

Hon. Susan Collins  
Chair  
Senate Committee on Governmental Affairs  
SD- 340 Dirksen Senate Office Building  
Washington, D.C. 20510-6250

Hon. Joseph Lieberman  
Ranking Minority Member  
Senate Committee on Governmental Affairs  
SH-604 Hart Senate Office Building  
Washington, D.C. 20510

January 10, 2005

Dear Senators Collins and Lieberman:

On behalf of our organizations, Public Employees for Environmental Responsibility (PEER), the Government Accountability Project (GAP), and the Project on Government Oversight (POGO), we are writing to alert you to the latest in a series of efforts by Special Counsel Scott Bloch that threaten to undermine the United States Office of Special Counsel's (OSC) vital mission. Taxpayers and public servants within the government depend on the OSC. As a practical matter, in many instances there is no alternative to defend the merit system against retaliation against whistleblowers; patronage, old boy networks and buddy system hiring practices; or any other threats to America's merit system, which has sustained a non-partisan, professional civil service in our nation for over 130 years. Unfortunately, Mr. Bloch's current pattern of leadership threatens to transform the OSC from an independent agency whose mission is to protect the merit system, into a role model for destroying it.

In light of Mr. Bloch's most recent actions, described in detail below, we strongly urge that you conduct oversight hearings and order an independent investigation of Mr. Bloch's illegal personnel practices and the culture of fear he has created at OSC. We also believe Congress should consider whether continued efforts to amend the Whistleblower Protection Act should be modified to compensate for the weak link that the OSC has become under Mr. Bloch's anti-leadership. For all practical purposes, his office is the only remedy available for emergency interim relief, or any at all against common forms of harassment. For now, whistleblowers or others who need and deserve that support have nowhere to go.

On Thursday, January 6, 2004, without notice or warning, Mr. Bloch directed 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). Seven employees, including one of the two career senior executives, as well as the Director of OSC's alternative dispute resolution (ADR) program, have been directed to report to a newly created field office in Detroit, Michigan. Four others are being told that they are being transferred to fill vacancies in OSC's existing Dallas field office. The twelfth employee, a career senior executive who has been with OSC since 1983, has been reassigned to head the existing Oakland field office. Among other duties he has discharged over the last twenty years, with consistently outstanding performance

appraisals, this career executive has served as Acting Special Counsel for extended periods of time during vacancies in that position. He has also been in charge of enforcement of the Hatch Act for many years, through the terms of several Special Counsels. The Oakland field office has a staff of only approximately six employees. Further, like the Dallas field, the Oakland field office has been headed successfully for many years by an experienced grade 15 manager.

Mr. Bloch advised the affected employees that they must to report to their new assignments within 60 days. He has advised them that they will be fired if they do not indicate their willingness to relocate within ten days.

In a January 7th press release filled with misleading statements, 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." 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 has 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.

Finally, contrary to the insinuation in the press release, the 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. 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, as field offices headed by senior executives will now 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, assuming that they accept the forced geographic reassignments to Detroit and Oakland, the two career senior executives with the most litigation experience will be reporting to the career senior executive at headquarters with the least litigation experience. OSC's Hatch Act Unit will, for the first time in OSC's history, report directly to a political deputy. Further, OSC's highly successful ADR program will inexplicably be run out of Detroit.

In fact, the way that the "reorganization" is being implemented leads to the inescapable conclusion that existing career staff are being purged. 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 have been ordered to relocate have been told that they are not permitted to switch assignments with others who might be willing to take their places. Further, there are at least eleven current vacancies at

OSC headquarters. 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.

Indeed, 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 be less expensive to hire new staff to fill the vacancies in Dallas and to staff the new office in Detroit, than it is to move twelve incumbent employees halfway across the country for that purpose.

Moreover, Mr. Bloch has given the affected employees virtually no time to decide whether to accept the reassignment; nor has he given those employees who might decide (however, reluctantly) to do so, sufficient time to relocate. Many of the affected employees have homes, spouses and family in the Washington, D.C. area. It is completely unreasonable, cruel, and inconsistent with the practice at other agencies, to conduct a geographic reassignment in this absurdly short time frame.

Equally, if not more disturbing, there is every reason to believe that the employees directly affected by the "reorganization" have been deliberately targeted to make way for Mr. Bloch's own hand-picks. Virtually all of the employees affected are individuals who either work under, or have themselves dared to engage in even mild private discussions with Mr. Bloch over the advisability of management and policy decisions he has made over the last twelve months. Mr. Bloch has hired a number of career employees himself over the last year, but he has broken with past OSC practice by hiring them non-competitively, without even involving the career supervisors to whom they would report. Not a single one of Mr. Bloch's personal picks, so selected, is being forced to move.

As you may be aware, despite the fact that he has been in his position for only slightly over a year, Mr. Bloch has already received some very unfavorable attention (as well as a public rebuke by the White House) for suggesting that federal employees are not protected against discrimination based on sexual orientation, and for issuing a gag order to OSC staff, directing them not to speak to anyone outside of the agency about agency policies. In the wake of these incidents, Mr. Bloch (whose job it is to protect whistleblowers) has been publicly quoted as deriding what he calls "leakers" at OSC. Even before this latest purge, OSC staff, whose morale is now at an all-time low, were living in a culture of fear.

Thus, Mr. Bloch is widely perceived by his staff as a dictatorial figure that considers any dissent (even when expressed internally) to be an act of "disloyalty." A significant number of OSC employees are actively searching for new jobs. As a result of Mr. Bloch's management style, several months ago, OSC's long time Director of Human Resources, who was in charge of personnel issues and procurement, retired abruptly, with less than a week's notice. A senior personnel management specialist who worked directly for her, resigned at the same time. These resignations, coming at around the time that Mr. Bloch appears to have been planning his "reorganization" appear to be highly suspicious.

As we hope the foregoing makes clear, something is desperately wrong at the Office of Special Counsel. Ironically, were these abuses of the merit system taking place at any other agency, the proper recourse would be to file a complaint with OSC. If an

Inspector General were abusing his position, the proper recourse would be to file a complaint with the Integrity Committee of the President's Council on Integrity and Efficiency (of which Mr. Bloch is a sitting member). Because these remedies are not available for OSC's employees, it is imperative that Congress step in to direct that an outside review be conducted (perhaps by the Government Accountability Office). On behalf of our organizations, and the public interest we urge you to take whatever immediate action you can to secure such an outside review, to be completed before Mr. Bloch can go ahead with the forced reassignments.

Mr. Bloch's in-house betrayal of the merit system also illustrates why Congress should consider structural reform for civil service remedies as well. It goes to the heart of why his office exists. In 1976 a massive, blue ribbon report by the Ink Commission recommended the Office of Special Counsel's creation in response to the same type of scorched earth attacks on the merit system during Watergate era coverups that Mr. Bloch is now using against his own staff. Federal employees can hardly count on Mr. Bloch to prosecute others for using the same harassment tactics he is perfecting against his own staff.

A structural solution is imperative. For temporary relief or long-term harassment like loss of duties, federal employees realistically have nowhere to turn besides the Office of Special Counsel, or individual congressional offices. OSC employees literally have nowhere to enforce their rights against retaliation in this dispute. They would not even have technical jurisdiction at the MSPB until months after the purge reassignment was a completed fait accompli. Unlike EEO victims or corporate whistleblowers since passage of the Sarbanes-Oxley law, federal workers do not have access to court when there is no action at the administrative level.

The OSC is so fundamental for good government that the Special Counsel's commitment to the merit system must be beyond any credible challenge. By any credible standard, Mr. Bloch has flunked that test. This is not the first time the OSC has turned on its mission. The Whistleblower Protection Act was sparked by analogous purges from Alex Kozinski, whose abuses of power also directly caused 43 Senators to vote against his appellate court nomination. The current OSC fiasco illustrates why this remedies gap is an Achilles heel for the merit system. If the Office is to continue, Congress needs to consider structural reforms to impose accountability for the OSC, and fallback remedies such as those available for corporate workers and discrimination victims.

Sincerely,

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