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October 18, 2005

General Patrick E. McFarland
U.S. Office of Personnel Management
Washington, DC 20415-1100

Re: Complaint Against Scott J. Bloch Counsel,
Office of Special Counsel (OSC)

Dear Mr. McFarland:

I am in receipt of an October 17, 2005 letter from Patricia A. Marshall, in which she advises me that Clay Johnson, III, the Chair of the President's on Efficiency and Integrity, has assigned you to investigate the allegations against Special Counsel Scott Bloch contained in my March 3, 2005 letter. We are fully prepared to cooperate in this investigation and are providing Ms. Marshall with the documentation she has requested along with a copy of this letter. Nonetheless, given the fact that after seven and one half months all that the Executive Branch has generated is a one paragraph letter announcing the long overdue referral of the original complaint for an investigation, I am requesting immediate clarification of several important issues.

First, the narrow focus of Ms. Marshall's letter raises serious concerns about the scope of the investigation you intend to conduct. In addition to the original complaint that her letter references, I also submitted an amended complaint to the Integrity Committee on March 31, 2005 (copy enclosed). Further, my June 22, 2005 and October 12, 2005 letters to Clay Johnson (*copies enclosed*) identified additional acts of misconduct and malfeasance by Mr. Bloch. He committed these acts while the original and amended complaints were transferred between the Integrity Committee, the Office of the White House Counsel, and the PCIE, where they landed in May and then languished in Mr. Johnson's office, apparently until yesterday. In any event, please confirm that your investigation will also include these matters.

Ms. Marshall's letter also contains no information about how your office plans to conduct this investigation. Among other things, we would like your assurance that the complainants here will have the same rights that other federal employees enjoy in similar investigations when they are conducted or overseen by the Office of Special Counsel (OSC). For example, complainants before OSC are entitled to have advanced notice of

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any decision by OSC to close a prohibited personnel practice case, including proposed findings of fact and legal conclusions. 5 U.S.C. § 1214(a)(1)(D). They are also entitled to periodic status reports on the investigation, *Id.* at §1214(a)(1)(C). In addition, complainants are entitled to receive a final report, summarizing the results of the investigation. *Id.* at § 1214(a)(2). Further, whistleblowers who make disclosures to OSC are entitled to review any investigative report concerning their disclosures. 5 U.S.C. § 1213(e). My clients will be expecting similar transparency in this investigation, which is serving as a substitute for the rights they would be able to exercise if they worked for any federal agency other than OSC itself.

Finally, Ms. Marshall's letter does not indicate to whom your findings will be provided, whether you will be making recommendations for corrective and/or disciplinary action, and who is charged with reviewing the findings and acting on the recommendations. Obviously, my clients will need to understand the ultimate purpose of this investigation so that they can determine the extent and nature of their participation in it. Therefore, I request that you provide me with details regarding the anticipated action to be taken in the wake of this investigation.

As you might imagine, the passage of over seven months with no word from Mr. Johnson or any other responsible official concerning the serious allegations against Mr. Bloch; has been extremely demoralizing to my clients and to the OSC staff as a whole. It has also left a cloud hanging over that agency, whose effectiveness as a guardian of the merit system depends in large measure upon the public perception of OSC's own integrity and compliance with the law. Further, the apparent apathy on the part of the Administration toward Mr. Bloch's actions, in conjunction with the ever-increasing pattern of cronyism and politicization of the career service government-wide, have deepened suspicions about whether—even now that some investigation has been ordered—it will be a truly impartial, effective, and complete one.

In short, my clients have waited a long time for Mr. Bloch's actions to be scrutinized and his misconduct to be addressed. While they are encouraged to at last see some movement, if this investigation is to have any credibility at all, it is crucial that your office provide my clients with the reassurances, described above, regarding the scope and conduct of your inquiry.

Sincerely,


Debra Katz

Enclosures

cc: SAIC Maroney w/enclosures

Patricia Marshall w/out enclosures