



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the
Inspector General

December 5, 2013

Honorable Carolyn N. Lerner
Special Counsel
Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Dear Ms. Lerner:

This letter transmits for your information my office's final report pursuant to the interagency agreement we signed with the U.S. Office of Special Counsel (OSC) on March 3, 2006. Under that instrument, we were empowered to conduct an investigation of a complaint filed on March 3, 2005 (as amended on March 31, 2005) by several former OSC employees who alleged that then-Special Counsel Scott J. Bloch committed prohibited personnel practices and other acts of misconduct during the period January 2004 – March 2005. Because it would have constituted an irreconcilable conflict for OSC to have investigated the alleged wrongful conduct of its own agency head, Clay Johnson, who at that time was the Deputy Director for Management of the Office of Management and Budget (OMB), took responsibility for arranging an independent inquiry into the complaint. In an October 5, 2005 letter to our office, Mr. Johnson asked us to conduct an administrative investigation of the allegations contained in the employees' complaint, and to provide a report of our findings to him. Upon the direction of OMB, OSC funded the costs of the investigation from its appropriated funds. While there was considerable discussion during the negotiation of the Economy Act Agreement regarding the authorities that our office could exercise in conducting its investigation, we proceeded on the basis that it was our responsibility to develop and report factual findings which could be used as a basis for resolving the matters identified in the former employees' complaint.

To conduct the investigation, we assembled a team of investigators, attorneys, information technology specialists and an OPM senior personnel management auditor drawn from several different member agencies of the then-President's Council on Integrity and Efficiency to work under the leadership of a supervisory special agent from my office. The investigative team initiated its work in March 2006 after execution of the Economy Act Agreement. In August 2007, the investigative team obtained evidence which indicated that Mr. Bloch may have committed violations of Federal criminal law associated with efforts to impede the administrative investigation that our office was conducting. In September 2007, after consulting with the United States Attorney's Office for the District of Columbia, the team referred responsibility for the criminal matters to them in accordance with title 5, United States Code, section 1214(d)(1). In October 2007, the U.S. Attorney opened a criminal investigation and requested the participation of the OIG investigative personnel. At the further request of the prosecutor to whom the criminal case was assigned, the team suspended its administrative investigation

OSC is releasing this document in the public interest. Appropriate redactions have been made to protect individual privacy interests.

pending resolution of the criminal issues. This took an unexpectedly prolonged time, and the criminal matter was not closed until Mr. Bloch's sentencing before U.S. District Court Judge Robert L. Wilkins on June 24, 2013. (Our report, of course, does not address any aspects of the criminal investigation or the ensuing judicial proceedings.)

The investigative team interviewed Mr. Bloch in July 2007 during the administrative investigation. In addition to the testimony he provided at that time, the team reviewed documents that Mr. Bloch generated in response to the March 2005 complaint and other material, such as Congressional testimony, containing statements he made in respect to the complaint, the administrative investigation led by my office, and various provisions of OSC law and procedure.

In respect to the central issue of the March 2005 complaint—alleged prohibited personnel practices on the part of Mr. Bloch associated with directed staff reassignments—the investigative team developed evidence that, beginning shortly after he took office as Special Counsel in January 2004 and proceeding through calendar year 2004, he took a series of actions that set the stage for an extensive reorganization of the agency's structure which was announced in early January 2005. The key element of the reorganization was the establishment of a Midwest Field Office in Detroit, Michigan and the directed reassignments of 12 headquarters personnel (constituting slightly over ten percent of OSC's total strength) to that office. The complainants were among those reassigned employees, and they charged that their reassignments were retaliatory in nature, constituting prohibited personnel practices actionable under title 5, United States Code, section 2302(b)(8). The pertinent statutory language is as follows:

- (a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).
- (b)(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—
 - (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
 - (i) any violation of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
 - (i) any violation (other than a violation of this section) of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

Our investigative report contains information supporting the determination that the January 2005 reorganization of OSC and the associated personnel reassignments were designed to specifically target the removal of certain employees on the basis of nonmerit factors. Mr. Bloch and his immediate staff offered an array of ostensible explanations in press releases, Congressional testimony, and interviews with the investigative team, seeking to link the reassignments to the *bona fide* operational needs of the agency. However, our investigation developed evidence

which tended to undermine the proffered explanations. The report discusses these matters in considerable detail, and concludes that OSC management could not demonstrate that the reassignments were taken for a legitimate business purpose of the agency. Particularly relevant to this point was information furnished to the investigative team by Lieutenant General (Retired) Richard Trefry, a former Inspector General of the Army who was a founder and executive vice-president of the consulting firm Military Personnel Resources, Inc. (MPRI), which was contracted by Mr. Bloch in April 2004 to perform a management analysis of OSC.

General Trefry told the investigative team that, in multiple discussions about MPRI's work in OSC, Mr. Bloch openly explained to him that OSC had a number of homosexual employees; that he (Mr. Bloch) wanted to "ship out" these persons; and that he "had a license to do this." The general said that he was unsure as to whom or what Mr. Bloch was referring by the "license" comment. However, he observed that Mr. Bloch appeared to be "very determined" to carry out the intentions he articulated.

During the period in which MPRI was performing its analytical study of OSC (April – October 2004), General Trefry told the investigative team that Mr. Bloch spoke with him in detail about the way in which he intended to "ship out" homosexual employees. The general indicated that Mr. Bloch stated that his plan was to create a new OSC field office in Detroit, Michigan and assign to it the homosexual employees, along with others who he (Bloch) viewed as exerting a negative influence on the agency. Mr. Bloch also indicated that he would be sending other employees to the existing Dallas, Texas field office. General Trefry advised Mr. Bloch not to create and staff a new field office, or to assign more employees to Dallas, on the basis that workload availability in the field did not warrant these actions, and urged that any reassignments be made in accordance with Federal personnel law.

The report also addresses several other charges of improper or wrongful conduct on the part of Mr. Bloch that were contained in the complaint. In summary, these include:

- **Refusal to enforce statutory provisions barring discrimination on the basis of employee sexual orientation,**

This portion of the complaint referred to a decision by Mr. Bloch to reverse the existing OSC policy which deemed sexual orientation discrimination to constitute a prohibited personnel practice under section 2302(b)(10) of Title 5, United States Code, which prohibits agencies to "*[D]iscriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others ...*"

The investigative team found that formal implementation of the 2302(b)(10) policy change occurred hurriedly in February 2004 without a plan to explain or justify it, without an apparent intention to announce it publicly, without prior consultation with other interested agencies, and in an apparent failure—whether willful or not—to realize that it affected, or could be perceived as affecting, significant numbers of Federal employees. In fact, an official White House press release in March 2004 is susceptible to being interpreted to indicate that Mr. Bloch had not informed or cleared his actions through their channels. Cumulatively, we believe that these factors demonstrate—regardless of the legal correctness of the policies involved—that Mr.

Bloch's conduct of the process through which the policy change was implemented involved a substantial degree of inefficiency and disorganization.

However, the investigative team ultimately concluded that a determination of the legal supportability of Mr. Bloch's action to reverse the prior OSC policies could not be appropriately made through investigative techniques, but rather must rest on legislation or a decision of an appropriate adjudicative body. In the absence of such factors, the Special Counsel, as a matter of operational reality, had the ability to establish OSC's position on the issue. Mr. Bloch clearly defined it to preclude the recognition of sexual orientation discrimination as a prohibited personnel practice. The complainants did not identify a statute or judicial decision in effect as of the date of Mr. Bloch's policy change that was directly inconsistent with his position. Therefore, we do not believe it could be either proved or disproved by this investigation that Mr. Bloch's actions represented a refusal to enforce Federal personnel law.

- **Violations associated with attempts to limit free speech rights of OSC employees through issuance of a "gag order."**

This issue involves allegations in the complaint that involved the following matters attributed to Mr. Bloch's actions as Special Counsel:

- Violating the First Amendment rights of OSC employees by issuing a "gag order" which restricted their ability to communicate with parties outside the OSC on "confidential or sensitive internal agency matters."
- Violating the Anti-Gag statute by failing to provide guarantees of employees' statutory free speech rights in the "gag order."
- Violating the Lloyd LaFollette Act (5 U.S.C. 7211), which assures Federal employees the right to petition or furnish information to Congressional representatives and committees.

The record developed by the investigative team revealed that in April 2004, Mr. Bloch directed [REDACTED] to develop a policy statement requiring that official communications purporting to speak on behalf of the agency be issued through the Immediate Office of the Special Counsel (IOSC—an acronym for the group of Mr. Bloch's politically-appointed advisors and executives). On April 9, 2004, [REDACTED] sent an email titled "Updated language for issuance to staff" to the chiefs of OSC's three Investigation and Prosecution Divisions which contained the statement "[T]he Special Counsel has directed that any official comment on or discussion of confidential or sensitive internal agency matters with anyone outside OSC must be approved in advance by an IOSC official." The following week Mr. Bloch directed the issuance of a follow-up e-mail to OSC's career executives, which read in part, "Although nobody on my immediate staff saw the final message [reference is to the April 9, 2004 email cited above] before it went out, obviously there was no intent that First Amendment rights, WPA, or other statutory rights of employees be curtailed. Please reassure and communicate that to the staff."

The investigative team's interviews with employees who were present in OSC during 2004 revealed that, to the extent that this policy was communicated to them at all, the senior career

officials offered little or no explanation of its intent. Many employees simply received a copy of [REDACTED] e-mail forwarded by their immediate supervisors. Some did not remember it having been conveyed to them at all. The employees expressed varied opinions as to whether the policy was still in effect at the time of our investigation in 2006, with some believing that it had been rescinded and others unsure of its status. None of the persons we interviewed indicated that they had interpreted the message as infringing on their speech rights or opined that it affected their on-the-job conduct in any way. Moreover, essentially every current and former OSC employee interviewed by the investigative team expressed a belief that the statement was intended to serve the appropriate business purpose of assuring coordination at the top management level for matters on which the agency had to speak authoritatively and with one voice. The complainants provided no evidence upon which it could be concluded that OSC officials acted in a manner that deprived any employee of his or her constitutional and legal rights of free speech. In light of these findings, the investigative team does not believe that these allegations in the complaint have been proved.

- **Religious Discrimination**

This matter appeared in the March 31, 2005 amended complaint. It consisted of allegations that "Mr. Bloch's political appointees" had closed OSC and given employees paid time off for Good Friday in 2004 and 2005, while not providing equivalent treatment of employees on non-Christian religious holidays. In addition, it was alleged that Mr. Bloch scheduled a mandatory off-site retreat for OSC senior managers, including certain career personnel, during a portion of Passover in 2004.

The investigations team verified that all OSC employees were excused from duty without charge to leave on Good Friday in 2004 (April 9) and 2005 (March 25), and that the April 2004 OSC senior staff retreat at the Tidewater Inn in Easton, MD did fall during Passover, the dates of which in 2004 extended from sundown April 5 until April 12.

The email record available to the investigative team reflected that the personnel charged with arranging the Tidewater Inn conference [REDACTED] devoted considerable care to selecting dates that would avoid conflicts with the Christian Holy Week observances. There was no indication that IOSC personnel gave similar consideration to conflicts with the dates of Passover, or that they even realized when Passover was to occur.

While the current and former career OSC employees interviewed by the investigative team were aware that the noncareer officials hired into OSC by Mr. Bloch had a particular religious orientation that appeared to support their political viewpoints, none expressed a belief that actions such as the granting of time off for all employees on Good Friday constituted discrimination on religious grounds. Even the complainant who raised this matter in the first instance declined, upon being interviewed by the investigative team, to state that [REDACTED] had been the victim of religious discrimination. We concluded, therefore, that the factual content of this element of the complaint was substantiated, but that there was no basis to conclude that the complainants, or other OSC employees, were adversely affected by the timing of April 2004 senior staff conference.

- Preferential treatment for employment in OSC was afforded to persons associated with the same [REDACTED]

In January 2004, when he was named as Deputy Special Counsel, Mr. Renne was serving [REDACTED]. Information developed by the investigative team appears to reflect unusual circumstances surrounding the subsequent appointments of (1) a [REDACTED] position in OSC in [REDACTED] and (2) the [REDACTED] appointment of [REDACTED].

These appointments were among only [REDACTED] appointments made in OSC during the [REDACTED] Mr. Bloch's tenure. Although the individuals involved were placed in mid-career positions, neither of them, in the estimation of the investigative team's human resources management consultant, possessed qualifications relevant to the position [REDACTED] received.

[REDACTED] Mr. Bloch prepared a memorandum stating that the first appointee's superior qualifications warranted [REDACTED] appointment under the advanced salary rate of GS-13, step 7. [REDACTED] was initially assigned to work directly for [REDACTED] on a special project to [REDACTED].

Without exception, the career OSC attorneys we interviewed described this person's job performance as being distinctly substandard.

OSC's appointment of [REDACTED] reflected circumstances that were suggestive of at least the appearance of preferential treatment in the conditions of [REDACTED] employment. [REDACTED] was hired by OSC without any qualifications related to prior legal practice or Federal personnel law. [REDACTED]

The investigative team also identified emails and other documents indicating that OSC's appointment of [REDACTED] may have carried personal importance for Mr. Renne, who had served [REDACTED]. In late 2003—just prior to his appointment in OSC—Mr. Renne [REDACTED].

[REDACTED]

OSC's email records revealed that during the period July – December 2004, Mr. Renne spent substantial time preparing his application [REDACTED]. The time period in question was essentially contiguous to the appointment of the [REDACTED] in OSC.

The investigative team concluded that the evidence it developed was highly suggestive of preferential treatment having been afforded to [REDACTED].

- **The September 2004 resignations of OSC's [REDACTED] and [REDACTED] were coerced by Messrs. Bloch and Renne.**

The complainants alleged that Mr. Bloch forced OSC's long-time, highly respected [REDACTED] and a [REDACTED] to leave the agency in September 2004 because of their objections to [REDACTED] practices he insisted on implementing and specific [REDACTED] that he directed them to process. The [REDACTED] and [REDACTED] retired under voluntary retirement authority effective September 30, 2004, having [REDACTED]. By retiring prior to October 1, 2004, they also qualified to receive Voluntary Separation Incentive Payments (colloquially referred to as "buyouts") under authority that Mr. Bloch had requested and received from OPM in September 2004.

The record developed by the investigative team disclosed that Mr. Bloch and Mr. Renne, virtually from the beginning of their service in OSC, [REDACTED]. In email messages to each other, [REDACTED]. Their opinions contrasted sharply with career managers in OSC, who informed the investigative team of their belief that the [REDACTED] demonstrated the highest standards of personal integrity and professional competence.

In an email message [REDACTED] sent to all OSC staff on the occasion of [REDACTED] retirement, the [REDACTED] emphasized that [REDACTED] was leaving the Federal service at a time and in a manner that were strictly of [REDACTED] own choosing. When interviewed by the investigative team, [REDACTED] reiterated this statement, and specifically declined to discuss the reasons for [REDACTED] decision to retire at the time [REDACTED] did, other than to emphasize that [REDACTED] was not coerced to leave OSC or the Federal service. The [REDACTED] did not respond to the investigation team's repeated requests to interview [REDACTED]. In this context, the investigative team determined that there is no basis to conclude that the retirement of either of the OSC [REDACTED] in question was the product of improper or illegal actions by OSC's top management officials.

- **Summary closure of whistleblower complaints**

The complaint charged that in 2004 Mr. Bloch directed the summary closure and disposal of “hundreds” of whistleblower complaints by the Disclosures Unit (DU)—the OSC component responsible for receiving and referring such complaints—without regard to their merits.

The investigative team found that significant backlogs of unresolved complaints regarding improper personnel practices in Federal agencies had existed in several OSC components, including the Complaints Examining, Disclosures, and Hatch Act Units, for many years, predating the term of Elaine Kaplan as Special Counsel. These had become the subject of congressional interest and were well documented in a GAO report issued in 2003. Former Special Counsel Kaplan’s administration viewed the backlogs as a resource problem, and worked in Congress for additional funding to increase the number of personnel assigned to case processing. Some increased appropriations did become available for FY 2004, after Ms. Kaplan had left office. Concurrently, OSC managers and staff in the affected headquarters units were actively seeking means of reducing backlogs through improvements in their methods and procedures. The OSC backlogs were a principal topic of discussion during Mr. Bloch’s Senate confirmation hearings in 2003, and he committed himself and the agency to resolving them promptly.

Upon taking office as Special Counsel, Mr. Bloch assigned operational responsibility for backlog reduction efforts to [REDACTED]. The primary technique employed to reduce the backlogs was the use of Special Project Units (SPUs), *ad hoc* work groups comprised of selected OSC employees drawn from throughout the agency. The SPUs supplemented the ability of the units which had on-going responsibility for the types of work in question to focus resources on backlog reduction. Mr. Bloch asserted before congressional panels, in public and media statements, and later in an interview with the investigative team that the SPUs were fully successful in reducing the backlogs of cases and complaints that had accumulated during previous administrations.

However, according to information provided by DU management, the ultimate resolution of its backlogs was based on an idea originated by a legal intern who served on the DU staff during 2003 and early 2004. This person conceived a system of streamlining the processing of complaints which was implemented by DU and successfully resolved the backlog of whistleblower complaints before the SPU process began in mid-2004. According to the DU employees and supervisors interviewed by the investigative team, noncareer OSC employees (including Messrs. Bloch and [REDACTED]) played no part in developing or implementing the revised procedures.

Based on this information, the investigations team concluded that there was no evidence to support the allegation that Mr. Bloch ordered the summary disposal of meritorious whistleblower complaints pending in OSC’s Disclosures Unit.

- **Retaliation against OSC employees based on their representation by counsel**

The complaint identified two types of situations related to the January 2005 OSC reorganization in which it claimed that representation by an attorney was associated with an adverse personnel action or the threat of such an action against OSC employees by Mr. Bloch.

The first instance occurred in February 2005, during a telephone conversation between Mr. Bloch and the attorney who was then representing OSC employees who had received directed reassignments to the OSC's Midwest Field Office. This discussion involved the potential terms of a settlement agreement proposed by Mr. Bloch under which the employees would receive monetary considerations and an extension of their separation date from OSC. Mr. Bloch conditioned the settlement on the employees' agreement not to contest their removals for declining to accept the reassignments. This topic had been discussed by the respective sides a few weeks earlier and was rejected by the employees, at which time Mr. Bloch stated that he considered this avenue of resolution to be irrevocably closed. Despite explanations to the contrary from the employees' attorney, Mr. Bloch apparently believed that the attempt to renew those discussions reflected a bad faith negotiation that was disrespectful of him. He expressed anger that the employees were attempting to manipulate him, and he stated that he would "bring charges" against them. However, in an interview with the investigative team, the employees' attorney stated that Mr. Bloch never followed up this threat; that in any event there was no basis in law for bringing any "charges" against the employees; and that he had no basis to believe that his erstwhile clients were treated differently than they would have been if they had not been represented.

The second situation involved the allegedly disparate treatment of OSC employees who contested their directed reassignments with or without the assistance of counsel. The complainants stated that all of the reassigned personnel who were represented by counsel (and had not yet obtained employment outside OSC) were removed from Federal employment for failing to accept their directed reassignments to Detroit. In contrast, the directed reassignments of [REDACTED] who served in comparable positions but who had not retained counsel to represent them were rescinded. These included [REDACTED] who had initially received directed reassignments to the [REDACTED] but were subsequently offered the opportunity to be placed in new positions at OSC headquarters, on the condition that they sign an agreement not to discuss the circumstances of the rescission of their reassignments. The [REDACTED] not represented by counsel was [REDACTED] whose directed reassignment to the [REDACTED] [REDACTED] was held in abeyance while [REDACTED] continued to serve at OSC headquarters. Approximately two years later, the abeyant reassignment was cancelled without further notice.

The symmetry of this occurrence—three OSC employees who retained an attorney were all removed, while [REDACTED] who were unrepresented but were otherwise similarly situated were allowed to remain with the agency in Washington, D.C.—created the appearance that Mr. Bloch's decisions affecting them may have been motivated by retaliatory considerations. However, the investigative team concluded that the varying situations surrounding each of the employees whose reassignments were rescinded tend to undercut this conclusion. In addition, based on OSC documents obtained by the investigative team, it is quite plausible that the

executive's reassignment was deferred or canceled because the OSC budget officer discovered that the actual costs of relocating [REDACTED] far exceeded the amount that had been budgeted for this purpose.

Therefore, in the absence of evidence definitively establishing a causal link between removals of employees and their representation by counsel, this element of the complaint was not considered to have been proven.

- **Systemic human resources management violations**

The complaint alleged that, under Mr. Bloch's leadership, OSC had "abandoned competitive merit-based hiring." To assess the accuracy of this element of the complaint, the investigative team conducted a 100 percent review of OSC personnel actions and records for the period 2004 through 2005. The team found that a nearly complete exclusion of OSC career managers from their customary role in recruiting and hiring employees for OSC's career positions had occurred. While it is a widely-observed and strongly recommended practice, there is no systemic requirement as such within the Federal personnel management system that managers be directly involved in recruiting and selecting candidates for their own organizations. Indeed, in many situations, direct managerial participation is simply not possible. This is particularly the case in larger agencies which have a need to hire substantial numbers of employees on a continuing basis without an ultimate duty location having been identified beforehand. This is, for example, a common practice in law enforcement agencies. However, this context for recruitment and selection of candidates places a particular emphasis on adherence to pre-established staffing plans that are developed by an agency with input from the employees most knowledgeable regarding the positions to be filled—that is, the supervisors and managers of the positions in question. In contrast, the record developed by the investigative team indicates that this simply did not occur in connection with OSC's hiring and assignment practices during 2004 and 2005. There was an absence of input from career-level agency managers, either directly by first-hand participation in selection decisions or indirectly through the agency's adherence to a recruitment plan. In this regard, the investigative team found it to be especially problematic that OSC had an established recruitment plan for hiring attorneys into career positions, but clearly failed to adhere to it. Among other concerns, this placed OSC at risk of failing to meet statutory requirements related to veterans' preference and equal employment opportunity.

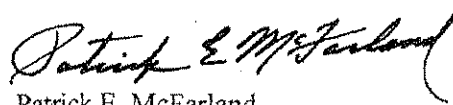
In addition, while the complainants' terminology, "abandonment of merit-based competitive hiring" implies a universality which the record does not fully support, there was evidence of widespread deficiencies in other personnel management areas as well. Foremost among these was the deficient recordkeeping to document OSC's personnel actions. The investigative team's personnel management auditor noted that having the ability to reconstruct personnel actions from the written record is fundamental to carrying out a personnel management audit and to applying accountability principles within an agency's human resources system. In this light, he opined that the evident inadequacies of the personnel records supplied to the investigative team may have been part of a deliberate attempt to hinder the investigation, because "having as little an audit trail as possible is the best way to avoid accountability for wrongdoing." He also observed that information developed by the investigative team indicated that the Government Accountability Office (GAO), which conducted several reviews of OSC during 2004 and 2005,

prior to the OIG's involvement, had discovered a similar pattern of inadequate or missing OSC documentation in the areas that it addressed.

In closing, we are also providing the attached report to the Director of the Office of Personnel Management and to the current Deputy Director for Management of OMB. Under the principles of the Economy Act, and as agreed between my office and the OSC, both the report and all other documents created by the investigative team are the property of, and are controlled by, the Office of Special Counsel, and administrative action in respect of the report's findings is within your jurisdiction.

If you have specific questions regarding the role of the Office of the Inspector General in this investigation, please do not hesitate to contact me, at (202) 606-1200, or have a member of your staff contact J. David Cope, Assistant Inspector General for Legal Affairs, at (202) 606-2851.

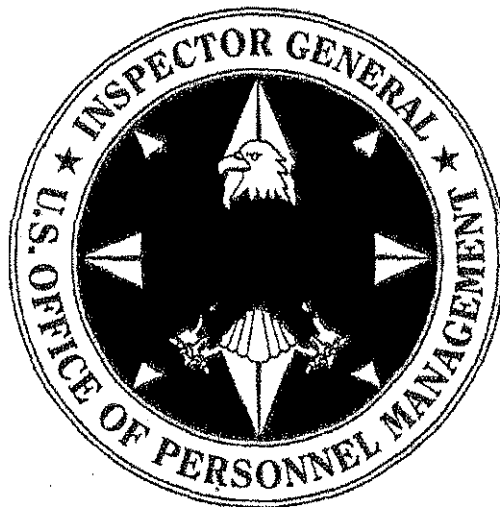
Sincerely,



Patrick E. McFarland
Inspector General

Enclosure

U.S. OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT OF INVESTIGATION
INTO MARCH 3 AND 31, 2005 COMPLAINTS FILED
WITH THE OFFICE OF SPECIAL COUNSEL

DECEMBER 2013

PREPARED UNDER THE AUTHORITY OF AN ECONOMY ACT AGREEMENT (31 U.S.C. 1535) BETWEEN THE
OFFICE OF THE INSPECTOR GENERAL AND THE OFFICE OF SPECIAL COUNSEL

REPORT OF INVESTIGATION
MARCH 3, 2005 COMPLAINT (AS AMENDED MARCH 31, 2005)
OF
PROHIBITED PERSONNEL PRACTICES
IN THE U.S.OFFICE OF SPECIAL COUNSEL

This is the report of the administrative investigation conducted by the Office of the Inspector General (OIG) of the U.S. Office of Personnel Management (OPM) into the allegations of prohibited personnel practices and other improper activities made against then-Special Counsel Scott J. Bloch in a complaint filed with the Office of Special Counsel (OSC) on March 3, 2005, and amended on March 31, 2005.

1. BACKGROUND

This matter arose from a complaint filed by a group of OSC employees who, at the time of the filing, had been given notice that they would be removed from the Federal service because of their refusal to accept directed reassignments to the OSC's newly-established Midwest Field Office in Detroit, Michigan. The reassignments were associated with a reorganization announced by Mr. Bloch on January 5, 2005. The complainants alleged that they had been subjected to prohibited personnel practices, and sought remedies under the provisions of section 1214 of title 5, United States Code which authorize OSC to conduct investigations and file administrative actions before the Merit Systems Protection Board (MSPB) against agencies and, in some cases, individuals, for committing such practices.

Because it would have constituted an irreconcilable conflict for OSC to have investigated the alleged misconduct of its own agency head, responsibility for arranging an independent inquiry into the complaint devolved upon Clay Johnson, who at the time in question was the Deputy Director for Management of the Office of Management and Budget (OMB). In an October 5, 2005 letter to OPM Inspector General Patrick E. McFarland, Mr. Johnson asked the OPM-OIG (OIG) to conduct an administrative investigation of the allegations contained in the employees' complaint, and to provide a report to him. After an extended period of negotiation between the OIG and OSC, this arrangement was formalized in a March 3, 2006 Economy Act agreement (Agreement), which by its terms was to remain in effect until the OIG completed its investigative activities and issued a report of investigation. Upon the direction of OMB, OSC funded the costs of the investigation from its appropriated funds. It was also agreed that the OIG would use the investigative authorities conferred upon OSC by Title 5, but OSC specifically declined to extend to the OIG its authorities under title 5, United States Code, sections 1214, 1215, and 1216 to seek a stay, corrective action, or disciplinary action against an individual. While the documents associated with the Agreement did not identify the precise demarcation between investigative and other types of powers, the OIG interpreted its responsibility as being to report factual findings that could be used as a basis for resolving the matters identified in the complaint.

The OIG initiated its investigation of the former OSC employees' complaint in March 2006. In August 2007, the OIG investigative team obtained evidence which indicated that Mr. Bloch may have committed violations of Federal criminal law associated with efforts to impede the investigation that our office was conducting. In September 2007, after consultation with the United States Attorney's Office for the District of Columbia, the OIG referred responsibility for the criminal matters to them, in accordance with title 5, United States Code, section 1214(d)(1). In October 2007, the U.S. Attorney opened a criminal investigation, and requested the participation of OIG investigative personnel in it. At the further request of the prosecutor to whom the criminal case was assigned, the OIG suspended its administrative investigation until the criminal issues were resolved. When the criminal matter was closed by the sentencing of Mr. Bloch on June 24, 2013, the OIG was able to resume its earlier work on the administrative investigation. This final report is being provided to the current Special Counsel, the Director of OPM, and the current Deputy Director for Management of OMB.

2. INVESTIGATIVE TEAM AND METHODOLOGY

The core of the investigative team which conducted this case was comprised of personnel from the OIG. The team was led by a senior special agent with extensive experience in investigations of employee misconduct cases, and was supplemented by an attorney, an investigative analyst, budget analysts, and information technology specialists drawn from the OIG staff. OPM itself made a senior personnel management auditor available to the team as a consultant on human resources issues. In response to a request for assistance that the OIG made to the Federal Inspector General community, the Offices of Inspector General of the Departments of Education and Department of Defense each made an investigator from their staffs available to the team on an as-needed basis. In addition, the Office of Government Ethics and the Offices of Inspector General of the U.S. Postal Service and the International Trade Commission provided attorneys who were instrumental in reviewing OSC documents and identifying issues for the investigative team to pursue. Further, especially invaluable assistance was furnished by an investigator from the Department of Defense Office of Inspector General who specialized in forensic examination of electronic records and an attorney from the Office of Inspector General of the Railroad Retirement Board, who acted as the OIG's special counsel for the investigation.

The investigative team conducted 67 interviews of 62 different individuals, including the complainants, other former OSC employees, current OSC employees, and other witnesses, including Mr. Bloch. In addition, the team reviewed the Official Personnel Folders of each person who served in OSC during any part of the period 2004 - 2005, with the exception of two former OSC employees who, at the time of the OIG investigation, were assigned to classified national security duties. The team conducted forensic examinations of over 342,491 emails and other documents which resided on OSC-controlled computers and networks, of which 101,100 were selected for detailed manual review. Throughout the investigation, the OIG maintained all documents associated with the case in a secure database separate from its own systems of records.

3. EVENTS LEADING UP TO THE ADMINISTRATIVE INVESTIGATION

- a. The Office of Special Counsel is an independent agency in the Executive Branch. It is headed by the Special Counsel, who is appointed by the President for a five-year term with the advice and consent of the Senate. Scott J. Bloch was nominated to be Special Counsel by President George W. Bush in 2003, and was confirmed by the Senate on December 9, 2003. He began work at OSC on January 5, 2004. For the two years prior to his nomination as Special Counsel, Mr. Bloch had served as Counsel and Deputy Director of the Office of Faith-Based Initiatives at the Department of Justice. He is a 1986 graduate of the University of Kansas Law School, and was in private practice with a law firm in Lawrence, Kansas from 1986 to 2001.
- b. In January 2004, Mr. Bloch named James Renne as Deputy Special Counsel. As was the case with prior Deputy Special Counsel appointees, this was a noncareer appointment in the Senior Executive Service (SES). Mr. Renne was a graduate of the University of Kansas and the Columbus School of Law of the Catholic University of America. His prior Federal employment included service as a legislative assistant in the Office of the President during the Administration of George H.W. Bush and as a special assistant to the Inspector General of the Department of Defense during 2001 – 2003.
- c. OSC was established in January 1979 under the Civil Service Reform Act of 1978. It is charged with safeguarding the merit-based Federal employment systems by protecting employees and applicants from prohibited personnel practices (PPPs), as defined in 5 U.S.C. 2302. In this role, OSC investigates and prosecutes PPPs, violations of the Hatch Act (which limits the partisan political activity of Federal employees), and violations of the Whistleblower Protection Act.
- d. At the times relevant to the investigation, OSC had a total staff of 110 – 115 employees, distributed among its Washington, D.C. headquarters and field offices in Dallas, Texas, Oakland, California, and Detroit, Michigan. The lattermost field office became operational during 2005. The most numerous occupation among the OSC staff was attorneys; there were also significant numbers of personnel management specialists and investigators, who participated in analyzing and developing cases. OSC maintained in-house support staffs of information technology specialists and human resource specialists, but relied on interagency agreements for contracting, budget, and financial management services.
- e. Within three months of assuming his responsibilities as Special Counsel, Mr. Bloch had directed the initiation of several policy, organizational, and programmatic changes in OSC. These included, but were not limited to, the following:
 - Reversing the policy of the previous Special Counsel by deciding that personnel actions taken against an employee because of his or her sexual orientation would not be deemed prohibited personnel practices under 5 U.S.C. 2302(b)(10).

- Contracting with the consulting firm Military Personnel Resources, Inc. (MPRI) for a comprehensive analysis of OSC's organizational structure, mission, workload, personnel utilization, and work-related practices, procedures, policies, and techniques.
 - Addressing a backlog of Federal employee complaints and allegations of prohibited personnel practices by forming special project units (SPUs) comprised of employees drawn from throughout OSC, which focused exclusively on eliminating the backlogs.
 - Providing direct and increased attention by OSC's noncareer employees to Hatch Act cases.
- f. Virtually from the beginning of his tenure as Special Counsel, Mr. Bloch spoke in general terms about his intention to reorganize OSC in the relatively near-term future. He frequently invited rank-and-file employees to communicate their ideas and suggestions about reorganization concepts (although the investigative team was unable to identify any employee suggestions on reorganization matters which were actually adopted by OSC management), and was especially expansive about what he claimed to be his plans and objectives at an all-hands retreat in May 2004. In statements he made to career staff, Mr. Bloch consistently linked the decisions that would be made regarding the actual details of the reorganization to the findings and recommendations of the management review being conducted by MPRI.
- g. The final MPRI report was issued in October 2004, and a copy was distributed to each OSC employee. Although Mr. Bloch invited employees to contribute their comments on the report and met weekly with an "employee advisory committee" he had established ostensibly to represent the viewpoints of nonsupervisory personnel, decision making about the nature, scope, and timing of the reorganization was limited to a small group of noncareer employees in the Immediate Office of the Special Counsel (IOSC—an acronym for the group of Mr. Bloch's politically-appointed advisors and executives). Information provided to the investigative team by persons who served as senior IOSC officials during this time indicated that all reorganization decisions were ultimately made by Mr. Bloch, with a few witnesses also indicating that Mr. Renne exercised some influence with respect to them. Additionally, the investigative team adduced information to the effect that at least three other noncareer appointees were requested to perform certain tasks preparatory to the reorganization, including 1) a survey of available Federal office space in Detroit; 2) projection of costs associated with reorganization scenarios; and 3) preparation of a document which would announce and justify the reorganization to OSC staff.
- h. Based on analysis of OSC email traffic from this period, the investigative team determined that detailed preparations for the actions that were needed to actually implement the reorganization commenced in approximately November 2004. On November 9, Mr. Bloch convened a meeting with OSC career managers and employee representatives at a conference facility in the National Gallery of Art. He encouraged considerable discussion on this occasion about reorganization issues. He stated that he

wanted to open a new OSC field office somewhere in the Midwest, asked for suggestions about specific locations, and commented on the advantages and disadvantages of several cities proposed by the attendees as appropriate venues for a new OSC field office. Mr. Bloch, however, made no commitments to adopt any of the ideas discussed at this meeting, and at no point was establishment of an OSC field office in Detroit suggested or discussed with career employees.

- i. Approximately one week after the National Gallery conference, IOSC members held a luncheon meeting at Mr. Renne's personal residence during which Mr. Bloch discussed his specific decisions about the reorganization. According to an attendee at this meeting who was interviewed by the investigative team, Mr. Bloch instructed the IOSC members that information about the reorganization was to remain closely held within the IOSC, and was not to be communicated to career employees. It should be noted that these directions precluded any consultation with employees who were identified as being affected by the reorganization, to determine, for example, their availability for voluntary reassignment or their willingness to accept voluntary separation payments in lieu of reassignment.
- j. In November 2004, an IOSC employee visited the real estate section of the General Services Administration's (GSA) Great Lakes Regional Office in Chicago, and, according to information supplied to the investigations team by the GSA realty specialists who met with him, in effect demanded that office space in Detroit be made available for OSC's occupancy at the earliest possible time. On December 12, 2004, Mr. Renne and [REDACTED] another IOSC official, inspected space in the Patrick V. McNamara Federal Building in Detroit, and identified an available suite of offices that was already built out and contained sufficient space for an OSC field office. Mr. Renne immediately agreed to commit OSC to lease this space.
- k. Also in December 2004, Mr. Bloch brought the [REDACTED] into the reorganization planning effort. According to information this person provided to the investigative team, [REDACTED] was the only career employee who was knowledgeable of the details of the impending reorganization. This official noted that Messrs. Bloch and Renne knew what they wanted to accomplish with the reorganization, but lacked the detailed knowledge of Federal personnel management regulations, systems, and procedures needed to actually bring it about. [REDACTED] stated that [REDACTED] provided advice on the administrative aspects of reorganization (e.g., requirements for advance notice to the affected persons, payment of mandatory relocation costs, agency recourse if employees refused reassignment, etc.), and that [REDACTED] prepared all of the necessary documentation, so that no other career employees would learn of the reorganization.
- l. The investigative team's analysis of the email traffic among IOSC members in December 2004 revealed that preparation for the reorganization intensified during the month preceding its announcement. Mr. Bloch, Mr. Renne, and the two other IOSC employees most directly involved in reorganization matters appear to have been revising and refining elements of the plan on a daily basis. [REDACTED] maintained a written record of the actions

needed to carry out the reorganization, which [REDACTED] was directed to modify on an on-going basis. As the investigative team reconstructed the timeframes involved, it appears that the reorganization arrangements were finalized during the week between Christmas 2004 and the New Year's 2005 holiday.

- m. On the afternoon of January 5, 2005, the reorganization was announced to career OSC employees. They were convened simultaneously in conference rooms at the agency's offices in Washington, Dallas, and Oakland. Via teleconference links, Mr. Bloch stated that OSC was being reorganized, and that employees could obtain information about the reorganization, including their new assignments, by returning to their offices and logging on to the OSC website. Based on interviews it conducted with OSC employees, the investigative team determined that Mr. Bloch had achieved 100 percent secrecy—and the resulting surprise—among rank-and-file career employees, none of whom had obtained any prior knowledge of the reorganization. Mr. Bloch did brief the OSC career executives individually during the afternoon of January 4 and the morning of January 5, 2005 informing them of the outlines of the reorganization and the manner in which they would be personally affected.
- n. The reorganization created a new Midwest Field Office in Detroit, Michigan, and reassigned nine staff members of Investigation and Prosecution Division 3 (IPD 3), including Cary Sklar, the SES-level division chief, Travis Elliott, a GS-15 attorney, and [REDACTED] from Washington, D.C. to Detroit to constitute the field office staff. [REDACTED] from IPD 3 were reassigned to the Dallas Field Office. [REDACTED] was reassigned from Washington, D.C. to the [REDACTED] SES position of Director of the [REDACTED] displacing the existing GS-15 field office director. The other headquarters components were realigned to report to the single remaining Associate Special Counsel, with the exception of the Hatch Act Unit, which was designated to report directly to the Special Counsel.
- o. Subsequently, many of the OSC employees who were to be reassigned out of Washington retained counsel, and attempted to obtain the retraction of their reassignments or, failing that, an extension of their reporting dates in Detroit or Dallas, in the hope that they could locate other employment in the meantime. Some of the individuals designated for reassignment canvassed Senators and Congressmen interested in Federal employee issues to focus attention on their situation. Ultimately, none of the reassignments to the field offices actually took place. All of the affected IPD 3 employees either obtained employment outside OSC or were separated from the Federal service during March 2005 for refusing to accept their directed reassignments to Detroit or Dallas. One of the employees reassigned to Dallas obtained other Federal employment, one accepted a last-minute offer of a position with OSC in Washington, and another declined a similar offer and was removed from the Federal service. The employees who were offered the opportunity to remain in Washington were not informed of the reasons why they received such offers. [REDACTED] indicated [REDACTED] willingness to accept relocation to the [REDACTED] but without any explanation being provided to [REDACTED] was instead given an interim

assignment at OSC headquarters to [REDACTED].
Approximately two years later was formally assigned to another headquarters position, also without explanation.

- p. On March 3, 2005, the employees who had been reassigned to Detroit, and had not found employment outside OSC, filed the complaint which became the subject of this investigation. The purpose of this filing was to preserve their rights under OSC statutes to an investigation of their claims of whistleblower reprisal and other prohibited personnel practices and ultimately to file petitions to the Merit System Protection Board (MSPB) seeking corrective action for alleged prohibited personnel practices. An amended complaint was filed on March 31, 2005.
- q. Mr. Bloch forwarded the complaint to then-OMB Deputy Director for Management Clay Johnson, noting that it would be a conflict of interest for OSC to investigate its own agency head. A formal complaint of prohibited personnel practices had never previously been filed against a Special Counsel, and it was not immediately apparent where jurisdiction to address it should lie. During the ensuing six months, the complaint was forwarded to a number of entities, including the then-President's Council on Integrity and Efficiency and its Integrity Committee and the Office of the White House Counsel, none of which believed that it had jurisdiction. In an October 5, 2005 letter to Inspector General McFarland, Mr. Johnson requested that the OIG investigate the complaint. He addressed the jurisdictional issue by directing that OSC and the OIG execute an agreement under the Economy Act (31 U.S.C. 1535), through which the investigation would be conducted by the OIG, using OSC's investigative authorities, with costs being reimbursed by OSC. The OIG quickly and unconditionally agreed to Mr. Johnson's request. OSC raised a series of objections to the proposed arrangement, involving Mr. Bloch's expressed interest in remaining personally involved in the case, the amount of funds needed to conduct the investigation (OSC initially proposed that \$8,000 would be an adequate budget, but after a review by OMB, Mr. Johnson directed it to make \$113,000 available), and the extent of the investigative team's access to OSC documents and employees. Resolution of these matters delayed the start of the OIG team's investigation until March 2006.

4. SCOPE AND RESULTS OF THE INVESTIGATION

Under the Economy Act agreement with OSC, the OIG's investigative jurisdiction was limited to the matters set forth in the original and amended complaints against Mr. Bloch. During their interviews with the OIG, the complainants raised one additional allegation of a prohibited personnel practice and made a whistleblower disclosure concerning an abuse of authority by Mr. Bloch. Both of these appeared to be so closely associated with the allegations contained in the complaint that they were included within the scope of the investigation.

The investigative team addressed every issue identified by the complaint. However, in reviewing the original complaint and its March 31, 2005 amendment, they observed that there were substantial areas of overlap among the various allegations of legal violations and

misconduct. In these instances, we sought to identify the areas of commonality as being the principal thrust of the allegations, and focused our efforts accordingly. In addition, several of the allegations appeared to be so closely associated with each other that they could be treated as related portions of a single issue. Therefore, we consolidated a number of separate charges to be treated in a unitary manner. In particular, we addressed several issues regarding improper or wrongful administration of Federal personnel law and regulation within OSC through an analytical survey conducted by a senior human resources auditor who was detailed from OPM to the OIG for this purpose. This review is reported on pages 39 through 44.

The results of our investigation are presented on an issue-by-issue basis below.

ISSUE A: Refusing to enforce statutory protections of Federal employees against sexual orientation discrimination.

This allegation refers to section 2302(b)(10) of Title 5, United States Code which establishes a category of actions that constitute prohibited personnel practices if taken by agencies against federal employees. This provision designates as prohibited personnel practices actions that

(10) Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others;...

5 U.S.C. 1212(a)(2) confers jurisdiction on OSC to investigate allegations of prohibited personnel practices, and to bring actions before the Merit Systems Protection Board seeking corrective action on behalf of the victims of such practices and disciplinary measures against persons who commit them.

BACKGROUND

During the tenure of Elaine Kaplan, Mr. Bloch's immediate predecessor as Special Counsel (1998 - 2003), OSC determined that 2302(b)(10) should apply to prohibit discrimination in Federal personnel actions on the basis of an employee's sexual orientation. OSC staff attorneys interviewed by the investigative team explained that this policy rested on the underlying theory that an individual's sexual orientation connoted that he/she engaged in a form of conduct which, unless it occurred directly in the workplace, could not be shown to affect the employee's job performance. The issuance of Executive Order (E.O.) 13087 ("Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Workplace," May 28, 1998) appears to have contributed to OSC's decision to deem sexual orientation discrimination as a prohibited personnel practice. E.O. 13087 states that it is the policy of the Federal Government that its employees are protected against discrimination in employment on the basis of their sexual orientation. OPM issued a June 24, 1999 explanatory memorandum to heads of Federal departments and agencies, following up E.O. 13087, and indicating that it interpreted 2302(b)(10) to prohibit discrimination based upon sexual orientation.

OSC employees who were in the agency during Ms. Kaplan's tenure as Special Counsel told the investigative team that the agency had been looking for test cases to bring before MSPB on this

issue, but had not, by the end of her term in office in 2003, found an appropriate case in which the facts and procedural posture would allow the issue of sexual orientation to be addressed directly as a matter of law. However, OSC did negotiate settlements in favor of Federal employees in at least two cases where the facts indicated that the sexual orientation of the employee was a contributing factor in personnel actions which had been taken against them.

On February 4, 2004—about one month after Mr. Bloch took office as Special Counsel—the material on the OSC website which indicated that 2302(b)(10) applied to personnel actions based on an individual's sexual orientation was abruptly removed. The equivalent hardcopy publications, forms, and other informational material were also subsequently withdrawn from use. OSC did not publicly announce these actions until Federal employee groups noticed the website changes and informed the news media. After the appearance of news articles about the changes generated critical comment, OSC issued press releases which described its actions as an interim step based on the determination that "sexual orientation" as referred to in E.O. 13087 did not amount to "conduct" as that term is used in 5 U.S.C. 2302(b)(10).

ANALYSIS

The complaint against Mr. Bloch characterized OSC's decision to discontinue its policy of treating sexual orientation as a form of conduct that was protected under 2302(b)(10) as a refusal to enforce the civil service laws. However, as the investigation proceeded, this matter appeared to present at least two dimensions. First, any finding regarding the allegation as framed by the complainants necessarily requires a determination as to whether the language of 2302(b)(10) actually can be applied to sexual orientation. In both written material he provided to the OIG and in his interview with the investigative team, Mr. Bloch repeatedly asserted that his position rested on a legal analysis which concluded that a plain reading of the statutory language ("*conduct which does not adversely affect the performance of the employee*") cannot reasonably be construed to include one's sexual orientation. He explained that, in his estimation, the essential meaning and intent of the term "conduct" necessarily denote overt action, rather than a state of mind or preference, as is typically associated with the concept of "orientation." During its interviews of current and former OSC attorneys who were identified by their peers as being particularly conversant with this issue, the investigative team found that there were supporters for each of the differing interpretations of 2302(b)(10) taken by OSC during the Kaplan and Bloch administrations.

The investigative team concluded that a determination of the legal supportability of Mr. Bloch's action to reverse the Kaplan era policies cannot be made through investigative techniques, but rather must rest on a decision of an appropriate adjudicative body. In the absence of such a decision, the Special Counsel, as a matter of operational reality, had the ability to establish the OSC's position on the issue. Mr. Bloch clearly defined it to preclude the recognition of sexual orientation discrimination as a prohibited personnel practice. As of the date that the investigative team suspended its administrative investigation in late 2007, no adjudicative bodies had issued opinions or orders directly inconsistent with his position. Therefore, we do not believe it can be either proved or disproved by this investigation that Mr. Bloch's actions represented a refusal to enforce Federal personnel law.

However, information developed by the investigative team revealed circumstances surrounding OSC's policy change on sexual orientation that are inconsistent with Mr. Bloch's statements to the investigative team that depicted the process as an objective and carefully considered legal analysis conducted with the knowledge and support of OSC career staff. In fact, according to statements of witnesses in OSC and information generated by the investigative team's review of OSC email records, there appears to have been a sort of "crash project" during an approximately four working day period in late January and early February 2004, coinciding with the arrival in OSC of Mr. Renne as the first Deputy Special Counsel appointed by Mr. Bloch. Mr. Renne was specifically identified as having personally directed and led the so-called "scrubbing" of material which depicted the scope of 2302(b)(10) to include coverage of sexual orientation discrimination.

According to the testimony of senior OSC career officials, when Mr. Bloch first took office, he sharply limited his contact with the agency's employees. At least one career executive believed that he was isolating himself unnecessarily, and urged him to

██████████ Emails that Mr. Bloch sent to OSC personnel during the first month of his tenure, indicating that he was deferring any initiatives pending the arrival of his deputy, tend to confirm this depiction. Mr. Bloch did have some level of contact with the senior career officials, and apparently spoke briefly and informally with each of them on their views as to whether 2302(b)(10) protected employees against discrimination on the basis of sexual orientation. The OSC career officials who participated in these conversations did not characterize them as a systematic exploration of the issue, or as a serious exchange of legal viewpoints in the manner that lawyers may use to test the strength of various lines of argument. Most of the OSC staff, including the career managers and supervisors, stated that they were unaware of and uninvolved with these discussions. Mr. Bloch did solicit the views of Mr. Elliott, who was acting as OSC's congressional relations director pending the arrival of the political appointee who Mr. Bloch had selected for the position. Mr. Elliott, who was described in interviews with career staff as being professionally respected, expressed his support for the interpretation given to 2302(b)(10) during the Kaplan administration. In his interview with the investigative team, Mr. Elliott indicated that Mr. Bloch quickly and clearly "lost interest" in talking to him when his opinion became apparent.

As for the actual process of removing material from the OSC website, one senior career official who observed the effort characterized it as a frenetic burst of activity that took place late into the evening of one day (February 4, 2004). At that time, Mr. Renne was depicted as intently searching the OSC website with the assistance of a senior career official to identify passages which interpreted 2302(b)(10) as extending protection to employees on the basis of their sexual orientation. According to this account, Mr. Renne demanded that OSC's information technology manager remove these materials from the website immediately. OSC email records reviewed by the investigative team made it clear that in the haste to remove material, several passages addressing sexual orientation discrimination were missed, and that follow-up deletions from the website continued to be made for some time thereafter. A similar process took place for hardcopy materials, such as informational pamphlets and OSC complaint forms. OSC either withdrew these items from circulation or superseded them with revised versions that eliminated any reference to the prior interpretation of 2302(b)(10) as applying to employees' sexual orientation.

CONCLUSIONS

The investigation identified a series of events that support the inference that Mr. Bloch had decided, before taking office as Special Counsel, to reverse the existing OSC policy which deemed sexual orientation discrimination as a form of prohibited personnel practice. Moreover, the timing and urgency with which the elimination of all OSC materials referring to sexual orientation discrimination took place suggest that this was one of Mr. Bloch's highest and most immediate priorities for action by OSC under his direction. However, despite the weightiness attached to this matter by Mr. Bloch and his noncareer staff at OSC, the information developed by the investigative team through employee interviews and analysis of emails indicates that the written opinions providing a legal justification for the rescission of prior OSC policy were produced only after the website had been modified.

It is also apparent that Mr. Bloch did not coordinate officially with other interested agencies on this matter. In fact, the urgency with which OSC pursued its policy change produced unfavorable perceptions regarding its intentions. The investigative team's review of Mr. Renne's email records for the period immediately following the website changes revealed that he and Mr. Bloch were seemingly unaware of the possibilities for adverse reception of the changes and that they were unprepared for the negative reactions that did occur. Their emails indicate that they were surprised by the level and intensity of media coverage and that they expressed to each other anger that their actions had attracted unfavorable comment. There was no indication that Messrs. Bloch and Renne had intended to announce the policy changes publicly, and consequently they appeared not to have had a plan for communicating the reasons behind their actions. The very compressed timeframe surrounding the policy changes and the decision to modify the OSC website at an early date meant that the person Mr. Bloch had selected to be the

[REDACTED]
[REDACTED] that a friend

[REDACTED] would

be willing to provide assistance on an *ad hoc* basis. Messrs. Bloch and Renne subsequently consulted this person extensively—often multiple times a day—over a period of several weeks. [REDACTED] wrote and edited an array of press releases and letters to print media, and provided advice on dealing with the electronic media, without compensation or any form of contractual or employment arrangement with OSC.

In summary, we found that implementation of the 2302(b)(10) policy change occurred "on the fly," without a plan to explain or justify it, without an apparent intention to announce it publicly, without prior consultation with other interested agencies, and in an apparent failure—whether willful or not—to realize that it affected, or could be perceived as affecting, significant numbers of federal employees. In fact, an official White House press release in March 2004 is susceptible to being interpreted to indicate that Mr. Bloch had not informed or cleared his actions through their channels. Cumulatively, we believe that these factors demonstrate—regardless of the legal correctness of the policies involved—that Mr. Bloch's conduct of the process through which the policy change was implemented involved a substantial degree of inefficiency and disorganization.

Finally, the investigative team adduced facts which reflect that Mr. Bloch and Mr. Renne may have been motivated in their actions by a negative personal attitude toward homosexuality and individuals whose orientation is homosexual. Foremost among these were the statements witnessed, and described to the investigative team by, retired Army Lieutenant General Richard Trefry, an MPRI vice-president who met frequently with Messrs. Bloch and Renne as part of MPRI's contract work. Mr. Bloch indicated to General Trefry that there was a sizeable group of homosexuals employed by OSC, which had developed during the years prior to his taking office, that he "had a license" to get rid of homosexual employees, and that he intended to "ship them out." Further, in the portions of Mr. Bloch's official e-mail account that were available to the investigative team, there were crude and vulgar messages containing anti-homosexual themes that appeared to have been forwarded from his personal email. The investigative team noted that Mr. Bloch, who stated during his interview with them that as a matter of business practice, he routinely deleted all of his email traffic to avoid "cluttering" his computer, had in fact chosen to retain such items, which were insulting to gay persons. Similarly, Mr. Bloch's public media references to Ms. Kaplan contained repeated, negatively-phrased assertions regarding her sexual orientation. For example, in interviews he granted during 2007, Mr. Bloch described her as a "lesbian activist," a "public lesbian," a "well-known gay activist," and similar depictions. While Mr. Bloch's statements did not overtly link her public policies to private personal factors, the investigative team observed that his repeated characterizations of Ms. Kaplan in terms of her sexual orientation (as opposed to her professional qualifications as an employment law attorney with the Federal Government, Federal employee unions, and private-sector law firms) suggests that her personal orientation was significant to him.

At a minimum, Mr. Bloch's statements as described above would appear to be violative of the policy of EO 13087 to the effect that employment-related decision making in the Federal sector should not be based on sexual orientation. Further, they tend to undercut Mr. Bloch's own assertions that his position on 2302(b)(10) was based solely on a rigorous legal interpretation of law and precedent.

ISSUE B: Violations associated with attempts to limit free speech rights of OSC employees through issuance of a "gag order."

This issue involves the allegations that were articulated in the complaint as involving the following matters attributed to Mr. Bloch's actions as Special Counsel:

- Violating the First Amendment rights of OSC employees by issuing a "gag order" which restricted their ability to communicate with parties outside the OSC on "confidential or sensitive internal agency matters."
- Violating the Anti-Gag statute by failing to provide guarantees of employees' statutory free speech rights in the "gag order."
- Violating the Lloyd LaFollette Act (5 U.S.C. 7211), which assures Federal employees the right to petition or furnish information to Congressional representatives and committees.

BACKGROUND

The documentary record developed by the OIG investigative team reveals that in April 2004, Mr. Bloch directed the [REDACTED] to develop a policy statement requiring that official communications purporting to speak on behalf of the agency be issued through the IOSC. On April 9, 2004, [REDACTED] sent an email titled "Updated language for issuance to staff" to the chiefs of the three IPDs which contained the statement "the Special Counsel has directed that any official comment on or discussion of confidential or sensitive internal agency matters with anyone outside OSC must be approved in advance by an IOSC official." The following week Mr. Bloch directed the issuance of a follow-up e-mail to the top OSC career executives, which read in part, "Although nobody on my immediate staff saw the final message [reference is to the April 9, 2004 email cited above] before it went out, obviously there was no intent that First Amendment rights, WPA, or other statutory rights of employees be curtailed. Please reassure and communicate that to the staff."

ANALYSIS

During the investigative team's interviews of persons who were employed by OSC in 2004, it was repeatedly stated by high-ranking career officials that Mr. Bloch had forcefully expressed his unhappiness regarding unauthorized disclosures ("leaks") to news media of information regarding the policy changes that he was implementing in OSC and the critical press coverage that they had generated. These witnesses stated that Mr. Bloch made it clear that he wanted to prevent such disclosures. His concerns had also become well-known to OSC's rank and file career employees and were the subject of apprehension among some of them, who feared that coincidences or random, inadvertent remarks would be wrongfully interpreted so as to cast them as the source of the leaks.

For example, within the first few months of Mr. Bloch's tenure, Mr. Sklar casually remarked to him that he was acquainted with a top executive of a firm that produced a publication which had printed articles critical of Mr. Bloch's policies. Mr. Sklar believes that he may thereby have been (wrongfully) presumed to be a "leaker," and had thus become a target for retaliation.

Mr. Elliott expressed similar concerns that his interim assignment to handle OSC's media and congressional relations between the end of Ms. Kaplan's term and the arrival of Mr. Bloch's noncareer appointee as the agency's communications director may have cast him in Mr. Bloch's eyes as a suspected "leaker" of information to the media and congressional offices.

The investigative team obtained additional direct evidence of Mr. Bloch's concerns about "leaking" through its interview with General Trefry, who indicated that both Mr. Bloch and Mr. Renne were extremely concerned with secrecy and security of their activities.

In view of these exceptional expressions of concern about "leaking," the OIG investigative team noted that the methodology which Mr. Bloch used to develop and convey the "gag order" was disorganized and ineffective. Even though Mr. Bloch clearly wished to control outside dissemination of information regarding OSC's decisions and activities, the process he set in

motion for developing and issuing the media policy statement was executed in a manner that shielded his involvement, in that the policy was issued in the name of a career official. Further, the policy was not communicated systematically or uniformly throughout OSC. [REDACTED] [REDACTED] emailed it to the other OSC career executives without instructions as to further distribution to their employees or enforcement of its provisions. The subsequent follow-up email simply asked the original recipients of the e-mail to communicate the policy to their staffs, without providing specific directions as to the form or content of such communications.

The investigative team's interviews with employees who were present in OSC during 2004 suggested that, to the extent that the policy was communicated to them at all, the senior career officials offered little or no explanation of its intent. Many employees simply received a copy of [REDACTED] e-mail forwarded through their immediate supervisors. Some did not remember it having been conveyed to them at all. The employees expressed varied opinions as to whether the policy was still in effect in 2006, with some believing that it had been rescinded and others unsure of its current status. However, none recalled any attempts by OSC management to clarify the policy or to enforce it against any OSC employee.

In each interview with an OSC employee who was in the agency when the "gag order" was issued, the investigative team reviewed the language of [REDACTED] email and asked if the interviewee perceived it as inhibiting their First Amendment rights to freedom of speech or their statutory right under the Lloyd LaFollette Act to petition or communicate with Congressional representatives or bodies. None of the persons we interviewed indicated that they had interpreted the message as infringing on their speech rights or opined that their on-the-job conduct was in any way affected by the policy.

The investigative team also found it difficult to reconcile the accounts of some witnesses regarding the casual manner in which the "gag order" was issued with other witnesses' characterizations of Mr. Bloch's emphatic concerns that leaks of information be squelched. However, consistent with our observations noted in other sections of this report about careless administration on the part of Mr. Bloch, we believe that this apparent contradiction may simply reflect poor management practices and processes in the IOSC, rather than a lack of interest on Mr. Bloch's part in asserting control over release of information outside OSC.

CONCLUSION

The complainants made credible assertions regarding Mr. Bloch's repeated expressions of concern and anger regarding the occurrence of "leaks" of information from OSC to outside entities, and appropriately linked the issuance of the "gag order" to his desire to prevent such leaks. However, the plain wording of the order does not appear to support the interpretation that it sought to restrict the speech rights of OSC employees. Further, essentially every current and former OSC employee interviewed by the investigative team expressed a belief that the statement was intended to serve the appropriate business purpose of assuring coordination at the top management level for matters on which the agency had to speak authoritatively and with one voice. The investigative team found no evidence upon which it could be concluded that OSC

officials acted in a manner that deprived any employee of his or her constitutional and legal rights of free speech.

In light of these conclusions, the investigative team does not believe that the allegations in the complaint regarding First Amendment, Lloyd-LaFollette, and Anti-Gag violations in OSC have been proved.

ISSUE C: Religious discrimination.

This matter appeared in the March 31, 2005 amended complaint. It consisted of allegations that "Mr. Bloch's political appointees" had closed OSC and given employees paid time off for Good Friday in 2004 and 2005, while not providing equivalent treatment of employees on non-Christian religious holidays. In addition, it was alleged that Mr. Bloch scheduled a mandatory off-site retreat for OSC senior managers, including certain career personnel, during a portion of Passover in 2004.

BACKGROUND

The investigative team obtained information regarding this matter both through testimony of former and current OSC employees and by examination of email records. It verified that all OSC employees were excused from duty without charge to leave on Good Friday in 2004 (April 9) and 2005 (March 25), and that the April 2004 OSC senior staff retreat at the Tidewater Inn in Easton, Maryland did fall during Passover, the dates of which in 2004 extended from sundown April 5 until April 12.

ANALYSIS

The email record available to the investigative team reflected that the IOSC personnel charged with arranging the Tidewater conference (principally [REDACTED]) devoted considerable care to selecting dates that would avoid conflicts with the Christian Holy Week observances. There was no indication that IOSC personnel gave similar consideration to conflicts with the dates of Passover, or that they even realized when Passover was to occur.

In a more general context, a number of the current and former OSC employees interviewed by the investigations team remarked that the IOSC personnel appeared to share the same religious affiliation and attitudes in a manner that tended to set them apart from others in OSC. The investigative team determined that all IOSC employees hired prior to January 2007 were Roman Catholic. Based on a review of official email records, it was noted that several of them, including Mr. Bloch, frequently sent messages with a religious content to each other and to outside parties through the OSC email system. In addition, they appear to have associated their religious views with political convictions, and some of their emails expressed negative perceptions of persons whose beliefs and actions did not conform to their religiously-derived standards.

There were also occasional attempts by persons within IOSC to recruit each other for membership in organizations affiliated with the Roman Catholic Church, including Opus Dei. Mr. Bloch himself had been active for two decades as an officer in the Hillaire Belloc Society, a men's association dedicated to consideration of the life and works of Belloc, who was the preeminent Roman Catholic writer in Great Britain during the early 20th century. There is evidence that Mr. Bloch approached at least one career OSC employee regarding that person's interest in participating in the Society's meetings. This individual was a graduate of a [REDACTED] where one or more faculty members appear to have had a longstanding connection to the [REDACTED] with which Mr. Bloch was affiliated as a student and adjunct professor of law from 1982 until he relocated to Washington, D.C. in 2001.

CONCLUSION

While the current and former career OSC employees interviewed by the investigative team were aware that the noncareer officials hired into OSC by Mr. Bloch had a particular religious orientation that appeared to support their political viewpoints, none expressed a belief that actions such as the granting of time off for all employees on Good Friday constituted discrimination on religious grounds. Even the complainant who raised this matter in the first instance declined, upon being interviewed by the investigative team, to state that [REDACTED] had been the victim of religious discrimination. We conclude, therefore, that the factual content of this element of the complaint was substantiated, but that there was no basis to conclude that the complainants, or other OSC employees, were adversely affected thereby.

ISSUE D: Preferential treatment for employment in OSC was afforded to persons associated with the same [REDACTED] Deputy Special Counsel James Renne.

BACKGROUND

At the beginning of Mr. Bloch's tenure as Special Counsel (January 2004), there was one OSC career staff attorney (at grade GS-13) who also [REDACTED]

This person had been employed by OSC for several years.

In January 2004, when Mr. Bloch named him as Deputy Special Counsel, Mr. Renne was serving [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANALYSIS

Documents and interviews revealed unusual circumstances surrounding the appointment of the [REDACTED] during Mr. Bloch's tenure. This individual was appointed in OSC [REDACTED]

[REDACTED] Mr. Bloch prepared a written justification that this person's superior qualifications warranted his appointment at the advanced salary rate of GS-13, step 7. [REDACTED]

[REDACTED] The attorney was initially assigned to work directly for [REDACTED]

[REDACTED]

OSC's appointment of [REDACTED] reflected circumstances that were suggestive of at least the appearance of preferential treatment in the conditions of [REDACTED] employment. [REDACTED] was hired by OSC without any qualifications related to legal practice or federal personnel law. Although [REDACTED] possessed a law degree, [REDACTED]

[REDACTED]

[REDACTED] The OPM personnel auditor who served as a consultant to the investigative team stated that he did not believe that [REDACTED] could be held personally accountable for the circumstances of [REDACTED] employment, but that the actions of the OSC officials who appointed [REDACTED] carried at least the appearance of impropriety.

The investigative team also identified emails and other documents indicating that OSC's appointment of [REDACTED] may have carried personal importance for Mr. Renne. [REDACTED]

In late 2003—just prior to his appointment in OSC—Mr. Renne [REDACTED]

[REDACTED] despite the fact that he held a Juris Doctor (JD) degree and bar membership. Completion of this training, in addition to allowing him to serve as an attorney, [REDACTED]

[REDACTED] OSC's email records revealed that during the period July – December 2004, Mr. Renne spent substantial time preparing his application [REDACTED]

[REDACTED] The necessary endorsements [REDACTED] At the time in question, less than 3 months had elapsed since [REDACTED]—this this person's [REDACTED]—had been hired by OSC.

CONCLUSION

The information developed by the investigative team appears to reflect unusual circumstances surrounding the appointments of the [REDACTED]

[REDACTED] They were among [REDACTED] career attorney appointments made in OSC during [REDACTED] and although they were appointed to mid-career positions, neither of them, in the estimation of the investigative team, possessed qualifications relevant to the positions they received. Further, the available information regarding the appointment in OSC of the [REDACTED]

[REDACTED] carries the appearance that it may have been influenced by Mr. Renne's personal interest in obtaining approval [REDACTED]

[REDACTED] In such a situation, based upon Mr. Renne's level of involvement in [REDACTED] appointment, there may have been an ethically improper exercise of official authority for his personal benefit.

ISSUE E: The resignations of OSC'S [REDACTED] [REDACTED] were improperly coerced by Messrs. Bloch and Renne.

The complainants alleged that Mr. Bloch forced OSC's long-time and highly respected [REDACTED] [REDACTED] and a [REDACTED] to leave the agency in September 2004 because of their objections to [REDACTED] practices he insisted on implementing, as well as specific [REDACTED] that he directed them to process.

BACKGROUND

The [REDACTED] and [REDACTED] retired under voluntary retirement authority effective September 30, 2004. [REDACTED]

[REDACTED] By retiring prior to October 1, 2004, they also qualified to receive Voluntary Separation Incentive Payments (colloquially referred to as "buyouts") under authority that Mr. Bloch had requested and received from OPM in September 2004.

ANALYSIS

The email record examined by the investigative team reflects that Mr. Renne had begun to communicate [REDACTED] to Mr. Bloch within two weeks after his arrival in OSC in late January 2004. Additional information developed by the investigative team further supports the interpretation that Messrs. Bloch and Renne perceived that the [REDACTED] efforts to adhere to regulatory requirements for documentation of [REDACTED]

[REDACTED] (the [REDACTED]) impeded what they believed to be their management prerogatives. For example, in an email recovered by the investigative team, Mr. Bloch stated to Mr. Renne, [REDACTED]

[REDACTED] Although the complaint appears to suggest that their departures were in some manner the result of wrongful acts by Mr. Bloch, the record available to the investigative team does not support such an allegation. In fact, the former [REDACTED] in an email message [REDACTED] sent to all OSC staff on the occasion of [REDACTED] retirement, emphasized that [REDACTED] was leaving the Federal service at a time and in a manner that were strictly of [REDACTED] own choosing. When interviewed by the investigative team, [REDACTED] reiterated this statement, and specifically declined to discuss the reasons for [REDACTED] decision to retire at the time [REDACTED] hid, other than to emphasize that [REDACTED] was not coerced to leave OSC or the Federal service.

Despite repeated attempts to contact [REDACTED] did not respond to the investigative team's requests to interview [REDACTED]

CONCLUSION

The record developed by the investigative team disclosed that Mr. Bloch and Mr. Renne, virtually from the beginning of their service in OSC, [REDACTED]

[REDACTED] Their opinions contrasted sharply with career managers in OSC, who informed the investigative team of their belief that the [REDACTED] demonstrated the highest standards of personal integrity and professional competence. Given the [REDACTED] decision to remain largely silent as to [REDACTED] dealings with Messrs. Bloch and Renne, there is no basis to conclude that their actions were improper or illegal. [REDACTED]

ISSUE F: Mr. Bloch personally recruited and hired [REDACTED] School of Law

[REDACTED] The complaint questioned the appointments of [REDACTED] attorneys who had graduated from this school because it was only [REDACTED]

provisionally accredited during part of the time these individuals attended it, and because the surrounding circumstances suggested that Mr. Bloch displayed favoritism for students from that school.

BACKGROUND

[REDACTED] which was located at that time in [REDACTED] [REDACTED] received career appointments as [REDACTED] attorneys in OSC during [REDACTED]. At the time of their appointments, both individuals had been admitted to practice before the [REDACTED] and each met the qualifications requirements of the position to which [REDACTED] was appointed.

ANALYSIS

The investigative team developed information that the [REDACTED] in question were contacted, interviewed, and hired directly by Mr. Bloch, without involvement of other political or career staff in OSC. These employees were the [REDACTED] attorneys hired in OSC during [REDACTED]. In a contemporaneous email exchange with Mr. Renne, Mr. Bloch stated in respect to the [REDACTED] that "we're getting points for this," in a context that appeared to refer to support from a constituency. [REDACTED]

The senior OSC career attorneys interviewed by the investigative team indicated that the job performance of the [REDACTED] was proficient, and fully on a level with the expectations for [REDACTED] attorneys hired by OSC during the tenure of prior Special Counsels.

On at least one other occasion identified by the investigative team, Mr. Bloch displayed a similar approach by personally recruiting and hiring an [REDACTED] attorney at another law school in 2005. In that case, Mr. Bloch visited a job fair sponsored by [REDACTED] and interviewed law school seniors on campus. Apparently without consulting his staff, he offered employment as a staff attorney to a particular individual who was a member of the law school's [REDACTED] graduating class. This person was the first career attorney hired by OSC in [REDACTED].

CONCLUSION

Insofar as the individual appointees themselves were concerned, the [REDACTED] graduates who Mr. Bloch hired into OSC attorney positions in [REDACTED] and the [REDACTED] law student hired in [REDACTED] were fully qualified for the positions they received. However, the recruitment practices followed by Mr. Bloch in hiring these persons represented a departure from the existing OSC attorney recruitment plan, in that there was no attempt to attract an applicant pool from among a widely-based variety of recruitment sources, with selections ultimately being made from among the best-qualified candidates in the group as a whole.

ISSUE G: Hiring of unqualified cronies

The complaint identified as an example of cronyism OSC's [REDACTED] appointment to a [REDACTED] position of an individual who was [REDACTED]

BACKGROUND

[REDACTED] appointment was reviewed extensively by the [REDACTED] [REDACTED] during the reviews it conducted in OSC during 2004 – 2005 and was independently examined by the personnel management auditor attached to the OIG investigative team. As previously noted, the investigative team also reviewed every personnel appointment made in OSC during 2004 and 2005.

ANALYSIS

A dictionary definition of "cronyism" is "favoritism shown to old friends without regard for their qualifications." By this standard, [REDACTED] although linked with Mr. Bloch through [REDACTED] previous employment, was qualified for the [REDACTED] position [REDACTED] received, and as such would not be considered to be a "crony." Further, no regulations or procedural requirements were violated in connection with his appointment, because [REDACTED] appointments are not subject to competitive requirements. In addition, [REDACTED] immediate connection to Mr. Bloch had ended by the time of [REDACTED] appointment in OSC, [REDACTED]

Mr. Bloch, in various statements responding to the cronyism allegations, indicated that [REDACTED] [REDACTED] appointment was not a sinecure, and that [REDACTED] produced a useful document regarding human behavior in organizations. However, OSC employees interviewed by the investigative team who were present in the agency during the period of [REDACTED] appointment claimed to have had little or no workplace contact with [REDACTED]. Some had no recollection of him at all, while those who did recall [REDACTED] remarked that [REDACTED] had read a research paper which they characterized as overly long, boring, opaque, and unrelated to OSC's work at their Williamsburg conference in 2004.

The investigative team also identified a situation in which the OSC [REDACTED] [REDACTED] hired a friend and business associate who had also worked for [REDACTED] previously in [REDACTED] and was involved with [REDACTED] in a nonprofit business venture. This person was appointed under the [REDACTED]

Neither the [REDACTED] cooperated with the investigative team in developing information regarding their prior association, the existence of which they initially denied. It was necessary to question them extensively, and to confront them with information already known to the investigative team, before they admitted the existence of their past relationship.

CONCLUSION

While perceptions of the usefulness of [REDACTED] appointment by Mr. Bloch varied, the investigative team found no evidence to suggest that it was per se improper. However, the appointment of the [REDACTED] into a position in OSC is susceptible to being characterized as cronyism. Given the very limited cooperation that these individuals extended to the investigative team on this matter, the existence of undisclosed common financial interests stemming from the prior business association between them could not be foreclosed. If such interests did exist, they would call into question the legality of the employee's appointment under ethics law and regulation.

ISSUE H: The reassignments of OSC staff members as part of the reorganization announced in January 2005 constituted prohibited personnel practices.

The March 2005 complaint alleged that the reassignments were intended to "purge" the complainants from OSC, thus allowing Mr. Bloch to replace them with his "picks."

BACKGROUND

On January 5, 2005, Mr. Bloch announced a reorganization of OSC, which involved the following actions:

- a. A new field office was established in Detroit, Michigan. To staff this office, a group of seven employees from the headquarters-based IPD 3, including the complainant Mr. Sklar and complainants Mr. Elliott and [REDACTED] received directed reassignments from Washington, D.C. to Detroit.
- b. [REDACTED] received a directed reassignment from Washington, DC to [REDACTED], supplanting the existing GS-15 Chief, who had served in that capacity for 20 years.
- c. Three investigators and an attorney who had previously been assigned to IPD 3, along with another attorney in OSC headquarters, received directed reassignments from Washington, D.C. to Dallas, Texas, to serve in equivalent positions in OSC's Dallas Field Office.
- d. The Washington-based Hatch Act Unit, which had previously reported to the [REDACTED] who was reassigned to the [REDACTED] was designated to report directly to the Deputy Special Counsel.

- e. The two remaining Investigation and Prosecution Divisions (IPDs 1 and 2) were consolidated into a single unit, which was titled as the Washington Field Office. This component, along with the headquarters-based Complaints Examining Unit and the Disclosures Unit, was designated to report to a career SES official in OSC headquarters who had previously directed the Complaints Examining and Disclosures Units.
- f. The headquarters-based administrative and management support responsibilities, which had been split among a number of offices, were consolidated into a single organization headed by a senior noncareer official.

OSC's HR Director provided advice and technical support to the IOSC staff regarding procedural aspects and documentation of the personnel actions associated with the reorganization. [REDACTED] apparently did not participate in the actual decisional process. Based on information developed by the investigations team, other than the limited role played by [REDACTED] no career OSC employee was consulted about, or had knowledge of, any features of the reorganization prior to the afternoon of January 4, 2005, when Mr. Bloch began to inform OSC's career SES members. OSC's managerial, supervisory and working-level employees affected by it had literally no advance notice prior being summoned into a meeting with Mr. Bloch where they were told that details about the reorganization—including specific personnel assignments—would be posted on the OSC intranet.

Ultimately, none of the directed reassignments of staff members was implemented. The IPD 3 employees who were reassigned to Detroit either found other employment outside OSC or, as in the case of all three complainants, were removed by OSC in March 2005 for failure to accept the directed reassignments. The reassignments of two of the four persons reassigned to Dallas were rescinded and the other two employees resigned. Effectuation of [REDACTED] reassignment to [REDACTED] was held in abeyance for approximately two years, after which [REDACTED] was assigned to a newly-created headquarters position. The realignments of the headquarters-based units were all implemented as originally announced; however, none of these involved the removal or geographic reassignment of any employees.

The original group of seven IPD 3 employees who had received directed reassignments from Washington, D.C. to Detroit obtained counsel for the purpose of opposing these personnel actions. During January and February 2005, they contacted staff of both Senate and House committees with oversight responsibility for OSC, seeking to focus congressional scrutiny on the reorganization. Through counsel, they also sought to negotiate with OSC management to rescind the reassignments, and failing that, to extend the date on which they had to indicate whether they would accept the reassignments (and, by extension, the date on which they would be subject to removal for failing to accept them). Meanwhile, various members of this group were actively seeking employment outside OSC, and as they obtained other positions, they terminated their representation by counsel.

ANALYSIS

According to information provided to the investigative team through its interviews with career OSC staff members, most OSC employees had anticipated that Mr. Bloch would implement a reorganization of OSC in late 2004 or early 2005, and expected that the recommendations flowing from the organizational review of OSC by MPRI would play a substantial role in Mr. Bloch's decision-making. As part of its work, MPRI staff interviewed virtually every OSC employee, either individually or as part of a group, or both. In September 2004, MPRI issued a final report of its findings and recommendations, which was shared with OSC employees. Further, throughout 2004, Mr. Bloch made repeated references to a forthcoming reorganization in emails to employees and in meetings with employee groups.

The documentary and testimonial record developed by the investigative team revealed that the reorganization was formulated by Mr. Bloch and Mr. Renne very early in their tenure at OSC. At the latest, they had established the concept and a general outline of their plan by April 2004, when they contracted with MPRI. A very small group of noncareer OSC employees, including

Messrs. Bloch and Renne with subordinate roles in implementing the reorganization.

In general terms, the complainants alleged that their directed reassignments to the newly-established Midwest Field Office constituted prohibited personnel actions, taken (1) in retaliation for the complainants' protected disclosures of various acts of wrongdoing; (2) on the basis of their sexual orientation; (3) the professional association of some of them with former Special Counsel Elaine Kaplan; or because of other improper reasons.

Interpretation of the investigative team's findings in this area must be prefaced by the understanding that, as previously noted, the reorganization was planned and executed by Messrs. Bloch and Renne with the assistance of a very small group of non-career appointees. This group maintained a "close hold" on information related to the reorganization when being questioned by the investigative team. Four of these persons who were lawyers repeatedly invoked the attorney-client privilege in response to questions regarding the reorganization, even when the questions clearly did not call for information regarding protected communications made for the purpose of obtaining or providing legal advice. Further, they advanced a variety of arguments in support of their assertions that the reorganization was based solely on the need to improve the agency's productivity and effectiveness, and that reassignment of an "intact work team" consisting of a portion of the IPD 3 staff to Detroit was based entirely on the immediate need to staff the Midwest Field Office with experienced, high-performing personnel, so that it would be operational within the shortest possible time. However, based on an examination of OSC email records, as well as information obtained through the interview of General Trefry of MPRI, the investigative team developed an evidentiary record which indicates that:

- The operational aspects of the 2005 OSC reorganization cannot be justified by reference to appropriate management practices in the Federal sector or to the specific factors cited in statements by Mr. Bloch and his spokespersons as the bases for the reorganization.

- The selection of personnel for directed reassignment to field locations as part of the reorganization was based on non-merit factors that bore no resemblance to the justifications put forth to Congress, various media outlets, and the investigative team by Mr. Bloch and his proxies.
- In defending the January 2005 reorganization before congressional committees, in the media, and in response to the OIG investigation, Mr. Bloch repeatedly stated that its primary purposes were to :
 - ◊ Move OSC personnel and activities out of the Washington, D.C. headquarters into field offices, in the interests of implementing the findings of the MPRI consulting firm;
 - ◊ Realize cost savings through the less expensive office rents available in geographic locations outside Washington, D.C.;
 - ◊ "Power down the organization" (i.e., delegate authority away from Washington to the field offices), resulting in more efficient operations; and
 - ◊ Bring OSC staff closer to the population they served.

The evidence assembled by the investigative team revealed that these ostensible goals were not the actual objectives of the reorganization. Further, contemporaneous documents and witness testimony revealed that Messrs. Bloch and Renne, as the planners of the reorganization, largely did not intend to achieve legitimate management-related purposes. The following information developed by the investigative team rebuts the assertions that they advanced as justification for the reorganization.

- i. *Cost savings were insignificant.* In addressing congressional inquiries regarding the purpose of the reorganization, Mr. Bloch offered as justification an extensive discussion of the fiscal necessity for OSC to save funds by shifting staff out of the high cost commercially leased space in its Washington, D.C. headquarters into lower cost field locations. However, according to the cost projections for the reorganization, (which were prepared by an IOOSC official after the reorganization was announced to OSC employees), in the best case scenario, moving the division director and a work team of IPD 3 from Washington, D.C. to the newly-established Detroit field office would yield a net savings of only \$80,000 per year over the subsequent five-year period. In the context of OSC's \$15,000,000 annual appropriation in FY 2005, these savings represented approximately .053 percent of the funds available to the agency each year, and at this level would not have been meaningful to OSC's financial position.
- ii. *Headquarters funding increased.* The investigative team's analysis of the same OSC budget documents referenced above revealed that, even with the establishment of the Midwest Field Office, the overall balance of funding between OSC headquarters and field offices remained essentially the same before and after the reorganization. This appeared to be attributable to an increase in the funding of the headquarters units, such as the Hatch Act Unit and the

Disclosures Unit, which offset the increases in field office expenditures related to establishment of the Detroit field office.

- iii. *Workload of field offices decreased.* Interviews with managers and senior staff in all of OSC's field offices and headquarters units revealed without exception that the workload available to the field offices declined during Mr. Bloch's tenure as Special Counsel. In particular, the Midwest Field Office was characterized as never having been able to establish a workload volume and diversity that was at all comparable to the Dallas and San Francisco Bay Area Field Offices. The interviewees proposed varying explanations for this, but were unanimous in stating that no serious or concerted effort had been made by IOSC personnel to shift workload from the headquarters components to the field offices, despite repeated requests by the field office chiefs for them to do so. In contrast, the headquarters managers unanimously indicated that, following the reorganization, Mr. Bloch approved additional staff for their units and maintained the enhanced levels in subsequent years. Moreover, General Trefry stated to the investigative team that, based on the information obtained by MPRI in its organizational analysis of OSC, he had concluded that there was simply not sufficient workload available in the field to warrant establishing a new office (i.e., Detroit) or increasing the staff of the Dallas office. He said that he advised Mr. Bloch of these issues, but, as explained later in this report, because Mr. Bloch's plans for the OSC reorganization and reassignments were largely being driven by factors other than workload analysis, his advice was not accepted or implemented.
- iv. *Field office location in the "upper Midwest" isolated OSC from its clients.* As part of his stated interest in moving OSC functions out of Washington and closer to the persons it served, Mr. Bloch characterized the choice of Detroit as a location in which to establish a new field office as a means of bringing a needed OSC presence to the "upper Midwest." However, documents that the investigative team found in OSC's records contemporaneous with the 2005 reorganization include a publication produced by OPM in 2004, ranking localities throughout the United States in order of the size of their federal employee population. This document listed Detroit, with a Federal employee population at that time of approximately 8,800, as the 52nd largest center of Federal employment in the United States. Other upper Midwest locations which OSC noncareer executives identified in testimony to the investigative team as having been considered for the location of a new field office, including Madison and Milwaukee, Wisconsin, are listed as having even smaller Federal employee populations. This material appears to indicate that OSC management was aware that, by moving staff from Washington into Detroit, it was actually moving personnel into an area where there was only a relatively small number of clients (i.e., Federal agencies and employees), thus calling into question the validity of Mr. Bloch's assertions as to the advantageous nature of an office presence in Detroit. Testimony from OSC managers in both the field offices and headquarters units revealed that IOSC repeatedly expanded the jurisdictional boundaries of the Detroit office far beyond the Midwest during 2005 – 2007 in an effort to generate an adequate and continuing workload, but did not succeed in achieving this result.

- v. *OSC top management not candid regarding efforts to obtain office space outside Washington, DC.* Mr. Bloch and members of his immediate staff repeatedly asserted to the investigative team that OSC initially attempted to obtain office space in Chicago for the new field office, and only after finding that there was no availability of Federally-controlled space in that area did they explore other Midwest locations. They further indicated that officials in GSA's Chicago regional office (which serviced the Detroit area as well) in effect "steered" them to Detroit, on the basis that reasonably-priced space was readily available there. If this in fact were the case, then in effect OSC would have been ceding its management responsibilities for locating its own facilities in favor of what amounted to random chance, dependent on wherever GSA might have had readily available office space in its inventory. Further, OSC's assertions are not supported by information developed in the investigative team's interviews of the manager of GSA's regional real property office in Chicago and the realty specialist who handled OSC's leasing arrangements. These individuals stated that the two OSC officials (both of whom were noncareer IOSC personnel) who initially contacted them in November 2004 indicated from the outset that the agency had a pressing need to obtain space in Detroit, and that the nature and location (within the Detroit area) of the space were less significant than its immediate availability. Documents that GSA provided to the investigative team support this account. General Trefry also told the investigative team that Mr. Bloch had stated to him, in discussions held during the period of the MPRI study (April - October 2004), that it was his intention to create a new OSC field office in Detroit and reassign "homosexuals and other employees who [he viewed as] morale problems" to it. Based on the circumstances of the first-hand contacts described by the GSA Chicago real property office employees and General Trefry, the investigative team believes the information they furnished was credible, whereas the inherent illogic of the assertions made by noncareer OSC officials supports the conclusion that Mr. Bloch did not accurately portray the actual basis for his immediate staff's efforts to obtain new office space outside Washington, D.C.
- vi. *Field office reassignments were contrary to recommendations of consultants' report.* Another justification put forth by Mr. Bloch and members of his immediate office for the establishment of the Midwest Field Office was to the effect that OSC was seeking to carry out the recommendations of the MPRI study to improve the effectiveness of the OSC organization. The September 2004 MPRI report did in fact characterize the field offices as highly effective units, especially in comparison to the existing Investigation and Prosecution Divisions in OSC headquarters. However, upon careful review, the investigative team could identify no material in the MPRI report that could be reasonably construed as endorsing the establishment of another field office in any location, let alone one in Detroit. OSC managers in both headquarters and the field offices who were interviewed on this point unanimously expressed the same conclusion. Further, as noted above, General Trefry informed the investigative team that he actually advised Messrs. Bloch and Renne that creation of a new field office and assignment of headquarters personnel to it was not warranted. In addition, the January 2005 reorganization directly ignored a significant finding of the MPRI report and in the process imperiled the functioning of OSC's best field office. MPRI had cited the [REDACTED] and the manager who had headed it for over 20 years, as representing an outstandingly effective organizational team with high employee morale. Nonetheless, in the reorganization [REDACTED] was designated to be assigned to the

██████████ displacing the existing GS-15 chief from ██████████ responsibilities. This action was especially striking in light of the fact that OSC had literally no office space in which to accommodate ██████████

██████████ The investigative team's interviews of all of the personnel assigned to the ██████████ including the since-retired office chief, yielded unambiguous statements to the effect that there was utterly no work available for a reassigned executive to perform in the field office and that no operational justification existed for changes in its management structure. After an approximate two-year period in which ██████████ was pending in an indeterminate status, it was rescinded and ██████████ was placed in a different headquarters position.

vii. *Incorrect representation of "intact component."* In virtually every one of their explanations of the 2005 reorganization, Mr. Bloch and his noncareer staff claimed that there was literally no other intact component within OSC to assign to the newly-established Midwest Field Office, other than the IPD 3 work team that was reassigned there. Information developed by the investigative team, however, suggests that these assertions were known at the time by OSC officials to be either misleading or factually incorrect, for the following reasons:

- OSC management made no survey of current employees to ascertain their interest in or availability for positions in the Detroit area. Beyond representing a failure to observe a fundamental personnel management practice, this meant that there was no base of information within OSC as to which employees would be willing to accept reassignment to Detroit. Thus, the assertion that it was necessary to assign IPD 3 as an "intact unit," to work in Detroit, was utterly unsupported by knowledge in OSC management's possession. Further, this lack of information subsequently hampered and delayed OSC's efforts to staff the Midwest Field Office after all of the affected IPD 3 personnel refused to accept the directed reassignment and were either terminated from the Federal service or left OSC for other employment.
- The OIG investigative team identified an email sent in November 2004 (i.e., before the reorganization plans were finalized) from the acting chief of IPD 2 to Mr. Bloch, stating that this IPD was an "intact work team" whose members wished to remain together, even if the IPD itself was abolished. This message is particularly significant because it specifically referred to the reorganization of OSC that was widely and imminently anticipated by OSC employees at the time. Thus, OSC management's claims that only IPD 3 met the test of "intactness" that was needed for reassignment to Detroit appear to be directly contradicted by information that was in Mr. Bloch's possession prior to the time that the details of the reorganization were completed. (IPD 2 was eliminated in the reorganization and was consolidated with IPD 1 into a single division. No personnel from IPD 2 were reassigned outside Washington, D.C.)
- One of Mr. Bloch's statements to congressional committees regarding the rationale for assigning IPD 3 to Detroit explained that it was a "high performing" team which could rapidly bring the new field office into active operation. As a

basis for distinguishing IPD 3 from among the other OSC headquarters offices as the appropriate component to staff the new Midwest Field Office, this statement appears to be factually incorrect, and contradicts information in Mr. Bloch's possession. With the exception of one staff member who had worked briefly in the Dallas Field Office several years previously, none of the IPD 3 personnel who were transferred to Detroit had any experience in an OSC field office environment, and thus there was no factual basis to expect that IPD 3 personnel would be more proficient in a field office setting than employees of the other IPDs. In addition, the MPRI study specifically identified IPD 3 as the least productive of the IPDs, and criticized its work processes and management practices. Thus, if Mr. Bloch had actually been relying on MPRI's observations to guide his reorganization decisions, and if the factor driving the selection of the initial staff complement in Detroit had actually been to provide a "high performing" work unit, the choice of IPD 3 to staff the Detroit office would have been both inconsistent with the MPRI study and would have represented a less desirable option (in terms of unit performance) than assigning personnel from the other, better-performing IPDs, such as IPD 2.

- viii. *Staff assigned to Detroit office did not correspond to the composition of the other field offices or the staffing pattern recommended by the MPRI report.* The composition of the IPD 3 personnel reassigned to Detroit, in terms of grade levels and professional disciplines, reflected a headquarters orientation that was significantly out of alignment with the responsibilities that OSC field offices performed and with the staffing of the other OSC field offices, including the highly successful SFBAFO. Specifically, of the eight IPD 3 personnel who received directed reassignments to Detroit, seven were attorneys (including one SES official and two [REDACTED], and only [REDACTED]. In contrast, the other OSC field offices were comprised principally of investigators and personnel specialists, with at most only two attorneys per office. In this context as well, the reorganization decisions appear to run counter to recommendations contained in the MPRI report, which had specifically praised the orientation of the field offices toward investigators and personnel specialists. It should also be noted that two IPD 3 investigators who could have been reassigned to Detroit with the rest of the unit were instead assigned to the Dallas Field Office and then, immediately after the separations of other IPD 3 personnel for refusing to accept the reassignments to Detroit, were offered the opportunity to remain at OSC headquarters (see below.) Given the MPRI report's analysis, there is substantial evidence to believe that Mr. Bloch and his noncareer associates who planned the reorganization were fully aware that the assignment of headquarters staff to Detroit did not represent an efficient or effective use of OSC personnel in a field office. It is especially instructive that, in staffing the Midwest Field Office after all of the IPD 3 personnel who were assigned there declined their directed reassignments, OSC constructed an organization that closely adhered to the pattern of the other field offices—that is, only one attorney was hired (in addition to the field office chief), while the remainder of the positions were filled with investigators and personnel specialists. Further, the Midwest Field Office chief was appointed at the GS-13 level—a sharp contrast to the SES level at which the position would have been filled if the IPD 3 chief had accepted reassignment to Detroit. These actions cast substantial doubt as to the veracity and sincerity of the assertions made by Mr. Bloch and his spokespersons to the effect that it was

functionally essential for OSC to place IPD 3 personnel, including the [REDACTED] from headquarters to the Midwest Field Office.

- ix. *Staff reassignments said to be predicated on a military model.* The OIG investigative team, when interviewing Mr. Bloch and his noncareer advisors who participated in planning the January 2005 reorganization, questioned them regarding the basis for their decisionmaking that resulted in the dramatic approach of issuing directed reassignments simultaneously to approximately 10 percent of OSC's overall workforce. The responses to the investigative team's questions, as well as to congressional inquiries on the same matter, were to the effect that top OSC management "assumed" that Federal civilian employees were subject to mandatory relocation at the will of management on the same basis as military personnel. The OIG investigative team finds these remarks to be inherently unworthy of belief. OSC's role as protector of the Federal civilian employee had involved it in cases where directed reassignments under certain circumstances had been deemed to constitute prohibited personnel practices. Thus, a body of knowledge existed within OSC to the effect that, for most Federal employees, directed reassignments comparable to those of uniformed military members are not an unlimited condition of Federal civilian employment. Second, even assuming that the OSC top management group which planned the reorganization was not aware of Federal civilian personnel practices, their ostensible reliance on assumption and conjecture to make fundamental decisions regarding the relocation of a significant portion of the agency's personnel belies the ostensible importance that Mr. Bloch placed upon reorganization virtually since the beginning of his tenure as Special Counsel.
- x. *Rescission of reassignments of certain personnel was arbitrary and inconsistent with stated basis for reorganization.* In March 2005, OSC rescinded the directed reassignments to the Dallas Field Office of two IPD 3 employees after four others had been terminated for failing to accept reassignments to Detroit. The two employees—[REDACTED]—were offered reassignment to newly-created positions in OSC headquarters. When interviewed by the investigative team, OSC management officials could not articulate their reasons for selecting these employees for rescission of the reassignments. In fact, they did not provide the employees themselves any explanation or even advance notification as to why the opportunity to remain at agency headquarters was being extended to them. These employees were requested to sign confidentiality agreements in exchange for receiving the proffered positions in Washington. One of them accepted the offer, while the other declined and was removed from the Federal service for failure to accept [REDACTED] directed reassignment to Dallas.

[REDACTED] The investigative team subsequently reviewed a copy of the agreements and noted that they contained no statement explaining the basis for the employees' retention at headquarters. Neither reduction-in-force nor other systematic procedures were applied to identify the employees who were offered retention in OSC headquarters. Finally, the investigative team's review of emails and documents, as well as interviews with OSC personnel, revealed that OSC's top managers were aware that the Dallas Field Office was deemed to be critically short of investigators, due to vacancies created by attrition and the earlier transfer of an investigator to headquarters to serve as the HR director. Thus, the rescission of investigator reassignments to the Dallas office was

inconsistent with the recognized staffing needs of OSC. The Dallas positions were in fact filled later in 2005 by new hires with no prior OSC experience.

A similar appearance was created when ██████████ was simply informed, at approximately the same time as the removal of the IPD 3 personnel who had refused directed reassignment to Detroit, which ██████████'s own reassignment the ██████████ was going to be held in abeyance. ██████████ performed other duties at OSC headquarters, which were not documented in a position description. Over two years later, without further discussion, ██████████ was placed on a new position description covering work at OSC headquarters. Although some OSC managers interviewed by the investigative team stated that Mr. Bloch had at one point justified the reassignment of headquarters ██████████ and the Midwest Field Office on the basis of his intent to fill all the field office chief positions with SES appointees, no tangible action was ever taken to effectuate such a plan, even though there were clear opportunities to do so. For example, as noted above, after the Chief of IPD 3 was removed from the Federal service for declining his reassignment to be head of the Midwest Field ██████████ OSC filled the office chief position with an employee who was at that time in grade GS-13, while the SES position authority remained vacant. When the GS-15 chief of the SFBAFO retired at the end of 2005, the position was filled at the same level through promotion of an SFBAFO employee rather than carrying out the abeyant reassignment of ██████████. According to information provided by the ██████████ ██████████ was not aware of any consideration ever having been given to elevating ██████████ position to the ██████████

- xi. *Witness testimony.* As noted above, Messrs. Bloch and Renne were, throughout the period covered by this report, at pains to conceal their purposes and intentions from OSC career staff, and communicated only a limited picture to the noncareer appointees. However, the investigative team was told by several witnesses that Messrs. Bloch and Renne repeatedly emphasized that the results of the MPRI study would represent a crucial element in shaping the future of the OSC organization.

In March 2004, OSC solicited offers from at least three consulting firms to perform an extensive analysis of its operations and organization. Email traffic obtained by the investigative team revealed that Mr. Renne took the lead for this initiative. In April 2004, OSC awarded MPRI a \$100,000 sole source contract for this work. (Although it was beyond the scope of the complaint, the investigative team noted that the Government Accountability Office had reviewed this contracting decision and found that sole-sourcing of the award was unjustified.)

Messrs. Bloch and Renne appeared to have been candid with MPRI officials in explaining their intentions, and how they wanted MPRI's work product to contribute to the accomplishment of their overall vision for OSC. When interviewed by the investigative team, General Trefry provided the following information relevant to the issues raised in the complaint:

- In regard to the management review that MPRI performed, General Trefry served as the primary contact between MPRI and OSC. The MPRI employees who

actually conducted the work of the study, including document reviews, employee interviews, and report writing, reported to General Trefry.

- MPRI's principal line of business involved U.S. Army training activities. However, prior to the OSC contract award, MPRI had conducted a conceptually similar assessment of the Department of Defense's Office of Inspector General, at the request of the then-Inspector General, Joseph Schmitz. The report of this study was well-received by the Inspector General and some congressional figures.
- As MPRI's point of contact with OSC, General Trefry had frequent discussions with Messrs. Bloch and Renne. The general noted that it appeared that Mr. Bloch may have been heavily influenced by Mr. Renne, who seemed to want to become involved in matters related to reorganization issues.
- General Trefry indicated that, in discussions about MPRI's study of OSC, Mr. Bloch spontaneously explained to him that OSC had a number of homosexual employees, and that he (Bloch) wanted to "ship out" these persons and "had a license to do this." The general indicated that he was unsure as to whom, if anyone, Mr. Bloch was referring by the "license" comment. However, he observed that Mr. Bloch appeared to be "very determined" to carry out these intentions.
- During the period in which MPRI was performing its analytical study of OSC, General Trefry had numerous discussions with Mr. Bloch about the way in which he intended to "ship out" homosexual employees. The general indicated that Mr. Bloch stated that his plan was to create a new OSC field office in Detroit and to staff it with the homosexual employees, along with others who he (Bloch) viewed as exerting a negative influence on the office. Mr. Bloch also indicated that he would be sending other employees to the existing Dallas Field Office. General Trefry advised Mr. Bloch not to create and staff a new field office, or to assign more employees to Dallas, on the basis that workload availability in the field did not warrant these actions.
- General Trefry told the investigative team that MPRI staff conducted its review of OSC consistently with the professional analytical principles that it normally applied to its work. However, he indicated that, when MPRI provided its draft report to OSC top management, Mr. Bloch and Mr. Renne were not pleased with it. Mr. Bloch met with the general and raised a number of issues which reflected his desire for changes in the report. General Trefry indicated to Mr. Bloch that he would consult with the MPRI project staff in this regard. General Trefry also informed the investigative team that, as he was leaving Mr. Bloch's office after a meeting, he encountered Mr. Renne, who remarked to him, "If you do not make [the changes in the report requested by Mr. Bloch] I will see to it that you never do an[other] assessment in Washington, DC." The investigative team verified that such a meeting had taken place through an analysis of email traffic in Mr. Renne's OSC account, including a message sent by Mr. Bloch, who indicated that he

thought that the general had been persuaded to change the MPRI report in the manner that they wanted.

- General Trefry informed the investigative team that he discussed the changes to the report desired by Messrs. Bloch and Renne with ██████████ the MPRI staff member who was the principal analyst and author of the report. ██████████ took vigorous exception to all of these changes, characterizing them as impugning MPRI's integrity. Ultimately, General Trefry decided that some changes had to be made in the report, but also arranged for a cautionary letter to be written over his signature by an MPRI attorney. In reference to what Mr. Bloch wanted to do with the OSC field offices, the letter stated, "personnel interchange is permissible, but cannot be directed without following Office of Personnel Management procedures for both parties."
- General Trefry's statements to the investigative team tended to confirm information that had been provided by other witnesses, to the effect that matters relating to the findings of the MPRI study and Mr. Bloch's plans for OSC reorganization were treated with the greatest secrecy. He described being told by Mr. Renne, after a meeting with Mr. Bloch in which their plans for field offices had been discussed, that such matters "had to be on the QT." At another time, Mr. Renne told the general that the plans for the field offices should never be discussed out loud in OSC. In his own words, General Trefry characterized Messrs. Bloch and Renne's attitude to be that they "didn't want anyone to know what the hell they were doing."

CONCLUSION

The evidence developed by the investigative team supports the conclusion that the assertions of Mr. Bloch to the media, congressional oversight panels, and the investigative team itself regarding the following matters do not correlate with the available empirical information regarding the following matters associated with the 2005 OSC reorganization.

- Objectives of the 2005 OSC reorganization;
- Cost-benefit expectations associated with the establishment of a new OSC field office in Detroit;
- OSC top management's actual use of the MPRI consultants' report in determining the new organizational structure;
- Selection of a location for the new field office;
- Bases for identification of OSC personnel to be reassigned from headquarters to field locations; and,
- Management techniques and expectations applied in carrying out the reorganization.

Therefore, the investigative team determined that the statements of Mr. Bloch and other noncareer OSC officials involved with the reorganization, do not plausibly or credibly establish a legitimate business-related basis for the reassignment of the complainants. The team's subsequent interview of General Trefry identified specific reasons of Mr. Bloch and his associates for conducting the reorganization which led to the separation of the complainants from the Federal service. Although these reasons differed sharply from the statements provided by Mr. Bloch and the noncareer OSC personnel, the investigative team finds them to be consistent with the factual record which it has developed.

Given these circumstances, we believe that the evidence supports a determination that reassignments of OSC personnel from headquarters to field offices as part of the January 2005 reorganization, and the subsequent rescission of 25 percent of them, were apparently designed to target the removal of certain IPD 3 personnel from OSC headquarters, without regard to the operational needs of the agency. On this basis, the investigative team believes that OSC management cannot demonstrate, in response to the complainants' charges that their reassignments to the Midwest Field Office constituted prohibited personnel practices under 5 U.S.C. 2302(b)(8), that the reassignments were taken for a legitimate business purpose of the agency.

ISSUE I: Summary closure of whistleblower complaints

This element of the complaint charges that in 2004 Mr. Bloch directed the summary closure and disposal of "hundreds" of whistleblower complaints by the Disclosures Unit (DU), the OSC component responsible for receiving and referring such complaints, and through the Special Projects Unit (SPU), a process initiated by Mr. Bloch in which task groups were assembled from throughout OSC to address work backlogs in various units.

BACKGROUND

Significant backlogs of unresolved cases had existed in several OSC components, including the Complaints Examining, Disclosures, and Hatch Act Units for many years, predating the term of Ms. Kaplan as Special Counsel. These had become the subject of congressional interest and were well documented in a Government Accountability Office (GAO) report issued in 2003. Ms. Kaplan's administration viewed the backlogs as a resource problem, and worked in Congress for additional funding to augment the number of personnel assigned to case processing. Some increased appropriations did become available for FY 2004, after Ms. Kaplan had left office. Concurrently, OSC managers and staff in the affected headquarters units were actively seeking means of reducing backlogs through improvements in their methods and procedures.

The OSC backlogs were a principal topic of discussion during Mr. Bloch's Senate confirmation hearings in 2003, and he committed himself and the agency to resolving them promptly. Upon taking office as Special Counsel, Mr. Bloch assigned primary operational responsibility for backlog reduction efforts to [REDACTED]. The primary technique employed to reduce the

backlogs was the use of Special Project Units (SPUs), *ad hoc* work groups comprised of selected OSC employees drawn from throughout the agency. The SPUs supplemented the ability of the units which had on-going responsibility for the types work in question to focus resources on backlog reduction.

The SPU initiative began in mid-2004 and continued into 2005. Using a frequently changing group of employees—although always under the leadership of the Principal Special Assistant—SPUs sequentially addressed backlogs in each of the OSC headquarters units. During this period, Mr. Bloch asserted before congressional panels, in public and media statements, and later in an interview with the investigative team that the SPUs were fully successful in reducing the backlogs of cases and complaints that had accumulated during previous administrations.

ANALYSIS

The investigative team interviewed executive, managerial, and supervisory personnel associated with the Disclosures Unit (hereafter referred to as the DU), as well as OSC employees who served on SPUs. The information developed from these sources reflected a consensus with respect to the following facts regarding the DU's backlog reduction activities in 2004 – 2005:

- In 2003 – 2004, prior to Mr. Bloch's taking office and the implementation of the SPU process, the DU chief and her staff were actively seeking means of reducing the backlog of unresolved whistleblower complaints.
- Historically, most of the disclosures received in the DU did not meet the statutory criteria for acceptance under the Whistleblower Protection Act and referral to the affected agency for investigation and follow-up reporting to OSC. To assure that the *bona fide* cases warranting prompt attention were identified from among the larger volume of nonmeritorious complaints, DU had instituted a screening process which separated incoming material into three categories, designated 1, 2, and 3. Category 3 complaints were those in which it appeared clear upon initial review that there was no basis for OSC involvement. DU would defer action on them in favor of working on category 1 and 2 complaints, which represented disclosures that were either clearly within the scope of the Whistleblower Protection Act, or were considered likely to be deemed so if further information could be developed from the complainant.
- Category 3 complaints constituted the most numerous single category. Even though DU staff had identified them as nonmeritorious, the DU policy then in effect required that, before OSC actually closed the complaint, the complainant be sent a written notice to the effect that OSC intended to close their file unless they provided additional information by a stated date to establish that their disclosure merited action. Given the resource limitations within which DU operated, and their knowledge that category 3 complainants seldom took advantage of the opportunity to furnish additional data, this recontact process tended to proceed at a deliberate pace. This resulted in a large, ongoing backlog of open cases, which had attracted the critical notice of whistleblower rights groups and their congressional supporters.

- According to information provided by DU management, the ultimate resolution of the disclosures backlogs was based on an idea originated by a legal intern who served on the DU staff during 2003 and early 2004. This person suggested streamlining the processing of complaints by eliminating the intermediate notice, and simply closing the category 3 complaints as soon as they were recognized as such during OSC's initial review. These complainants would then be sent a letter stating that, if they provided additional information, OSC would reconsider their complaint. This concept was adopted and implemented by DU before the SPU process began in mid-2004. According to the individuals interviewed by the investigative team, noncareer OSC employees played no part in developing or implementing the revised procedures.
- The DU and SPU personnel who worked on the disclosures backlog examined each pending category 3 complaint to re-verify that it did not, in fact, meet the Whistleblower Protection Act's criteria for acceptance and processing by OSC. Each person who had filed a complaint which was assigned to the DU received correspondence from the DU or SPU staff member who reviewed their file. All of the witnesses interviewed by the investigative team (including the complainants) denied knowledge that any items in the DU were summarily disposed of without appropriate review or notice to the persons who had submitted them to OSC.

CONCLUSION

The evidentiary record developed by the investigative team disclosed that career staff of the Disclosures Unit developed revised procedures for processing whistleblower complaints in order to resolve longstanding case backlogs that GAO, congressional oversight committees, and prior Special Counsel Kaplan, as well as Mr. Bloch, deemed to have reached a critical stage. These procedures were put into effect by the DU before the SPU approach was instituted. No witnesses reported that either the DU or the SPU closed or otherwise physically disposed of whistleblower disclosures cases without appropriate review. Given the state of the evidentiary record, the investigative team concluded that this allegation has not been proven.

ISSUE J: Retaliation against OSC employees based on their representation by counsel

This issue refers to the provisions of 5 U.S.C. 2302(b)(9)(A), which make it a prohibited personnel practice to "take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—"(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation..."

BACKGROUND

The complaint identifies two situations related to the January 2005 OSC reorganization in which representation by an attorney appeared to be associated with a personnel action or the threat of a personnel action.

The first occurred in February 2005, during a telephone conversation between Mr. Bloch and [REDACTED] the attorney who was then representing OSC employees who had received directed reassignments to the Midwest Field Office. This discussion involved the potential terms of a settlement agreement proposed by Mr. Bloch under which the employees would receive monetary considerations and an extension of their separation date from OSC. Mr. Bloch conditioned the settlement on the employees' agreement not to contest their removals for declining to accept the reassignments. This topic had been discussed by the respective sides a few weeks before and rejected by the employees, at which time Mr. Bloch stated that he considered this avenue of resolution to be irrevocably closed. Despite explanations to the contrary from [REDACTED] Mr. Bloch apparently believed that the attempt to renew those discussions reflected a bad faith negotiation that was disrespectful of him. When [REDACTED] indicated that [REDACTED] clients would not agree to Mr. Bloch's conditions, but still wanted to continue the discussion, Mr. Bloch expressed anger that the employees were attempting to manipulate him, and he stated that he would "bring charges" against them.

The second situation involved disparate treatment of OSC employees who contested their directed reassignments with or without the assistance of counsel. The complainants stated that all of those who were represented by counsel (and had not obtained employment outside OSC) were removed from Federal employment for failing to accept their directed reassignments to Detroit. In contrast, the directed reassignments of [REDACTED] who served in comparable positions but who had not retained counsel to advise them were not carried out. These included the [REDACTED] who had initially received directed reassignments to the [REDACTED] but were subsequently offered the opportunity to be placed in new positions at OSC headquarters. [REDACTED] accepted this offer, and remained at OSC headquarters for several years thereafter. The other declined it and was separated from the Federal service for refusing to accept their reassignment to Dallas. [REDACTED] employee not represented by counsel was [REDACTED] was held in abeyance while he continued to serve at OSC headquarters. Approximately two years later, the reassignment was cancelled.

ANALYSIS

With respect to the first of these situations, the OIG investigative team was able to establish that in February 2005, Mr. Bloch did articulate, in a conversation with [REDACTED] an oral threat to take action against the complainants. However, as [REDACTED] noted, there was no statutory basis on which "additional charges" could be brought against the employees, and thus no such action occurred. Thus, a causal link could not be established between Mr. Bloch's statements to [REDACTED] and the subsequent decision to remove the employees in question for refusing to accept reassignment to the Midwest Field Office. However, throughout the investigation, the OIG team developed substantial evidence from a variety of sources—including emails and the testimony of both noncareer appointees and career OSC employees—that Mr. Bloch was prone to making angry, table-thumping outbursts in the workplace or writing emails which carried overtones of threats when events displeased or frustrated him, or when he was issuing instructions to his staff on matters about which he felt strongly. The investigative team also noted that, while some of these types of statements may have revealed Mr. Bloch's actual intentions, many others seem to have been delivered simply for dramatic effect, or as

concomitants of his highly assertive personality. Mr. Bloch's behavior toward [REDACTED] on the occasion in question was not inconsistent with this pattern.

As to the rescission of the reassignments of OSC headquarters employees who did not retain counsel, the information developed by investigative team revealed that there were substantial differences in their respective situations. While [REDACTED] who were reassigned to the [REDACTED]

[REDACTED] was not available for an interview, but the OIG team obtained information from [REDACTED] former co-workers that [REDACTED] did not contest [REDACTED] removal because [REDACTED] planned to leave the Federal service, receive severance pay, and relocate to a geographic area of [REDACTED] choosing.

The investigative team learned that none of the employees whose reassignments were rescinded was provided an explanation for the rescission. The OSC HR Officer, who delivered the offers of placement in new headquarters positions to the investigators, also stated that he had not been told of the reasons for the rescissions, but was simply directed by [REDACTED] to make the offers.

[REDACTED] learned this only when, two years after the directed reassignments had been issued, [REDACTED] was formally reassigned to a newly-established headquarters position. As was the case with essentially all elements of the OSC reorganization, decision making on the rescissions appeared to have rested with Mr. Bloch, and information about them was extremely closely held within the Immediate Office of the Special Counsel. Interviews of IOSC officials by the investigative team elicited either denials of knowledge about this matter or assertions that Mr. Bloch had simply decided in his judgment to withdraw the directed reassignments of certain employees.

CONCLUSION

The symmetry of this occurrence—three OSC employees who retained an attorney were all removed, while the [REDACTED] who were unrepresented either received offers to remain with the agency in Washington or were simply retained there—created the appearance that Mr. Bloch's decisions may have been motivated by retaliatory considerations. However, the varying situations surrounding each of the employees whose reassignments were rescinded tend to undercut this conclusion. In addition, based on documentary information obtained by the investigative team, it is at least equally plausible that [REDACTED] reassignment was deferred or canceled because the OSC budget officer discovered that the actual costs of relocating [REDACTED] far exceeded the amount that had been budgeted for this purpose. In the absence of evidence definitively establishing a causal link between removals and representation by counsel, this element of the complaint cannot be considered to have been proven.

ADDITIONAL ISSUE: Systemic Violations of Federal Personnel Management Rules

The complaints addressing personnel management issues represented an admixture of more or less specific acts of alleged wrongdoing and charges that reflect systemic problems in the way that OSC performed its human resources management activities. The investigative team pursued these two categories on separate tracks. The foregoing sections A – J deal with the allegedly wrongful specific acts. This section addresses the systemic aspects identified below.

The complainants charged that Mr. Bloch was responsible for actions constituting violations of the Federal personnel management system, including the following:

- “Abandonment of merit-based competitive hiring” for career positions in OSC;
- “Misuse” of special hiring authorities; and,
- Stripping senior executives and mid-level career managers of their “longstanding” authority to hire subordinate employees and instituting a pattern of personally hiring employees for career positions. In these cases, the career supervisors of the new hires were completely excluded from the hiring process and did not meet the new hires until their first day of work.

BACKGROUND—SYSTEMIC FAILURES

- i. *Use of personnel management auditor.* Because of the breadth and variety of the allegations of systemic personnel management irregularities in OSC, OIG supplemented the investigative team with an OPM senior personnel management auditor who had extensive experience in inspecting and evaluating Federal agencies’ human resources programs for compliance with applicable laws and regulations. This individual, who has since retired from the Federal service, was well-qualified to examine OSC’s personnel management practices, to identify violations of personnel laws and regulations, and to determine accountability for them.
- ii. *Review of all personnel files and actions.* According to the auditor, the OPM human resources accountability practices prevailing at the time of the investigation called for personnel management audits of agencies of OSC’s size to cover a 100 percent sample of personnel files and personnel actions for the period under review. Based on this standard, the investigative team reviewed the official personnel files and security files of all persons employed in OSC during the period 2004 – 2006.

ANALYSIS

- *Recordkeeping deficiencies.* The auditor observed that the OSC personnel records the investigative team reviewed, covering the period January 2004 – April 2006, reflected the “poorest documentation and recordkeeping” that he had ever encountered in his experience as a personnel management auditor. He pointed particularly to the very large number of SF

50's (Notice of Personnel Action) and other basic documents that are universally included in employee personnel files which were missing from the OSC records. He stated that, to a significant extent, the absence of many personnel records and the poor quality of those that did exist made it difficult for the investigative team to reconstruct the basis for and processes of personnel actions taken by OSC during the period covered by the complaint against Mr. Bloch. The auditor attributed most of the records deficiencies to sloppiness and carelessness by [REDACTED] while also indicating that it could not be discounted that OSC's management may have intentionally omitted some records.

- *Misuse of Federal Career Intern appointing authority.* The auditor found that OSC's practices during the period April 2004 – December 2005 appear to constitute a misuse of the Federal Career Intern program, in that OSC failed to adhere to the following elements of OPM's guidance on this program:
 - ◊ OSC failed to develop a recruitment plan that identified positions to be filled by career intern appointments and the means by which appropriate public notice regarding the availability of these positions would be provided to the potential applicant pool. In fact, OSC appears to have randomly offered career intern appointments to persons referred by other OSC employees or, in at least one case, to a person who had been employed by a temporary services firm [REDACTED] in OSC's offices.
 - ◊ OSC did not use an OPM-approved examining methodology to evaluate candidates for career intern appointments. In fact, there was no indication that OSC made any attempt to evaluate applicants against any qualifications measures.
 - ◊ There is no evidence that OSC observed the requirements of the veterans preference laws when recruiting or evaluating applicants for career intern positions.
 - ◊ OSC misapplied the career intern appointment authority to certain positions. For example, a [REDACTED] was filled through this authority, even though OPM's program guidance indicated that it was to be used for two-grade interval (professional) positions with significant advancement opportunities; additionally, the former OSC [REDACTED] was appointed under the career intern authority to a position that appeared to be principally of a support or technical nature.
- *Misuse of superior qualifications appointments.* The auditor stated that OSC had misused its authority to make superior qualifications appointments (i.e., above the step 1 pay level for a given grade). He observed that his review of their records revealed the following deficiencies:
 - ◊ In most superior qualifications cases, documentation was either missing from the official personnel files or was incomplete.
 - ◊ The requisite analysis of an appointee's salary history, needed to demonstrate the basis for advanced salary rates, was often missing from the file under circumstances

that made it appear that Mr. Bloch himself may have refused/failed to supply it to OSC's HR office.

- ◊ In several cases, it appeared from the objective information that was available in the files that the higher pay levels awarded to appointees were simply not supportable by reference to OPM guidance, but reflected seemingly random assignment of salary levels. In addition, superior qualifications appointments were not offered consistently; while many who received them did not appear to warrant them, several very well-qualified appointees did not receive them.
- *Lack of systematic incentive awards policy.* While OSC frequently issued incentive awards to its employees, the auditor found no evidence of a systematic incentive awards policy that would foster equity and objectivity in the amounts and frequency of awards distribution among employees. The available information suggests an almost random pattern of awards, with new employees having less than a year's tenure in OSC often receiving as many or more awards than many long-term employees. These circumstances tend to detract from the value of awards as both recognition of meritorious accomplishments and as incentives for future performance.
- *Failure to adhere to attorney recruitment plan and exclusion of career managers from recruitment and hiring processes for attorney positions.* The auditor observed that, although attorney appointments are exempted from competitive requirements under Schedule A (5 CFR part 213, subpart C), they are subject to other statutory and regulatory requirements, such as veterans preference and EEO rules. For this reason, OPM guidance calls for agencies to develop and follow staffing plans for their attorney positions. After repeated requests, OSC's HR officer provided the investigative team with an attorney recruitment plan dated 1979, and asserted that it was still in effect as of April 2006. Given the existence of such a plan, OSC was obligated to follow it in order to meet the regulatory requirements for Schedule A appointments. OSC's plan called for public recruitment of applicants for attorney positions in a variety of law schools, with career OSC managers primarily responsible for carrying out this process independently of the political appointees. The investigative team's interviews of OSC senior career personnel revealed that OSC's attorney recruitment activities prior to Mr. Bloch's appointment as Special Counsel generally corresponded to the plan's model. However, the career managers who had previously conducted OSC's attorney recruitment indicated to the investigative team that they had been systematically excluded from recruitment efforts during Mr. Bloch's tenure, to the extent that many new attorney personnel simply appeared for duty in their offices without their prior notice or knowledge.

██████████ revealed that they had been either recruited by direct contact with Mr. Bloch or that they had been referred to OSC through the Office of Student Services of the Federalist Society. The email records reviewed by the investigations team verified that ██████████ the Federalist Society's ██████████ regularly forwarded resumes of law school graduates to Mr. Bloch. One such email alone contained the resumes of approximately 45 candidates, three of whom were hired by OSC. There was no indication

that OSC provided public notice of the availability of attorney positions—a requirement of their attorney recruitment plan—during the 2004 – 2005 period.

On the basis of the foregoing, the investigative team believes that there is no indication that Mr. Bloch and his staff made any attempt to adhere to the 1979 OSC attorney hiring plan. There were anecdotal indications—supported to some extent by the empirical record—that political and religious affiliations, as well as attendance at certain law schools that were of interest to Mr. Bloch, were significant factors in OSC's employment decisions.

CONCLUSION—SYSTEMIC PERSONNEL MANAGEMENT ISSUES

Based upon the information developed during the investigative team's 100 percent sample of OSC personnel actions and records for the period 2004 – 2005 and the input of the OPM personnel management auditor, there is a factual basis to conclude that OSC failed to comply with Governmentwide program guidance regarding special hiring authorities, including the Federal Career Intern Program and the superior qualifications appointment authority.

The allegations regarding exclusion of OSC career managers from their customary role in recruiting and hiring employees for career positions appear to be factually correct. While it is a widely-observed and strongly recommended practice, there is no systemic requirement as such within the Federal personnel management system that managers be directly involved in recruiting and selecting candidates for their own organizations. Indeed, in many situations, direct managerial participation is simply not possible. This is particularly the case in larger agencies which have a need to hire substantial numbers of employees on a continuing basis without an ultimate duty location having been identified beforehand. This is, for example, a common practice in law enforcement agencies. However, this context for recruitment and selection of candidates places a particular emphasis on adherence to pre-established staffing plans that are developed by an agency with input from the employees most knowledgeable regarding the positions to be filled—that is, the supervisors and managers of the positions to be filled. In contrast, the record developed by the investigative team indicates that this simply did not occur in connection with OSC's hiring and assignment practices during 2004 and 2005. There was an absolute absence of input from career-level agency managers, either directly by first-hand participation in selection decisions or indirectly through the agency's adherence to a recruitment plan. It is especially problematic that OSC had an established recruitment plan for hiring attorneys into career positions, and clearly failed to adhere to it. This placed the agency at risk of failing to meet statutory requirements related to veterans' preference and equal employment opportunity.

While the complainants' terminology, "abandonment of merit-based competitive hiring" implies a universality which the record does not fully support, there is evidence

pre-existing partisan ties to the Republican Party and who were referred to OSC through the Federalist Society. This practice clearly calls into question the extent of OSC top management's commitment to open competitive employment procedures.

As noted in the foregoing section, the investigative team also found widespread deficiencies in other personnel management areas that had not been addressed by the complaint. Foremost among these is the matter of inadequate recordkeeping to document OSC's personnel actions. The auditor indicated that he perceived the inadequacy of the records to reflect a pattern of abuse and obstruction in the personnel records made available to the investigative team by OSC. He noted that having the ability to reconstruct personnel actions from the written record is fundamental to carrying out a personnel management audit and to applying accountability principles within an agency's human resources system. In this light, he believed that the evident inadequacies of the records supplied to investigative team may have been part of a deliberate attempt to hinder the investigation, because "having as little an audit trail as possible is the best way to avoid accountability for wrongdoing." He also stated that the information that the investigative team developed indicated that GAO, which conducted several reviews of OSC prior to OIG's involvement, had been presented with a similar pattern of inadequate or missing OSC documentation in the areas of interest that it addressed.

In the context of OPM's Governmentwide personnel management audit program, an equivalent pattern of deficiencies found in a Federal agency normally would trigger a requirement for corrective and accountability actions. While the investigative team had no authority to impose such measures in this case, we asked the personnel management auditor to identify, as an approximate standard of reference, the types of remedies that would normally be considered if OPM's personnel management auditors had encountered deficiencies in an agency's human resources systems similar to those found in OSC. The auditor indicated that the following guidelines would be observed in developing a plan of corrective action.

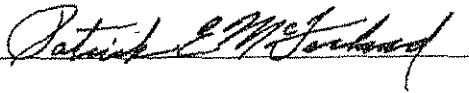
- In the absence of a specific legal or regulatory violation that constituted fraud or would prohibit payment of Federal funds, no action would be taken to adversely affect an individual who benefited from an improper personnel action for which he/she was not personally responsible.
- The responsible agency would be required to supply all missing documentation needed to fully reconstruct the records of personnel actions.
- The responsible agency would be required in the future to adhere to all statutory, regulatory, and policy provisions that it violated. This may include developing policies with OPM guidance to assure that violations will not recur.

As applied to the findings of the OIG's investigation, the auditor stated that he found no indication of misconduct that would warrant direct action against an individual. However, he indicated that appropriate accountability measures in analogous situations in other agencies have included the following measures:

- Implementation of a quality control system for human resources processes to assure that all personnel records were complete, and to establish that personnel actions met all applicable legal, regulatory, and policy requirements.

- Demonstrating adherence to correct practices in regard to the Federal Career Intern Program, use of superior qualifications appointments, and recruitment and hiring of attorney personnel. If no policies were in effect in these areas, or if the policies were outdated, the agency would be required to develop new, fully current ones.
- If it can be demonstrated that OSC personnel were directly and immediately responsible for violations of Federal human resources law or regulation, they should be held accountable in an action before the MSPB.

SIGNED:



Patrick E. McFarland
Inspector General
U.S. Office of Personnel Management

12-5-13

December 5, 2013