

# KATZ, MARSHALL & BANKS, LLP

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By Telecopier and Hand-Delivery  
November 28, 2007

President George W. Bush  
White House  
1600 Pennsylvania Ave.  
Washington, D.C. 20580

Re: Malfeasance and Illegal Misconduct by Special Counsel Scott Bloch

Dear Mr. President:

For the last two and one half years, I have been representing a group of public interest organizations as well as a number of current and former employees of the United States Office of Special Counsel (OSC) in connection with a complaint filed against Special Counsel Scott Bloch, which is under investigation by the Office of Personnel Management's Inspector General (OPM IG). The initial complaint, filed in April of 2005, alleged violations of federal personnel laws, including retaliation against internal whistleblowers, the purging of existing career staff and their replacement with political cronies, illegal gag orders, and the wholesale dismissal of over 1000 whistleblower disclosures without investigation. I have since amended the complaint several times, as Mr. Bloch and/or his political staff have continually obstructed the IG's investigation, made false statements to Congress, and engaged in other improper and illegal activity, all of it directly antithetical to the mission of OSC, which is to protect the merit-based civil service, and to investigate and prosecute agency officials who retaliate against whistleblowers.

The OPM IG investigation has dragged on for several years, while Mr. Bloch has systematically destroyed OSC, and any credibility it once had. While Mr. Bloch has boasted of his efficiency in clearing out "backlogged" cases, the number of employees receiving relief from OSC has plummeted. Experienced career staff have left in unprecedented numbers and OSC is widely viewed as an ineffective, highly politicized, and even corrupt institution.

Today's *Wall Street Journal* contains a report confirming what my clients and other sources within OSC have been saying since the OPM IG investigation began: that Mr. Bloch and his political henchmen have continuously obstructed the investigators' efforts to get at the truth. Mr. Bloch apparently hired "Geeks on Call" in December 2006 to do a sophisticated, Department of Defense-level "wipe" of his computer hard drive, and the hard drives of two of his political deputies. He claims that he did so to eradicate "viruses" on the computers. This assertion is ludicrous; the procedure that "Geeks on Call" employed is used to wipe hard drives and delete all information previously stored,

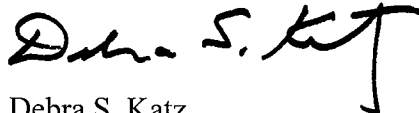
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not to address viruses. Further, OSC has its own IT department, which would have been responsible for addressing any "virus" issue; OSC does not use "Geeks on Call" to service its computers.

Tellingly, the *Wall Street Journal* article quotes Mr. Bloch as defending himself with a claim that the OPM IG has a "conflict of interest" in pursuing its investigation of Mr. Bloch while his office supposedly is conducting an investigation of White House. This claim by Mr. Bloch confirms what we have repeatedly pointed out in correspondence with the White House Counsel, with Clay Johnson, Deputy Director of OMB, and with members of Congress -- that Mr. Bloch launched his supposed investigation of the White House to insulate himself from the OPM IG investigation. (I am enclosing for your ease of reference a letter dated October 10, 2007, to White House Counsel Fred Fielding, outlining these concerns.) The fact that Mr. Bloch -- caught red-handed destroying evidence and obstructing justice -- has now himself openly attacked the ability of the OPM IG to conduct an impartial investigation speaks volumes. Mr. Bloch continues to cling to his strategy of using his "investigation" of the White House to insulate himself from his own misdeeds.

Enough is enough Mr. President. By law, you may remove the Special Counsel for neglect, inefficiency or malfeasance in office. 5 U.S.C. Sec. 1211. Obstruction of justice, making untruthful statements to Congress, retaliating against whistleblowers, purging career staff, using official authority for personal and political reasons, and the systematic destruction of OSC's effectiveness and credibility certainly constitute malfeasance. We urge you, therefore, to remove Mr. Bloch from his office, and to provide full relief to the talented and highly qualified employees that Mr. Bloch illegally drove out of the agency, who have brought his continued misconduct to light, and who continue to wait for justice.

Sincerely,



Debra S. Katz

Enc.

cc: Fred Fielding, White House Counsel  
Senator Joseph Lieberman, Chairman, Senate Homeland Security and  
Governmental Affairs Committee  
Senator Susan Collins, Ranking Member, Senate Homeland Security and  
Governmental Affairs Committee

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

Senator Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee

Rep. Henry Waxman, Chairman, House Oversight and Government Reform Committee

Rep. Tom Davis, Ranking Member, House Oversight and Government Reform Committee

Rep. Danny K. Davis, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia

Rep. Kenny Marchant, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia

Clay Johnson III, Deputy Director for Management, Office of Management and Budget

Patrick E. McFarland, Inspector General, Office of Personnel Management

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October 10, 2007

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

Re: PCIE Referral of Complaint Against Scott J. Bloch, Special Counsel,  
Office of Special Counsel (OSC) to White House Counsel

Dear Mr. Fielding:

I am writing on behalf of my clients, a group of career OSC employees and four public interest organizations, who filed a Complaint of Prohibited Personnel Practices Against U.S. Special Counsel Scott J. Bloch ("OSC Complaint") with President George W. Bush in March 2005. This OSC Complaint was assigned for investigation to Patrick McFarland, the Inspector General for the Office of Personnel Management, in April 2005. I am writing to request that you direct the OPM IG to provide you with an interim report or substantive briefing regarding what its investigation has uncovered to date, and to explain the reasons for its long delay in concluding this investigation.

It is our view that despite the diligent efforts of the OPM IG's staff, Mr. Bloch has succeeded in obstructing and delaying this investigation for over almost two and half years. He has done so repeatedly, as I believe the OPM IG would confirm, both personally and through members of his political staff, and most recently by directing his former and current political staff to refuse to answer questions about Mr. Bloch's various misdeeds. We understand that Mr. Bloch (though his political staff) has interposed frivolous claims of "attorney client" privilege in an effort to prevent the IG from getting at the truth.

Mr. Bloch has also greatly delayed this investigation by throwing up smoke screens to make himself "bullet proof," including the launching of a widely publicized investigation concerning alleged violations of law in connection with the termination of a former U.S.

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

In fact, our concerns about having Mr. Bloch lead these efforts were recently confirmed when OSC conducted a Hatch Act investigation of GSA Administrator Lurita Doan. Because of Mr. Bloch's involvement and actions, the focus was shifted from the allegations against Ms. Doan to Mr. Bloch's own credibility. Thus, in an act that could only have been motivated by Mr. Bloch's desire to protect himself, Mr. Bloch authorized James Mitchell, his Director of Communications, to leak OSC's investigative report to the press, before Ms. Doan had an opportunity to respond to it. Mr. Mitchell accidentally released a preliminary draft of the report, rather than the final one, to the *Washington Post* and the *Los Angeles Times*. Upon learning of his error (after the *Washington Post* had already published the preliminary report on its website), Mr. Mitchell gave the media copies of the final report, but failed this time to redact the names of employees whose work and competence Ms. Doan was said to have questioned in her interviews with OSC.

During OSC's Reauthorization hearing, Mr. Bloch did not own up to his actions under intense questioning by members of the House Subcommittee on the Federal Workforce, Postal Service and the District of Columbia. Instead, he testified (untruthfully) that he did not know whether OSC was the source of the leak. Contrary to his testimony, Mr. Bloch was well aware of how the report had been leaked because he himself authorized it. His untruthful testimony and evasive responses to questions asked by the Subcommittee further undermined the credibility of the Doan investigation. In fact, to date, the President has not taken any action in response to OSC's report; had a credible Special Counsel overseen this investigation it is far less likely that the President would have felt free to simply ignore OSC's findings.

Given OSC's critical role in protecting the merit system and enforcing the Hatch Act, it is unacceptable that after more than two years, the OPM IG has still not completed its investigation of the charges lodged against Mr. Bloch. We believe that to a large degree this is the result of Mr. Bloch's own obstruction of the investigation. For all of these reasons we believe the OPM IG should issue an interim report at this time. Mr. Bloch should not be permitted to benefit by his obstruction of the IG's investigation, including through the invocation of frivolous claims of privilege, and other high-profile gambits.

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<sup>1</sup> At this point, Mr. Bloch cannot be trusted to oversee any investigation, much less a sensitive investigation of alleged Hatch Act violations by high level political appointees. Regardless of the outcome of those investigations, they will not be considered credible. As I explained in my letter to you dated April 25, 2007, multiple conflicts of interest preclude Mr. Bloch from being entrusted with responsibility for these important investigations, while he himself is also being investigated, essentially at the direction of the White House.

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Mr. Bloch's end-game here is obvious. He intends to play out the clock through the end of the President's term and avoid any responsibility or consequences for his misconduct. Is the White House content to let that happen?

I look forward to hearing from you.

Sincerely,



Debra S. Katz

Cc: Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee  
Senator Susan Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee  
Senator Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia  
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