

By Telecopier and First-Class Mail
November 1, 2011

Hon. Phyllis K. Fong
Chair
Council of the Inspectors General on Integrity and Efficiency
Inspector General, U.S. Department of Agriculture
1400 Independence Ave. SW, Room 117W
Washington, D.C. 20250

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

Dear Ms. Fong:

I am writing to request that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) compel the release of a prompt and final determination to an investigation it assigned in 2005 to the Office of Personnel Management's Office of Inspector General (OPM IG). This investigation concerns alleged misconduct at the U.S. Office of Special Counsel (OSC), the federal agency charged by Congress and the President with upholding the rights of federal whistleblowers and other federal employees. OPM IG has failed to release the findings of its investigation despite the fact that the investigation concluded nearly four years ago.

In March 2005, our clients – a group of former OSC civil service employees and several national public interest groups¹ – filed an OSC charge against the Office of Special Counsel itself, alleging various acts of retaliation and misconduct by former Special Counsel Scott J. Bloch, at that time the head of OSC. Because of the obvious conflict in having OSC investigate a charge against itself, the matter was referred to the President's Council on Integrity and Efficiency (PCIE) in June 2005, and PCIE assigned OPM IG to perform an investigation into the matter. As you of course know, in 2008 PCIE became part of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). This complaint is therefore now under CIGIE's purview. See Exhibit 1 (Letter from P. Marshall to D. Katz (Oct. 17, 2005), acknowledging referral from PCIE).

¹ Our clients include the Government Accountability Project (GAP), which seeks to protect the rights of government whistleblowers; the Project on Government Oversight (POGO), which investigates corruption and other misconduct in order to ensure a more accountable and ethical federal government; and Public Employees for Environmental Responsibility (PEER), which seeks to protect the rights of public employees who blow the whistle on environmental abuses. Our clients also include several former OSC employees.

This complaint was and is a matter of significant public concern, given its allegations of whistleblower retaliation by the agency charged with safeguarding the federal workforce against whistleblower retaliation; politically and religiously-based hiring for career positions; discrimination on the basis of sexual orientation or perceived sexual orientation; refusal to enforce federal merit systems protection laws; dismissal of hundreds of OSC charges without investigation; placing unlawful “gag orders” on federal government staff; and deliberate interference with a federal IG investigation. I have enclosed with this letter a copy of the complaints against Mr. Bloch, which detail these allegations. See Exhibits 2 and 3 (Complaint and amendment to Complaint). Ultimately, Mr. Bloch’s misconduct in office was so significant that he was removed by the White House as Special Counsel in October 2008.

In 2008, the U.S. Department of Justice and the U.S. Attorneys’ Office for the District of Columbia opened a criminal investigation into Mr. Bloch, based on allegations that he willfully impeded the investigation into our clients’ claims. In April 2010, the U.S. Attorney’s Office then formally charged Mr. Bloch with violation of 2 U.S.C. § 192, misdemeanor Contempt of Congress. Since that time, the matter has been stalled in court, with Mr. Bloch initially submitting a guilty plea but then, after many months, successfully filing an appeal in order to withdraw that guilty plea. Given the likelihood of a trial, which has yet to be scheduled, sentencing upon any guilty verdict, and potential further appeals, it appears that this criminal matter will take significant further time, and possibly further years, to fully resolve.

Although it is our understanding that the OPM IG concluded its investigation into our clients’ charge more than three years ago, OPM has unfortunately not released the results of this investigation while Mr. Bloch’s criminal matter is pending. The prompt release of the conclusions of OPM IG’s investigation is vital for our clients, who have waited more than six and a half years for redress for the retaliation against them by Mr. Bloch after they blew the whistle on his unlawful conduct as the head of OSC.

A final report of investigation in the OSC complaint is urgent not only for our clients, but for the millions of federal employees for whom the Office of Special Counsel is the official protector against reprisal for raising issues of serious public concern. Until the results of OPM IG’s investigation are released, federal employees cannot move beyond the extremely damaging conduct of Mr. Bloch’s tenure and our clients who suffered significant economic damages and career-derailing retaliation remain uncompensated for the harm Mr. Bloch caused them.

Moreover, a final report of investigation in the OSC complaint is vital for the public. Our clients’ complaint reported numerous instances of unlawful whistleblower reprisal, violation of federal law, and refusal by OSC to enforce protections of federal

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employees. Even one of Mr. Bloch's top deputies, James Byrne, in announcing his resignation in 2008, concluded that "the independence and very existence of the Office of Special Counsel are – and shall remain – at risk" because of Mr. Bloch's "political agendas and personal vendettas" as alleged in our clients' complaint. The lack of a final resolution from OPM IG thus harms not only the specific complainants in that case, but hinders the public's understanding of what the government has done to appropriately address these serious issues of widespread public concern.

As the Supreme Court and the federal Courts of Appeal have long recognized, "justice delayed is justice denied." Rohr Indus., Inc. v. Washington Metro. Area Transit Auth., 720 F.2d 1319, 1327 (D.C. Cir. 1983); accord Guardians Ass'n v. Civil Serv. Comm'n of City of New York, 463 U.S. 582, 627 (1983). Six and a half years is far too long to wait for the results of this important investigation, especially considering that the investigation actually concluded nearly four years ago. We respectfully request that CIGIE compel OPM IG to promptly release the results of its investigation.

We appreciate your prompt efforts to help bring our clients' long wait for justice to an end. We look forward to hearing from you.

Sincerely,



Debra S. Katz



Avi Kumin

Attorneys for OSC Complainants

Enclosures

cc: (w/o attachments)

Patrick E. McFarland, Inspector General, U.S. Office of Personnel Management
Carolyn Lerner, Special Counsel, U.S. Office of Special Counsel
Kathryn Ruemmler, Esquire, White House Counsel
Sen. Joseph Lieberman, Chairman, Senate Homeland Security and Governmental
Affairs Committee
Sen. Susan Collins, Ranking Member, Senate Homeland Security and
Governmental Affairs Committee

Sen. Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Sen. Ron Johnson, Ranking Member, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Sen. Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee

Rep. Darrell Issa, Chairman, House Oversight and Government Reform Committee

Rep. Elijah Cummings, Ranking Member, House Oversight and Government Reform Committee

Rep. Dennis Ross, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and Labor Policy

Rep. Stephen Lynch, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and Labor Policy

Mark D. Jones, Executive Director, Council of the Inspectors General on Integrity and Efficiency

Exhibit 1



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

OFFICE OF
THE INSPECTOR GENERAL

October 17, 2005

Debra S. Katz, Esquire
Bernabei and Katz, PLLC
1773 T Street, NW
Washington, D.C. 20009

Dear Ms. Katz:

I am writing to advise you that Inspector General Patrick E. McFarland, U.S. Office of Personnel Management, has been asked by Clay Johnson III, Chair, President's Council on Integrity and Efficiency to investigate the allegations contained in your March 3, 2005 letter concerning Mr. Scott Bloch, Special Counsel, U.S. Office of Special Counsel. I am requesting that you provide me with an additional copy of this letter, attachments and all documents related to this matter. Special Agent in Charge (SAIC) Jill Maroney from our Office of Investigations is available to collect these documents. Please contact SAIC Maroney, at (202) 606-1141, when these documents are available.

Thank you for your cooperation.

Sincerely,

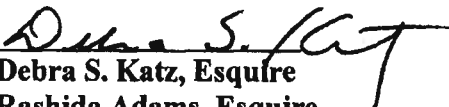
A handwritten signature in cursive script that reads "Pat A. Marshall".

Patricia A. Marshall
Special Counsel to
Inspector General

Exhibit 2

**COMPLAINT OF PROHIBITED PERSONNEL PRACTICES AGAINST
SPECIAL COUNSEL SCOTT BLOCH**

Submitted by:


**Debra S. Katz, Esquire
Rashida Adams, Esquire
Bernabei and Katz, PLLC
1773 T Street, NW
Washington, D.C. 20009
(202) 745-1942**

Counsel for:

**Anonymous Career Employees of the
U.S. Office of Special Counsel**

The Government Accountability Project

The Human Rights Campaign

**Public Employees for Environmental
Responsibility**

The Project on Government Oversight

March 3, 2005

STATEMENT IN SUPPORT OF
COMPLAINT OF PROHIBITED PERSONNEL PRACTICES
AGAINST U.S. SPECIAL COUNSEL SCOTT J. BLOCH

I. INTRODUCTION

This statement is filed pursuant to 5 U.S.C. § 1214 in support of the attached complaints alleging the commission of a series of prohibited personnel practices as well as violations of civil service laws, and other acts of malfeasance by U.S. Special Counsel Scott J. Bloch.¹

A. The Complainants

There are two groups of complainants:

1. An alliance of public interest organizations that have a strong and direct interest in assuring that OSC impartially and effectively performs its mission of promoting the merit system and protecting whistleblowers against retaliation. These organizations are the Government Accountability Project, the Project on Government Oversight, Public Employees for Environmental Responsibility, and the Human Rights Campaign.

OSC has jurisdiction over the complaints of these organizations pursuant to 5 U.S.C. § 1214(a)(1)(A), which provides that “the Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.” As OSC has long recognized, this provision permits any individual or organization to invoke OSC’s jurisdiction by filing a complaint with the agency, alleging the commission of prohibited personnel practices, or the violation of civil service laws, rules and regulations, whether or not the complainants have themselves been the victims of the illegal actions. This long held interpretation is based on the clear statutory language as well as the broad interest the public possesses in protecting whistleblowers against retaliation and ensuring compliance with the laws that promote the merit-based civil service.

2. The second set of complainants consists of a group of OSC career employees who were subject to the illegal and retaliatory involuntary geographic reassignments described below and/or the hostile work environment arising out of the culture of fear and

¹Attached hereto is an executed copy of OSC’s Complaint Form, which incorporates this Statement by reference.

retaliation that Mr. Bloch has fostered at OSC, as well as an illegal gag order that Mr. Bloch issued in April 2004. Because they fear retaliation by Mr. Bloch, they are filing their complaint anonymously, through their counsel, Debra Katz, of the law firm of Bernabei & Katz, PLLC.

B. Summary of Prohibited Personnel Practices and Violations of Civil Service Law

The prohibited personnel practices and violations of civil service law that Special Counsel Bloch has committed include:

- Creation of a hostile work environment arising out of an escalating series of retaliatory acts against career OSC staff, culminating in the involuntary geographic reassignment of twelve career employees because of protected whistleblowing and/or perceived whistleblowing, and the subsequent proposal to remove those employees who declined the involuntary reassignments.
- Threatening to retaliate against employees by hastening their termination dates and bringing further unspecified charges against them because they refused to enter an agreement waiving their rights to challenge the illegal reassignments and proposed removals.
- Violation of the First Amendment rights of OSC career employees by the issuance of an illegal gag order, which prohibits them from communicating with the press, Congress, or any outside party regarding so-called “confidential or sensitive internal agency matters”, without the permission of Mr. Bloch or a member of his political staff.
- Violation of the Anti-Gag statute by imposing a non-disclosure policy on career staff that fails to include required guarantees regarding employees’ statutory free speech rights.
- Violation of the Lloyd LaFollette Act, 5 U.S.C. § 7211, which guarantees all federal employees the right to communicate with Congress, through a non-disclosure policy which precludes employees from engaging in such communications without the permission of Mr. Bloch or a member of his political staff.

C. Summary of Other Acts of Malfeasance and Failure to Perform Statutory Duties

As detailed below, the complainants’ allegations involve not only the commission of prohibited personnel practices and violations of civil service laws, but also numerous acts of malfeasance by Mr. Bloch and failures to perform statutory duties. These include the abandonment of merit-based competitive hiring for career positions in the agency, the

purging of existing career staff to make way for Mr. Bloch's personal picks, the misuse of special hiring authorities, the refusal to enforce existing statutory prohibitions against sexual orientation discrimination in the federal workforce, the summary closure of hundreds of whistleblower disclosures submitted to the agency, and the politicization of Hatch Act enforcement. In many instances, Mr. Bloch has made misleading statements to the public and Congress about these actions.

Indeed, Mr. Bloch's obsession with secrecy and his aversion to transparency have manifested themselves yet again in connection with the most recent of his illegal personnel actions—the forced geographic reassignments and proposed removals of experienced OSC career staff. As is widely known at the agency, Mr. Bloch offered employees who are being removed for refusing to accept involuntary geographic reassignments several additional weeks of pay, but only if they agreed to waive their legal rights, and submit to a gag order. The waiver of rights included, not only a waiver of employees' rights to file complaints with the Office of Special Counsel or the Merit Systems Protection Board, but also an agreement not to file complaints about Mr. Bloch with the President's Council on Integrity and Efficiency. Further, Mr. Bloch conditioned the additional weeks of pay upon an agreement by the employees not to discuss his illegal actions with anyone at all, unless compelled to do so by subpoena.

To their credit, the employees rejected this offer, whose terms are antithetical to the very mission that OSC was established to promote -- transparency and accountability in government. Thereafter, as detailed below, Mr. Bloch threatened to take further action against the affected employees, by hastening their departure and bringing additional charges against them, for refusing to waive their legal rights.

D. Summary of Relief Requested

The complainants' allegations against Special Counsel Bloch are serious ones, which go to the heart of the OSC's credibility and effectiveness as a watchdog of the merit system. Complainants are entitled by law to an independent investigation of their complaints and to an opportunity for those complaints to be prosecuted on their behalf by the Office of Special Counsel. As is readily apparent, however, Mr. Bloch cannot credibly oversee the investigation of the complaints because he is their subject. Nor can any of his political staff or any members of OSC career staff, who all serve as his subordinates, take part in the investigation or be involved in any decisions related to it. Indeed, the OSC's complainants' ability to remain anonymous would be jeopardized if any OSC staff were assigned to work on this complaint because if the matter was assigned to one of the complainants, they would have to recuse themselves, thereby revealing their identities.

To avoid further injury, complainants request that OSC immediately stay the reassignments and/or removals of affected OSC employees and stay further implementation of the gag order pending an investigation. Further, in light of the fact that OSC cannot investigate these complaints itself, complainants request that they be

referred for an investigation and recommendation of corrective and/or disciplinary action by an impartial Office of Inspector General, chosen by the Chairman of the President's Council on Integrity and Efficiency.

II. STATEMENT OF FACTS AND CHRONOLOGY OF EVENTS

A. Background: Public Controversy Erupts During the Special Counsel's Second Month in Office When He Removes References to Sexual Orientation Discrimination from OSC Website, Resulting in a Rebuke by the White House

Special Counsel Bloch took office on January 5, 2004. One month later, in one of his first official acts, Mr. Bloch ordered that all references to OSC's jurisdiction over complaints by federal workers alleging sexual orientation discrimination be "scrubbed" from OSC's website, and its official publications. The items scrubbed included, among others, references to sexual orientation discrimination contained in OSC's mandatory complaint form and informational flyer. The scrubbed items also included a June 2003 OSC press release announcing the settlement of a sexual orientation discrimination complaint filed by an applicant for a position with the Internal Revenue Service, which resulted in the imposition of disciplinary action against an IRS supervisor. See June 2003 press release, attached and incorporated herein as Exhibit 1.

Almost immediately after Mr. Bloch took these actions, they became publicly known, when the National Treasury Employees Union issued a press release on February 12, 2004, along with a letter from its President, protesting the action. See February 12, 2004, press release attached and incorporated herein as Exhibit 2. A heated public controversy erupted. The controversy triggered significant national media attention and bipartisan expressions of concern by members of Congress.²

²Among the Congressional inquiries was a February 19, 2004 letter from the Senate Committee on Governmental Affairs, signed by both Chairman Susan Collins (R-Maine) and ranking minority member Joseph Lieberman (D-Connecticut), among others; a March 4, 2004 letter from Rep. Shays (R-Connecticut), Rep. Greenwood (R-Pennsylvania), and Rep. Simmons (R-Connecticut); and a separate March 4, 2004 letter signed by 70 other Members of the House on the Democratic side. See Congressional Letters attached and incorporated herein as Exhibit 3. The letter from Senators Collins and Lieberman expressed concern that Mr. Bloch's decision to remove all references to jurisdiction over sexual orientation discrimination complaints "appears inconsistent with . . . assurances" that Mr. Bloch had given to committee staff in written submissions and conversations during consideration of his nomination two months before, that he would continue OSC's policy of protecting federal employees against sexual orientation discrimination.

Notwithstanding negative media and Congressional reaction, and against the counsel of members of his career staff, Mr. Bloch resisted initial calls to restore the information he had ordered removed from OSC's web site and publications. Instead, he announced that he was conducting a "full legal review" of a question that had already been settled for over 20 years within the rest of the Executive Branch: whether it is a prohibited personnel practice within the meaning of 5 U.S.C. § 2302(b)(10) to discriminate against federal employees on the basis of their sexual orientation. See February 27, 2004 OSC Press Release, attached and incorporated herein as Exhibit 4.

The controversy continued over the next month, until it reached its zenith on March 31, 2004, when several Members of the House and Senate held a joint press conference to condemn Mr. Bloch's rollback of rights, and to call on the White House to assist in the resolution of the matter. The same day, the White House responded, issuing a strongly-worded statement, which was widely interpreted as a rebuke of Mr. Bloch. The White House confirmed that "[l]ong-standing federal policy prohibits discrimination against federal employees based on sexual orientation. President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work." See Statement attached and incorporated herein as Exhibit 5 ("Employees are protected from bias for sexual orientation, White House says," April 1, 2004 Federal Times).

B. The Special Counsel Feigns Compliance With the White House Directive, But Never Restores the Deleted Information to OSC's Website and Continues to Apply His Discredited Interpretation of the Law

Shortly after the White House rebuke, on April 8, 2004, Mr. Bloch issued an OSC press release acknowledging the White House statement, and purporting to announce the results of his "legal review." The press statement was vague and confusing. Rather than simply acknowledging that discrimination based on sexual orientation is a prohibited personnel practice, the statement asserted that OSC would enforce protections against sexual orientation discrimination, where such discrimination was based on "imputed private conduct." See April 8, 2004 statement attached and incorporated herein as Exhibit 6.

It is now clear that Mr. Bloch issued this opaque statement only in order to deflect the criticism being directed against him and to feign compliance with the President's clear statement that he expected federal agencies (presumably including OSC) to enforce prohibitions against sexual orientation discrimination. In fact, Mr. Bloch never shifted his course on this issue; on the contrary, he refuses to this day to enforce the statutory prohibition against sexual orientation discrimination that flows from 5 U.S.C. § 2302(b)(10).

Thus, OSC's practice under Mr. Bloch's direction has been to close complaints by federal employees alleging discrimination based on sexual orientation, even in the most

egregious of circumstances. This is demonstrated in a very recent case involving Michael Levine, a 32 year veteran of the Forest Service, who had an unblemished record until he blew the whistle on another agency manager's misconduct. Mr. Levine, who is gay, was suspended for 14 days on trumped up charges after he made protected disclosures to the agency inspector general alleging that a fellow manager was running a sporting goods business from the worksite, that he was absent from the worksite without authorization, that he had sold equipment to the Forest Service for his own profit, and that he had improperly rented a trailer owned by his parents, on behalf of the Forest Service.

Mr. Levine filed a complaint with OSC in November 2003, alleging that he was suspended in retaliation for whistleblowing and because of his sexual orientation. On January 27, 2005, after sitting on Mr. Levine's complaint for over a year, and refusing to return Mr. Levine's many telephone calls, OSC closed both the whistleblower retaliation and sexual orientation discrimination allegations in his case, without investigation.

OSC declined to investigate Mr. Levine's allegations of whistleblower retaliation despite the fact that the suspension he suffered occurred almost immediately after Mr. Levine made his protected disclosures, and despite the fact that the subsequent charges leveled against Mr. Levine were patently pretextual. OSC declined to investigate the allegations of sexual orientation discrimination despite the fact that the trumped up charges against Mr. Levine were crafted by a personnel officer who remarked to a witness, in reference to Mr. Levine, "don't you just hate these fucking faggots?" Indeed, OSC closed the case without investigation, despite the fact that Mr. Levine provided a written statement from this witness, attesting to the fact that the personnel officer had made this despicable statement of animus. OSC closed the case on the grounds that while the hateful statement was "offensive" and "insensitive," Mr. Levine had apparently not satisfied Mr. Bloch's bizarre legal test, which holds that discrimination based on off duty sexual conduct is illegal, but that discrimination based on sexual orientation is not.

The handling of Mr. Levine's complaint, which is detailed in the attached letter from the Human Rights Campaign, including Mr. Levine's correspondence with OSC was disgraceful. See Letter from Human Rights Campaign to S. Bloch (March 2, 2005), attached and incorporated herein as Exhibit 7. As far as we know, however, it is only the tip of the iceberg. To date, Mr. Bloch has never restored the disputed materials to OSC's website or other publications and he has continually stonewalled Congressional requests that he provide a clear explanation of his policy regarding sexual orientation discrimination.³

³It bears noting that Mr. Levine's case was handled through the special procedure Mr. Bloch instituted, requiring that all sexual orientation claims be processed under the supervision of one of his political appointees, James McVay. The OSC employee who wrote the letter under Mr. McVay's supervision (Thomas Forrest) is one of the employees Mr. Bloch personally brought on board in the last year, as described infra, through a non-competitive secret hiring procedure. Mr. Forrest appears to have secured

C. **Mr. Bloch's Open Expressions of Animus Toward Staff Suspected of "Leaking" to the Press, His Public Statements Denouncing OSC "Leakers," and His Issuance of a Gag Order to OSC Staff**

During the course of the controversy described above, Mr. Bloch made known his belief--and his anger--that OSC staff had "leaked" word to the media of his actions on the sexual orientation issue. Mr. Bloch raised this issue both internally and publicly. Internally, Mr. Bloch complained to career staff that members of the press were calling and telling him that career OSC employees were "agitated" over his actions. He also expressed to members of the career staff his belief that he could not "trust" any of them in light of the public airing of the controversy.

Further, Mr. Bloch expressed his hostility and suspicions of the career staff publicly. In an interview with the Federal Times, which occurred in the midst of the controversy, Mr. Bloch is quoted as stating that "[i]t's unfortunate that we have a leaker or leakers in our office who went to the press rather than coming to me. . . ." See Federal Times (Mar. 22, 2004), attached and incorporated herein as Exhibit 9 ("New counsel reviews whistleblower, bias laws.")

The full text of what Mr. Bloch told the reporter is even more revealing. It is as follows:

Federal Times: Any regrets over how you kind of entered this office under a bit of controversy? Anything you wish you would have done differently?

Bloch: No I'm proud of the decision I made to follow the law and do a full legal review. It's unfortunate that we have a leaker or leakers in our office who went to the press rather than coming to me and complaining and saying we need to do this differently or I need to have my voice heard or I don't think you're doing the right thing. No one came and said that. I talked to my senior staff and they made suggestions about what to take down from the website. That's all I heard. And the next thing I know the press was calling me and telling me I have people in my office agitated. I think that's unfortunate, because we need to focus on our mission as an agency and pull together to do what's right for the workers and right for the merit system."

his position because he is in the same Army reserve unit as Deputy Special Counsel James Renne. Mr. Renne himself is on the public record vehemently opposing the civil rights of gay and lesbian citizens. See <http://www.priestsforlife.org/government/sq.htm> attached and incorporated herein as Exhibit 8.

In fact, Mr. Bloch's claim that "no one" had raised questions internally about his decision to "scrub" the website, was false. Members of the career staff raised concerns with him about this action, as well as raising concerns about his new "interpretation" of the law. The senior staff did not "make suggestions" to him about what to take off the website; they simply identified for him the parts of the website that referred to OSC's role in enforcing the prohibition on sexual orientation in the federal worksite. Mr. Bloch did not invite the career staff to participate in his "legal review." Indeed, they never received any further information about how that "review" was conducted, much less any notification of how the legal issue was resolved (other than the confusing press release described above).⁴

To forestall further leaks to the media, at the same time he announced the results of his "legal review" on the sexual orientation issue, Mr. Bloch imposed a patently illegal gag order on OSC career staff. Shortly after the April 8 press release referred to above, the staff was sent an e-mail that reads, in its entirety, as follows:

The Special Counsel has requested that we convey to you that he and his staff have completed their legal review of OSC's jurisdiction to process claims under title 5, section 2302(b)(10), alleging sexual orientation discrimination. Their conclusions can be found in a recently posted press release on OSC's website. If, in the performance of your case-processing duties, current or potential complainants, their representatives, or agency representatives ask about OSC's policy on (b)(10) complaints, you should simply refer them to the press release on our web site as a complete and definitive statement of OSC's policy.

Please also note that the Special Counsel has directed that any official comment on or discussion of confidential or sensitive internal agency matters with anyone outside OSC must be approved in advance by an IOSC official.⁵

See E-Mail to OSC staff, attached and incorporated herein as Exhibit 10.

Mr. Bloch's gag order triggered another round of negative media attention, including coverage in the Washington Post and other media outlets. In remarks to the Washington Post, Mr. Bloch made further disingenuous representations, claiming that neither he nor his staff had approved the final language of this e-mail. In fact, although Mr. Bloch's statement was technically accurate, he and/or his staff definitely did approve

⁴Mr. Bloch has never produced a copy of the "legal review" he claimed to have conducted, notwithstanding the request of several Members of Congress that he do so.

⁵ "IOSC" stands for "Immediate Office of the Special Counsel"—i.e. Mr. Bloch or a member of his political staff.

an earlier version of the e-mail that was identical to the final version in all material respects. Moreover, it was he who directed that a gag order be issued in the first place.

Further, while Mr. Bloch claims he never reviewed the final language of the gag order, he has never rescinded it notwithstanding that it is directly violative of the Whistleblower Protection Act, the "Anti-Gag" Statute, the First Amendment, and the Lloyd LaFollette Act. OSC staff, including the anonymous complainants, have reasonably concluded that the gag order is still in effect and that Mr. Bloch will punish OSC employees who violate the gag order⁶

D. Mr. Bloch's Ensuing Pattern of Non-Competitive Hiring, Including the Hiring of Unqualified Cronies, and Marginalization of Career Staff

In the months after the controversy over the sexual orientation issue and gag order occurred, Mr. Bloch began to increasingly exclude career OSC staff from any participation in key agency management and policy decisions. He also doubled the number of Schedule C (i.e. political) employees at the agency, and dramatically increased the size of his immediate staff. In doing so, he used positions budgeted for program staff to assemble a palace guard.

In addition, during this period, Mr. Bloch stripped senior executives and mid-level career managers of their longstanding authority to hire their subordinate employees, and began a pattern of personally hiring employees for career positions on a non-competitive basis. Consistent with this new policy, all career hires have been hand-picked by either Mr. Bloch or his political staff. In every case, the career supervisors of these new hires were completely excluded from the hiring process and did not meet the new hires until their first day of work.⁷

⁶ Mr. Bloch's displeasure with the negative press attention he received in the wake of these controversies continued over succeeding months. Indeed, six months later, in an interview with the hometown newspaper where he had attended college, Mr. Bloch characterized the entire controversy over his actions as resulting in what he called "a huge, unnecessary hullabaloo." See Lawrence Journal-World (Oct. 1, 2004), attached and incorporated herein as Exhibit 11.

⁷ In his recent letter to Congressman Waxman, Mr. Bloch asserted that "our hires since coming to OSC have been with the input of senior personnel in the career service. . . ." See Letter to Congressman H. Waxman from S. Bloch, attached and incorporated herein as Exhibit 12. To the extent that Mr. Bloch is asserting that senior personnel in the career service at OSC have had input into his hiring decisions, that claim is inconsistent with the truth. The sole exception to complainants knowledge is Mr. Bloch's agreement to hire one of OSC's incumbent law clerks into an attorney position in the Hatch Act Unit, at the recommendation of the Unit's supervisor. If Mr. Bloch is asserting that senior personnel in the career service at some other agency have had input into the hiring decisions,

In most, if not all cases, the new hires brought on board by Mr. Bloch also had no background in employment or labor law. Worse still, a number of them are known to have a personal connection or affiliation to Mr. Bloch or his Deputy, James Renne. For example, Mr. Bloch hired two attorneys at Mr. Renne's recommendation, one of whom (as noted earlier) serves with Mr. Renne in his Army reserve unit and another who is the brother of an officer in that unit. Neither one has relevant experience in labor or employment law.

Mr. Bloch also hired Alan Hicks, the former headmaster of a Pennsylvania boarding school attended by one or more of his children (St. Gregory's Academy). According to a recent letter that Mr. Bloch sent to Congressman Henry Waxman, he hired Mr. Hicks non-competitively to serve as a "consultant" or "expert" on a "intermittent" basis, purportedly pursuant to 5 U.S.C. § 3109 and 5 CFR § 304.103. See Letter from S. Bloch to H. Waxman, attached and incorporated herein as Exhibit 12.

Mr. Hicks' hiring cannot be justified under these provisions. Under the regulations, a "consultant" is "a person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional or technical knowledge or experience." 5 CFR § 304.102(b). An "expert" is a person who is "specially qualified by education and experience to perform difficult and challenging tasks in a particular field beyond the usual range of achievement of competent persons in that field." The regulations further provide that "an expert is regarded by other persons in the field as an authority or practitioner of unusual competence and skill in a professional, scientific, technical or other activity." 5 CFR § 304.102(d).

Mr. Hicks is a former school master, who apparently also had some experience teaching logic and philosophy at the University of Kansas (where Mr. Bloch also served on the adjunct faculty). In his letter to Representative Waxman, Mr. Bloch asserted, without further explanation, that he hired Mr. Hicks to "improve [OSC's] procedural operations and advice [sic] on training initiatives." It is unclear exactly what this means. Mr. Bloch has not revealed how Mr. Hicks is being compensated or precisely what it is he has done for the agency in the past, or is expected to do in the future. So far as the career staff is aware, at this point, Mr. Hicks' work has included giving a dry speech at the OSC off-site conference last Spring about the "philosophy of work" and playing some undefined role concerning the processing of cases in OSC's Disclosure Unit. On the basis of the latter, he was provided with copies of confidential OSC disclosure files for his review. So far as anyone at OSC can determine, Mr. Hicks has no experience

complainants are unaware of whether that assertion is true or false, but it is clearly beside the point.

relevant to OSC's work, and appears to have been given a federal job only because of his prior personal connection with Mr. Bloch.⁸

In addition to invoking extraordinary statutory authority to give Mr. Hicks a federal job on a non-competitive basis, Mr. Bloch has also personally recruited and hired several inexperienced recent graduates of the Ave Maria School of Law, a law school that is religiously oriented and only provisionally accredited.⁹

Mr. Bloch has engaged in a cover up of his hiring practices by refusing to provide documents concerning his non-competitive hiring and no-bid contracts, which were the subject of a Freedom of Information Act Request made by Public Employees for Environmental Responsibility in June 2004. PEER publicized Mr. Bloch's refusal to comply with FOIA as well as his crony hiring in a press release it issued November 17, 2004. See Press Release from PEER, attached and incorporated herein as Exhibit 16.

Mr. Bloch was deeply angered by PEER's press release. It is entirely reasonable to infer that Mr. Bloch suspected the career staff of "leaking" again, this time by providing information to PEER about his non-competitive hiring practices and the potentially embarrassing hiring arrangement he entered on behalf of OSC with Mr. Hicks.

Finally, during this time period, in October, 2004, Marie Glover, the GS-15 Director of OSC's Human and Administrative Resource Management Branch, resigned abruptly and unexpectedly, giving only a few days notice. At the same time, her senior personnel specialist, Joanne O'Quinn, also retired on very short notice. Ms. Glover's duties included ultimate responsibility for all OSC personnel actions and procurement decisions. She had served at OSC in similar functions since OSC was created in 1979, through the terms of every Special Counsel, and had developed a reputation for very high

⁸As noted, Mr. Hicks is the former headmaster of a Catholic boarding school in Pennsylvania (St. Gregory's Academy). Mr. Hicks apparently left that position in the wake of a scandal concerning, among other things, allegations of priests sleeping with young male students at the Academy. See "Scranton Scandal" and "Scranton Scandal-A Follow Up" by Rod Dreher in National Review On Line (February 7 and February 15, 2002) at <http://www.nationalreview.com/dreher/dreher020702.shtml> and <http://www.nationalreview.com/dreher/dreher021502.shtml> attached and incorporated herein as Exhibits 13 and 14, respectively. See also, "The Seduction of the Society of St. John" by Michael Chapman, at <http://www.rcf.org/docs/seductionssjpl.htm> attached and incorporated herein as Exhibit 15.

⁹ The mission statement of the Ave Maria School of Law, located in Ann Arbor, Michigan, asserts that the school is "dedicated to educating lawyers with the finest professional skills characterized by the harmony of faith and reason in fidelity to the teachings of the Catholic Church."

integrity and strict compliance with law and regulation in all personnel and procurement actions that she approved.¹⁰

Ms. Glover's sudden and unexplained departure resulted in a serious loss to OSC of decades of institutional knowledge and experience. To OSC staff, Ms. Glover's abrupt and unexplained resignation was an additional signal of severe management dysfunction, and possible improprieties in the personnel and procurement functions.

E. Mr. Bloch's Purge of Experienced Career Staff through Involuntary Reassignments

On January 6, 2005, Mr. Bloch escalated his attack on the career staff by directing the involuntary geographic reassignment of twelve career OSC employees (approximately 20 percent of the legal and investigative team at headquarters, including two of the four career senior executives at OSC). This reassignment was announced with no notice whatsoever to the staff, except for the two career executives, who had been told of their reassignments only the previous day.¹¹

Seven employees, including one of the two career senior executives, as well as the Director of OSC's Alternative Dispute Resolution (ADR) program, were directed to report to a newly created field office in Detroit, Michigan. These seven employees were senior executive Cary P. Sklar (Associate Special Counsel for Investigation and Prosecution Division ("IPD") III), and six members of his staff: Linda Myers (OSC's ADR Director), Ron Engler (Attorney Team Leader, IPD III), Travis Elliott (Senior Attorney, IPD III), Brian Uryga (Attorney, IPD III), David Brooks (Attorney IPD III) and Sharon Lee (Investigator, IPD III). Three other members of Mr. Sklar's staff, along with an attorney in the OSC complaints examining unit, were told that they would be involuntarily transferred to fill vacancies in OSC's existing Dallas field office.¹²

¹⁰Ms. Glover has indicated to several individuals that although she is not willing to discuss the circumstances of her departure, or her tenure under Mr. Bloch with the press, she would be willing to cooperate fully in any official investigation.

¹¹Apparently, the only reason these senior executives were given any notice at all, was to feign compliance with 5 C.F.R. § 317.901(b), which requires an agency to consult with senior executives before giving them the required 60 day notice of their geographic reassignment. The "consultation" with Mr. Sklar and Mr. Reukauf was, of course, a farce, as Mr. Bloch was already planning to announce his reorganization to the staff, and give them their 60 day notices, the next day.

¹² The employees reassigned to the Dallas Field Office are Alberto Rivera-Fournier (Senior Attorney, IPD III), Caprice Andrews (Investigator, IPD III), Joan Howell (Investigator, IPD III) and Michael Lupinski (Attorney, Complaints Examining Unit).

Two of the employees subject to the transfer to the Detroit and/or Dallas field offices are openly gay. In addition, Mr. Sklar, Mr. Elliot and Ms. Myers had all previously been employed by the National Treasury Employees Union, the organization that first brought the sexual orientation discrimination controversy to light through a February 12, 2004 press release. Mr. Engler is the staff attorney who had handled the IRS sexual orientation discrimination case that was the subject of the press release deleted from the OSC website by Mr. Bloch, and never restored.

The twelfth employee reassigned was William Reukauf, a career senior executive who has been with OSC since 1983, and has served for extended periods of time as Acting Special Counsel. Mr. Reukauf has been in charge of OSC's Hatch Act enforcement for many years, and is widely perceived by the staff as an individual of high integrity and impeccable impartiality. We understand that Mr. Reukauf has angered Mr. Bloch and been accused of "disloyalty" for raising concerns internally concerning certain policy and management decisions.¹³

Mr. Reukauf was reassigned to head the existing Oakland field office. The Oakland field office has a staff of ten employees. Further, like the Dallas field office, the Oakland field office has been headed successfully for many years by an experienced grade 15 manager.

Mr. Bloch initially advised the affected employees that they must report to their new assignments within 60 days. He also advised them that they would be fired if they did not agree to relocate. Eight of the twelve employees subject to the geographic reassignment have declined them.¹⁴ At least three of the four employees who initially indicated their acceptance of their reassignment did so under duress.¹⁵ Seven of the eight employees who declined the transfer have been given notices of removal. One of the transferred employees who had initially expressed acceptance of the transfer under duress has resigned in the face of the involuntary reassignment, and found another position.

The management justifications for the reassignment of the twelve career employees to the field as part of a "reorganization" are patently pretextual. In a January

¹³ In addition, Mr. Reukauf may well have been in disfavor because of his role in the Hatch Act prosecution of Alan White, which was undertaken during the term of the prior Special Counsel. Mr. Bloch's political Deputy, James Renne, and Mr. Bloch's Senior Advisor, Brendan McGrath, had previously worked with Mr. White at the Office of the Inspector General, Department of Defense. They held him in high regard and disapproved of his prosecution by OSC.

¹⁴ These employees are Mr. Sklar, Mr. Rivera-Fournier, Mr. Brooks, Mr. Elliot, Ms. Andrews, Ms. Myers, Ms. Lee, Mr. Engler, and Ms. Howell.

¹⁵ Mr. Uryga, Mr. Engler, and Mr. Reukauf.

7th press release, which Mr. Bloch issued as the media and others began making inquiries, he asserted that the new Detroit field office was created “after extensive discussions with staff and an outside assessment team’s review of the Agency’s structure.” See Press Release, attached and incorporated herein as Exhibit 17. In reality, however, none of the affected staff, including the affected senior executives, was notified in advance, let alone a party to “discussions” about the move. Indeed, notwithstanding that he met privately with OSC’s senior staff at the end of November and during the month of December, to discuss the possibility of making organizational changes, he never hinted that he intended to open a new field office, much less that two of OSC’s career senior executives would be geographically relocated. Further, when Mr. Bloch announced the reassignments, he told the staff that office space had already been leased in Detroit, thus demonstrating that this move had been contemplated for at least a number of weeks, and likely a number of months, before it was announced to anyone outside Mr. Bloch’s circle of political appointees.

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

There are still more reasons to question the bona fides of the management justification offered for this “reorganization.” Under the new structure, if both senior executives had accepted the forced geographic reassignments to Detroit and Oakland, then the two career senior executives with the most litigation experience (Messrs. Reukauf and Sklar) would have been reporting to Leonard Dribinsky, the career senior executive at headquarters with virtually no litigation experience.¹⁶

¹⁶ Mr. Dribinsky also has very little, if any, experience overseeing OSC investigations. Until the reorganization he had been in charge of the Complaints Examining Unit and the Disclosure Unit for many years. Neither of those units conducts investigations or engages in litigation. Because of his relative lack of relevant experience, it is widely believed by career staff that Mr. Dribinsky emerged as the new leader of these functions because he willingly cooperated in Mr. Bloch’s recent and mysterious mass closures of whistleblower disclosures and because he was the only member of OSC’s career staff who voiced approval and supported Mr. Bloch’s decision to revisit OSC’s policy on sexual orientation discrimination.

In addition, under the reorganization, OSC's Hatch Act Unit will, for the first time in OSC's history, report directly to a political deputy. This arrangement strongly suggests an intent to politicize that Unit. This is especially true in light of the otherwise inexplicable reassignment to the Oakland field office of Mr. Reukauf, who had overseen the Act's impartial enforcement for over for 20 years. The staff has reasonably inferred that Mr. Reukauf is being moved out of the way to allow the agency's political leadership to exert unfettered control over Hatch Act enforcement decisions.

Further, under the reorganization, OSC's highly successful ADR program will inexplicably be run out of a field office in Detroit. This odd result continues to obtain notwithstanding that the career executive to whom Linda Myers, the Director of ADR, had been reporting (Mr. Sklar) has declined his reassignment to Detroit and has been given a notice of removal. Mr. Bloch previously justified the ADR Director's transfer to Detroit as a move to keep her under the supervision of Mr. Sklar. He has now taken to justifying her transfer on the grounds that housing her in the "centralized" location of Detroit, rather than at headquarters in Washington, is consistent with his intent that the Director conduct more mediations in person, rather than over the phone. This explanation is absurd on its face, given the fact that most complaints arise in the Washington, D.C. area, and/or require the presence of agency personnel who work in Washington.

In fact, the way that the "reorganization" is being implemented leads to the inescapable conclusion that existing career staff are being purged and that it was designed to ensure that remaining staff would be thoroughly intimidated into silence, and driven to leave. Mr. Bloch did not ask for volunteers to transfer to the new Detroit field office, or to the existing Oakland and Dallas field offices. Employees who were ordered to relocate were told that they were not permitted to switch assignments with others who might be willing to take their places. None of Mr. Bloch's personal picks was subjected to the involuntary reassignments. Further, there were at least eleven vacancies at OSC headquarters when Mr. Bloch announced his "reorganization." It is unclear why at least some portion of the staffing-up of the new and existing field offices could not be accomplished by moving those vacancies to the field and filling them there.

Finally, Mr. Bloch gave affected employees virtually no time to decide whether to accept the reassignments; nor has he given those employees who agreed to take the reassignments, under duress, sufficient time to relocate.¹⁷ Many of the affected employees have homes, spouses and family in the Washington, D.C. area. It is completely unreasonable, punitive, and inconsistent with the practice at other agencies, to conduct a geographic reassignment in this absurdly short time frame.

Notwithstanding all of the above, Mr. Bloch has attempted to justify the directed reassignments by citing the need to reduce the "backlog" of cases at OSC. This is a non-

¹⁷ A single exception to the otherwise applicable deadline for relocation has been provided to Mr. Reukauf. Mr. Bloch has apparently given him a brief extension of time.

sequitur. Mr. Bloch has never satisfactorily explained how ordering experienced employees to transfer against their will from Washington, D.C. to a new field office in Detroit, where OSC has virtually no case load, and where the Merit Systems Protection Board has no regional field office, will help reduce the agency backlog.

Indeed, the proof is in the pudding: as a result of Mr. Bloch's actions, OSC has already lost eight of its most experienced attorneys and investigators, including the Director of its ADR program. The team that it is losing is one that has historically shown the greatest efficiency in processing its cases (in terms of numbers of cases handled), while at the same time securing relief for whistleblowers and other victims of prohibited personnel practices in a number of OSC's most high profile cases.¹⁸

Although Mr. Bloch has claimed that he transferred these employees for purposes of keeping this highly successful team intact, his actions were clearly designed for precisely the opposite purpose. The team is destroyed. The agency will have to replace all of its members with new and inexperienced staffers (presumably hand-picked by Mr. Bloch). In addition, until those individuals are trained, all of the cases that the eight departing employees have been handling will have to be reassigned to other members of the staff, often in the middle of an on-going investigation, at considerable cost in terms of efficiency and continuity. It is inconceivable that Mr. Bloch will be able to clear the "backlog" in the Investigatory and Prosecution Divisions after having so decimated the career staff there, at least if he intends to fully and fairly investigate those cases.

Moreover, the current backlog of cases in the Investigatory and Prosecution Divisions is of Mr. Bloch's own making. As a result of his decisions not to fill vacant career positions in the IPDs and to reallocate staff in the IPDs to work on cases in OSC's intake unit, the caseload in the IPDs, which had been substantially reduced over the last several years, has doubled on his watch.

Further, while publicly congratulating himself for reducing the caseload in OSC's Complaints Examining and Disclosure Units, Mr. Bloch has failed to explain just what happened to all of the cases he closed. Indeed, it is our understanding that under Mr. Bloch, OSC has adopted a policy under which career staff in the Disclosure Unit are not permitted to contact whistleblowers, but are required to close their cases unless their

¹⁸ In addition to handling the sexual orientation case that was the subject of the press release Mr. Bloch ordered removed from OSC's web site, the IPD headed by Mr. Sklar was responsible for, among other things: 1) securing relief for two Border Patrol agents who suffered retaliation for making disclosures related to security risks on the northern border in a highly publicized case in 2002; 2) obtaining a stay and then a reversal of the removal of an FAA employee who was fired after making disclosures in the wake of the September 11th terrorist attacks; and 3) securing relief for an employee in the Department of Energy who was disciplined for providing information to the press about security risks at DOE's nuclear facilities.

written filings are sufficient on their faces to establish a basis for investigation. As a result of this new policy, the Disclosure Unit appears to have closed over 600 cases in only a few months, without referring any of them for investigation.¹⁹

Similarly, Mr. Bloch has claimed to have reduced the number of prohibited personnel practice cases in the Complaints Examining Unit from over 500 down to 30. The backlogged case figure, however, is grossly inflated. When Mr. Bloch arrived at OSC he directed the Complaints Examining Unit not to send out closure letters in cases that had already been completed, in order to build up the backlog, so that he could take credit himself for its reduction through his "special projects unit." Although the exact number of cases that were held in this manner is not known by the complainants, they believe that it was quite substantial.

Moreover, the Complaints Examining Unit has abandoned its former policy under which complainants alleging retaliation were given an opportunity to speak with the examiner reviewing their cases, before they were closed. In an effort to show progress on the backlog in that unit, CEU has not only closed cases at breakneck speed, it also dumped into the IPDs an increasing number of cases without giving them adequate review, which Mr. Bloch has boasted represents a doubling of the historical rates of referral out of that unit. Since the backlog in the IPDs has doubled, and since the cases referred for investigation require significantly more time and attention than those being considered in CEU, the result of these machinations on the overall backlog at the agency is the equivalent of moving the deck chairs around on the Titanic.

OSC was not created to receive and close cases. As demonstrated by the wholesale dismissal of over 600 whistleblower disclosures, by the apparent paucity of relief achieved on behalf of whistleblowers and other victims of prohibited personnel practices during Mr. Bloch's tenure, and by the appalling disposition of Michael Levine's complaint, the new case handling policies are apparently being implemented at the expense of OSC's core mission of assisting whistleblowers and promoting the merit system.

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

¹⁹ In recent statements to the press, OSC's Director of Public Affairs, Cathy Deeds, has characterized all 600 of these disclosures as either involving "minor" matters or having already been investigated. See OSC press statements, attached and incorporated herein as Exhibit 18. This statement is inherently incredible. Further, the agency cannot possibly make a reliable determination about the merits of 600 disclosures without speaking to the whistleblowers.

have forced the departure of nine experienced career employees, OSC will be required to bear the costs of providing severance pay to departing employees, as well as a lump sum that represents their accrued annual leave.

III. PROHIBITED PERSONNEL PRACTICES AND VIOLATIONS OF CIVIL SERVICE LAWS COMMITTED BY SPECIAL COUNSEL BLOCH

A. Forced Geographic Reassignments and Creation of Hostile Work Environment in Retaliation for Whistleblowing (5 U.S.C. § 2302(b)(8))

Under the Whistleblower Protection Act (WPA), it is a prohibited personnel practice for an agency to take a personnel action against an employee because the employee has disclosed information which he or she reasonably believes evidences a violation of any 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. § 2302(b)(8). This provision protects both persons who have made protected disclosures, and those who are perceived to have done so.

The perceived or actual disclosures in this matter, which were made to the press and outside interest groups, included disclosures concerning Mr. Bloch's decisions: 1) to "scrub" OSC's website of references to sexual orientation discrimination; 2) to change the agency's interpretation of its authority to enforce a prohibition on such discrimination; 3) to issue an illegal gag order; 4) to use no-bid contracts or other improper hiring authorities; and 5) to engage in a practice of non-competitive hiring including the selection of friends and cronies for career federal jobs. All of these disclosures would be protected under § 2302(b)(8) because they concern actions by Mr. Bloch that would constitute abuses of authority, gross mismanagement, and violations of law, rule or regulation.

Further, Mr. Bloch was aware that these matters had been publicly disclosed, and openly expressed his suspicion that a "leaker" or "leakers" within OSC was responsible for what he later called the "unnecessary hullabaloo" surrounding his actions. He has also expressed explosive anger toward employees who question his policies and initiatives, even internally, dubbing such individuals "disloyal." Over the last year, he has engaged in a pattern of hiring designed to ensure that new employees are appropriately "loyal" to him, and has attempted to cripple the authority of career managers. He also ordered forced geographic assignments of a large percentage of the headquarters staff, in an effort to instill terror in the remaining career staff.

Moreover, there is ample basis to believe that, in implementing his "reorganization", Mr. Bloch targeted particular employees for reassignment because he believed that they either were the "leakers" or because of their association with persons believed to be "leakers." It is significant that the brunt of the impact of the geographic reassignments fell on the division headed by Mr. Sklar, and included Mr. Elliot, Mr. Engler and Ms. Myers, any one of whom might have been a target of Mr. Bloch's

suspicious due either to their previous employment by the National Treasury Employees Union, their sexual orientation, their involvement in the investigation and pursuit of the prior case involving sexual orientation discrimination, or their questioning of some of Mr. Bloch's policy and management decisions.

Mr. Reukauf, who also expressed internal dissent about some of Mr. Bloch's policies, and was in disfavor for his role in the prosecution of Alan White, was reassigned to head a fully functioning field office in Oakland, where there is no apparent need for his services. Even if there were a justification for sending a career executive out to head the Oakland office, Mr. Bloch's decision to send Mr. Reukauf, rather than Mr. Dribinsky, makes no business sense whatsoever.

Further, as described above, the reorganization was implemented in a way that was guaranteed to drive out these employees, and permit them to be replaced with Mr. Bloch's own "loyal" picks. This is consistent with Mr. Bloch's pattern over the last year of hiring new employees himself on a non-competitive basis, without the involvement of their career supervisors.

Indeed, both the surprise reassignments and the bizarre method chosen by Mr. Bloch to inform the twelve employees who were affected seems calculated to have instilled the maximum level of fear among the entire OSC career staff. Thus, Mr. Bloch held a five-minute meeting for all OSC staff the afternoon when he announced the reorganization. During the meeting, at which no questions were solicited or asked, Mr. Bloch stated that certain unidentified career staffers would be reassigned to the Dallas and Oakland offices, and the newly-created Detroit office. To learn whether one's name was on the list for reassignment, Mr. Bloch stated, employees should return to their offices and log onto the OSC Intranet. When employees did so, however, the information had not yet been posted, and considerable anxiety ensued over the next 30 minutes, before the names were finally posted, and employees learned their fates.

As a result of this pattern of conduct, OSC staff is thoroughly demoralized and lives in a culture of fear. Substantial numbers of career staff at headquarters are actively seeking new jobs because of the intolerable and hostile work environment Mr. Bloch has created. Some OSC employees have indicated privately that they would welcome an independent investigation of Mr. Bloch's actions, so that they could share their knowledge of his improper actions. The OSC complainants in this case are so fearful of Mr. Bloch's retaliation, that they have decided to file their complaint on an anonymous basis, through their attorney, Debra Katz.

In short, Mr. Bloch has created a hostile environment, in violation of the WPA, and has ordered geographic reassignments of OSC employees because they have either made protected disclosures, or are perceived to have done so. The creation of a hostile work environment, the involuntary geographic reassignments, and the resulting removal of employees who decline the illegal reassignments constitute prohibited personnel practices, within the meaning of 5 U.S.C. § 2302(b)(8).

B. Threats to Retaliate Against Employees Who Decline to Waive their Legal Rights to Challenge the Illegal Involuntary Reassignments and Removals

Pursuant to 5 U.S.C. § 2302(b)(9)(A) it is a prohibited personnel practice to take or threaten to take a personnel action against an employee because of “the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation.” On March 1, 2005, Mr. Bloch himself called an attorney who has been representing some of the employees who were given proposed letters of removal after they declined the involuntary reassignments. Mr. Bloch made the call in an effort to secure a settlement of all potential legal claims that the employees might pursue against him. When the attorney representing the employees advised Mr. Bloch that his clients were no longer interested in settling their complaints, Mr. Bloch declared that--in light of that fact--it was his intention, not only to hasten their departures but also to bring additional “charges” against them.

In threatening to hasten the removal of the employees who declined to waive their legal rights, and to bring unspecified additional “charges” against them, Mr. Bloch committed a prohibited personnel practice, in violation of 5 U.S.C. § 2302(b)(9).

C. Violations of Civil Service Laws, Rules and Regulations, Including Regulations Implementing Merit Systems Principles, Arising Out of Issuance of Gag Order

As described above, in the wake of the negative press attention Mr. Bloch received last February and March, he issued an email articulating a new agency policy which directs that “any official comment on or discussion of confidential or sensitive internal agency matters with anyone outside OSC must be approved in advance by an IOSC official.” The issuance of this policy, which has resulted in a significant change in OSC employees’ conditions of employment, contributed to the creation of the hostile work environment, and violates the “Anti-Gag” Statute, § 622, P.L. 106-554, the Lloyd-Lafollette Act, 5 U.S.C. § 7211, and the First Amendment. All three of these provisions are laws, rules or regulations implementing merit systems principles. 5 U.S.C. § 2302(b)(12). Further, the Anti Gag Statute and the Lloyd LaFollette Act are also “civil service laws, rules or regulations within the meaning of 5 U.S.C. § 1216(a)(4).

1. Violation of Anti-Gag Statute

The Anti-Gag Statute states that “[n]o funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Form 312 and 4414 of the Government or any other nondisclosure policy, form or agreement if such policy,

form or agreement does not contain the following provisions [citing laws protecting disclosures made to members of Congress, the WPA, and other similar laws].”

OSC’s nondisclosure policy, expressed in the e-mail gag order, violates this law. First, the language in the e-mail is a nondisclosure policy because it prevents OSC employees from disclosing any kind of information “on confidential internal agency matters” without approval from agency political staff. Second, the nondisclosure policy does not contain the required statutory language, ensuring employees’ rights to make protected disclosures under applicable laws. Third, Mr. Bloch has used agency funds to implement the gag order by using salaried employees to distribute it through the agency’s e-mail system. In addition, Mr. Bloch has enforced the illegal gag order by geographically reassigning employees he believes spoke to the media without permission from his immediate office. Thus, the nondisclosure policy violates the Anti-Gag Statute.

2. Violation of the First Amendment

The gag order also violates the First Amendment. While the government may impose some restraints on the job-related speech of public employees that would be impermissible if applied to the citizenry at large, it is well settled that public employees retain important rights to free expression under the First Amendment. U.S. v. NTEU, 513 U.S. 454, 465 (1995); Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968). In evaluating the validity of a restraint on government employee speech, courts must balance the interests of the employee as a citizen commenting upon matters of public concern and the interest of the government, as an employer, in promoting the efficiency of the public service. Pickering, 391 U.S. at 568.

OSC employees have a strong interest as citizens in commenting on matters of public concern, including the Special Counsel’s policies and acts of misconduct or malfeasance. The gag order contained in the e-mail established a prior restraint on speech. To defend a prior restriction on employee expression the government must demonstrate that:

the interests of both potential audiences and a vast group of present and future employees in a broad range of present and future expression are outweighed by that expressions’ “necessary impact on the actual operation of the Government.”

NTEU, 513 U.S. at 465, quoting Pickering v. Bd. Of Educ., 391 U.S. at 571.

Mr. Bloch could not possibly meet his burden of justifying his prior restraint on the speech of OSC employees because the prohibition in the gag order is patently overbroad. The range of information that could fall within the category of “sensitive or confidential internal agency matters” is unlimited.

Courts have routinely struck down as unconstitutional similar prior restraints on the speech of government employees. See Harman v. City of New York, 140 F.3d 111 (2nd Cir. 1998) (striking down press policy forbidding employees from speaking with media regarding any policies or activities of the agency without first obtaining permission from agency's media relations department); International Assoc. of Firefighters Local 3233 v. Frenchtown Charter Township, 246 F.Supp. 2d 734 (E.D. MI 2003) (fire department restricted employees' communications with the media and public); Kessler v. City of Providence, 167 F.Supp. 2d 482 (D.R.I. 2001) (same); Fire Fighters Assoc. v. Barry, 742 F.Supp. 1182 (D.D.C. 1990) (same). Mr. Bloch's gag order is constitutionally invalid on the basis of the reasoning of these and other decisions.

3. Violation of Lloyd-Lafollette Act

Finally, the gag order violates the Lloyd-Lafollette Act. That Act provides that "the right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or a committee or Member thereof, may not be interfered with or denied." 5 U.S.C. § 7211. Special Counsel Bloch's gag order cannot be reconciled with this law, as it encompasses disclosures to members of Congress as well as Congressional committees.

IV. DEMAND FOR STAY OF INVOLUNTARY REASSIGNMENTS AND REMOVALS, WITHDRAWL OF GAG ORDER, AND REFERRAL OF COMPLAINT FOR INDEPENDENT INVESTIGATION

The foregoing statement outlines the multiple prohibited personnel practices, violations of civil service laws, and other acts of malfeasance Mr. Bloch has committed. As relief, the complainants demand that the following steps be taken immediately:

- Special Counsel Bloch must order an immediate stay of the directed reassignments, and resulting removals, as well as the gag order;
- After granting the stay, Special Counsel Bloch and all members of his immediate staff must recuse themselves from making any further decisions in this case;
- Special Counsel Bloch must refer these complaints to the Chairman of the President's Council on Integrity and Efficiency for an independent investigation, including a recommendation for corrective and or disciplinary action, as appropriate; and
- Provide all other appropriate equitable relief.

The complainants request that the Special Counsel rule on their stay request expeditiously and that he refer their cases for independent investigation immediately.

Exhibit 3

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By Telecopier
March 31, 2005

Mr. Chris Swecker
Chair, Integrity Committee
President's Council on Integrity & Efficiency
935 Pennsylvania Ave., N.W.
Room 3117
Washington, D.C. 20535-001

RE: IC # 465

Dear Mr. Swecker:

I am enclosing a copy of the Amendment to Complaint of Prohibited Personnel Practices Against Special Counsel Scott Bloch to be added to the above-referenced charge.

Sincerely,

Debra S. Katz

Enc.

cc: James Renne, Deputy Special Counsel
Senator Daniel Akaka
Senator Susan Collins
Senator Charles Grassley
Senator Carl Levin
Senator Joseph Lieberman
Senator George Voinovich
OMB Deputy Director Clay Johnson
Acting Director of the Office of Personnel Management Dan Blair

**AMENDMENT TO COMPLAINT OF PROHIBITED PERSONNEL
PRACTICES AGAINST SPECIAL COUNSEL SCOTT BLOCH**

On March 3, 2005, the Government Accountability Project, the Project on Government Oversight, Public Employees for Environmental Responsibility, the Human Rights Campaign, and a group of anonymous career employees of the U.S. Office of Special Counsel filed complaints alleging the commission of a series of prohibited personnel practices as well as violations of civil service laws, and other acts of malfeasance by U.S. Special Counsel Scott J. Bloch. The complainants are now filing this amendment to their Complaint to include additional allegations of prohibited personnel practices, in violation of 5 U.S.C. §§ 2302(b)(8) and (b)(9), and partisan handling of complaints alleging violations of the Hatch Act.

NEW DEVELOPMENTS

1. Additional Acts of Retaliation and Confirmation of Retaliatory Animus Since March 2, 2005

As described in the original complaint, at p. 20, on March 1, 2005, Mr. Bloch called William Bransford, who was then acting as counsel for several OSC employees whom Mr. Bloch had decided to involuntarily reassign to a newly created Detroit field office. During the conversation, Mr. Bloch threatened to take further unspecified action against these staff members and to hasten their departure after their attorney declined OSC's settlement overture.

The next day, on March 2, 2005, Mr. Bloch was alerted to the imminent filing of complainants' March 3 Complaint by a member of the press. That evening, employees who had received notices of removal, including those who were represented by Mr. Bransford, were instructed by email to immediately turn in their work files. The employees learned of this order when they arrived at work the next day (March 3) and complied with it.

A detailed 22 page complaint was delivered to Mr. Bloch on the morning of March 3, 2005. Later that day, Mr. Bloch's spokesperson, Cathy Deeds, issued a statement to the press on his behalf announcing that OSC was transmitting the

Complaint to the President's Council on Integrity and Efficiency.

In the statement, Ms. Deeds disparaged the complainants. She termed their Complaint "a clever press angle," and stated that the allegations were "false" and "baseless", claiming that "most, if not all of the allegations are old and have been previously addressed." This assertion is patently untrue. Concerns had been publicly expressed by Public Employees for Environmental Responsibility, and other groups, about a few of the many actions by Mr. Bloch that are the subject of the Complaint. But many of the allegations in the Complaint have never been previously made at all, and certainly not with the supporting detail provided in the complaint. Moreover, none of the allegations have been "previously addressed" in any manner. Mr. Bloch has either ignored them or issued conclusory and misleading denials, similar to those Ms. Deeds made on his behalf in the March 3rd press statement.

On that same day that the Complaint was filed, another OSC official (who declined to be identified) disparaged the complainants in remarks to the Washington Times that were published in the paper's March 4th edition. This unnamed official termed the complainants a few "disgruntled employees who know or should have known" that their complaint had no merit. He further remarked that "some people are too union-oriented to accept" Mr. Bloch's "strong" leadership. That statement of animus corroborates the original allegations in the Complaint regarding Mr. Bloch's decision to target employees who had formerly worked at the federal sector union which broke the story of Mr. Bloch's decision to remove references to sexual orientation discrimination from OSC's website and other publications. Complaint at 13, 19.

On March 8, 2005 the employees who had turned in their files the preceding Thursday, March 3rd, were instructed to pick up a few of their cases and resume working on them. They were not told how long they would have to perform this work, or when their removals would become effective.

The next day, Wednesday, March 9, 2005 an article appeared in the Washington Post, announcing that the Senate Committee on Governmental Affairs was going to conduct

oversight hearings on the Office of Special Counsel. In addition, that same morning, the Government Accountability Project, the Project on Government Oversight, and Public Employees for Environmental Responsibility issued a press release concerning the mass closings of whistleblower cases under Mr. Bloch's tenure. The release revealed what had transpired at a meeting that Mr. Bloch had held with employees a month earlier. At that meeting, Mr. Bloch had announced that in light of the fact that so many employees had refused their reassignments and were being removed, he intended to step up his efforts to "close" as many pending whistleblower cases as possible before they left. He also stated that he intended to hire interns to "close" cases over the summer.

The minutes of the meeting were posted on PEER's website and widely distributed to the press. As those minutes were only available to OSC employees, Mr. Bloch concluded that there had been an unauthorized disclosure to the press, in violation of his gag order.

That same day, in the afternoon of Wednesday, March 9, 2005, one day after directing employees who had received notices of removal to retrieve some of their cases and resume working on them, Mr. Bloch ordered the very same employees to clear out their offices and turn in their credentials by Friday, March 11. He informed them that they were being put on administrative leave for the week of March 14th, and that their employment would be terminated, effective March 18, 2005.

In the end, ten of the twelve employees who were subjected to the involuntary reassignments, including all seven of the employees reassigned to Detroit, refused the reassignments. Mr. Bloch is currently scrambling to find a way to open the Detroit office in light of the fact that all of the employees he selected for relocation have either found new jobs or been removed for refusing to take the reassignments. Two attorneys who have been working in the intake unit, and have no experience investigating or prosecuting cases, have agreed to relocate to the Detroit office, possibly with relocation bonuses or other monetary incentives.

Complainants have learned that two of the investigators who refused geographic reassignments were offered the opportunity to stay on at OSC headquarters in the Complaints Examining Unit. These two employees are the only ones among the individuals given notices of removal who did not either hire counsel or assert that their reassignments were illegal. One of the two employees accepted the offer to stay on; the other did not.

None of the employees who hired counsel or asserted the reassignments were illegal were offered the opportunity to remain at headquarters. At least one of these individuals, Senior Executive Cary Sklar, asked to be permitted to stay on at headquarters, in another capacity if necessary, but was told that he would not be permitted to do so. Another of the reassigned investigators, Sharon Lee, was more qualified to stay on to work in the Complaints Examining Unit than those who were asked to do so; she had worked in that Unit before, and received outstanding performance appraisals. Ms. Lee, however, was one of the employees who was represented by counsel and was terminated.

Complainants have also learned that another employee who accepted the reassignment to Oakland (senior executive William Reukauf) has now been told that he will not be required to move to Oakland for at least a year. Not surprisingly, Mr. Reukauf, like the other employees who were offered a reprieve, did not hire an attorney or assert that his reassignment was illegal.

Mr. Reukauf's reprieve casts still further doubt upon management justifications that Mr. Bloch originally ordered for his reorganization. He had originally claimed that his "reorganization" was intended to "power down" the agency, and that he wanted the field offices to be headed by senior executives in recognition of their importance. Now that he has driven out the employees he targeted for retaliation (including Mr. Sklar), that pretext has evaporated. Mr. Bloch has decided to assign Mr. Reukauf to oversee the field offices in Oakland, Dallas and Detroit from OSC headquarters in Washington, D.C.

Further, Mr. Reukauf's reprieve also completely undermines another justification previously asserted for the

forced reassignments. Thus, Mr. Bloch has assigned Mr. Reukauf to take over OSC's mediation program.

As described in the original complaint, the mediation program had long been directed by Linda Myers, a highly experienced mediator. Ms. Myers was involuntarily reassigned to Detroit, along with Mr. Sklar, who was her supervisor. Mr. Bloch had reassigned Ms. Myers to Detroit on the grounds that he wanted her to continue to work for Mr. Sklar. When Mr. Sklar refused the reassignment to Detroit, Mr. Bloch changed his rationale. He stated that he still wanted Ms. Myers to go to Detroit because that would somehow further his goal of conducting more mediations in person.

Despite these original claims, now that Mr. Sklar and Ms. Myers have been driven out of OSC, the mediation program is remaining in Washington, D.C. under Mr. Reukauf. Tellingly, Mr. Reukauf does not have any mediation experience and will have to receive training in order to take over the program. Mr. Reukauf, however, did not protest his reassignment; he accepted it. Mr. Sklar and Ms. Myers had hired Mr. Bransford as counsel to represent them to challenge their involuntary reassignments.

Further, Mr. Sklar and Ms. Myers are also former members of the staff of the National Treasury Employees Union. As described in the original complaint, there is ample basis to infer that Mr. Bloch targeted them for the reassignments because of their perceived whistleblowing and their former union affiliation. His recent decision to keep the mediation program in Washington, D.C. under Mr. Reukauf, who has no mediation experience, provides still more proof of his retaliatory intent.

Critically, while Mr. Reukauf is being given a one year reprieve, he will not be permitted to resume his duties as the senior executive in charge of the Hatch Act Unit. The Hatch Act Unit will report to Mr. Bloch's deputy, James Renne, as originally contemplated.

2. Partisan Handling of High Profile Hatch Act Cases

The decision to continue to have the Chief of the Hatch Act Unit report Mr. Renne, a political deputy, rather than a

career senior executive, appears to be part of pattern of politicization of Hatch Act enforcement. OSC has pursued trivial matters without regard to the political affiliation of the alleged violators (for example, prosecuting low level federal employees for sending out political emails to colleagues prior to the last election). However, its treatment of more significant and high profile allegations is not even-handed.

During the recent Presidential campaign, OSC received at least two such complaints. One of the complaints concerned a visit by Senator John Kerry to the Kennedy Space Center, which was alleged to constitute a violation of the Hatch Act's prohibition against the use of the workplace to engage in political activity. The other was a complaint filed by Representative Conyers against then-National Security Advisor Condoleezza Rice for using government funds to travel around the country in the weeks before the election making speeches, which were alleged to be political.

These two complaints (both of which were reported in the media) were treated very differently. Special Counsel Bloch and Deputy Special Counsel Renne, referred the complaint to the career staff and ordered an on-site investigation of the Kerry complaint within days after the Kerry visit. On the other hand, when the Rice complaint came on October 21, 2004 Mr. Renne assigned it to himself (rather than Mr. Reukauf or any of his subordinates in the Hatch Act Unit). He then sat on the complaint, taking no action, until after the election, when he finally referred it to the Hatch Act Unit for investigation. Under the reorganization, as noted, Mr. Renne will be the executive in charge of the Hatch Act in all cases, and Mr. Reukauf, who had overseen the Act's impartial enforcement for over for 20 years, is being reassigned to head up the mediation unit that Mr. Sklar had successfully headed since its inception over five years ago.

The favorable treatment afforded to the Rice complaint raises very troubling questions regardless of whether the allegations against Secretary Rice are ultimately substantiated. The deliberate decision to sit on the allegations until after the election while expediting the

investigation of the 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.

3. Religious Discrimination

For the past two years, Mr. Bloch's political appointees have closed OSC Headquarters several hours early on Good Friday and have given OSC employees paid leave for this Christian holiday. They have not provided such a benefit for OSC employees on Jewish, Muslim, or other non-Christian religious holidays. In fact, in 2004, Mr. Bloch scheduled a mandatory off-site retreat for the agency's senior managers during the first few days of the Passover holiday.

ADDITIONAL VIOLATIONS OF LAW

Based on the foregoing, complainants add the following allegations:

1. Mr. Bloch hastened the termination date of the employees who refused the geographic reassignments in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments. The decision to terminate the employees violates both 5 U.S.C. §§ 2302(b)(8) and (b)(9).


2. Mr. Bloch declined to permit employees to remain on at OSC headquarters in positions they were qualified to hold, in retaliation for perceived whistleblowing, First Amendment activity, and/or the assertion of their legal rights to hire counsel and challenge the illegal reassignments. Mr. Bloch's failure to offer these employees alternative positions at headquarters violates both 5 U.S.C. §§ 2302(b)(8) and (b)(9).

3. Mr. Bloch has abused his authority by affording disparate treatment to the Hatch Act complaints described above, based on partisan political considerations.

In addition, complainants urge that the most recent developments provide further support for their charge that

the reasons proffered for the "reorganization" and involuntary reassignments were pretextual.

Respectfully submitted


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DATED: March 31, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amendment to Complaint of Prohibited Personnel Practices Against Special Counsel Scott Bloch was served on James Renne, Deputy Special Counsel, by mailing a copy by first-class mail, postage prepaid, this 31st day of March 2005, to:

James Renne, Deputy Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036



Debra S. Katz