

By Hand-Delivery
July 15, 2010

The Honorable Deborah A. Robinson
U.S. District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: United States of America v. Scott J. Bloch, No. 1:10-mj-00215-DAR

Dear Magistrate Judge Robinson:

As attorneys for the individuals and groups harmed by Scott Bloch's unlawful conduct in the above-captioned case¹, we are writing to offer a victim impact statement for your consideration in Mr. Bloch's upcoming sentencing on July 23, 2010. As detailed in a federal complaint filed in March 2005, which is still under investigation by the Inspector General at the federal Office of Personnel Management (OPM IG), Mr. Bloch engaged in serious abuses of power in his role as Special Counsel, retaliated against federal employees who sought to prevent or expose his abuses, and then obstructed the ongoing investigation by deleting information from his computer. While Mr. Bloch has now pled guilty to his final act of unlawful conduct – willfully withholding pertinent information from a congressional investigation into the matter – this charge understates the true scope and impact of Mr. Bloch's unlawful conduct.

We understand the U.S. Attorney's Office intends to support a request by Mr. Bloch that he receive a sentence of only probation. On behalf of the victims of Mr. Bloch's unlawful conduct, we would oppose such a light sentence. We believe such a sentence would not appropriately reflect the severity of Mr. Bloch's admitted actions and would represent a miscarriage of justice in this case.

Subject of the Federal Investigation

Upon taking office as head of the U.S. Office of Special Counsel (OSC) on January 5, 2004, one of Mr. Bloch's first official acts was to order that all references to OSC's jurisdiction

¹ Our clients include the national public interest groups the Government Accountability Project (GAP), which seeks to protect the rights of government whistleblowers; Public Employees for Environmental Responsibility (PEER), which seeks to protect the rights of public employees who blow the whistle on environmental abuses; the Human Rights Campaign (HRC), which promotes equal rights for gay, lesbian, bisexual, and transgendered individuals, including those in the federal workforce; and the Project on Government Oversight (POGO), which investigates corruption and other misconduct in order to ensure a more accountable and ethical federal government. Our clients also include several former employees of the Office of Special Counsel, the federal agency charged by Congress and the President with upholding the rights of federal whistleblowers and other federal employees, previously headed by Mr. Bloch.

over complaints of sexual orientation discrimination against federal employees be removed from OSC's website and its official publications. This action – which was contrary to longstanding federal policy and Mr. Bloch's own assurances during his Senate confirmation process – immediately brought tremendous concern both from the public and from Congress.² Even the White House issued a public statement that Mr. Bloch's action appeared contrary to “[l]ong-standing federal policy [which] 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 Exhibit 2. Indeed, federal employees had been protected from sexual orientation discrimination dating back to 1980, but Mr. Bloch's unauthorized action effectively removed that longstanding protection. In addition, Mr. Bloch permitted the complaints of several hundred federal whistleblowers to be dismissed without any investigation, effectively leaving those federal employees without any remedy for the retaliation they had experienced.

When Mr. Bloch then suspected that members of his staff were speaking to the media about his unlawful policies, he reacted by imposing a “gag order” for all OSC employees, announcing a new OSC policy 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 [i.e. Mr. Bloch or a member of his political staff].” See Exhibit 3. This restriction on government employees' speech not only violated their First Amendment rights, but also violated the Anti-Gag statute and the Lloyd LaFollette Act, which prohibit non-disclosure requirements which bar federal employees from speaking with Congress or from disclosing potential legal violations with authorized federal agencies.³

² Among the Congressional inquiries was a February 19, 2004, letter from the Senate Committee on Governmental Affairs, signed by both Chairman Susan Collins (R-Maine) and ranking minority member Joseph Lieberman (D-Connecticut), among others; a March 4, 2004, letter from Rep. Shays (R-Connecticut), Rep. Greenwood (R-Pennsylvania), and Rep. Simmons (R-Connecticut); and a separate March 4, 2004, letter signed by 70 other Members of the House of Representatives. See Exhibit 1. The letter from Senators Collins and Lieberman expressed concern that Mr. Bloch's decision to remove all references to jurisdiction over sexual orientation discrimination complaints “appears inconsistent with . . . assurances” that Mr. Bloch had given during his Senate confirmation process that he would continue federal government policy of protecting federal employees from sexual orientation discrimination.

³ The Lloyd LaFollette Act provides that “[t]he right of [federal] employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.” 5 U.S.C. § 7211. Similarly, the Anti-Gag statute requires that most federal agency actions not “prohibit[] or prevent[], or attempt[] or threaten[] to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way . . . or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.” Pub.L. No. 109-115, § 820, 119 Stat. 2396, 2500-2501 (2005).

In January 2005, in an effort to purge the OSC of employees who he believed may have been responsible for exposing his violations of law, Mr. Bloch then announced the involuntary geographical reassignment of 12 career OSC employees from the D.C. office, most of them to a newly-planned office in Detroit. He further announced that employees who did not report to their newly assigned offices within 60 days would be summarily terminated. Of the 12 employees involuntarily reassigned, two of them were openly gay; three of them had worked previously at the National Treasury Employees Union, the organization that first brought the sexual orientation discrimination controversy to light through a February 12, 2004, press release. Of the seven employees involuntarily reassigned to Detroit, none of them accepted such a reassignment, leaving all of them to either find new jobs outside the agency or be terminated. (Mr. Bloch subsequently offered two of the reassigned employees the opportunity to return to the D.C. office; not coincidentally, these were the only two employees who had not hired an attorney to challenge their reassignments as unlawful). Ironically, it appeared that the nation's top whistleblower rights enforcer had retaliated against his own employees based on his suspicion that they had blown the whistle on him.

Interference With the Federal Investigation

The above issues were referred to the OPM IG, which began to conduct an intensive investigation, including document review and numerous witness interviews. From nearly the very beginning, Mr. Bloch engaged in various efforts to thwart the investigation. First, he refused to cooperate with the investigation under the bogus claim of "attorney-client privilege".⁴ Next, one of Mr. Bloch's political deputies instructed all OSC employees that if they were contacted by OPM IG directly for an interview, they were required to "notify [her] immediately." This attempt to control all witness interviews was contrary to OSC's own published policy, which provides that "OSC reserves the right to contact witnesses directly when appropriate" rather than through an agency liaison. See www.osc.gov/documents/pubs/dr-memo.htm. After negative publicity over this issue, OSC was forced to revoke this command. Mr. Bloch's deputy also publicly identified one of the individual complainants by name in a blast email to the entire agency – even though the identities of OSC complainants are required to be kept confidential. Mr. Bloch and/or his political deputies then told OSC employees – the potential witnesses in the federal investigation – that an OSC political appointee would ultimately review the investigation findings and decide whether corrective action was warranted, which was false. Other witnesses reported that Mr. Bloch had discussed with senior staff his desire to compel employees who had been interviewed by the IG to complete affidavits describing what they had been asked and what they had told investigators; although he was ultimately dissuaded from implementing this plan, Mr. Bloch's desires were widely known among OSC staff. All of these actions served to

⁴ "Federal officials have no attorney-client privilege that can be asserted against federal investigators with respect to consultations with government lawyers." See Simon, William, Propter Honoris Respectum: The Professional Responsibilities of the Public Official's Lawyer: A Case Study from the Clinton Era, 77 Notre Dame L. Rev. 999, 1012 (1998), citing In re Lindsey, 148 F.3d 1100, 1106 (D.C. Cir. 1998); In re Grand Jury Subpoena, 112 F.3d 910, 921 (8th Cir. 1997), cert. denied, 525 U.S. 1105 (1997).

intimidate witnesses and make them feel that they were putting their careers on the line by cooperating in the investigation.

In April 2007, Mr. Bloch made the rounds of the media announcing that he was launching investigations into alleged violations of law in connection with the highly-publicized termination of a former U.S. Attorney, David Iglesias, despite the fact that the matter was already being investigated by the Department of Justice, as well as a separate investigation of President Bush's then political advisor, Karl Rove. Mr. Bloch then publicly used these investigations to try to insulate himself from potential discipline from President Bush by claiming that any discipline of him would be politically motivated – even though Mr. Bloch had launched these inquiries more than two years after the complaint against him had been filed.

On November 28, 2007, the *Wall Street Journal* then reported the shocking revelation that in December 2006 Mr. Bloch had hired an outside IT company, “Geeks On Call,” which performed a “seven-level wipe” of his OSC computer, as well as the computers of his two top deputies. See Exhibit 4. This computer wipe – the most thorough deletion possible – destroyed all of the documents, files, and emails on his computer and that of his deputies, who had recently left OSC.⁵ In so doing, Mr. Bloch rendered thousands of documents potentially critical to the federal investigation not only unavailable to investigators, but making it nearly impossible for forensics experts to restore the deleted data. While Mr. Bloch claimed that only personal files on his computer were affected, he paid for the work using over \$1,000 in government funds; he then refused to permit investigators to review the portable flash drive to which he had copied his computer's files. See id. These events prompted the FBI to raid Mr. Bloch's OSC and home offices on May 7, 2008. Ultimately, the White House removed Mr. Bloch from his position in October 2008.

Not only did Mr. Bloch destroy or permit to be destroyed potentially relevant evidence in the midst of a federal investigation into his wrongdoing, he then – as is well documented in the Statement of Offense (Apr. 27, 2010) in this case, which Mr. Bloch has accepted as true – willfully withheld information about this matter from Congress. For example, on December 7, 2007, a spokesperson for Mr. Bloch reported that Mr. Bloch “also had the computers of former aides who had departed the agency wiped because the computer technicians arrived at the office

⁵ While Mr. Bloch has claimed that he sought out Geeks on Call due to a problem with his computer – at the time, he claimed that he was trying to eradicate a virus that had seized control of his computer – this assertion appears highly pretextual. OSC has its own, highly capable IT department to perform such IT functions, and OSC does not bring in “Geeks On Call” if a computer is not working, and certainly not for a fairly routine issue like a virus. Indeed, this would likely represent a violation of OSC policy, as this outside access to an OSC computer would represent a potential security risk. Moreover, as detailed in the Statement of Offense (Apr. 27, 2010), at 6-7, Mr. Bloch disingenuously informed Congress that he never discussed the supposed problem with his computer with the Geeks On Call specialist before that person performed a seven-level wipe – as if IT professionals routinely delete all files on a computer, rendering all information on the computer completely and permanently irretrievable, before ascertaining what the problem is or whether such a drastic approach is remotely necessary. To the contrary, as the manager of “Geeks On Call” confirmed to the *Wall Street Journal* at the time: “We don't do a seven-level wipe for a virus.” See Exhibit 4.

while Bloch was not present and were billing the agency for their time.” See Government Executive, Dec 7, 2007, attached as Exhibit 5. Mr. Bloch concedes that he later contradictorily told congressional investigators, however, that he had no knowledge of technicians working on any computers other than his own. See Statement of Offense, at 7 (Excerpt No. 4).

Victim Impact of Mr. Bloch’s Misconduct

Mr. Bloch’s misconduct had a tremendous negative impact on a variety of different parties. First, his retaliatory actions caused a considerable toll on the lives and careers of the OSC employees who he terminated or forced into involuntarily transferring. One of these employees, for example – who had previously been in the federal service for more than 20 years – was unable to find another position and was forced into involuntary retirement. Other longtime federal employees had to scramble to accept positions at other agencies that either offered less pay or represented a significant step backwards in their careers. Mr. Bloch’s retaliatory actions created tremendous anxiety, emotional distress, financial losses, and career damage to these loyal federal employees, which continues to this day. As a result of Mr. Bloch’s criminal wrongdoing and the resulting criminal investigation – which has resulted in the OPM IG investigation being tabled for the past two years – Mr. Bloch’s victims have now had to wait more than five years, and counting, to obtain relief in their whistleblowing complaints.

Second, Mr. Bloch’s misconduct has had a very negative impact on hundreds of whistleblowers and on the entire federal workforce. As noted above, Mr. Bloch authorized the dismissal of hundreds of whistleblower complaints without investigation – leaving hundreds of dedicated federal employees potentially subjected to unlawful retaliatory conduct with no remedy. Mr. Bloch also refused to enforce longstanding federal policy regarding discrimination of federal employees on the basis of their sexual orientation, leaving numerous federal employees discriminated against on this basis, who previously would have been protected by the OSC, with no remedy.

Finally, Mr. Bloch’s destruction of documents in the midst of a federal investigation and subsequent deliberate withholding of information from Congress have damaged the entire federal investigatory system. Were Mr. Bloch to be given a “slap on the wrist” sentence, it would signal not only to Mr. Bloch, but to every federal official that their best way out of a serious federal investigation is to destroy documents in order to cover up evidence of their misconduct. It would further suggest to such federal officials that there are little consequences to then deliberately withholding information or providing misleading information to the investigators seeking to uncover *that* misconduct – even to Congress. This message would be conveyed especially to those officials, like Mr. Bloch, at the very top of the government hierarchy, leading entire federal agencies, who, after being formally nominated by the President and confirmed by the Senate to protect the public trust, have then repeatedly violated that trust.

Conclusion

On behalf of the victims of Mr. Bloch's unlawful conduct, we urge the Court to award a sentence that appropriately reflects the severe, long-lasting, and broad impact of his actions.

Sincerely,



Debra S. Katz



Avi Kumin

Enclosures

cc: Glenn S. Leon, Esq., U.S. Attorneys' Office for the District of Columbia
William M. Sullivan, Esq., Winston & Strawn
Kelly Kraemer-Soares, United States Probation Office

Exhibit 1

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6260

February 19, 2004

Honorable Scott Bloch
Special Counsel
United States Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Mr. Bloch:

It has come to our attention that the Office of Special Counsel (OSC) recently removed references to unlawful discrimination on the basis of sexual orientation from OSC's website and published materials, including a pamphlet entitled "Your Rights as a Federal Employee." We also understand that OSC has amended its Complaint Form 11, "Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity," so that it no longer references the fact that OSC receives complaints alleging unlawful discrimination related to an employee's sexual orientation. During the confirmation process, you assured us that you were committed to protecting federal employees against unlawful discrimination related to their sexual orientation. We are concerned that the recent changes to OSC publications might give federal employees the opposite impression and we ask that you reaffirm your previously stated commitment and advise us of steps you will take to inform federal employees of their rights and remedies under the law.

As you know, 5 U.S.C. § 2302(b)(10) has long been interpreted as prohibiting discrimination against federal employees based upon their sexual orientation, and, in its Guide to Employee Rights, the Office of Personnel Management (OPM) refers federal employees who believe they have been discriminated against on this basis to the OSC for the investigation and possible prosecution of those complaints. Until recently, OSC's own materials noted the Office's responsibility and commitment to pursuing such complaints.

Furthermore, when your nomination was under consideration before this Committee, you assured us — both in your response to written questions from Senator Akaka and in conversations with our staffs — that you would protect federal employees against unlawful discrimination related to their sexual orientation. Indeed, with reference to specific guidance then in OSC publications, you told us you agreed that "firing someone solely because the person is seen at an event such as . . . [a local Gay Pride Day event] would fall within the prohibitions of" the anti-discrimination laws that OSC must enforce. Again in the context of sexual-orientation related discrimination, you assured us: "Outreach and education will be a vital part of the office if I am confirmed. It is important to ensure that all know their rights and remedies... ." The removal of references to OSC's role in investigating and enforcing complaints alleging

discrimination on the basis of sexual orientation (including the specific example about attendance at a Gay Pride Day event that you discussed in your written submissions to this Committee) appears inconsistent with these assurances.

Accordingly, we ask that you reaffirm the extent and nature of your commitment to protecting federal employees against discrimination on the basis of sexual orientation. Please advise us, specifically, as to whether it remains OSC's interpretation that discrimination based upon sexual orientation is a prohibited personnel practice under 5 U.S.C. § 2302(b)(10), and whether OSC remains committed to investigating such claims of discrimination against federal employees. In addition, please explain OSC's rationale for removing references to sexual orientation from OSC's published materials. Finally, please provide us your assurance that you will restore information and examples into OSC's published guidance to inform federal employees, who believe they have been discriminated against on the basis of sexual orientation, of their rights and available remedies, and please let us know what will be your timetable for accomplishing this.

Thank you for your prompt attention to this matter.

Sincerely,

Arthur Collins

J. L. ...

David ...

Carl ...

Congress of the United States

Washington, DC 20315

March 4, 2004

Mr. Scott Bloch
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, DC 20036

Dear Scott:

We are writing in regard to your recent decision to remove from the Office of Special Counsel's website and printed materials references to sexual orientation discrimination as well as information about the June 2003 settlement of the first case involving sexual orientation discrimination against a prospective applicant at the Internal Revenue Service.

Although 5 USC 2302(b)(10), which prohibits agencies from discriminating against employees based on conduct that does not affect performance, contains no explicit reference to sexual orientation, since 1974 it has been interpreted by the Office of Personnel Management (OPM), and its predecessor the Civil Service Commission to prohibit discrimination on the basis of sexual orientation.

The Justice Department took a similar stance on the provision in an opinion issued back in 1983 and OPM Director Kay Coles James endorsed this interpretation during her confirmation hearing.

It seems to us your decision to remove references to discrimination based on sexual orientation contradicts an historical interpretation of this important provision that has been reaffirmed several times over the last 30 years.

We have been told your decision came in the course of a legal review of how the statute should be interpreted, but it seems to us clarity already exists on the matter.

It is almost unthinkable that we could stay silent on any issue of discrimination on the basis of anything other than performance in the workplace. This kind of discrimination serves only to limit the number of people who can ultimately be successful.

The bottom line is, people should be judged by the work they do, not by who they are and no one should fear being fired because of their sexual orientation.

Please consider restoring all references to discrimination on the basis of sexual orientation to all of the Office of Special Counsel's published and electronic information.

Sincerely,


Christopher Shays
Member of Congress


Jim Greenwood
Member of Congress


Rob Simmons
Member of Congress

Congress of the United States
Washington, DC 20515

March 4, 2004

Mr. Scott J. Bloch
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Mr. Bloch:

We are writing today in regard to your decision to remove information about sexual orientation discrimination from the OSC's Web site as reported in the Washington Post (February 18, 2004 Page A17). The mission of the OSC is to "safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices."

As you know, it is a prohibited personnel practice to discriminate against a federal employee or applicant for employment based on conduct which does not affect their performance or the performance of others. 5 U.S.C. 2302(b)(10). Since at least 1980, and continuing to date, the Office of Personnel Management has interpreted this provision to prohibit discrimination based on sexual orientation. Indeed, in 1983, the then-Assistant Attorney General for DOJ's Office of Legal Counsel, Ted Olson, issued an opinion on behalf of DOJ in which he concluded that it would violate this provision to take an action against an Assistant United States Attorney on the basis of either his sexual orientation or private sexual conduct. He based his conclusion on the long-established interpretation of OPM and its predecessor, the Civil Service Commission, as well as court decisions which pre-dated the enactment of section 2302(b)(10). This interpretation of the statute has also been affirmed in President Clinton's Executive Order 13087, which remains in force, and clearly states that the Federal Government has a uniform policy to prohibit discrimination based on sexual orientation.

In short, discrimination based on sexual orientation is a prohibited personnel practice. As such, we demand that you immediately return the OSC Web site to the state in which you found it upon your arrival. Furthermore, we expect you to publicly acknowledge that discrimination based on sexual orientation is and will remain a prohibited practice.

Gay, lesbian, bisexual and transgender people have always served this country with distinction. They are entitled to work in an atmosphere free of fear of job loss and intimidation. We look forward to your quick action and prompt reply.

Sincerely,


Eliot L. Engel


Barney Frank

John Conyers, Jr.
John Conyers, Jr.

Henry A. Waxman
Henry A. Waxman

Jane Harman
Jane Harman

Land Evans
Land Evans

Tammy Baldwin
Tammy Baldwin

Carolyn B. Maloney
Carolyn B. Maloney

Maurice D. Hinchey
Maurice D. Hinchey

Howard Berman
Howard Berman

Michael R. McNulty
Michael R. McNulty

Maxine Waters
Maxine Waters

José E. Serrano
José E. Serrano

Martin T. Meehan
Martin T. Meehan

George Miller
George Miller

Martin Frost
Martin Frost

Tom Lantos
Tom Lantos

Robert T. Matsui
Robert T. Matsui

Edolphus Towns
Edolphus Towns

Jerrold Nadler
Jerrold Nadler

Alcee Hastings
Alcee Hastings

Ed Pastor
Ed Pastor

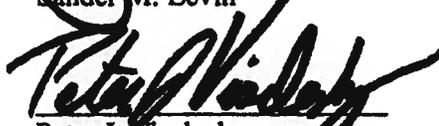
Sherrod Brown
Sherrod Brown

Peter A. DeFazio
Peter A. DeFazio

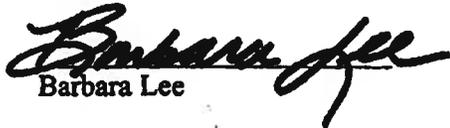
Martin Olav Sabo
Martin Olav Sabo

Bobby L. Rush
Bobby L. Rush

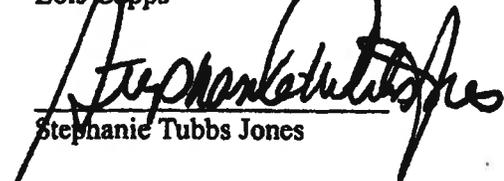

Sander M. Levin


Peter J. Visclosky


Peter Deutsch


Barbara Lee


Lois Capps


Stephanie Tubbs Jones


Dennis J. Kucinich

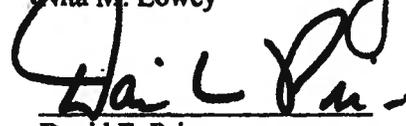

Jim McDermott


Michael M. Honda


Neil Abercrombie


Anthony D. Weiner


Nita M. Lowey


David E. Price


Raúl M. Grijalva


Eleanor Holmes Norton


Sam Farr


Timothy H. Bishop


William D. Delahunt


Hilda L. Solis


Chris Van Hollen


Grace F. Napolitano


Denise L. Majette

Jim Langevin
James R. Langevin

Pete Stark
Fortley Pete Stark

Michael H. Michaud
Michael H. Michaud

Carolyn McCarthy
Carolyn McCarthy

Janice D. Schakowsky
Janice D. Schakowsky

James P. McGovern
James P. McGovern

Patrick J. Kennedy
Patrick J. Kennedy

Robert Wexler
Robert Wexler

Joseph Crowley
Joseph Crowley

Anna G. Eshoo
Anna G. Eshoo

Madeleine Z. Bordallo
Madeleine Z. Bordallo

John B. Larson
John B. Larson

Frank Pallone, Jr.
Frank Pallone, Jr.

James P. Moran
James P. Moran

John W. Olver
John W. Olver

Mark Udall
Mark Udall

Steven R. Rothman
Steven R. Rothman

Rahm Emanuel
Rahm Emanuel

Linda T. Sanchez
Linda T. Sanchez

Ellen O. Tauscher
Ellen O. Tauscher

Louise McIntosh Slaughter
Louise McIntosh Slaughter

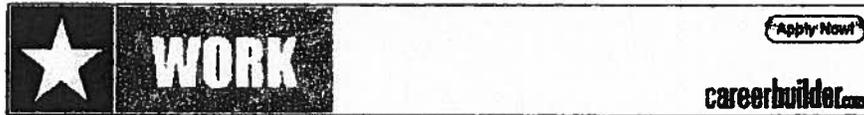
Lynn C. Woolsey
Lynn C. Woolsey

Exhibit 2

FEDERALTIMES.com

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HOME
Information Technology
Management Issues
Homeland Security
Procurement
Postal News
Business Report
Career Info
Personal Finance
Spotlight
Commentary
Weekly Poll



March 31, 2004

Employees are protected from bias for sexual orientation, White House says

By **TIM KAUFFMAN**

Employees are protected from discrimination based on their sexual orientation, the White House says.

The White House position, made in a March 31 statement to *Federal Times*, appears to contradict recent statements by President Bush's appointee to the office that handles such discrimination claims.

"Longstanding federal policy prohibits discrimination against federal employees based on sexual orientation," White House spokeswoman Maria Tamburri said. "President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work."

The government has advised employees since 1980 that discrimination based on sexual orientation is covered as a prohibited personnel practice under the 1978 Civil Service Reform Act and should be appealed to the Office of Special Counsel. The act covers all conduct "which does not adversely affect" performance, although it doesn't specifically list sexual orientation.

Special Counsel Scott Bloch, whose office is responsible for ensuring employees are not discriminated against based on matters unrelated to their work, has questioned publicly whether the law actually protects federal employees from discrimination based solely on their sexual orientation. He removed all materials referencing sexual orientation discrimination from OSC's Web site shortly after beginning a 5-year term in January and said he is reviewing his agency's obligation to enforce such cases.

In a March 10 interview with *Federal Times*, Bloch said his initial reading of the law is that gays, lesbians and bisexuals are protected only if the discrimination is based on conduct unrelated to their jobs, such as attending a gay pride rally.

Tamburri did not make a distinction between sexual orientation and conduct. She said she was unable to comment on whether the White House statement conflicts with Bloch's views and whether the White House had discussed its reading of the law with Bloch. OSC did not have an immediate response to the White House statement.

A group of Democratic lawmakers challenged Bloch's interpretation at a March 31 news conference and said they will be sending a letter to Bush asking him to issue a statement affirming that sexual orientation discrimination is illegal. The letter was being circulated to House and Senate members for their signatures at press time.



DefenseNews.com

ArmyTimes.com

NavyTimes.com

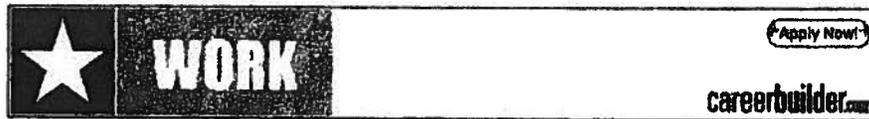
AirForceTimes.com

MarineTimes.com

"The law is clear: Federal employees cannot be discriminated against in employment matters for factors that do not affect their job performance," Rep. Tammy Baldwin, D-Wis., said. "This may come as a surprise to Mr. Bloch, but being a gay or lesbian American does not affect a person's job performance."

Several lawmakers at the news conference said Bush should demand Bloch's resignation if Bloch does not retreat from his stated position.

Nearly 80 lawmakers from both chambers and parties, but mostly House Democrats, have sent letters to Bloch in recent weeks asking him to reverse his position and acknowledge that discrimination based on sexual orientation is against federal policy. Rep. Eliot Engel, D-N.Y., said House Democratic leaders decided to write to Bush because they have received no response from Bloch.



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(updated April 4, 2003).

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Exhibit 3

From:
Sent: Friday, April 09, 2004
To:
Subject: From the Special Counsel

Please read the message below.

From:
Sent: Friday, April 09, 2004 10:53 AM
To:
Subject: Updated language for issuance to staff

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.

Exhibit 4


THE WALL STREET JOURNAL.
 ONLINE

November 28, 2007

Head of Rove Inquiry in Hot Seat Himself

**Bloch Used Private Company,
Geeks on Call, to Delete Files
On His Office Computer**

By **JOHN R. WILKE**
November 28, 2007

WASHINGTON -- The head of the federal agency investigating Karl Rove's White House political operation is facing allegations that he improperly deleted computer files during another probe, using a private computer-help company, Geeks on Call.

Scott Bloch runs the Office of Special Counsel, an agency charged with protecting government whistleblowers and enforcing a ban on federal employees engaging in partisan political activity. Mr. Bloch's agency is looking into whether Mr. Rove and other White House officials used government agencies to help re-elect Republicans in 2006.

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



Scott J. Bloch

Recently, investigators learned that Mr. Bloch erased all the files on his office personal computer late last year. They are now trying to determine whether the deletions were improper or part of a cover-up, lawyers close to the case said.

Bypassing his agency's computer technicians, Mr. Bloch phoned 1-800-905-GEEKS for Geeks on Call, the mobile PC-help service. It dispatched a technician in one of its signature PT Cruiser wagons. In an interview, the 49-year-old former labor-law litigator from Lawrence, Kan., confirmed that he contacted Geeks on Call but said he was trying to eradicate a virus that had seized control of his computer.

Mr. Bloch said no documents relevant to any investigation were affected. He also says the employee claims against him are unwarranted. Mr. Bloch believes the White House may have a conflict of interest in pressing the inquiry into his conduct while his office investigates the White House political operation. Concerned about possible damage to his reputation, he cites a Washington saying, "You're innocent until investigated."

Clay Johnson, the White House official overseeing the Office of Personnel Management's inquiry into Mr. Bloch, declined to comment. Depending on circumstances, erasing files or destroying

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evidence in a federal investigation can be considered obstruction of justice.

Mr. Bloch had his computer's hard disk completely cleansed using a "seven-level" wipe: a thorough scrubbing that conforms to Defense Department data-security standards. The process makes it nearly impossible for forensics experts to restore the data later. He also directed Geeks on Call to erase laptop computers that had been used by his two top political deputies, who had recently left the agency.

Geeks on Call visited Mr. Bloch's government office in a nondescript office building on M Street in Washington twice, on Dec. 18 and Dec. 21, 2006, according to a receipt reviewed by The Wall Street Journal. The total charge was \$1,149, paid with an agency credit card, the receipt shows. The receipt says a seven-level wipe was performed but doesn't mention any computer virus.

Jeff Phelps, who runs Washington's Geeks on Call franchise, declined to talk about specific clients, but said calls placed directly by government officials are unusual. He also said erasing a drive is an unusual virus treatment. "We don't do a seven-level wipe for a virus," he said.

Mr. Bloch was a loyal member of the Bush administration, serving in the Justice Department's office of faith-based programs, when the president named him to head the Office of Special Counsel in 2003. Unlike many administration appointees, Mr. Bloch doesn't serve at the pleasure of the president. He has a fixed five-year term and may be removed only for malfeasance. That is supposed to ensure his agency has the independence to pursue any probe.

Mr. Bloch's investigation of the White House political operation began after a Rove deputy gave a series of political presentations to government agencies on Republican prospects in specific congressional races. Mr. Bloch's office wants to know whether such presentations violated the Hatch Act, a law forbidding the use of federal resources to back candidates for office.

The Office of Special Counsel has set up a task force of lawyers and investigators, led by Mr. Bloch's deputy, James Byrne, to determine which agencies got political briefings from the White House. The agency plans to interview officials at more than 20 agencies and is examining White House emails and documents.

In one email, sent by the U.S. drug-control office and disclosed this summer, an official quotes Mr. Rove as being pleased that officials at the Commerce, Transportation and Agriculture departments went "above and beyond" the call of duty in arranging appearances by cabinet members at Republican campaign events.

Mr. Rove has resigned from the White House and is no longer under jurisdiction of the Office of Special Counsel. His attorney, Robert Luskin, declined to comment.

The special counsel's probe has already found one alleged violation, at the General Services

Blowing the Whistle

- **2001-2003:** Scott Bloch works at the Justice Department's Task Force for Faith-Based & Community Initiatives
- **June 26, 2003:** Nominated to head Office of Special Counsel by President Bush
- **October 2005:** White House assigns inspector general to probe claims against Mr. Bloch of mismanagement and whistleblower retaliation
- **November 2006:** Mr. Bloch opens first inquiry into activities of Karl Rove and his deputies
- **February 2007:** Mr. Bloch's office starts probing agencies where Rove deputies spoke in 2006. Question is whether officials violated law barring use of federal resources to back candidates.

Administration, where Rove deputies gave a presentation on Jan. 26. At the end of the presentation, according to a report by Mr. Bloch's office on the incident, GSA Administrator Lurita Doan asked, "How can we help our candidates?" Twenty participants in the meeting recalled substantially the same words, the report said.

In a letter to President Bush, Mr. Bloch urged that Ms. Doan "be disciplined to the fullest extent for her serious violation of the Hatch Act" and for failing to cooperate "fully and honestly" with the probe. The White House hasn't acted on Mr. Bloch's request. In a response, Ms. Doan said the investigation was "far off the mark." Her lawyer urged the White House to ignore Mr. Bloch's findings, citing a "clear lack of objectivity and impartiality."

Now, Mr. Bloch is facing claims that he too isn't cooperating with investigators. Agents working for the inspector general of the Office of Personnel Management are seeking his emails and a copy of an encrypted flash drive he bought from the Geek service.

"I have nothing to hide and I've cooperated with all legitimate requests," Mr. Bloch said.

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Exhibit 5

Oversight committee asks OSC's Bloch to explain deleted files

By Dan Friedman *CongressDaily* December 7, 2007

The House Oversight and Government Reform Committee Thursday asked Special Counsel Scott Bloch to agree to a transcribed interview with committee staff to explain why he deleted from an office computer files that might have been relevant to an investigation into his conduct.

In a letter, Oversight and Government Reform Chairman Henry Waxman, D-Calif., and ranking member Tom Davis, R-Va., said they "are interested in gaining understanding of several issues" raised by a report that Bloch in December 2006 had files on his computer and those used by two former aides erased by a private computer help service.

The Office of Personnel Management's inspector general has sought the files for its two-and-one-half-year-old probe into allegations that Bloch, whose office investigates violations of workplace rules at federal agencies, retaliated against whistleblowers who opposed his policies.

Waxman's consent to the request is significant.

Davis for months has accused Bloch of leaking documents and courting the Democratic majority during OSC's investigation of political briefings at federal agencies.

Davis has also blasted a similar probe by committee Democrats.

Last summer, Davis tried to slash OSC's budget and demanded Bloch turn over e-mails related to what Republicans charged was improper use of office e-mail by Bloch. But Waxman did not back the request, leaving Davis unable to force Bloch to comply.

Waxman declined to comment, but a senior Republican committee aide said the chairman agreed to co-sign Thursday's letter because Bloch's recently disclosed actions were "too strange to ignore."

An OSC spokesman said Bloch is considering whether to comply with the request. The committee did not subpoena Bloch, but could do so if he refuses a voluntary interview.

The committee inquiry puts new pressure on Bloch, who in recent days has defended his actions in a radio interview and a letter to *The Wall Street Journal*, which first reported the deletion of Bloch's files.

The letter asks Bloch why he used a private information technology company to perform a "seven-level wipe" on his computer, which makes it nearly impossible to recover data.

Bloch has said he hired the company because he thought his computer had a virus.

The OSC spokesman said Thursday that Bloch initially had his agency's IT staff work on his computer, but later brought in a private company when problems persisted.

The spokesman said Bloch also had the computers of former aides who had departed the agency wiped because the computer technicians arrived at the office while Bloch was not present and were billing the agency for their time.

The spokesman could not explain why Bloch, who has said all the deleted files were personal, used agency funds to pay for the work, which cost \$1,149.

Bloch has said he backed up all the files on a portable thumb drive.

But he has refused to agree to a subpoena sent last month by the OPM IG seeking access to the thumb drive and his America Online e-mail account because the files are not relevant to the investigation, the spokesman said.

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