

Dear Chairmen Collins and Voinovich:

Thank you for calling this oversight hearing on the U.S. Office of Special Counsel. (OSC). It is a badly needed opportunity to begin the process of separating facts from disinformation in an increasingly heated debate about a question fundamental for accountable government: Is the OSC under the leadership of Special Counsel Scott Bloch serving or undermining the merit system in general, and rights secured by the Whistleblower Protection Act (WPA) in particular?

Earlier this year our groups joined an unprecedented Whistleblower Protection Act complaint charging that Mr. Bloch had engaged in retaliation to purge whistleblowers on his own staff who protested the agency's deteriorating commitment to its mission. The reason was simple. Under the prior Special Counsel the Office was a good faith, modestly effective resource to enforce whistleblower rights. Due to the battered condition of the WPA after hostile judicial activism, it doesn't get any better than that for whistleblowers in the federal government. As a result, often the OSC was the first, and only realistic option, for a whistleblower to "commit the truth" and survive professionally.

Now we warn federal whistleblowers that they may be signing their own professional death warrant by seeking the Special Counsel's help. Since Mr. Bloch's arrival, the service function we once relied on has dried up completely. And matters could get far worse. The agency either forced out or exiled veteran, highly effective staff who either blew the whistle on betrayal of the OSC's mission or were perceived to have done so.. This agency responsible for protecting the federal workforce from illegal gag orders has issued an illegal, blanket gag order on its own staff, claimed it was all a "misunderstanding," but never withdrew it. We fear the OSC could revert to déjà vu for the 1980's nightmare when the agency was a legalized plumbers unit that helped identify and eliminate "disloyal" employees from the federal government.

Mr. Bloch has repeatedly defended his controversial policies by claiming that he has been trying to improve the efficiency of OSC's operations, by reducing the "backlog" of overage cases, while at the same time improving service to complainants and whistleblowers. As described in the accompanying Fact Sheet, however, this defense is based on a manipulation of the relevant statistics, which show quite the opposite. While Mr. Bloch is certainly closing more cases in his intake units, he is dramatically reducing the quality of the review complaints receive, as well as the number of whistleblowers helped, and simply moving backlogs around within the agency..

Beyond statistical issues, from everyday experience we know the facts of life. At best, going to the Special Counsel for help is putting good energy after bad. To our knowledge, very few whistleblowers have been helped since Mr. Bloch's arrival. While we do not doubt that exceptions have occurred, there is no mystery about the rule. Employees threatened or victimized by merit system violations are not grounded in reality if they seek the Special Counsel's help against harassment or retaliation.

The dynamic is the same for whistleblowers who want to challenge government misconduct such as fraud, waste or abuse. They should go to Congress, the media or another outlet. In terms of making a difference, filing a whistleblowing disclosure at the OSC has become akin to spitting in the wind..

These conclusions are based on a careful comparison of statutory law with the OSC's recent public denials of any misconduct; our organization's ongoing patterns of analogous frustrations; reports from 60 whistleblowers so far in an ongoing GAP survey of employees who filed cases at the OSC since Mr. Bloch's arrival; and documents obtained by PEER in Freedom of Information Act requests. This letter summarizes information in the more detailed, attached fact sheet. Condensed summaries illustrating our concerns are listed below.

1. Backlogs. The Special Counsel asserts drastic backlog reductions both for reprisal investigations and whistleblowing disclosures. Unfortunately, it appears that the OSC's approach to reducing backlogs has been to arbitrarily abandon those who have been waiting. Further, the claims that backlogs have been reduced and that enforcement has been increased are based upon a selective and distorted statistical analysis, as is described in the attached Fact Sheet.

* The Complaints Examining Unit (CEU) arbitrarily has been limited to writing no more than 1.5 pages on whether to conduct potentially high-stakes, multi-year investigations on whistleblower disputes that could affect the lives of all Americans.

* OSC claims of reducing the intake backlog have not been matched by data about the backlog of cases in the investigation divisions, which means the delays may just be shifting from one office to another. Further, the increased backlog in the investigative divisions has resulted in a precipitous decrease in the number of complainants being helped by OSC

* The backlog of whistleblowing disclosures has been reduced for the most part by closing out 500 pending "low priority" cases without even contacting the whistleblowers, on the excuse that the prior Special Counsel did not plan to either. In fact, the prior Special Counsel's policy was to contact both high and low priority whistleblowers to follow through on initial queries, because frequently whistleblowers are lay people who do not communicate in the legal format or jargon used by the OSC. In fact, clarification calls to a low priority whistleblower on Navy welding led the prior Special Counsel to order a significant investigation that Mr. Bloch has taken credit for, after sitting on the completed report for some eight months before forwarding it to the President. That wouldn't have happened under Mr. Bloch's streamlined case closing policy.

* To illustrate further, in January 2004 a high level Department of Energy whistleblower whom the prior Special Counsel backed on nationally prominent charges of a homeland security breakdown at a nuclear weapons facility issued comments rebutting an agency whitewash that had denied any security problems exist. As of May

2005, the Special Counsel has not responded, and there has been no corrective action to better protect America from vulnerable to terrorists attacking our nuclear facilities.

2. Track record.

Mr. Bloch has asserted that the OSC is doubling its enforcement record of results. A careful reading of his statistics reveals just the opposite. Corrective action for all prohibited personnel practices has dropped roughly in half over the last two years. The number of whistleblowing disclosures referred for some form of agency investigation has not increased; in fact, as a percentage of the overall disclosures received, the number referred has dropped dramatically.

Beyond statistics, the response of a whistleblower in the GAP survey illustrates why OSC professionalism has become a bitter joke.

“In the reprisal charge, they [the OSC] did not contact key witnesses I suggested; appropriately review evidence I identified as critical; ask for additional evidence, of which I have plenty; afford me the opportunity to provide evidence to counter the subjects’ response....The OSC did not wait for or consider my comment before closing my complaint. As a federal investigator with another agency, I would probably face disciplinary action for handling investigations or treating complainants in th[is] manner.... For the whistleblower disclosures, the OSC did not contact me until 19 months after I filed my complaint to discuss the evidence in my case. The OSC did not explain why they would/did not order an agency investigation.”

This individual got far better service than most. The OSC opened a field investigation of his reprisal complaint, and spoke with him about his whistleblowing disclosure.

3. Reorganizations and reassignments. In addition to charges of being a pretext for staff purges, they have stripped the agency of its most veteran employees with track records of obtaining results. Attorneys and investigators have been replaced without explanation to affected complainants. Litigation and corrective action commitments have been arbitrarily dropped without explanation, after being developed for months or years by a prior team. For all practical purposes the OSC’s Alternative disputes Resolution (ADR) unit has been abolished and its mediator forced out, although she was credited with helping resolve and constructively obtain relief from more prohibited personnel practices than any other single agency employee.

4. Buddy system replacements. After Special Counsel Alex Kozinski purged veteran employee rights professionals from the staff in 1981 and 1982, his next step was far more destructive to the merit system. In a series of buddy system hires, he systematically replaced them with intelligence, law enforcement and similar personnel who were openly hostile to whistleblowing. Symptoms of déjà vu are recurring. The competitive process increasingly is being bypassed. New inexperienced professional staff have been recruited from among the personal acquaintances of the Special Counsel and

his Deputy to replace effective career veterans. Mr. Bloch hired his son's boarding school headmaster as a special consultant, and then gave him access to sensitive disclosure files. The number of political appointees has doubled. The agency's Director of Human Resources, who had been with OSC since it was created in 1979, resigned abruptly some 10 months into Mr. Bloch's tenure, in what many members of OSC staff believe was concern over these and other policies.. It is essential that the merit system against political hiring start at home for the OSC.

5. Budgetary priorities. Mr. Bloch did not fill 16 of 113 positions Congress allocated for the agency in FY 2004. To illustrate, while doubling political appointments he has passively refused to double the disclosure Unit staff from five to ten, despite congressional funding approval. Positions to serve reprisal victims remain unfilled, while the agency approves six figure contracts for work that is ignored or of questionable value.

6. Twisted mission. Neglect of whistleblower rights is not an aberration. For all practical purposes enforcement of merit system rights protecting sexual orientation has become dormant, although the OSC is the only agency with enforcement authority against that prohibited personnel practice. OSC recently closed one complainant's case without even investigating it, notwithstanding that he had provided a witness statement alleging that the personnel officer who wrote the charges against him had stated, in reference to the complainant "don't you just hate these f-ing faggots?" Meanwhile, resources are increasing for steadily more partisan, and controversial, Hatch Act investigations and prosecutions. In one case, Mr. Bloch has been accused of delaying until after the election an investigation of a Hatch Act complaint concerning political activity by then-National Security Advisor Condolleeza Rice, by assigning the case to himself and his political deputy.

The OSC's sharply deteriorating record must be nipped in the bud, before the agency becomes more dangerous. Already GAP has received a pattern of complaints from employees who filed OSC whistleblowing disclosures that they were subsequently retaliated against for going to the Special Counsel, after which the OSC declined to investigate.

The first step is for Congress to obtain transparency about what is happening at this sick agency, and about how much damage has occurred already. The Special Counsel simply is not playing it straight about policy reversals that are occurring throughout the agency, and the disastrous consequences for whistleblowers. He is not playing it straight about case processing statistics. He is not playing it straight about his hiring practices or the actions he has taken against his own staff. This hearing is a major step forward. It inspires us to step up ongoing vigilance. We will keep investigating the Special Counsel, and keep blowing the whistle on the OSC, unless and until its commitment to defend the merit system is born again.

Sincerely,

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Government Accountability Project

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Executive Director
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