Act matters is under investigation by the OPM IG at this time. The amended OSC Complaint against Mr. Bloch alleges, among other things, that he engaged in partisan handling of high-profile Hatch Act cases and politicized OSC's enforcement of the Hatch Act. Specifically, the complaint alleges that Mr. Bloch treated two high profile Hatch Act complaints differently based on partisan political reasons, attempted to cover up this abuse by altering records in OSC's computerized case management system, and then misled Congress about his actions.

In one case, Mr. Bloch immediately dispatched a team of investigators to the Kennedy Space Center in August 2004 to examine whether any Hatch Act violations had occurred in connection with a visit by then Democratic Presidential candidate Senator John Kerry. Two months later, Representative John Conyers filed a complaint alleging that then-Secretary of State Condoleezza Rice had violated the Hatch Act by making allegedly political speeches at the taxpayer's expense in the weeks before the 2004 Presidential election. This time, contrary to routine OSC procedure and to its handling of the complaint against Senator Kerry, Mr. Bloch took the matter away from career staff and assigned it to himself and his political deputy until after the election had been held. He then reassigned the matter back to the career staff after the election had passed. To cover his tracks, changes were made in OSC's computerized tracking system to delete the

records showing the earlier assignment of the cases to Mr. Bloch and his deputy. When asked about this incident by Congress, Mr. Bloch denied that the matter had ever been taken away from career staff. This statement was demonstrably false.

The favorable treatment afforded to the Secretary Rice complaint raises very troubling questions regardless of whether the allegations against Secretary Rice were ultimately substantiated. The deliberate decision to sit on the allegations until after the election while expediting the investigation of the Senator Kerry matter flies in the face of the Hatch Act itself, which was designed precisely to prevent partisan politics from undermining the impartial conduct of official government business.

Mr. Bloch's latest stunt – a widely publicized and legally dubious investigation of the White House – is consistent with this pattern. The only difference now is that he is turning his sights on the White House itself in the wake of the IG investigation, as well as public reports that as a result of his past misbehavior he has actually been asked to resign by the Administration on two occasions.

It bears noting that in addition to specific allegations about the mishandling of Hatch Act cases, the OSC Complaint also alleged 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 for actual or perceived whistle blowing;
- 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. § 7211, which guarantees all federal employees the right to communicate with Congress;
- abandoned merit-based competitive hiring for career positions and misused special hiring authorities; and
- refused to enforce existing statutory prohibitions against sexual orientation discrimination in the federal workforce, and in some instances, provided misleading statements to Congress.

Finally, it should be noted that since the inception of the IG investigation, Mr. Bloch and his deputies have actively obstructed it. The acts of obstruction include, among others, requirements that the OPM IG arrange all interviews with OSC staff by coordinating them with Mr. Bloch's political deputy, requirements that interviews be held at OSC headquarters unless employees affirmatively requested otherwise, and reports that Mr. Bloch had expressed a desire to secure affidavits from employee witnesses describing their discussions with IG investigators.

KATZ, MARSHALL & BANKS, LLP

Fred Fielding, Esquire

April 25, 2007

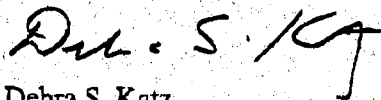
Page 4

We were recently notified by OPM that the IG intended to take sworn testimony from Mr. Bloch and his assorted deputies this month, as the final step in its investigation. It is in the wake of notification of these interviews that Mr. Bloch has now announced to the media the initiation of his broad-based investigation into the activities of Karl Rove.

It could not be any clearer that Mr. Bloch is not the one who should be leading the investigation he has announced. As was the case with the original OSC Complaints filed by my office, we would request that the White House direct OSC to contract out this new investigation to an Inspector General, who will have the credibility and, more importantly, the impartiality needed to address the allegations raised. Mr. Bloch's conflicts of interest regarding this investigation squarely clash with his ability to perform a fair and accurate investigation. Moreover, the mere appearance of such obvious conflicts here will undermine the perceived legitimacy of any report issued on this important subject.

I look forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Debra S. Katz", with a stylized flourish at the end.

Debra S. Katz

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 20, 2007

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at last week's Committee hearing examining the U.S. Office of Special Counsel ("OSC"). The hearing raised numerous questions. As you may recall, you committed to answer the Committee's questions posed to you in writing. Pending your written response, the official hearing record from the July 12, 2007 Committee hearing will remain open.

1. At the hearing, the Ranking Member disclosed an e-mail apparently from your personal account, dated Tuesday, June 19, 2007 at 11:52 a.m. That e-mail ("the June 19 e-mail") discusses official business relating to the agency you head the OSC. The e-mail discusses OSC's reauthorization hearing, disparages an individual under investigation by OSC and two Members of the U.S. House of Representatives with oversight responsibility for your agency.
 - a. Please identify all e-mail communications sent from a non-governmental account controlled by you since January 26, 2007, including but not limited to the above-listed AOL account, where you discuss official agency business, including those e-mails where you name individuals currently under investigation by your agency or Members of the U.S. Congress. When identifying all e-mail communications, we ask you to list the account the e-mail was sent on, the date, the time, the subject, and all individuals named in the text of the e-mail.
2. Your location at the time could corroborate whether the June 19 e-mail reflects the use of nongovernmental e-mail systems to conduct official business. At the hearing, Rep. Issa asked you where you were on June 19, 2007 at 11:52 a.m. You refused to answer.

- a. Please explain the basis for your refusal?
 - b. Rep. Issa asked you to determine the answer to this question and notify the Committee. Have you?
 - c. Where were you on June 19, 2007 at 11:52 a.m.?
 - d. Was government-supplied computer equipment used in the composition or transmission of the e-mail message you sent on June 19, 2007 at 11:52 a.m. on the (b)(6) account?
3. At the hearing, Committee members expressed their concern to you about the repeated disparagement of Administrator of General Services Lurita Doan. As they explained at the hearing, your staff disparaged her at an April 26, 2007 Congressional briefing and at a May 2, 2007 social event. You conceded that these comments were inappropriate, presumably because they prejudice the subject of your investigation and suggest bias by the agency against the subject. Moreover, you reinforced that sense of bias by personally disparaging her in your June 19 e-mail.
 - a. What have you done to remedy this situation?
 - b. What do you plan to do to restore confidence in your agency's broken investigative process?
4. The improper disclosure of an unpublished and unfinished OSC report on GSA Administrator Lurita Doan prejudiced her ability to respond effectively and, again, suggests bias by the agency. A report that can withstand scrutiny need not be prematurely disclosed to the press for political or public relations advantage. OSC Communications Director James Mitchell acknowledged in a telephone conversation with our staff that the source of this leak could only have been your agency and that he would make sure that you understood that. He further advised that OSC would not make any internal inquiry about it because leak investigations never go anywhere.

At our hearing, you provided a less than clear explanation of your understanding of this leak, including an invocation of your First Amendment right to free speech and the power to disclose information if it is in the public interest under your regulations. Your testimony about the leak of the draft report dated May 17, 2007 was not credible. Indeed, it may have been deliberately false.

 - a. Prior to the hearing did Mr. Mitchell discuss with you the disclosure of the May 17 draft of the Doan Report?

- b. Did he tell you that the disclosure could only have come from within the agency?
 - c. Did you tell him that you did not believe that?
 - d. Do you acknowledge that the *Washington Post* published a correction that it used a May 17 draft and not the final report that was sent to Doan?
 - e. If not, please explain the basis for your refusal to acknowledge that such a correction was published in the *Washington Post*.
 - f. Do you now acknowledge that the disclosure of the May 17 draft could only have come from your office?
 - g. If not, please explain the basis for any "belief" that the May 17 draft could have come from somewhere else.
 - h. Please explain the basis for your belief you have personal First Amendment rights in connection with your leak of the May 17 draft report on Lurita Doan.
 - i. Please explain how it was in the public interest to release the unpublished and unfinished draft May 17 report on the Administrator of General Services Lurita Doan.
5. During our examination of your agency's handling of the Lurita Doan matter, we learned the Administrator -- the target of your investigation -- was not permitted to see interview or deposition transcripts of witnesses against her.
- a. Is this true?
 - b. If so, the procedural protections afforded to targets of OSC investigations appear to be lacking. Would you support legislation ensuring that targets of OSC investigations are able to have access to such transcripts?
 - c. What types of additional due process rights would you support?
6. In response to questions from Rep. Issa relating to the Report of Prohibited Political Activity (Lurita A. Doan), you repeatedly advised Rep. Issa that only you have seen the entire Doan file. Amplifying your comments, you told Mr. Issa that he has not seen the witness transcripts and complete documentary record. The disclosure of confidential evidence that would be material to your report but that was not in the report raises serious ethical questions.
- a. Please explain why evidence that you claim to be material to your report was not included in your report.

- b. Please provide the Committee with any ethical standard that would permit the disclosure of such evidence.
 - c. If you claim that public disclosure of confidential evidence not included in your report is in the "public interest" under your regulations, please explain how such a disclosure is in the public interest if it was not in the public interest to put it in your report.
- 7. As an "independent" and "nonpartisan" federal agency, OSC officials have an obligation to conduct themselves professionally. On April 27, 2007 appearing on C-SPAN you said "our guide is the law, our lodestar are facts and evidence." You said "we make sure we read the case law to make sure we know what we are talking about." "Federal Courts and the MSPB tell us if we are right or wrong." Your Doan report relies on very few MSPB or federal court decisions.
 - a. Please identify all cases that would support the conclusion that the question "How can we help our candidates" constitutes a "commit[ment]" of agency resources to help Republican candidates.
- 8. In your May 18, 2007 Report you needlessly identify GSA employees by name. Surely you could have redacted these individual names.
 - a. Why did you fail to redact these names?
 - b. The publication of individual names in situations like this can lead to unfair consequences for these people. Do you agree?
 - c. Isn't this a terrible practice for the agency that is supposed to be protecting federal employees?
 - d. The May 17 draft of the report did not include the names, suggesting that the disclosure of the draft was part of a deliberate strategy to attack the Administrator of General Services but protect the agency from claims that it violated the Privacy Act. Why did the May 17 draft not include the names when the final version did?
- 9. When lawyers present information to a court they have a responsibility to be true to the evidence. There is a discipline required for preparing court papers. This includes quoting the actual words witnesses said, and citing the precise page number from the deposition transcript where you found those words. These practices establish credibility and demonstrate methodical, unimpeachable legal analysis.
 - a. Why do you eschew this practice in your Report on Prohibited Activity (Lurita A. Doan)?

- b. You do not quote witnesses interviewed by OSC. You do not use footnotes to identify the transcript pages the information was found in the record. Please explain.
- 10. You have presented no evidence to show anyone within GSA acted on statements you attribute to Doan.
 - a. If her actions were coercive as you say they were, what did she coerce?
 - b. What candidate or election would have been supported by the attendance of the President at an event in San Francisco, one subject of discussion following Doan's remark?
 - c. If you are able to identify such a candidate, why did you not identify that candidate or election in your report?
 - d. What candidate or election would have been supported by the attendance of Senator Martinez (who is not up for election in 2008) at an event in Florida, another subject of discussion that followed Doan's remark?
 - e. If you are able to identify one, please explain why you did not identify that candidate or election in your report.
- 11. The statements you attribute to Doan are ambiguous. She may have said "what can we do to help," or "what can we do to help our guys," or "help our candidates."
 - a. As her statements were addressed to Scott Jennings, couldn't this mean what can we do legally, and within the dictates of the Hatch Act to help our candidates?
 - b. Couldn't this have meant what can we do after work, on our own time, to help the administration?
 - c. Why did you fail to consider these alternative meanings to ambiguous statements?
 - d. The ambiguous statements you attribute to her may have been rhetorical. Why did you rule this out?
- 12. Your Report fails to identify the appropriate standard of evidence for analyzing whether Doan violated the Hatch Act.
 - a. What standard of evidence did you use?

- b. Why did you not set forth in the report the standard of evidence that you used?
- c. What standard of evidence should the President use in analyzing the materials you submitted -- preponderance of the evidence or substantial evidence? Some other standard?
- d. Why didn't you tell the President?
- e. Which standard of evidence is used before the Merit Systems Protection Board?
- f. If the standard you are asking the President to use is different from that which the Merit Systems Protection Board would use, please explain.

13. In Special Counsel v. Aeconcia, No. CB-1216-06-0007-T-1, 2007 M.S.P.B. LEXIS 404 (Feb. 26, 2007), the respondent was charged with soliciting a political contribution from a subordinate employee, by inviting that subordinate employee to a fundraiser for a candidate for partisan political office, and by engaging in political activity while in a government building. The MSPB penalty was 45 days.

In Special Counsel v. Collier, 101 M.S.P.R. 391 (2006), the respondent -- a USDA veterinarian -- was found to have violated the Hatch Act for soliciting political contributions for a county commissioners race in North Carolina. The penalty was 30 days.

In Special Counsel v. McEntee, No. CB-1216-02-0007-T-1, 2003 M.S.P.B. LEXIS 560 (Sept. 8, 2003), the respondent was a candidate for election while employed at the FAA. The MSPB found removal from office at the FAA was deemed too harsh. The penalty was 30 days.

In Special Counsel v. Rivera, 61 M.S.P.R. 440 (1994), the respondent a GS-13 attorney with the SEC was found to have sent fundraising letters at work inviting people to a Colorado Hispanic Bar Association fundraiser for Roger Candelaria who was running for District Attorney in southern Colorado. He was warned not to continue this by his supervisor, but he continued. The penalty was 60 days.

- a. In your Doan report, why didn't you cite any of these cases as precedent for your recommended punishment?
- b. You recommend the President punish Doan to the fullest extent, i.e. removal from office. What cases can you refer us to show that such a recommendation is consistent with MSPB and federal court case law?

- c. If you are able to cite such precedent, please explain why you did not cite it in your report.
 - d. With so much case law counseling against removal from office, does the Doan matter raise special considerations that have not heretofore been considered by the MSPB?
- 14. Solicitation cases warranting removal "have involved the coercion of subordinate employees, the most pernicious of the political activities prohibited by the Hatch Act." Special Counsel v. Malone, 84 M.S.P.R. 342, 366 (1999). The Merit System Protection Board (MSPB) has summarized that generally removal is only called for when the violation "occurred under circumstances demonstrating a deliberate disregard of the Act." Malone at 364-5. According to Malone, the MSPB generally considers six factors as aggravating or mitigating: 1) the nature of the offense and the extent of the employee's participation; 2) the employee's motive and intent; 3) whether the employee received the advice of counsel regarding the activities; 4) whether the employee ceased the activities; 5) the employee's past employment record; and 6) the political coloring of the employee's activities. Malone at 364, citing Special Counsel v. Riviera, 61 M.S.P.R. 440, 444 (1994).
 - a. Why did OSC fail to analyze the six factors identified in Malone?
 - b. In Doan's case, it appears that five of these factors are mitigating. If you disagree, why?
- 15. At the July 12 hearing, you claimed that lack of cooperation could be considered an aggravating factor and suggested that Doan's conduct during the investigation was such a factor. This again raises serious ethical questions regarding the disclosure of a material aspect of your investigation that had an impact on the result that was not explained in the report itself.
 - a. Please cite the MSPB or federal court precedent for your claim that that lack of cooperation can be an aggravating factor in an OSH Hatch Act investigation.
 - b. Please explain why, if lack of cooperation was an aggravating factor, you did not include any findings of fact or legal conclusions in your report that such aggravation influenced the results of the investigation.
 - c. Please explain what ethical standard permits you to make any public disclosure of considerations that influenced your decision that are not included in your decision.

Scott J. Bloch
July 20, 2007
Page 8

Please respond no later than August 3, 2007. If you have any questions regarding this request, please contact the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Davis", written in a cursive style.

Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

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July 20, 2007

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The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at the Committee's hearing examining the U.S. Office of Special Counsel on July 12, 2007. At that hearing, Committee members asked that you produce e-mails sent on your personal e-mail account that related to official business. This letter renews that request.

The use of nongovernmental e-mail accounts to conduct official business is of some importance to this Committee. As you know, the Committee is currently investigating whether official business was conducted improperly on nongovernmental e-mail accounts by executive branch officials. Records of official business conducted using private e-mail accounts are at risk of not being preserved in accordance with the Federal Records Act and not being accessible to the public through the Freedom of Information Act and other public access and open government requirements.

In addition, the e-mail disclosed at the hearing and others the Committee is seeking may implicate federal law that prohibits executive branch officials from engaging in lobbying. As you may know, the Committee is already investigating the Department of Transportation for possible unlawful lobbying.

The content and distribution of the e-mail disclosed at the hearing raise these questions. That e-mail was sent to an undisclosed recipient list at 11:52 am on Tuesday, June 19, 2007, from a nongovernmental e-mail account maintained by AOL. Your distribution list for this mass e-mail was large enough that a copy was forwarded to our staff shortly after it was sent.

In the e-mail communication you discuss official governmental business including your agency's reauthorization hearing. You comment inappropriately about the subject of an Office of Special Counsel investigation. You speak disparagingly of former President Clinton, Administrator of General Services Lurita Doan, and two Members of

Scott J. Bloch
July 20, 2007
Page 2

the U.S. House of Representatives. In addition, you distributed news articles on these subjects attached to the e-mail.

To determine whether you were conducting official business through a personal e-mail account or engaging in prohibited lobbying, the Committee will need to examine this and other e-mails regarding similar subjects and obtain some additional information. Accordingly, this letter renews the Committee's request that you produce all e-mail records from your nongovernmental e-mail accounts, including the AOL account with the address (b)(6) between January 26, 2007 and the present where you:

- a) discuss official business including anything related to Hatch Act violations and Hatch Act investigations;
- b) use the name Lurita Doan;
- c) use the name of any individual currently under investigation by your agency; or
- d) use the name of any government official, including but not limited to Members of the United States Congress.

We also request that you provide the Committee with a list of the names and e-mail addresses of the recipients of the June 19 e-mail and all other e-mail produced in response to this request. The recipient list is just as important as the e-mail content in determining whether you conducted official business or engaged in prohibited lobbying.

In addition to producing all e-mail records responsive to the aforementioned request, the Committee directs you to preserve all e-mail records from all nongovernmental and official e-mail accounts you use or have used since January 26, 2007. As these e-mails may be relevant to congressional investigations, Freedom of Information Act requests, and the Federal Records Act, the Committee also directs you to adequately protect and safeguard these records from destruction or tampering.

We appreciate your continued cooperation. If you have any questions regarding this request, please contact the Committee Staff. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

HENRY A. WAXMAN, CALIFORNIA
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BILL SALI, IDAHO

July 19, 2007

Mr. Randy Falco
Chairman and Chief Executive Officer
AOL LLC
22000 AOL Way
Dulles, VA 20166

Dear Mr. Falco:

The purpose of this letter is to direct AOL to preserve and protect all e-mail records associated with the account (b)(6) and any other e-mail account assigned to Scott J. Bloch.

The Committee on Oversight and Government Reform is currently investigating whether the use of this account by a federal governmental official may have violated laws relating to the Federal Records Act and the Freedom of Information Act. Indeed if official government business was conducted on this e-mail account, these records are government property.

Should you have any questions regarding this request, please contact our staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman
The Honorable Scott J. Bloch



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FAX TRANSMISSION COVER

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TO: Fred Fielding
White House Counsel

FAX: 202-456-6279

FROM: Glenn A. Fine

NUMBER OF PAGES (including coversheet): 9

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**U.S. Department of Justice****Office of the Inspector General**

February 11, 2008

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

Dear Mr. Bloch:

I am writing in response to your letter to the Attorney General, dated January 25, 2008, in which you complain about the Department of Justice's (Department or DOJ) response to your requests for information related to the removal of U.S. attorneys and the allegations raised against former U.S. Attorney Rachel Paulose. Your letter also mischaracterizes the actions of the Office of the Inspector General (OIG) related to several of those issues.

I understand that the Department intends to formally respond to your letter. However, because your letter does not fairly describe my actions or those of the OIG, I am writing to set the record straight regarding those issues.

Removal of U.S. Attorneys

At the outset, I want to place in context the Department's request that the Office of Special Counsel (OSC) postpone its much narrower administrative inquiry and instead rely on the work of the joint OIG/Office of Professional Responsibility (OPR) criminal investigation regarding the removal of U.S. Attorneys and other matters.

When OPR Counsel Marshall Jarrett and I first met with you on May 4, 2007, we informed you that the scope of the OIG/OPR investigation involved a comprehensive examination of the reasons for the removals of nine U.S. Attorneys, allegations of improper hiring practices involving career Department positions, and whether any false statements were provided to Congress regarding these and other related matters. At this meeting, we asked about OSC's normal practice when the Department had an ongoing criminal investigation on an issue that OSC was examining. You informed us that

OSC's normal practice is to defer its investigation so as not to interfere with the DOJ's ongoing criminal investigation. We stated then, and still believe now, that this is a responsible and appropriate course of action for the OSC to follow in this case. Overlapping investigations would be both inappropriate and duplicative, especially since your narrower administrative review involves the same factual issues and witnesses as the broader OIG/OPR criminal investigation. In addition, we agreed to provide you with the results of our investigation when completed.

Yet, contrary to your normal practice, on May 8 you wrote to inform Mr. Jarrett and me that OSC instead intended to move forward with its investigation of a Uniformed Services Employment and Re-employment Rights Act (USERRA) claim on behalf of former U.S. Attorney David Iglesias. Subsequently, you expanded your review to include allegations of prohibited personnel practices and whether the removal of the nine U.S. Attorneys violated the Hatch Act.

On August 13, OSC sent a wide-ranging information request to the Department that would require it, in essence, to conduct its own investigation to respond to OSC's series of questions. After discussions between OSC and the Department's Office of Legal Counsel (OLC), OLC wrote OSC on January 16, 2008, that a separate investigation by OSC could interfere with a DOJ criminal investigation, and OLC also noted that the Department could not answer OSC's request without prejudicing the outcome of the OIG/OPR joint investigation.

However, in response to the Department's reasonable response, you accused the Department in your January 25 letter of a "disturbing pattern of disregard of [your] authority." To the contrary, we believe the Department has acted appropriately in this matter and that OSC should rely on the comprehensive OIG/OPR investigation, consistent with your standard practice when criminal matters are open.

In the remainder of this letter I will briefly address several issues raised in your January 25 letter that we believe are misleading, incomplete, or inaccurate.

1. OSC's Jurisdiction: First, your description of OSC's jurisdiction as exclusive in certain areas ignores the fact that the Department also has the authority and obligation to investigate and make prosecutive decisions on alleged criminal violations relating to these matters. Further, your claim that OSC has exclusive jurisdiction regarding prohibited personnel practices is not

correct. Agencies such as the DOJ also have the authority to investigate alleged prohibited personnel actions regarding their employees.¹

Moreover, it is important to note that the OIG/OPR criminal investigation, which is examining in detail all the reasons provided for removal of the U.S. Attorneys, will provide the factual predicate for any analysis of your narrower administrative inquiry of whether the removal of any of the U.S. Attorneys violated the Hatch Act or USERRA, or whether the Department committed prohibited personnel practices.²

2. Criminal Investigation: Your January 25 letter to the Attorney General states that you would not defer OSC's administrative investigation based "simply on speculation that criminal charges might be preferred from the IG and OPR joint investigation." As described previously, the OIG and OPR asked you to postpone your investigation while our criminal investigation was pending so that your review did not interfere with the criminal investigation. Further, we offered to provide the results of our review to you when completed. In any criminal investigation, whether charges will be brought depends on the evidence and the outcome of the investigation. Your characterization of our request as simply "speculation that criminal charges might be preferred" is not a fair way to describe our request and ignores OSC's normal practice, as you represented it to us at our initial meeting, of deferring an OSC investigation until the conclusion of a criminal investigation.

¹ For example, nothing in federal law suggests that OSC's authority to investigate prohibited personnel practices is exclusive. To the contrary, 5 U.S.C. 2302(c) provides that "[t]he head of each agency shall be responsible for the prevention of prohibited personnel practices, [and] for the compliance with and enforcement of applicable civil service laws, rules, and regulations. . . ." Indeed, the law explicitly contemplates the possibility of investigations of prohibited personnel practices by the Attorney General. See 5 U.S.C. § 1214(d)(2) ("[i]n any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless-- . . . (B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed."). Nor is there any requirement in federal law that agencies report allegations of prohibited personnel practices to OSC. In short, the Department has broad authority to investigate allegations of misconduct by its employees, including allegations of prohibited personnel practices.

² In addition, it is not clear as a legal matter whether the Hatch Act or USERRA (as opposed to other statutes) applies to a case involving removal of U.S. Attorneys. See, e.g., Federal Times article, "Special Counsel Battles for More Clout," July 16, 2007 ("Iglesias has said an OSC official invited him to file a claim, an unusual step. OSC is responsible for investigating USERRA violations at agencies. But attorneys familiar with the act said that it protects only career civil servants, not presidential appointees like Iglesias"). You never have responded to the question of whether OSC has concluded as a threshold legal matter that the Hatch Act or USERRA covers the removal of a Presidential appointee such as a U.S. Attorney.

3. Initiation of the OIG/OPR investigation: Your letter's description of the timing of our respective investigations is also misleading. Your letter states:

I met with DOJ Inspector General (IG) Glenn Fine, along with H. Marshall Jarrett, Counsel, Office of Professional Responsibility (OPR), on May 4, 2007 to discuss our then-pending investigation. After our investigation was opened, Attorney General Alberto Gonzales asked the IG and OPR to conduct a joint investigation into the matters we were considering, according to Mr. Fine.

That is not accurate and also does not reflect what was said to you at the meeting. In fact, the joint OIG/OPR investigation began in mid-March 2007, well before we had any indication of OSC's interest in the U.S. Attorneys matter. The first we learned of any potential OSC investigation was in April 2007 when media reports disclosed that you intended to interview former U.S. Attorney David Iglesias.³ When we learned of the media reports, the OIG and OPR promptly contacted your office to arrange the meeting with you on May 4 to describe the scope of our investigation and to ask you to defer your investigation regarding Mr. Iglesias's USERRA claim in light of our pending criminal investigation.

4. Timing of completion of the OIG/OPR investigation: Your January 25 letter also cites media reports about the anticipated completion date of the OIG/OPR investigation, and your letter states that this "will effectively push OSC's role into the very last months of the administration when there is little hope of any corrective measures or discipline possible."

We are conducting our investigation as thoroughly and expeditiously as possible, and we do not conduct our investigations with regard to election cycles. However, we have already interviewed more than 200 individuals in our comprehensive investigation that, among many other things, examines the reasons for the removal of each U.S. Attorney as well as hiring practices in the Department. It clearly would be much more efficient and timely for you to rely on the results of our investigation rather than to begin a separate, overlapping investigation on the same factual issues.

In sum, we believe the Department's request that you defer your investigation is reasonable, consistent with your normal practice, and appropriate in light of OSC's limited administrative inquiry on the same set of factual issues that the OIG/OPR criminal investigation is examining. However,

³ Compare interview of David Iglesias, MSNBC, April 24, 2007 (Mr. Iglesias stated that he filed a claim with OSC on April 3, 2007) with letter from Glenn Fine and H. Marshall Jarrett to the House and Senate Judiciary Committees, March 26, 2007 (announcing OIG/OPR joint investigation).

we understand that the Department intends to formally respond to your January 25 letter.

Rachel Paulose Matter

This section addresses the comments in your letters to the Attorney General regarding the OIG's actions in the Rachel Paulose matter. For the reasons discussed below, we believe your description of the actions of the OIG with regard to this matter is incomplete and misleading.

On August 7, 2007, your office sent a series of allegations regarding Ms. Paulose to the OIG with a request for assistance. After describing the allegations and OSC's jurisdiction, your specific request was:

In order to determine whether the substantial likelihood requirement is met in this case, we are requesting your assistance. It would be greatly appreciated if you would bring to our attention any information that you have or obtain about these allegations, as well as any actions that have been taken or are planned as a result of these allegations. We will then be in a better position to assess the necessity of formally transmitting the matter to the agency head. We would request your response within 60 days of your receipt of this letter.

In response, a senior OIG attorney determined that the Department was already investigating the allegations regarding Ms. Paulose, and we provided information about the Department's investigations to OSC staff via telephone. The OIG attorney also advised OSC of the Department component (the Executive Office for United States Attorneys (EOUSA)) that OSC should contact if it needed further details about the Department's ongoing investigations or if it wanted to obtain a copy of the EOUSA report when it was completed.

However, the OIG decided that because of the ongoing Department investigations into the allegations contained in OSC's letters, as well as an ongoing OSC review of related allegations in the Minnesota U.S. Attorney's office, the OIG should not launch an overlapping investigation of matters that had already been examined by EOUSA, that were still under review by the Department, or that related to matters being investigated by your office. The OIG attorney informed OSC of this decision in that same telephone conversation noted above.

Subsequently, in a letter dated November 19, 2007, OSC formally referred the matter to the Attorney General for investigation. Based on the initial allegations, the OSC letter concluded that there was a "substantial likelihood" that U.S. Attorney Paulose had mismanaged the Minnesota office

and had engaged in abuses of authority, and required the Attorney General to investigate these matters and report on his findings within 60 days.

However, in that November 19 referral the OSC described the OIG's actions as follows:

On August 7, 2007, OSC referred Mr. Marti's allegations . . . to The Honorable Glenn A. Fine, Inspector General, United States Department of Justice (DOJ OIG). On October 11, 2007, OIG informed OSC by telephone that two of the allegations had been reviewed and resolved previously to the satisfaction of the Executive Office for United States Attorneys (EOUSA). OIG declined to further investigate, to make any inquiry into the remaining allegations, or to provide any written report in response to OSC's referral.

Contrasted with the events described above, your letter unfairly characterizes what OIG staff did to assist OSC and why the OIG decided not to open an investigation into these allegations.

Therefore, on November 26 I wrote you directly about your mischaracterization of the OIG's actions in your November 19 letter. My letter noted that the OIG attorney who responded to your office had made inquiries within the Department and determined that the Department had undertaken reviews related to the allegations of mismanagement and abuse of authority in the U.S. Attorney's Office and that EOUSA was drafting a report with its findings. In addition, the OIG attorney determined that the Department's Security and Emergency Planning Staff had conducted a review related to the allegations concerning mishandling of classified information. She also inquired about the allegations regarding improper use of government funds and was informed that EOUSA had uncovered no financial irregularities in its review. My letter to you also noted that the OIG had provided this information to OSC in response to its request for assistance and not in response to a request for an investigation.⁴

Your January 25 letter, therefore, still misrepresents what the OIG did to determine the status of the allegations and why we decided not to open an overlapping investigation. Your description of the OIG attorney as reporting that the OIG had "asked around" and that the "IG was not planning on doing anything" is both an inaccurate and incomplete characterization of what the OIG attorney said and what information she provided to OSC.

Your letter also suggests that OSC's referral to the OIG was part of an "informal" OSC process to seek an investigation of the matter rather than

⁴ We never received a response from you to this letter.

assistance from the OIG. However, as noted above, the plain language of the letter is contrary to that claim. In addition, the OSC staff attorney who spoke with the OIG attorney about OSC's letter specifically described the OSC letter as a request for the OIG to find out what pre-existing information, if any, the OIG or the Department already had related to the Paulose matter, and the OSC attorney did not describe it to the OIG attorney as a request for an investigation.⁵

Conclusion

The OIG and OPR continue to believe the appropriate and responsible action by OSC would be to defer – consistent with its normal practice – its narrower administrative investigation of the U.S. Attorney matter in light of the ongoing OIG/OPR criminal investigation. OSC should rely on the results of our investigation, which will address in detail the issues within OSC's jurisdiction. However, we understand that the Department intends to provide its formal response to your January 25 letter.

As to the Paulose matter, notwithstanding OSC mischaracterizations of the OIG's actions, the OIG responded appropriately to OSC's request for assistance by determining what the Department had done and was doing to review the allegations. We decided not to open an investigation that would overlap with the Department's and OSC's investigations, and we provided that information to OSC.

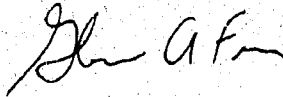
Finally, I believe that these disputes have been counterproductive and distracting to the missions of both of our offices. It is my hope that in the

⁵ Your January 25 letter also states that on several occasions in the past OSC had used similar language and in each case "the IG initiated or tasked an inquiry or investigation." This is not true. For example, in one of the cases cited, when the OIG received the request the OIG referred the letter to the component involved for it to respond to OSC, which the component did. Contrary to your claim, the OIG did not "task or initiate" an investigation into the matter. By contrast, in the Paulose case after speaking with an OSC attorney, the OIG attorney attempted to provide assistance to OSC by inquiring directly from the Department about the status of its ongoing review and providing this information to OSC. It is true that the OIG attorney responded orally to OSC's "informal" request rather than in writing, although we believed that was sufficient. In the future, to avoid these mischaracterizations about the OIG's actions we will be sure to respond to OSC in writing, or ask the Department to respond, even when OSC asks for assistance in this type of "informal" referral.

Finally, your discussion of the other OSC matter misses our point and leaves out the most salient sentence of the OSC's comment regarding the OIG report. In that case, OSC commented on an OIG investigation and suggested that the OIG had reached a conclusion on the adequacy of operating funds for certain functions of another agency when, in fact, the OIG had not reached such a conclusion. While we recognize that OSC has the right to comment on OIG reports or reach its own conclusions, we request that you attribute OSC's conclusions to OSC, not to the OIG.

future we can coordinate our work without such distractions, in light of the important issues confronting our offices.

Sincerely,



Glenn A. Fine
Inspector General

cc: The Honorable Michael B. Mukasey
Attorney General

H. Marshall Jarrett
Counsel, Office of Professional Responsibility
U.S. Department of Justice

Fred Fielding
White House Counsel

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary

The Honorable John Conyers, Jr.
Chairman, House Committee on the Judiciary

The Honorable Lamar S. Smith
Ranking Member, House Committee on the Judiciary

The Honorable Henry A. Waxman
Chairman, House Committee on Oversight and Government Reform

The Honorable Thomas M. Davis, III
Ranking Member, House Committee on
Oversight and Government Reform

Flood, Emmet T.

From: Lee, Kenneth K.
Sent: Monday, February 11, 2008 4:10 PM
To: Flood, Emmet T.
Cc: Smith, Barbara A.
Subject: FW: FYI
Attachments: Dingell re briefing books.pdf

Emmet --

FYI -- Attached is HHS's response to the House Energy & Commerce's subpoena for FDA Commissioner's briefing books.

From: Caperton, David (HHS/OGC) [mailto:David.Caperton@hhs.gov]
Sent: Monday, February 11, 2008 12:47 PM
To: Lee, Kenneth K.
Subject: FYI

This correspondence has been sent.

David Guhse Caperton

Senior Counsel
Office of the General Counsel
U.S. Department of Health and Human Services
David.Caperton@hhs.gov
202 205-5563 (o)

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2/11/2008

Flood, Emmet T.

From: Anfuso, Katelyn G.
Sent: Monday, February 11, 2008 3:44 PM
To: Adams, John D.; Augustine, Rene I.; Bakke, Mary Beth; Brady, Ryan D.; Burck, William A.; Campagna, Dianna G.; Coffina, Scott A.; Coghlan, John; Dunathan, Amy F.; Edwards, Tobin M.; Fahrenkopf, Leslie; Flood, Emmet T.; George, Allison C.; Green, Marcella M.; Hoang, Francis Q.; Lambert, Albert C.; Lee, Kenneth K.; Loughlin, Ann L.; Merrill, Jessica O.; O'Donoghue, Richard G.; Oprison, Christopher G.; Patterson, Peter A.; Perkins, Paul R.; Pinto, Ashok M.; Potts, Stephen D.; Purpura, Michael M.; Rounds, Emory; Scudder, Michael Y.; Smith, Barbara A.; Smith, John M.; Stanton, Cheryl M.; Todd, Kathryn L.
Subject: Kennedy Center Schedule - March, 2008
Attachments: Kennedy Center Schedule - March 2008.doc

All:

Attached, please find the schedule of Kennedy Center performances for the month of March, 2008.

Requests can be made by replying to this email with a list of the performances you would like to attend as well as the date, time, and number of tickets you will require.

As a reminder, everyone is able to submit requests for tickets. However, ticket assignment will be fulfilled according to protocol or rank order.

Thank you,

Kate

NOTE: Kennedy Center Presidential Box Rules:

This goes without saying, but you are representing the President and the White House when you are a guest in the President's Box. A few rules to reiterate:

- Please arrive for the performance on time and be seated before the curtain rises;
- Food and drinks must be kept inside the Suite. They are not permitted in the Box. Accordingly, drinks should not be placed on the balcony rail;
- Please refrain from entering and leaving the box during the performance;
- The President's Box must be filled for every performance. **If you have tickets and find yourself having to cancel, please let me know.** Even if it is over the weekend, just shoot me a blackberry email and we will work to find someone to take your place.

As a reminder, the ticketing process is as follows:

- I will be submitting your requests once a week on Fridays. When you email me your request, please be sure to list the performances in the order of your preference and include the number of tickets you will require. Please let me know if you have not yet been to a Kennedy Center performance, or if you have been in the last month;
- **More times than not, they will not be able to confirm your tickets until 24 hours before any given performance.** They are not able to get back to me on ticket requests they were not able to fulfill due to the

2/11/2008

high volume of requests.

- *Please do not contact Bessie Doffermyre directly, She will only direct you back to me.*

KENNEDY CENTER SCHEDULE

MARCH

Saturday, March 1, 2008

1:30 PM New York City Ballet
7:30 PM New York City Ballet
8:00 PM NSO Pops: Pink Martini

Sunday, March 2, 2008

1:00 PM NSO Family: Peter and the Wolf
1:30 PM New York City Ballet
3:00 PM NSO Family: Peter and the Wolf
7:30 PM New York City Ballet

Monday, March 3, 2008

8:00 PM WPA: Joshua Bell, violin

Thursday, March 6, 2008

7:00 PM NSO: Honeck/Fliter/Beethoven

Friday, March 7, 2008

8:00 PM NSO: Honeck/Fliter/Beethoven

Saturday, March 8, 2008

8:00 PM NSO: Honeck/Fliter/Beethoven

Tuesday, March 11, 2008

7:00 PM WPAS: Lang Lang, piano

Thursday, March 13, 2008

7:00 PM NSO: Graf/Gerhardt/Prokofiev

Friday, March 14, 2008

8:00 PM NSO: Graf/Gerhardt/Prokofiev

Saturday, March 15, 2008

7:00 PM WNO: The Flying Dutchman

8:00 PM NSO: Graf/Gerhardt Prokofiev

Sunday, March 16, 2008

3:00 PM Choral Arts: Dvoak: Stabat Mater

Thursday, March 20, 2008

7:30 PM WNO: The Flying Dutchman

Friday, March 21, 2008

7:30 PM Dance: Shen Wei Dance Arts

Saturday, March 22, 2008

7:30 PM Dance: Shen Wei Dance Arts

Tuesday, March 25, 2008

7:30 PM WNO: The Flying Dutchman

Thursday, March 27, 2008

7:00 PM NSO: Elder/Lortie/Prokofiev

Friday, March 28, 2008

8:00 PM NSO: Elder/Lortie/Prokofiev

Saturday, March 29, 2008

7:00 PM WNO: Rigoletto

8:00 PM NSO: Elder/Lortie/Prokofiev

Sunday, March 30, 2008

2:00 PM WNO: The Flying Dutchman

4:00 PM WPAS: Men/Women/Gospel Mass Choir

Monday, March 31, 2008

7:00 PM WNO: Rigoletto

7:30 PM

21st Annual Nancy Hanks Lecture



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January 31, 2008

ON STYLE

By CHRISTINA BINKLEY



Law Without Suits: New Hires Flout Tradition

**Young Attorneys' Casual Attire
Draws Criticism at Big Firms;
A Crackdown on Ugg Boots**

January 31, 2008; Page D8

One of the lifestyle perks law firms increasingly offer young lawyers is the chance to dress comfortably at the office. With "business casual" as the new dress code of record, ties hang in closets and jackets await their day in court at home.

There's just one problem: It can be difficult to get young associates to shift gears and don traditional dress when the need arises. A decade after the dot-com boom made casual Friday a weeklong event, many people under 30 have never witnessed a suits-only office.

Older people have long complained about the sartorial sloppiness of the younger generation. But the divide is stark in the legal profession.

"I share the lament and disgust about the general level of associates' attire," says Tom Mills, the 60-year-old managing partner of the Washington office of Winston & Strawn LLP. "I think it's abysmal."

For young men and women, a business suit is an uncomfortable yoke to be dusted off for special occasions. "Getting up in the morning and putting on a suit is hard," says Sara Shikhman, a 26-year-old legal associate at Cadwalader, Wickersham & Taft LLP in New York. She says she hasn't worn one in six months.

DRESSING DOWN?



1

Are associates getting away with too much? Have partners misplaced their anxieties? Join the discussion² on

WSJ.com's Law Blog³.

When associates show up at work in suits, their peers think they have a job interview, Ms. Shikhman says. "Guys don't really polish their shoes," she adds. They go for cool, rather than traditional. "They wear shoes like you might see Johnny Depp wearing to the Oscars." She recognizes that her firm's partners "definitely look more put together than associates, but they also get more sleep than the associates."

Yet in lawyering, half the battle is the posturing. Many experienced lawyers see their wardrobe as

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a tool to win the trust of clients, juries and judges. Legal associates who aren't sartorially prepared may not be invited along to a new-client pitch or to take a leading role in court, regardless of the office's stated "business casual" dress code.

Mr. Mills says he is partial to well-fitted Brioni suits for himself. He notes that the going rate for new associates in New York, Los Angeles and Washington is \$160,000 a year -- enough to buy suits while paying down school loans. Yet all too often, associates show up at work in jeans -- attire that he doesn't condone "unless it's moving day."

When it came time to pick a point person for a plum assignment at Manatt, Phelps & Phillips recently, the New York law firm chose "a polished, professional-looking associate" over a "brilliant" and experienced associate who had been counseled, to no avail, to improve his grooming and attire, says Renee Brissette, a partner at the firm.

The firm opted for someone more presentable to the client, says Ms. Brissette. She notes that associates are often loath to believe their attire could affect assignments or promotions. "Young lawyers don't like to hear that it's anything but their intellect," says Ms. Brissette. She notes that for women, being professionally attired doesn't require a man-suited look: She has a wardrobe of Nanette Lepore suits that are unmistakably feminine without being inappropriately flirty.

Brad Tobin, 25, who is working at a midtown Manhattan law firm, says he is certain that clothes don't affect job assignments at his firm. "Not at all -- it's really based on work product," says Mr. Tobin, who is working part-time while he completes law school. He says he owns suits but doesn't bother to wear them at work.

Law firms are attempting to raise the bar. Some associates at Cadwalader Wickersham & Taft this winter received a note asking employees to change out of their snow boots after young associates began wearing their Ugg boots all day at work, says Ms. Shikhman. A Cadwalader spokeswoman says she wasn't aware that such a note had circulated.

Winston & Strawn brought in a personal shopper from a local department store last year to address associates on how to shop and dress for work. Mr. Mills says that when some associates do make an effort to dress up, they seem to base their look on Hollywood. "You get the TV-woman lawyer look with skirts 12 inches above the knee and very tight blouses," he says. "They have trouble sitting and getting into taxis."

The firm also hired etiquette consultant Gretchen Neels, a former executive recruiter, to give lectures on grooming, dress, and etiquette standards such as where to place one's napkin at dinner.

She says many members of the so-called millennial generation have never been schooled in the traditions that previous generations learned at their parents' knees. Yet these 20-somethings are still being evaluated by old-school bosses and clients. Many members of this generation not only "don't own a watch -- they've never owned a watch," says Ms. Neels. In many white-collar professions, an expensive watch signals success, while a cool cellphone or iPod, though it tells time, signals hipness.

Ms. Neels, founder of Neels & Co. in Boston, has been making the rounds at law firms, as well as law and business schools at Duke, Harvard and other universities. She hears all sorts of complaints from scandalized partners: One young attorney wears yoga pants to work. Another associate blasted out a firmwide email searching for a size-32 belt when an unanticipated court

appearance required him to dress up midday.

Ms. Neels notes that business-school grads share law associates' casual sartorial attitude, and she tries to connect the dots between what they wear and how they come across. When she was coaching M.B.A. graduates at Harvard last weekend, she says only about half came in a suit. One young man showed up in cargo pants, and his cellphone rang during the interview.

"What I'm getting from you is that you're a jerk," Ms. Neels told the student as part of her feedback. "Can you see how I'd get that?"

"Yeah, I guess," he responded, she says.

Trial attorney Rosemarie Arnold says young lawyers need to learn that "courtroom drama is all about control." Ms. Arnold represented Joran van der Sloot, one of three men who were with student Natalee Holloway before she disappeared in Aruba. With courtroom appearances in mind, Ms. Arnold spends \$150,000 a year on clothes, she estimates. She is partial to Gucci and Dolce & Gabbana in particular and black suits in general.

"Trying a case is like a movie," Ms. Arnold says. "Wardrobe is everything."

• Email christina.binkley@wsj.com⁴

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- (3) <http://blogs.wsj.com/law/2008/01/31/are-associates-too-freewheeling-with-fashion/>
- (4) <mailto:christina.binkley@wsj.com>

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Counsel's Office, White House

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Flood, Emmet

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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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U.S. Department of Justice

Office of the Inspector General

February 11, 2008

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

Dear Mr. Bloch:

I am writing in response to your letter to the Attorney General, dated January 25, 2008, in which you complain about the Department of Justice's (Department or DOJ) response to your requests for information related to the removal of U.S. attorneys and the allegations raised against former U.S. Attorney Rachel Paulose. Your letter also mischaracterizes the actions of the Office of the Inspector General (OIG) related to several of those issues.

I understand that the Department intends to formally respond to your letter. However, because your letter does not fairly describe my actions or those of the OIG, I am writing to set the record straight regarding those issues.

Removal of U.S. Attorneys

At the outset, I want to place in context the Department's request that the Office of Special Counsel (OSC) postpone its much narrower administrative inquiry and instead rely on the work of the joint OIG/Office of Professional Responsibility (OPR) criminal investigation regarding the removal of U.S. Attorneys and other matters.

When OPR Counsel Marshall Jarrett and I first met with you on May 4, 2007, we informed you that the scope of the OIG/OPR investigation involved a comprehensive examination of the reasons for the removals of nine U.S. Attorneys, allegations of improper hiring practices involving career Department positions, and whether any false statements were provided to Congress regarding these and other related matters. At this meeting, we asked about OSC's normal practice when the Department had an ongoing criminal investigation on an issue that OSC was examining. You informed us that

OSC's normal practice is to defer its investigation so as not to interfere with the DOJ's ongoing criminal investigation. We stated then, and still believe now, that this is a responsible and appropriate course of action for the OSC to follow in this case. Overlapping investigations would be both inappropriate and duplicative, especially since your narrower administrative review involves the same factual issues and witnesses as the broader OIG/OPR criminal investigation. In addition, we agreed to provide you with the results of our investigation when completed.

Yet, contrary to your normal practice, on May 8 you wrote to inform Mr. Jarrett and me that OSC instead intended to move forward with its investigation of a Uniformed Services Employment and Re-employment Rights Act (USERRA) claim on behalf of former U.S. Attorney David Iglesias. Subsequently, you expanded your review to include allegations of prohibited personnel practices and whether the removal of the nine U.S. Attorneys violated the Hatch Act.

On August 13, OSC sent a wide-ranging information request to the Department that would require it, in essence, to conduct its own investigation to respond to OSC's series of questions. After discussions between OSC and the Department's Office of Legal Counsel (OLC), OLC wrote OSC on January 16, 2008, that a separate investigation by OSC could interfere with a DOJ criminal investigation, and OLC also noted that the Department could not answer OSC's request without prejudicing the outcome of the OIG/OPR joint investigation.

However, in response to the Department's reasonable response, you accused the Department in your January 25 letter of a "disturbing pattern of disregard of [your] authority." To the contrary, we believe the Department has acted appropriately in this matter and that OSC should rely on the comprehensive OIG/OPR investigation, consistent with your standard practice when criminal matters are open.

In the remainder of this letter I will briefly address several issues raised in your January 25 letter that we believe are misleading, incomplete, or inaccurate.

1. OSC's Jurisdiction: First, your description of OSC's jurisdiction as exclusive in certain areas ignores the fact that the Department also has the authority and obligation to investigate and make prosecutive decisions on alleged criminal violations relating to these matters. Further, your claim that OSC has exclusive jurisdiction regarding prohibited personnel practices is not

correct. Agencies such as the DOJ also have the authority to investigate alleged prohibited personnel actions regarding their employees.¹

Moreover, it is important to note that the OIG/OPR criminal investigation, which is examining in detail all the reasons provided for removal of the U.S. Attorneys, will provide the factual predicate for any analysis of your narrower administrative inquiry of whether the removal of any of the U.S. Attorneys violated the Hatch Act or USERRA, or whether the Department committed prohibited personnel practices.²

2. Criminal Investigation: Your January 25 letter to the Attorney General states that you would not defer OSC's administrative investigation based "simply on speculation that criminal charges might be preferred from the IG and OPR joint investigation." As described previously, the OIG and OPR asked you to postpone your investigation while our criminal investigation was pending so that your review did not interfere with the criminal investigation. Further, we offered to provide the results of our review to you when completed. In any criminal investigation, whether charges will be brought depends on the evidence and the outcome of the investigation. Your characterization of our request as simply "speculation that criminal charges might be preferred" is not a fair way to describe our request and ignores OSC's normal practice, as you represented it to us at our initial meeting, of deferring an OSC investigation until the conclusion of a criminal investigation.

¹ For example, nothing in federal law suggests that OSC's authority to investigate prohibited personnel practices is exclusive. To the contrary, 5 U.S.C. 2302(c) provides that "[t]he head of each agency shall be responsible for the prevention of prohibited personnel practices, [and] for the compliance with and enforcement of applicable civil service laws, rules, and regulations. . . ." Indeed, the law explicitly contemplates the possibility of investigations of prohibited personnel practices by the Attorney General. See 5 U.S.C. § 1214(d)(2) ("[i]n any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless-- . . . (B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed."). Nor is there any requirement in federal law that agencies report allegations of prohibited personnel practices to OSC. In short, the Department has broad authority to investigate allegations of misconduct by its employees, including allegations of prohibited personnel practices.

² In addition, it is not clear as a legal matter whether the Hatch Act or USERRA (as opposed to other statutes) applies to a case involving removal of U.S. Attorneys. See, e.g., Federal Times article, "Special Counsel Battles for More Clout," July 16, 2007 ("Iglesias has said an OSC official invited him to file a claim, an unusual step. OSC is responsible for investigating USERRA violations at agencies. But attorneys familiar with the act said that it protects only career civil servants, not presidential appointees like Iglesias"). You never have responded to the question of whether OSC has concluded as a threshold legal matter that the Hatch Act or USERRA covers the removal of a Presidential appointee such as a U.S. Attorney.

3. Initiation of the OIG/OPR investigation: Your letter's description of the timing of our respective investigations is also misleading. Your letter states:

I met with DOJ Inspector General (IG) Glenn Fine, along with H. Marshall Jarrett, Counsel, Office of Professional Responsibility (OPR), on May 4, 2007 to discuss our then-pending investigation. After our investigation was opened, Attorney General Alberto Gonzales asked the IG and OPR to conduct a joint investigation into the matters we were considering, according to Mr. Fine.

That is not accurate and also does not reflect what was said to you at the meeting. In fact, the joint OIG/OPR investigation began in mid-March 2007, well before we had any indication of OSC's interest in the U.S. Attorneys matter. The first we learned of any potential OSC investigation was in April 2007 when media reports disclosed that you intended to interview former U.S. Attorney David Iglesias.³ When we learned of the media reports, the OIG and OPR promptly contacted your office to arrange the meeting with you on May 4 to describe the scope of our investigation and to ask you to defer your investigation regarding Mr. Iglesias's USERRA claim in light of our pending criminal investigation.

4. Timing of completion of the OIG/OPR investigation: Your January 25 letter also cites media reports about the anticipated completion date of the OIG/OPR investigation, and your letter states that this "will effectively push OSC's role into the very last months of the administration when there is little hope of any corrective measures or discipline possible."

We are conducting our investigation as thoroughly and expeditiously as possible, and we do not conduct our investigations with regard to election cycles. However, we have already interviewed more than 200 individuals in our comprehensive investigation that, among many other things, examines the reasons for the removal of each U.S. Attorney as well as hiring practices in the Department. It clearly would be much more efficient and timely for you to rely on the results of our investigation rather than to begin a separate, overlapping investigation on the same factual issues.

In sum, we believe the Department's request that you defer your investigation is reasonable, consistent with your normal practice, and appropriate in light of OSC's limited administrative inquiry on the same set of factual issues that the OIG/OPR criminal investigation is examining. However,

³ Compare interview of David Iglesias, MSNBC, April 24, 2007 (Mr. Iglesias stated that he filed a claim with OSC on April 3, 2007) with letter from Glenn Fine and H. Marshall Jarrett to the House and Senate Judiciary Committees, March 26, 2007 (announcing OIG/OPR joint investigation).

we understand that the Department intends to formally respond to your January 25 letter.

Rachel Paulose Matter

This section addresses the comments in your letters to the Attorney General regarding the OIG's actions in the Rachel Paulose matter. For the reasons discussed below, we believe your description of the actions of the OIG with regard to this matter is incomplete and misleading.

On August 7, 2007, your office sent a series of allegations regarding Ms. Paulose to the OIG with a request for assistance. After describing the allegations and OSC's jurisdiction, your specific request was:

In order to determine whether the substantial likelihood requirement is met in this case, we are requesting your assistance. It would be greatly appreciated if you would bring to our attention any information that you have or obtain about these allegations, as well as any actions that have been taken or are planned as a result of these allegations. We will then be in a better position to assess the necessity of formally transmitting the matter to the agency head. We would request your response within 60 days of your receipt of this letter.

In response, a senior OIG attorney determined that the Department was already investigating the allegations regarding Ms. Paulose, and we provided information about the Department's investigations to OSC staff via telephone. The OIG attorney also advised OSC of the Department component (the Executive Office for United States Attorneys (EOUSA)) that OSC should contact if it needed further details about the Department's ongoing investigations or if it wanted to obtain a copy of the EOUSA report when it was completed.

However, the OIG decided that because of the ongoing Department investigations into the allegations contained in OSC's letters, as well as an ongoing OSC review of related allegations in the Minnesota U.S. Attorney's office, the OIG should not launch an overlapping investigation of matters that had already been examined by EOUSA, that were still under review by the Department, or that related to matters being investigated by your office. The OIG attorney informed OSC of this decision in that same telephone conversation noted above.

Subsequently, in a letter dated November 19, 2007, OSC formally referred the matter to the Attorney General for investigation. Based on the initial allegations, the OSC letter concluded that there was a "substantial likelihood" that U.S. Attorney Paulose had mismanaged the Minnesota office

and had engaged in abuses of authority, and required the Attorney General to investigate these matters and report on his findings within 60 days.

However, in that November 19 referral the OSC described the OIG's actions as follows:

On August 7, 2007, OSC referred Mr. Marti's allegations . . . to The Honorable Glenn A. Fine, Inspector General, United States Department of Justice (DOJ OIG). On October 11, 2007, OIG informed OSC by telephone that two of the allegations had been reviewed and resolved previously to the satisfaction of the Executive Office for United States Attorneys (EOUSA). OIG declined to further investigate, to make any inquiry into the remaining allegations, or to provide any written report in response to OSC's referral.

Contrasted with the events described above, your letter unfairly characterizes what OIG staff did to assist OSC and why the OIG decided not to open an investigation into these allegations.

Therefore, on November 26 I wrote you directly about your mischaracterization of the OIG's actions in your November 19 letter. My letter noted that the OIG attorney who responded to your office had made inquiries within the Department and determined that the Department had undertaken reviews related to the allegations of mismanagement and abuse of authority in the U.S. Attorney's Office and that EOUSA was drafting a report with its findings. In addition, the OIG attorney determined that the Department's Security and Emergency Planning Staff had conducted a review related to the allegations concerning mishandling of classified information. She also inquired about the allegations regarding improper use of government funds and was informed that EOUSA had uncovered no financial irregularities in its review. My letter to you also noted that the OIG had provided this information to OSC in response to its request for assistance and not in response to a request for an investigation.⁴

Your January 25 letter, therefore, still misrepresents what the OIG did to determine the status of the allegations and why we decided not to open an overlapping investigation. Your description of the OIG attorney as reporting that the OIG had "asked around" and that the "IG was not planning on doing anything" is both an inaccurate and incomplete characterization of what the OIG attorney said and what information she provided to OSC.

Your letter also suggests that OSC's referral to the OIG was part of an "informal" OSC process to seek an investigation of the matter rather than

⁴ We never received a response from you to this letter.

assistance from the OIG. However, as noted above, the plain language of the letter is contrary to that claim. In addition, the OSC staff attorney who spoke with the OIG attorney about OSC's letter specifically described the OSC letter as a request for the OIG to find out what pre-existing information, if any, the OIG or the Department already had related to the Paulose matter, and the OSC attorney did not describe it to the OIG attorney as a request for an investigation.⁵

Conclusion

The OIG and OPR continue to believe the appropriate and responsible action by OSC would be to defer – consistent with its normal practice – its narrower administrative investigation of the U.S. Attorney matter in light of the ongoing OIG/OPR criminal investigation. OSC should rely on the results of our investigation, which will address in detail the issues within OSC's jurisdiction. However, we understand that the Department intends to provide its formal response to your January 25 letter.

As to the Paulose matter, notwithstanding OSC mischaracterizations of the OIG's actions, the OIG responded appropriately to OSC's request for assistance by determining what the Department had done and was doing to review the allegations. We decided not to open an investigation that would overlap with the Department's and OSC's investigations, and we provided that information to OSC.

Finally, I believe that these disputes have been counterproductive and distracting to the missions of both of our offices. It is my hope that in the

⁵ Your January 25 letter also states that on several occasions in the past OSC had used similar language and in each case "the IG initiated or tasked an inquiry or investigation." This is not true. For example, in one of the cases cited, when the OIG received the request the OIG referred the letter to the component involved for it to respond to OSC, which the component did. Contrary to your claim, the OIG did not "task or initiate" an investigation into the matter. By contrast, in the Paulose case after speaking with an OSC attorney, the OIG attorney attempted to provide assistance to OSC by inquiring directly from the Department about the status of its ongoing review and providing this information to OSC. It is true that the OIG attorney responded orally to OSC's "informal" request rather than in writing, although we believed that was sufficient. In the future, to avoid these mischaracterizations about the OIG's actions we will be sure to respond to OSC in writing, or ask the Department to respond, even when OSC asks for assistance in this type of "informal" referral.

Finally, your discussion of the other OSC matter misses our point and leaves out the most salient sentence of the OSC's comment regarding the OIG report. In that case, OSC commented on an OIG investigation and suggested that the OIG had reached a conclusion on the adequacy of operating funds for certain functions of another agency when, in fact, the OIG had not reached such a conclusion. While we recognize that OSC has the right to comment on OIG reports or reach its own conclusions, we request that you attribute OSC's conclusions to OSC, not to the OIG.

future we can coordinate our work without such distractions, in light of the important issues confronting our offices.

Sincerely,



Glenn A. Fine
Inspector General

cc: The Honorable Michael B. Mukasey
Attorney General

H. Marshall Jarrett
Counsel, Office of Professional Responsibility
U.S. Department of Justice

Fred Fielding
White House Counsel

The Honorable Patrick J. Leahy
Chairman, Senate Committee on the Judiciary

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary

The Honorable John Conyers, Jr.
Chairman, House Committee on the Judiciary

The Honorable Lamar S. Smith
Ranking Member, House Committee on the Judiciary

The Honorable Henry A. Waxman
Chairman, House Committee on Oversight and Government Reform

The Honorable Thomas M. Davis, III
Ranking Member, House Committee on
Oversight and Government Reform



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FAX TRANSMISSION COVER

DATE: 2/11/08

TO: Fred Fielding
White House Counsel

FAX: 202-456-1647

FROM: Glenn A. Fine

NUMBER OF PAGES (including coversheet): 9

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U.S. OFFICE OF SPECIAL COUNSEL
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FACSIMILE COVER SHEET

TO:

Name: The Honorable Fred Fielding	
Title: White House Counsel	
Telephone: (202) 254-2632	Fax: (202) 456-6279

FROM:

Name: Mary Robinson	
Organization: U.S. Office of Special Counsel	
Office / Location: Washington	
Telephone: (202) 254-3611	Fax: (202) 653-5161

Date: January 25, 2008	Number of pages, including this cover sheet: 13
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Message:

Attached is the letter from Special Counsel, Scott J. Bloch to Attorney General, Michael Mukasey dated January 25th, 2008.

If you did not receive the total number of pages shown, please call (202) 254-3600.

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**U.S. OFFICE OF SPECIAL COUNSEL****1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505****The Special Counsel****January 25, 2008**

The Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: OSC File No. DI-07-2160

Dear Mr. Attorney General:

I am writing you because we are being impeded in our investigations of the United States Department of Justice in several areas, including the firing of U.S. Attorney David Iglesias, the investigation into the firing of the other seven U.S. Attorneys to the extent there is an allegation of use of official authority to affect the outcome of an election under the Hatch Act, 5 U.S.C. § 7323, in our investigation into political intrusion into personnel decision making, and in the matter of former U.S. Attorney Rachel Paulose.

The matter of David Iglesias involves an additional allegation that one of the considerations in firing him was his military reserve service, which could be a violation of the Uniform Services Employment and Reemployment Rights Act (USERRA). Moreover, he has alleged prohibited personnel practices (PPPs) as well.

In addition, our Special Task Force is looking at political intrusion into personnel decision making at the United States Department of Justice (DOJ) under 5 U.S.C. 1216(a)(4), and violations of prohibited personnel practices in the use of political affiliation as a preference for hiring under 5 U.S.C. 2302(b)(1), (b)(6) and b(12).

As you may know, the U.S. Office of Special Counsel has exclusive authority to investigate and prosecute violations of the Hatch Act, prohibited personnel practices, and political intrusion into decision making. We also have authority to prosecute violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) affecting federal executive branch employees, and exclusive authority to investigate mixed cases of PPPs and USERRA, which is what Mr. Iglesias' case contains.

U.S. Attorney Matters

I met with DOJ Inspector General (IG), Glenn Fine, along with the H. Marshall Jarrett, Counsel, Office of Professional Responsibility (OPR), on May 4, 2007 to discuss our then-pending investigation. After our investigation was opened, Attorney General Alberto Gonzales asked the IG and OPR to conduct a joint investigation into the matters we were considering,

The Special Counsel

The Honorable Michael B. Mukasey

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according to Mr. Fine. He asked me to step aside while his office and OPR looked at the firing of the U.S. Attorneys and the matters surrounding Monica Goodling's testimony about using political affiliation in hiring of career personnel.

On May 8, 2007, I wrote Mr. Fine that it was clear we could not step aside and not investigate the matters within our exclusive jurisdiction simply on speculation that criminal charges might be preferred from the IG and OPR joint investigation.

We proceeded with our investigation and sent a preservation letter to DOJ. On August 13, 2007, we forwarded an administrative request for documents and answers to written questions under Rule 5.4, which answer was due on September 13, 2007. We received a call from Paul Colborn, Special Counsel, DOJ Office of Legal Counsel (OLC) who also asked that we step aside and allow the IG and OPR to conduct their investigation first. We related several things: our exclusive jurisdiction; that pursuant to 5 U.S.C. § 1214, the U.S. Attorney General could not mete out disciplinary action without consulting OSC; that we have exclusive jurisdiction to obtain corrective action for individuals who might have been aggrieved, and to bring actions for discipline against offending officials pursuant to 5 U.S.C. § 1215.

Subsequently, my office wrote to explain this to OLC on November 6, 2007 to provide them with notice that we had to be consulted on the matter of any disciplinary action proposed. We again made it clear we were looking at the political hiring issues, and that we needed to have some cooperation on obtaining documents pursuant to our request. After receiving no cooperation for four months, we received a letter from Steven Bradbury, PDAAG of OLC, on January 16, 2008. Mr. Bradbury reiterates the request that we step down. Still there is expressed no intent to cooperate until the OIG and OPR are done with their investigation. Reports indicate that DOJ's internal investigation may take another several months. This is unacceptable for OSC to have to wait when OSC has exclusive jurisdiction over the Hatch Act, prohibited personnel practices, and USERRA. This will effectively push OSC's role into the very last months of the administration when there is little hope of any corrective measures or discipline possible.

I requested to see Fred Fielding, White House Counsel, to speak with him about this impeding of our investigations, and to inform him of new areas we were going to be investigating so that we could obtain cooperation there. Despite several calls to his office, he has refused to speak with or see me for over two months.

U.S. Attorney Rachel Paulose matter

On November 19, 2007, I referred to you a finding of a substantial likelihood on the disclosure of John Marti, accusing U.S. Attorney Rachel Paulose of abuse of authority and gross mismanagement, among other things.

On November 26, Mr. Fine responded, accusing OSC of misleading and factually inaccurate representations. He questioned the accuracy of my statement to you that he declined to further investigate in response to our previous referral to his office (OIG). He stated that

The Special Counsel

The Honorable Michael B. Mukasey

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OSC's request was "not a normal OSC referral that sought an agency or OIG investigation of the allegations," and that we did not request an investigation.

That is incorrect. Catherine McMullen, Chief of the Disclosure Unit, forwarded these allegations according to the same procedure our offices have used on at least four previous occasions, using the same language in the referral letter in all cases. In each case, the IG initiated or tasked an inquiry or investigation, and provided to us a written report.¹ In one case, the IG provided a written report, but we found the report insufficient and elected to refer the matter to the Attorney General pursuant to 5 U.S.C. § 1213.²

Our offices have previously enjoyed a good working relationship to address less complex matters through an informal method of referral directly to the IG rather than proceeding formally under 5 U.S.C. § 1213. We similarly referred Mr. Marti's allegations to the IG under this informal process on the belief that it is best to try to deal with matters effectively in the least elevated way whenever possible.

On October 9, 2007, a response was due to OSC. We were informed by telephone on that day, that the OIG had "asked around" and that the "IG was not planning on doing anything." We were also informed that while the IG was pleased to report by telephone on the allegations concerning the misuse of classified information and agency funds, he would not respond to OSC's letter in writing, and would not report on the abuse of authority allegations or "management issues," which were still pending in connection with an ongoing Department of Justice Evaluation and Review Staff (EARS) review. However, he declined to provide a copy of any EARS report.

The characterization in my letter to you, Mr. Attorney General, is accurate and fair. Where the IG provided information telephonically, it was so noted in the letter. My staff informed the IG's office that we would be referring the matter on to the Attorney General after he declined to provide a written response to our informal referral.

The IG also took issue with our failure to provide significant additional detail in our referral to the Attorney General because "OSC has been investigating this matter for months." As you should be aware, this referral was made to the IG, and then to the Attorney General, pursuant to my authority under 5 U.S.C. § 1213. In this capacity, as distinct from OSC's other functions under the Whistleblower Protection Act in 5 U.S.C. § 1214, my office has no investigative authority, and therefore does not conduct investigations. The statute permits me to rely solely on the whistleblower as the source of information on which to base a substantial likelihood determination. No investigative activity occurred or is occurring with regard to this disclosure qua disclosure.

Finally, the IG alleged we have engaged in a pattern of misrepresentation. He cited a recent case in support in which I commented on the agency's findings.³ I am required by

¹ OSC File Nos. DI-98-1089, DI-02-1086, DI-05-2091, and DI-05-2454.

² OSC File No. DI-98-1089.

³ OSC File No. DI-06-0784.

The Special Counsel

The Honorable Michael B. Mukasey

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Section 1213(e)(2) to review the report and determine whether the findings of the agency head appear reasonable and whether the report meets statutory criteria. Section 1213(e)(3) requires that I transmit the agency report, together with my comments or recommendations, to the President and congressional oversight committees.

I commented in my letter to the President and Congress on the findings of the agency report, as mandated by my authorization statute. In response to the investigative finding that an agency component "was unable to conduct regular sustainment training, could not fully staff teams deployed to cover high-profile trials, and was unable to replace heavy-duty vests whose useful life had expired," I added, "...it does appear that the shortage of resources hindered [the agency component's] ability to carry out its mission." Because the systemic problems had been corrected, and the agency took appropriate action, I found the report reasonable. The agency report in that case has been made a part of the public file maintained by my office pursuant to 5 U.S.C. § 1219, and was transmitted to the President and congressional oversight committees along with my letter. The IG simply disagrees.

Margolis letter

On December 11, 2007, I received a letter from Associate Deputy Attorney General David Margolis, regarding allegations from John Marti about USA Rachel Paulose. I referred these allegations to you pursuant to my authority as discussed above. Mr. Margolis' letter purports to respond to the referral, but does not meet the statutory criteria for an agency response under § 1213(d).

Mr. Margolis took issue with my finding of a substantial likelihood that USA Paulose grossly mismanaged her office, and abused her authority. He expressed strong disagreement with what he refers to as my characterizations of USA Paulose's actions, and requested reconsideration of my substantial likelihood finding.

Section 1213(b) requires that within 15 days of receipt of information from a whistleblower such as Mr. Marti, I review the information and "determine whether there is a substantial likelihood that the information discloses..." a wrongdoing as alleged. Under this statute, I have no investigative authority, and therefore must make a determination on the basis of the information supplied by the whistleblower.

The letter from Mr. Margolis does not meet the statutory criteria for investigation and reporting to me. Rather, it expresses Mr. Margolis' opinion that the allegations, if true, do not constitute gross mismanagement and an abuse of authority. This is wholly insufficient and reflects a deliberate disregard for the law under which OSC operates and with which you are obligated to comply. Mr. Margolis reports that "the Department has reviewed and assessed the issues surrounding Mr. Marti's allegations," and not only declines to investigate and report, but demands a retraction of my finding of substantial likelihood. In the same letter, Mr. Margolis informs my office that the EARS review is ongoing. This conflict suggests that Mr. Margolis' opinions are premature.

The Special Counsel

The Honorable Michael B. Mukasey

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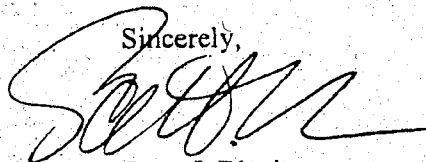
The law that mandates I refer whistleblower disclosures for investigation and reporting also requires that I transmit the report and my comments to the President and congressional oversight committees, and make the report available to the public. Are you requesting that I report to the President that you refuse to investigate disclosures of wrongdoing made by a career federal prosecutor, an employee of your agency? That you demand that I reconsider my statutorily authorized substantial likelihood finding and rescind my referral because it is the opinion of your Associate Deputy Attorney General that there has been no gross mismanagement? That you demand that I report back to this career federal employee, a recipient of the Attorney General's award, who has courageously come forward to report wrongdoing?

When considered in light of other pending requests from the IG and OLC to step aside from enforcing federal laws exclusively reserved to my office, this reveals a disturbing pattern of disregard for the authority of my office. I am gravely concerned that the Attorney General is asking a presidentially-appointed official to disregard his statutory duty.

I enclose a copy of my November 19 referral and renew my request that you investigate and report to me as required. I anticipate your response within the statutorily prescribed period, otherwise I will report to the President and congressional oversight committees that you have failed to comply.

Cooperation with our investigations is not optional. It is required by administrative rule, and failure to cooperate is a violation. I hereby ask that our Administrative Request for documents be complied with and that we receive unimpeded cooperation in our duty to exclusively investigate the matters within our jurisdiction.

Sincerely,

Scott J. Bloch
Special Counsel

Enclosure:

Letter to the Honorable Michael Mukasey dated November 19th, 2007.

cc:

The Honorable Fred Fielding
White House CounselThe Honorable Glenn A. Fine
Inspector General

The Special Counsel

The Honorable Michael B. Mukasey

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The Honorable Patrick Leahy
Chair, Senate Judiciary Committee

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee

The Honorable John Conyers
Chair, House Judiciary Committee

The Honorable Lamar S. Smith
Ranking Member, House Judiciary Committee

The Honorable Henry Waxman
Chair, Committee on Oversight and Government Reform

The Honorable Tom Davis
Ranking member, Committee on Oversight and Government Reform



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The Special Counsel

November 19, 2007

The Honorable Michael Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: OSC File No. DI-07-2160

Dear Mr. Attorney General:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that the United States Attorney for the District of Minnesota, Rachel K. Paulose, engaged in conduct, comments, and actions that constitute an abuse of authority and gross mismanagement. I am forwarding the following information from John R. Marti, an Assistant United States Attorney, Office of the United States Attorney, District of Minnesota (USAO MN), Minneapolis, Minnesota.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

Mr. Marti, who has consented to the release of his name, was until April, 2007, First Assistant United States Attorney (FAUSA) under United States Attorney (USA) Paulose. He disclosed to OSC that before, during, and after his tenure as FAUSA, he observed conduct, comments, and actions by USA Paulose that constitute an abuse of authority and gross mismanagement.

On August 7, 2007, OSC referred Mr. Marti's allegations, as described below, to The Honorable Glenn A. Fine, Inspector General, United States Department of Justice

The Special Counsel

The Honorable Michael Mukasey
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(DOJ OIG). On October 11, 2007, OIG informed OSC by telephone that two of the allegations had been reviewed and resolved previously to the satisfaction of the Executive Office for United States Attorneys (EOUSA). OIG declined to further investigate, to make any inquiry into the remaining allegations, or to provide any written report in response to OSC's referral.

Mr. Marti alleged that, through USA Paulose's management and administration by fear and intimidation, she has rendered the USAO without adequate and efficient leadership sufficient to conduct its mission. He described an office in which line AUSAs do not have supervisory guidance and support. USA Paulose has had difficulty in retaining a FAUSA, and currently has a leadership team, members of whom have told USAO employees that they are operating to contain the USA's abuses of authority.

Two FAUSAs have resigned in the last eight months, including Mr. Marti. Other resignations have contributed to the overall organizational uncertainty and lack of leadership, including two Chiefs of the Civil Division, one Chief of the Criminal Division, and two Administrative Officers. A candidate expected to start as Administrative Officer recently withdrew. According to Mr. Marti, the supervisory officials who have resigned did so in protest of USA Paulose's heavy-handed and inappropriate management of the USAO. Mr. Marti reports that her abuse of authority is continuing to cause significant morale and retention problems in the office. These concerns were attributed to the poor leadership and behavior of the USA by John Kelly, then Deputy Director, EOUSA, and the DOJ Evaluation and Review Staff (EARS) review of USAO MN, as reported to Criminal Division staff in October 2007.

Mr. Marti alleged that this dramatic turnover of the top supervisory officials calls into question whether the USAO MN is severely impaired in operating as a credible and effective prosecutorial arm of the agency, and whether it can continue to fulfill its mission to prosecute criminal and civil cases on behalf of the Federal government.

By way of example, Mr. Marti reported that USA Paulose delayed implementation of a top DOJ initiative, Project Safe Childhood¹, in favor of planning and executing her investiture as USA. When approached by Tracy Braun, the AUSA assigned to implement Project Safe Childhood, regarding missed deadlines for reporting to DOJ, Ms. Paulose directed repeatedly that AUSA Braun "hold off on that." USA Paulose stated directly to Mr. Marti that the investiture was the most important event to happen to the office. In accordance with that sentiment, she used agency resources and time over a four month period to plan the investiture, including directing up to six employees to work on planning the event. Mr. Marti alleged that the commitment of these employees' time and effort to the investiture directly affected the implementation of the agency-wide priority to advance Project Safe Childhood. According to Mr. Marti, if Project Safe Childhood had not been delayed by work on the investiture, the USAO would have been

¹ Project Safe Childhood is a Department of Justice initiative begun in 2006, as a comprehensive, department-wide, prosecutorial initiative to protect children from online exploitation and abuse. See, <http://www.projectsafechildhood.gov/>, last accessed August 6, 2007.

The Special Counsel

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prosecuting child exploitation cases much more aggressively at least one year earlier than actually occurred.

As a result of the lack of consistent leadership, Mr. Marti alleged that the USA's relationship with outside entities, including the judiciary, law enforcement, and the community, has suffered. Mr. Marti reports that several judges in the District of Minnesota have commented on their desire to see the current USA's tenure end. In addition, several AUSAs charged by USA Paulose with additional collateral responsibilities, including those that require regular communications with DOJ such as the handling of sensitive issues involving Native American voting rights, were directed not to communicate directly with DOJ officials or the media. USA Paulose's imposition of these tight controls on the flow of information between the USAO MN and DOJ left supervisory USAO officials unable to perform their duties and responsibilities adequately, hampered day-to-day operations, and adversely affected the accomplishment of the USAO mission.

Mr. Marti cites, as another example of the gross mismanagement of the office, USA Paulose's routine requests to use agency funds to pay for receptions, meals, and other products not authorized to be purchased with federally allocated money. On one occasion, USA Paulose requested that staff purchase place settings and silverware to be used at a breakfast in her office for the Minnesota Governor's staff. She also requested the purchase of Christmas trees, cards and other decorations not authorized to be purchased with federal funds.

When confronted with the regulations prohibiting such expenditures, Mr. Marti alleged, USA Paulose became irate, abusive, and demeaning toward the employees who attempted to advise her of the regulations, including Mr. Marti. During these tirades, USA Paulose made racially and culturally insensitive remarks. She also threatened and attempted, many times successfully, to remove or reassign many employees who questioned her decisions. Throughout his tenure as FAUSA, Mr. Marti observed numerous occasions in which USA Paulose viewed government regulations and the requirement to operate within those regulations, as constraints on her authority. She berated employees who regularly reminded her of applicable government regulations.²

Specifically, Mr. Marti reported that in March 2007, he discovered that classified information had been routinely left unsecured and unattended in USA Paulose's office. According to Mr. Marti, the material in question includes reports related to the war on terror drawn from the SIPRNET³ websites of numerous federal law enforcement and intelligence agencies. These reports were, for approximately one year, compiled in a

² OIG informed OSC by telephone that EOUSA conducted an Evaluation and Review Staff (EARS) review including a three-month snapshot of the budget and spending issues for the USAO MN. The EARS review did not find anything unusual, and no further review is planned. OIG declined to provide a written report to OSC.

³ SIPRNET, the Secret Internet Protocol Router Network, is a Department of Defense network used to transmit classified information among defense and law enforcement agencies.

The Special Counsel

The Honorable Michael Mukasey
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binder and routinely retrieved and delivered by a secretary who did not have clearance to handle the material. The binder was stored unsecured on a bookshelf in USA Paulose's office. Office employees, some without clearance, and building maintenance personnel, have access to this office. Mr. Marti also discovered that keys to USA Paulose's Secure Telephone Unit (STU) were kept in an unapproved file cabinet. He took immediate actions to correct the compromise of classified information and the improper STU key storage.

On April 2, 2007, Mr. Marti filed a mandatory report with the Executive Office for United States Attorneys (EOUSA), in the form of a memorandum to Eric Dorsey, Information Systems Program Manager, EOUSA. Thereafter, Mr. Marti reported, no inquiry or investigation of the matter was conducted as required by Chapter 1, Section 3 of the DOJ, Security Program Operating Manual.⁴

Mr. Marti also disclosed that, although he and others at the USAO MN have informed EOUSA of their concerns regarding USA Paulose's management and leadership of the USAO, they are unaware of any inquiry, investigation, or action in connection with these allegations. Although Mr. Kelly made a site visit to the USAO in April 2007, to discuss these matters with staff, and an EARS review was initiated, it appears that no action has since been taken to address the significant leadership and morale problems in the USAO MN.

I have concluded that there is a substantial likelihood that USA Paulose has grossly mismanaged the USAO MN, and has engaged in abuses of her authority as a USA. As previously stated, I am referring this information to you for an investigation of Mr. Marti's allegations and a report of your findings within 60 days of your receipt of this letter.

By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension

⁴ OIG advised OSC by telephone that EOUSA did initiate the required inquiry. As a result, the USA admitted the improper storage, and was counseled regarding appropriate security measures.

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

Los Angeles Times

BLOCH

[http://www.latimes.com/news/nationworld/nation/la-na-probe29jan29,1,3774918.story?](http://www.latimes.com/news/nationworld/nation/la-na-probe29jan29,1,3774918.story?ctrack=1&cset=true)

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From the Los Angeles Times

Justice Dept. accused of blocking Gonzales probe

Office of Special Counsel chief says his investigation into alleged politicization of the attorney general's agency has been repeatedly 'impeded.'

By Richard B. Schmitt and Tom Hamburger

Los Angeles Times Staff Writers

January 29, 2008

WASHINGTON — The government agency that enforces one of the principal laws aimed at keeping politics out of the civil service has accused the Justice Department of blocking its investigation into alleged politicizing of the department under former Atty. Gen. Alberto R. Gonzales.

Scott J. Bloch, head of the U.S. Office of Special Counsel, wrote Atty. Gen. Michael B. Mukasey last week that the department had repeatedly "impeded" his investigation by refusing to share documents and provide answers to written questions, according to a copy of Bloch's letter obtained by the Los Angeles Times.

The Justice Department wants Bloch to wait until its own internal investigation is completed. A department official signaled recently that the investigation is examining the possibility of criminal charges.

But that, the regulator wrote, could take until the last months of the Bush administration, "when there is little hope of any corrective measures or discipline possible" being taken by his office.

Bloch's allegations show how the controversy, which mostly focused on the dismissals of nine U.S. attorneys in 2006, continues to boil inside government.

Since last spring, the Justice Department's inspector general and its top ethics officer have been jointly investigating the firings, along with allegations that the department, under Gonzales, allowed political considerations to factor into the hiring of career employees.

Bloch runs an obscure agency charged with protecting federal whistle-blowers from reprisal and enforcing the Hatch Act, which limits use of government resources for election purposes. He has gained a measure of renown for investigating reports that the White House gave political briefings about GOP election prospects to senior officials at federal agencies.

A controversial figure in Washington, he has been accused by subordinates of harassment and intimidation, and also of mismanaging his office. The Office of Personnel Management's inspector general has been investigating these claims and is also looking into allegations that Bloch erased files on his own computers while the personnel office inquiry was under way.

Bloch, who has denied those allegations, asserted in his letter to Mukasey that he had independent

authority to investigate "political intrusion into personnel decision making" at the Justice Department.

He said that he had asked Justice officials on several occasions for access to documents and other evidence and that he had been repeatedly rebuffed.

He also accused the department of failing to take seriously allegations against the former U.S. attorney in Minneapolis, Rachel K. Paulose. A career prosecutor in her office had filed a complaint with Bloch accusing Paulose of mismanagement and abuse of her authority.

Bloch said he referred the complaint to the Justice Department for further investigation because there was a "substantial likelihood" that the allegations, if proven, would constitute wrongdoing.

He said Justice officials disagreed with his conclusion without conducting an adequate review. His letter indicates that Justice officials believed that Bloch had failed to investigate the complaint before sending it on to the department.

Paulose resigned late last year as the U.S. attorney in Minneapolis to accept a top legal policy job at Justice Department headquarters in Washington.

"Are you requesting that I report to the president that you refuse to investigate disclosures of wrongdoing made by a career federal prosecutor, an employee of your agency?" Bloch wrote to Mukasey.

He added that the demand that he step aside in the broader U.S. attorney probe "reveals a disturbing pattern of disregard for the authority of my office."

Peter A. Carr, a Justice Department spokesman, said, "We are reviewing the letter and will respond to Mr. Bloch as appropriate."

A spokesman for Bloch declined to comment.

Mukasey is set to appear Wednesday before the Senate Judiciary Committee at an oversight hearing, the first since he was sworn in as attorney general late last year.

The status of the internal investigation of the department under Gonzales has been of great interest to lawmakers. The furor over the U.S. attorney dismissals was one of the factors that drove Gonzales, one of Bush's closest confidants, from office last year. Democrats believe that the U.S. attorneys were identified for dismissal based on their history of pursuing cases that could benefit Republican office-holders.

Separately, Bloch's office is reviewing an extensive complaint from a whistle-blower regarding politicization of the U.S. Commission on Civil Rights. His office has not yet decided whether to launch an investigation, but a number of interest groups Monday accused the Justice Department of helping Republicans gain control over the commission.

The organizations, which include Citizens for Responsibility and Ethics in Washington, the NAACP and the Leadership Conference on Civil Rights, have drafted a letter asking Mukasey to rescind a 2004 department legal opinion that sanctioned the decision by a Republican member of the panel to switch parties in order to stay on the commission. The civil rights groups, which have called a news conference for today, said the department memo appeared to undermine Congress'

intent to have a political balance on the commission.

rick.schmitt@latimes.com

tom.hamburger@latimes.com

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**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: White House Counsel	
Telephone: (202) 254-2632	Fax: (202) 456-6279

FROM:

Name: Mary Robinson	
Organization: U.S. Office of Special Counsel	
Office / Location: Washington	
Telephone: (202) 254-3611	Fax: (202) 653-5161

Date: January 25, 2008	Number of pages, including this cover sheet: 13
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Message:

Attached is the letter from Special Counsel, Scott J. Bloch to Attorney General, Michael Mukasey dated January 25th, 2008.

If you did not receive the total number of pages shown, please call (202) 254-3600.

THIS DOCUMENT IS INTENDED FOR THE USE OF THE PARTY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR PROTECTED FROM DISCLOSURE UNDER APPLICABLE LAW. If you are not the addressee, or a person authorized to deliver the document to the addressee, you are hereby notified that any review, disclosure, dissemination, copying or other action based on the content of this communication is not authorized. If you have received this document in error, please immediately notify us by telephone and return to us at the above address by mail.



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

The Special Counsel

January 25, 2008

The Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: OSC File No. DI-07-2160

Dear Mr. Attorney General:

I am writing you because we are being impeded in our investigations of the United States Department of Justice in several areas, including the firing of U.S. Attorney David Iglesias, the investigation into the firing of the other seven U.S. Attorneys to the extent there is an allegation of use of official authority to affect the outcome of an election under the Hatch Act, 5 U.S.C. § 7323, in our investigation into political intrusion into personnel decision making, and in the matter of former U.S. Attorney Rachel Paulose.

The matter of David Iglesias involves an additional allegation that one of the considerations in firing him was his military reserve service, which could be a violation of the Uniform Services Employment and Reemployment Rights Act (USERRA). Moreover, he has alleged prohibited personnel practices (PPPs) as well.

In addition, our Special Task Force is looking at political intrusion into personnel decision making at the United States Department of Justice (DOJ) under 5 U.S.C. 1216(a)(4), and violations of prohibited personnel practices in the use of political affiliation as a preference for hiring under 5 U.S.C. 2302(b)(1), (b)(6) and b(12).

As you may know, the U.S. Office of Special Counsel has exclusive authority to investigate and prosecute violations of the Hatch Act, prohibited personnel practices, and political intrusion into decision making. We also have authority to prosecute violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) affecting federal executive branch employees, and exclusive authority to investigate mixed cases of PPPs and USERRA, which is what Mr. Iglesias' case contains.

U.S. Attorney Matters

I met with DOJ Inspector General (IG), Glenn Fine, along with the H. Marshall Jarrett, Counsel, Office of Professional Responsibility (OPR), on May 4, 2007 to discuss our then-pending investigation. After our investigation was opened, Attorney General Alberto Gonzales asked the IG and OPR to conduct a joint investigation into the matters we were considering,

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according to Mr. Fine. He asked me to step aside while his office and OPR looked at the firing of the U.S. Attorneys and the matters surrounding Monica Goodling's testimony about using political affiliation in hiring of career personnel.

On May 8, 2007, I wrote Mr. Fine that it was clear we could not step aside and not investigate the matters within our exclusive jurisdiction simply on speculation that criminal charges might be preferred from the IG and OPR joint investigation.

We proceeded with our investigation and sent a preservation letter to DOJ. On August 13, 2007, we forwarded an administrative request for documents and answers to written questions under Rule 5.4, which answer was due on September 13, 2007. We received a call from Paul Colborn, Special Counsel, DOJ Office of Legal Counsel (OLC) who also asked that we step aside and allow the IG and OPR to conduct their investigation first. We related several things: our exclusive jurisdiction; that pursuant to 5 U.S.C. § 1214, the U.S. Attorney General could not mete out disciplinary action without consulting OSC; that we have exclusive jurisdiction to obtain corrective action for individuals who might have been aggrieved, and to bring actions for discipline against offending officials pursuant to 5 U.S.C. § 1215.

Subsequently, my office wrote to explain this to OLC on November 6, 2007 to provide them with notice that we had to be consulted on the matter of any disciplinary action proposed. We again made it clear we were looking at the political hiring issues, and that we needed to have some cooperation on obtaining documents pursuant to our request. After receiving no cooperation for four months, we received a letter from Steven Bradbury, PDAAG of OLC, on January 16, 2008. Mr. Bradbury reiterates the request that we step down. Still there is expressed no intent to cooperate until the OIG and OPR are done with their investigation. Reports indicate that DOJ's internal investigation may take another several months. This is unacceptable for OSC to have to wait when OSC has exclusive jurisdiction over the Hatch Act, prohibited personnel practices, and USERRA. This will effectively push OSC's role into the very last months of the administration when there is little hope of any corrective measures or discipline possible.

I requested to see Fred Fielding, White House Counsel, to speak with him about this impeding of our investigations, and to inform him of new areas we were going to be investigating so that we could obtain cooperation there. Despite several calls to his office, he has refused to speak with or see me for over two months.

U.S. Attorney Rachel Paulose matter

On November 19, 2007, I referred to you a finding of a substantial likelihood on the disclosure of John Marti, accusing U.S. Attorney Rachel Paulose of abuse of authority and gross mismanagement, among other things.

On November 26, Mr. Fine responded, accusing OSC of misleading and factually inaccurate representations. He questioned the accuracy of my statement to you that he declined to further investigate in response to our previous referral to his office (OIG). He stated that

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OSC's request was "not a normal OSC referral that sought an agency or OIG investigation of the allegations," and that we did not request an investigation.

That is incorrect. Catherine McMullen, Chief of the Disclosure Unit, forwarded these allegations according to the same procedure our offices have used on at least four previous occasions, using the same language in the referral letter in all cases. In each case, the IG initiated or tasked an inquiry or investigation, and provided to us a written report.¹ In one case, the IG provided a written report, but we found the report insufficient and elected to refer the matter to the Attorney General pursuant to 5 U.S.C. § 1213.²

Our offices have previously enjoyed a good working relationship to address less complex matters through an informal method of referral directly to the IG rather than proceeding formally under 5 U.S.C. § 1213. We similarly referred Mr. Marti's allegations to the IG under this informal process on the belief that it is best to try to deal with matters effectively in the least elevated way whenever possible.

On October 9, 2007, a response was due to OSC. We were informed by telephone on that day, that the OIG had "asked around" and that the "IG was not planning on doing anything." We were also informed that while the IG was pleased to report by telephone on the allegations concerning the misuse of classified information and agency funds, he would not respond to OSC's letter in writing, and would not report on the abuse of authority allegations or "management issues," which were still pending in connection with an ongoing Department of Justice Evaluation and Review Staff (EARS) review. However, he declined to provide a copy of any EARS report.

The characterization in my letter to you, Mr. Attorney General, is accurate and fair. Where the IG provided information telephonically, it was so noted in the letter. My staff informed the IG's office that we would be referring the matter on to the Attorney General after he declined to provide a written response to our informal referral.

The IG also took issue with our failure to provide significant additional detail in our referral to the Attorney General because "OSC has been investigating this matter for months." As you should be aware, this referral was made to the IG, and then to the Attorney General, pursuant to my authority under 5 U.S.C. § 1213. In this capacity, as distinct from OSC's other functions under the Whistleblower Protection Act in 5 U.S.C. § 1214, my office has no investigative authority, and therefore does not conduct investigations. The statute permits me to rely solely on the whistleblower as the source of information on which to base a substantial likelihood determination. No investigative activity occurred or is occurring with regard to this disclosure qua disclosure.

Finally, the IG alleged we have engaged in a pattern of misrepresentation. He cited a recent case in support in which I commented on the agency's findings.³ I am required by

¹ OSC File Nos. DI-98-1089, DI-02-1086, DI-05-2091, and DI-05-2454.

² OSC File No. DI-98-1089.

³ OSC File No. DI-06-0784.

The Special Counsel

The Honorable Michael B. Mukasey

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Section 1213(e)(2) to review the report and determine whether the findings of the agency head appear reasonable and whether the report meets statutory criteria. Section 1213(e)(3) requires that I transmit the agency report, together with my comments or recommendations, to the President and congressional oversight committees.

I commented in my letter to the President and Congress on the findings of the agency report, as mandated by my authorization statute. In response to the investigative finding that an agency component "was unable to conduct regular sustainment training, could not fully staff teams deployed to cover high-profile trials, and was unable to replace heavy-duty vests whose useful life had expired," I added, "...it does appear that the shortage of resources hindered [the agency component's] ability to carry out its mission." Because the systemic problems had been corrected, and the agency took appropriate action, I found the report reasonable. The agency report in that case has been made a part of the public file maintained by my office pursuant to 5 U.S.C. § 1219, and was transmitted to the President and congressional oversight committees along with my letter. The IG simply disagrees.

Margolis letter

On December 11, 2007, I received a letter from Associate Deputy Attorney General David Margolis, regarding allegations from John Marti about USA Rachel Paulose. I referred these allegations to you pursuant to my authority as discussed above. Mr. Margolis' letter purports to respond to the referral, but does not meet the statutory criteria for an agency response under § 1213(d).

Mr. Margolis took issue with my finding of a substantial likelihood that USA Paulose grossly mismanaged her office, and abused her authority. He expressed strong disagreement with what he refers to as my characterizations of USA Paulose's actions, and requested reconsideration of my substantial likelihood finding.

Section 1213(b) requires that within 15 days of receipt of information from a whistleblower such as Mr. Marti, I review the information and "determine whether there is a substantial likelihood that the information discloses..." a wrongdoing as alleged. Under this statute, I have no investigative authority, and therefore must make a determination on the basis of the information supplied by the whistleblower.

The letter from Mr. Margolis does not meet the statutory criteria for investigation and reporting to me. Rather, it expresses Mr. Margolis' opinion that the allegations, if true, do not constitute gross mismanagement and an abuse of authority. This is wholly insufficient and reflects a deliberate disregard for the law under which OSC operates and with which you are obligated to comply. Mr. Margolis reports that "the Department has reviewed and assessed the issues surrounding Mr. Marti's allegations," and not only declines to investigate and report, but demands a retraction of my finding of substantial likelihood. In the same letter, Mr. Margolis informs my office that the EARS review is ongoing. This conflict suggests that Mr. Margolis' opinions are premature.

The Special Counsel

The Honorable Michael B. Mukasey

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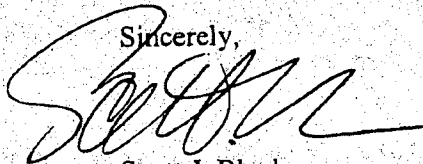
The law that mandates I refer whistleblower disclosures for investigation and reporting also requires that I transmit the report and my comments to the President and congressional oversight committees, and make the report available to the public. Are you requesting that I report to the President that you refuse to investigate disclosures of wrongdoing made by a career federal prosecutor, an employee of your agency? That you demand that I reconsider my statutorily authorized substantial likelihood finding and rescind my referral because it is the opinion of your Associate Deputy Attorney General that there has been no gross mismanagement? That you demand that I report back to this career federal employee, a recipient of the Attorney General's award, who has courageously come forward to report wrongdoing?

When considered in light of other pending requests from the IG and OLC to step aside from enforcing federal laws exclusively reserved to my office, this reveals a disturbing pattern of disregard for the authority of my office. I am gravely concerned that the Attorney General is asking a presidentially-appointed official to disregard his statutory duty.

I enclose a copy of my November 19 referral and renew my request that you investigate and report to me as required. I anticipate your response within the statutorily prescribed period, otherwise I will report to the President and congressional oversight committees that you have failed to comply.

Cooperation with our investigations is not optional. It is required by administrative rule, and failure to cooperate is a violation. I hereby ask that our Administrative Request for documents be complied with and that we receive unimpeded cooperation in our duty to exclusively investigate the matters within our jurisdiction.

Sincerely,

Scott J. Bloch
Special Counsel

Enclosure:

Letter to the Honorable Michael Mukasey dated November 19th, 2007.

cc:

The Honorable Fred Fielding
White House CounselThe Honorable Glenn A. Fine
Inspector General

The Special Counsel

The Honorable Michael B. Mukasey

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The Honorable Patrick Leahy
Chair, Senate Judiciary Committee

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee

The Honorable John Conyers
Chair, House Judiciary Committee

The Honorable Lamar S. Smith
Ranking Member, House Judiciary Committee

The Honorable Henry Waxman
Chair, Committee on Oversight and Government Reform

The Honorable Tom Davis
Ranking member, Committee on Oversight and Government Reform



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
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The Special Counsel

November 19, 2007

The Honorable Michael Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: OSC File No. DI-07-2160

Dear Mr. Attorney General:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that the United States Attorney for the District of Minnesota, Rachel K. Paulose, engaged in conduct, comments, and actions that constitute an abuse of authority and gross mismanagement. I am forwarding the following information from John R. Marti, an Assistant United States Attorney, Office of the United States Attorney, District of Minnesota (USAO MN), Minneapolis, Minnesota.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

Mr. Marti, who has consented to the release of his name, was until April, 2007, First Assistant United States Attorney (FAUSA) under United States Attorney (USA) Paulose. He disclosed to OSC that before, during, and after his tenure as FAUSA, he observed conduct, comments, and actions by USA Paulose that constitute an abuse of authority and gross mismanagement.

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The Special Counsel

The Honorable Michael Mukasey

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(DOJ OIG). On October 11, 2007, OIG informed OSC by telephone that two of the allegations had been reviewed and resolved previously to the satisfaction of the Executive Office for United States Attorneys (EOUSA). OIG declined to further investigate, to make any inquiry into the remaining allegations, or to provide any written report in response to OSC's referral.

Mr. Marti alleged that, through USA Paulose's management and administration by fear and intimidation, she has rendered the USAO without adequate and efficient leadership sufficient to conduct its mission. He described an office in which line AUSAs do not have supervisory guidance and support. USA Paulose has had difficulty in retaining a FAUSA, and currently has a leadership team, members of whom have told USAO employees that they are operating to contain the USA's abuses of authority.

Two FAUSAs have resigned in the last eight months, including Mr. Marti. Other resignations have contributed to the overall organizational uncertainty and lack of leadership, including two Chiefs of the Civil Division, one Chief of the Criminal Division, and two Administrative Officers. A candidate expected to start as Administrative Officer recently withdrew. According to Mr. Marti, the supervisory officials who have resigned did so in protest of USA Paulose's heavy-handed and inappropriate management of the USAO. Mr. Marti reports that her abuse of authority is continuing to cause significant morale and retention problems in the office. These concerns were attributed to the poor leadership and behavior of the USA by John Kelly, then Deputy Director, EOUSA, and the DOJ Evaluation and Review Staff (EARS) review of USAO MN, as reported to Criminal Division staff in October 2007.

Mr. Marti alleged that this dramatic turnover of the top supervisory officials calls into question whether the USAO MN is severely impaired in operating as a credible and effective prosecutorial arm of the agency, and whether it can continue to fulfill its mission to prosecute criminal and civil cases on behalf of the Federal government.

By way of example, Mr. Marti reported that USA Paulose delayed implementation of a top DOJ initiative, Project Safe Childhood¹, in favor of planning and executing her investiture as USA. When approached by Tracy Braun, the AUSA assigned to implement Project Safe Childhood, regarding missed deadlines for reporting to DOJ, Ms. Paulose directed repeatedly that AUSA Braun "hold off on that." USA Paulose stated directly to Mr. Marti that the investiture was the most important event to happen to the office. In accordance with that sentiment, she used agency resources and time over a four month period to plan the investiture, including directing up to six employees to work on planning the event. Mr. Marti alleged that the commitment of these employees' time and effort to the investiture directly affected the implementation of the agency-wide priority to advance Project Safe Childhood. According to Mr. Marti, if Project Safe Childhood had not been delayed by work on the investiture, the USAO would have been

¹ Project Safe Childhood is a Department of Justice initiative begun in 2006, as a comprehensive, department-wide, prosecutorial initiative to protect children from online exploitation and abuse. See, <http://www.projectsafechildhood.gov/>, last accessed August 6, 2007.

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prosecuting child exploitation cases much more aggressively at least one year earlier than actually occurred.

As a result of the lack of consistent leadership, Mr. Marti alleged that the USA's relationship with outside entities, including the judiciary, law enforcement, and the community, has suffered. Mr. Marti reports that several judges in the District of Minnesota have commented on their desire to see the current USA's tenure end. In addition, several AUSAs charged by USA Paulose with additional collateral responsibilities, including those that require regular communications with DOJ such as the handling of sensitive issues involving Native American voting rights, were directed not to communicate directly with DOJ officials or the media. USA Paulose's imposition of these tight controls on the flow of information between the USAO MN and DOJ left supervisory USAO officials unable to perform their duties and responsibilities adequately, hampered day-to-day operations, and adversely affected the accomplishment of the USAO mission.

Mr. Marti cites, as another example of the gross mismanagement of the office, USA Paulose's routine requests to use agency funds to pay for receptions, meals, and other products not authorized to be purchased with federally allocated money. On one occasion, USA Paulose requested that staff purchase place settings and silverware to be used at a breakfast in her office for the Minnesota Governor's staff. She also requested the purchase of Christmas trees, cards and other decorations not authorized to be purchased with federal funds.

When confronted with the regulations prohibiting such expenditures, Mr. Marti alleged, USA Paulose became irate, abusive, and demeaning toward the employees who attempted to advise her of the regulations, including Mr. Marti. During these tirades, USA Paulose made racially and culturally insensitive remarks. She also threatened and attempted, many times successfully, to remove or reassign many employees who questioned her decisions. Throughout his tenure as FAUSA, Mr. Marti observed numerous occasions in which USA Paulose viewed government regulations and the requirement to operate within those regulations, as constraints on her authority. She berated employees who regularly reminded her of applicable government regulations.²

Specifically, Mr. Marti reported that in March 2007, he discovered that classified information had been routinely left unsecured and unattended in USA Paulose's office. According to Mr. Marti, the material in question includes reports related to the war on terror drawn from the SIPRNET³ websites of numerous federal law enforcement and intelligence agencies. These reports were, for approximately one year, compiled in a

² OIG informed OSC by telephone that EOUSA conducted an Evaluation and Review Staff (EARS) review including a three-month snapshot of the budget and spending issues for the USAO MN. The EARS review did not find anything unusual, and no further review is planned. OIG declined to provide a written report to OSC.

³ SIPRNET, the Secret Internet Protocol Router Network, is a Department of Defense network used to transmit classified information among defense and law enforcement agencies.

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binder and routinely retrieved and delivered by a secretary who did not have clearance to handle the material. The binder was stored unsecured on a bookshelf in USA Paulose's office. Office employees, some without clearance, and building maintenance personnel, have access to this office. Mr. Marti also discovered that keys to USA Paulose's Secure Telephone Unit (STU) were kept in an unapproved file cabinet. He took immediate actions to correct the compromise of classified information and the improper STU key storage.

On April 2, 2007, Mr. Marti filed a mandatory report with the Executive Office for United States Attorneys (EOUSA), in the form of a memorandum to Eric Dorsey, Information Systems Program Manager, EOUSA. Thereafter, Mr. Marti reported, no inquiry or investigation of the matter was conducted as required by Chapter 1, Section 3 of the DOJ, Security Program Operating Manual.⁴

Mr. Marti also disclosed that, although he and others at the USAO MN have informed EOUSA of their concerns regarding USA Paulose's management and leadership of the USAO, they are unaware of any inquiry, investigation, or action in connection with these allegations. Although Mr. Kelly made a site visit to the USAO in April 2007, to discuss these matters with staff, and an EARS review was initiated, it appears that no action has since been taken to address the significant leadership and morale problems in the USAO MN.

I have concluded that there is a substantial likelihood that USA Paulose has grossly mismanaged the USAO MN, and has engaged in abuses of her authority as a USA. As previously stated, I am referring this information to you for an investigation of Mr. Marti's allegations and a report of your findings within 60 days of your receipt of this letter.

By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension

⁴ OIG advised OSC by telephone that EOUSA did initiate the required inquiry. As a result, the USA admitted the improper storage, and was counseled regarding appropriate security measures.

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.