

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
	:	CRIMINAL NO. 13-00005-001 (RLW)
v.	:	
	:	
SCOTT J. BLOCH	:	
	:	
Defendant.	:	

MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in aid of sentencing. For the reasons stated herein, the government agrees not to oppose a sentence at the lowest end of the recommended guidelines range, and if the Court elects to sentence the defendant to probation, the government respectfully recommends that the Court impose at least two conditions: (a) the payment by the defendant of a \$5,000 fine; and (b) the successful completion by the defendant of 200 hours of community service.

I. Background

On February 12, 2013, the defendant Scott J. Bloch pled guilty before this Court to Misdemeanor Depredation of Government Property, in violation of 18 U.S.C. § 1361 pursuant to a plea agreement with the government. As part of the plea agreement, the parties agreed, among other things, that the advisory sentencing range under the U.S. Sentencing Guidelines (“USSG”)

recommended a sentence of 0 to 6 months incarceration and a fine in the range of \$250 to \$5,000. The parties further agreed that a sentence within these stipulated ranges constituted a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a). The Presentence Investigation Report (“PSR”) issued by the United States Probation Office concurs with this analysis and has also determined that pursuant to the USSG, the defendant faces a recommended imprisonment range of 0 to 6 months and a fine of between \$250 to \$5,000. *See* PSR at ¶¶ 23-32, 35-36, 77, and 94.

On June 26, 2003, Bloch was nominated for the position of Special Counsel to the United States Office of Special Counsel (“OSC”). At all times relevant to this case, Scott Bloch served as Special Counsel to OSC. The OSC is an independent federal agency charged with safeguarding the merit-based employment system by protecting federal employees and applicants from prohibited personnel practices (“PPP”). As such, OSC receives, investigates, and prosecutes allegations of PPPs, with an emphasis on protecting federal government whistleblowers. The OSC is headed by a presidential appointee whose title is “Special Counsel.” Pursuant to federal statute, 5 U.S.C. § 1211(b), the Special Counsel is appointed by the President, with the advice and consent of the Senate, for a term of five years. OSC is funded by the U.S. Department of Treasury. Accordingly, all office equipment, including all OSC computers, are property of the United States.

Prior to December 18, 2006, Bloch and an individual (W-1) discussed, among other things, certain computer problems that each of them had experienced. In these discussions, W-1 informed Bloch that W-1 had previously used a person (later identified as an employee with a company called “Geeks On Call”) to successfully fix his own computer by using, among other

methods, a “seven-level wipe.” W-1 told Bloch that when a “seven level wipe” was performed on a computer, all of the programs and data on that computer, would be wiped completely clean from the computer. W-1 further explained that after such a wipe, the computer would only work again after reinstallation of the necessary operating software, including an Operating System (e.g. Microsoft Windows). With this information, Bloch had an understanding that if a “seven-level wipe” was performed on a computer it would be virtually impossible for anyone to recover deleted data from that computer. Bloch also understood that the wiped computer would not be operable unless and until software, including an Operating System, was reinstalled on the computer.

On or about December 11, 2006, Bloch directed a member of his senior staff to contact Geeks On Call to perform a seven-level wipe on OSC computers. On the morning of December 18, 2006, a Geeks On Call technician arrived at OSC’s office in the District of Columbia. A Geeks On Call technician went to Bloch’s office and arrived there before Bloch. A senior staff member called Bloch to ask Bloch what Bloch wanted the technician to do. Bloch instructed his senior staff member to direct the technician to perform a “seven-level wipe” on the C: drives (or “local” hard drives) of the OSC computers assigned to two former non-career appointees in the office of the Special Counsel. The technician performed the wipes as instructed.

The Geeks On Call technician then returned to the OSC office later that afternoon on December 18, 2006, to meet with Bloch. Upon his return, the technician was instructed by Bloch to perform a “seven-level wipe” on one additional OSC-issued laptop computer, one assigned to Bloch. Prior to performing this additional “seven-level wipe,” the technician was directed by Bloch to first make an archival copy of various documents and files, including all of the

documents and files in his “My Documents” folder, located on the C: drive. The technician then performed the wipe as instructed.

The “seven-level wipes” performed on the three OSC computers described above, wiped the entire hard drive of each of these three computers. As a result, after the wipes were completed, each of these computers was rendered unusable. After the seven-level wipes, none of the three computers was able to perform any of its functions until a new Operating System, as well as additional software, was reinstalled on the computers. In addition, all of the data stored on these computers was no longer recoverable from the computers. In mid-July of 2007, the acting Deputy Special Counsel (who did not work at OSC at the time fo the December 18, 2006 wipes), learned that Bloch had wiped the computers and reported this to the Office of Inspector General for the Office of Personnel Management.¹

Bloch’s conduct as described above and in the Statement of Offense resulted in the willful injury and depredation of property of the United States in violation of 18 U.S.C. § 1361.

II. Sentencing Guidelines Calculation

Under the voluntary Sentencing Guidelines, Bloch’s total offense level after acceptance of responsibility is 4. The recommended sentencing range under the USSG is 0 to 6 months incarceration, and a fine of between \$250 and \$5000. *See* PSR at ¶¶ 23-32, 35-36, 77, and 94.

¹ In December of 2007, the House of Representatives Committee on Oversight and Government Reform (the “Committee”) came to learn through media reports, including a November 28, 2007, Wall Street journal article, that Bloch had used non-government IT personnel to perform this service and by letter asked Bloch to participate in an interview about his use of Geeks on Call. Bloch made himself available to be interviewed by members of the committee staff in March 2008, that interview formed the basis for the prior charged conduct in 1:10-mj-00215. The defendant’s plea in that case was subsequently withdrawn in post plea litigation. The government dismissed this case on January 2, 2013. PSR at ¶ 37.

Under the plea agreement, the government does not oppose a sentence at the low end of the range.

III. Discussion

For nearly five years, Mr. Bloch served as the head of an independent United States government agency charged with safeguarding the rights of federal employees from a wide range of prohibited personnel practices. In this important role, Mr. Bloch was responsible for overseeing a great number of investigations vital to ensuring the integrity of the federal employment system. During the time that Mr. Bloch held this significant position of public trust, he willfully damaged federal property by ordering that three computers belonging to the United States be wiped in such a manner as to make it virtually impossible for anyone to ever recover any data from those computers. This breach of the public trust should not be treated lightly.

While the seriousness of the defendant's offense cannot be overlooked, certain factors weigh in favor of a sentence at the low end of the sentencing range. The defendant accepted responsibility for this charged criminal conduct pre-indictment and has no criminal history. Moreover, in light of the public nature of the defendant's guilty plea, and the likelihood of collateral punishment to the defendant (such as the possibility of sanctions with state bar offices), the government believes that beyond the sentence imposed in this case, the defendant will suffer the consequences attendant to any criminal conviction.

IV. Conclusion

For the foregoing reasons, the government agrees not to oppose a sentence at the lowest end of the recommended guidelines range. If the Court elects to sentence the defendant to probation, the government respectfully recommends that the Court impose at least two conditions: (a) the payment by the defendant of a \$5,000 fine; and (b) the successful completion by the defendant of 200 hours of community service. The government believes that such a sentence would, among other things, reflect the seriousness of the offense to which Mr. Bloch has pled guilty, promote respect for the law, provide just punishment for the offense, and provide appropriate deterrent effect for similar criminal conduct in the future.

Respectfully submitted,

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