

COMPLAINT OF PROHIBITED PERSONNEL PRACTICES AGAINST U.S.
SPECIAL COUNSEL SCOTT J. BLOCH

EXHIBITS

MARCH 3, 2005



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

U.S. OFFICE OF SPECIAL COUNSEL SECURES CORRECTIVE AND DISCIPLINARY ACTION IN CASE OF FEDERAL JOB APPLICANT DENIED JOB BECAUSE OF HIS HOMOSEXUALITY

FOR IMMEDIATE RELEASE - 6/20/03
CONTACT: KAREN DALHEIM
(202) 653-7984

The U.S. Office of Special Counsel (OSC) today announced that -- on the basis of the results of an OSC investigation -- the Internal Revenue Service (IRS) has agreed to provide backpay to a job applicant who was denied a federal position because of his homosexuality. IRS also agreed, at OSC's request, to suspend the discriminating supervisor for 45 days, without pay, and to detail the individual to a non-supervisory position for one year.

The job applicant, a GS-12 computer specialist, applied for a GS-13 computer specialist position with the IRS in 2000. The individuals who interviewed him recommended that he be hired. The applicant, however, never heard back from the IRS. He assumed that he had not been selected.

In September 2001, the applicant was contacted by one of the individuals who had interviewed him. That individual told the applicant that he had recommended to his supervisor, the hiring official, that the applicant be hired. According to the individual, the supervisor responded that she had a "good friend" who had worked at a federal agency where the applicant formerly worked and that she would ask for a reference. Later, when this individual asked about the status of the application, the supervisor replied that the IRS would not hire him because of his homosexuality, referring to that sexual orientation in a derogatory manner.

Thereafter, the applicant filed a complaint with OSC, alleging that the IRS had discriminated against him on the basis of his sexual orientation when it refused to hire him. After an investigation, OSC concluded that there were reasonable grounds to believe that the IRS supervisor who had refused to hire the complainant had violated 5 U.S.C. § 2302(b)(10). That provision makes it a "prohibited personnel practice" to discriminate against a federal employee or job applicant on the basis of off-duty conduct that does not affect job performance, including sexual orientation.

Upon being advised of OSC's findings, the IRS promptly agreed to offer the complainant the job he had been denied, as well as backpay. The complainant declined the job offer, but accepted a monetary settlement. The IRS also agreed to discipline and detail the supervisor who had rejected the complainant's application. The supervisor agreed not to challenge those actions.

OSC thanked the IRS for its cooperation in resolving the case, and noted that discrimination based upon sexual orientation, or any other factor that has no bearing on an employee's ability to do the job, is irreconcilable with the fundamental principles that underlie the merit-based civil service, and should not be tolerated.

OSC is an independent federal agency that investigates and prosecutes complaints alleging the commission of a prohibited personnel practice. In cases where an OSC investigation reveals reasonable grounds to believe that a prohibited personnel practice has been committed and an agency declines to voluntarily provide corrective and/or disciplinary action, OSC will prosecute the case before the Merit Systems Protection Board. In many cases, such as this one, OSC obtains corrective and disciplinary action through negotiations with the employing agency.

EXHIBIT 1



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For Immediate Release: Thursday, February 12 2004
Contact: (202) 572-5500

Dina Long, 7058
Sheila McCormick, 7034
Mike Drapkin, 7011

NTEU Demands Explanation For Apparent OSC Rollback Of Protections Against Sexual Orientation Discrimination

Washington, D.C.—The federal office with responsibility for protecting government workers from discrimination and retaliation appears to be backing away from its duty to enforce complaints of sexual orientation discrimination, and the leader of the nation's largest independent union of federal workers wants to know why.

In a letter to Scott Bloch, Special Counsel of the U.S. Office of Special Counsel, National Treasury Employees Union (NTEU) President Colleen M. Kelley demanded to know if OSC is abdicating its statutory obligation to enforce the law and inform federal workers of their rights.

Her concerns arose, President Kelley said, because it appears that Bloch no longer intends to make federal employees and federal job applicants aware that discrimination based on sexual orientation is prohibited in the federal government.

"Indeed," Kelley wrote, "in recent days, all references on OSC's web site to its jurisdiction to accept complaints of discrimination based on sexual orientation appear to have been removed," including previous references to it in OSC's basic brochure, its complaint form, a two-page flier entitled "Your Rights As A Federal Employee" and a set of applicable training slides. "Of particular concern," the NTEU leader said, is the removal from the index of press releases issued in 2003 of any reference to a June 2003 OSC press release announcing settlement of an important case involving sexual orientation discrimination against an applicant for work at the Internal Revenue Service. NTEU represents some 98,000 IRS employees.

"Removal of this press release, in particular, seems to signal a deliberate decision to obscure the history of OSC's enforcement actions," Kelley said.

She described OSC's recent actions as appearing to be "in direct contradiction" to decades of established interpretation of the law, as well as to previous OSC policy and procedure—and she demanded that Bloch, in the event that OSC no longer will be enforcing basic discrimination protections, provide "a statement of your legal basis for taking this position."

Among OSC's duties are enforcement of the Hatch Act, which governs political activity by federal workers, and protection of federal whistleblowers.

EXHIBIT 2

As the largest independent union of federal employees, NTEU represents some 150,000 workers in 29 agencies and departments.

Kelley Letter to Bloch Attached:

February 11, 2004

VIA TELECOPIER
Hon. Scott Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 300
Washington, D.C. 20036

Re: OSC's Enforcement of Complaints of Sexual Orientation Discrimination

Dear Mr. Bloch:

I am writing to seek clarification regarding your intentions in enforcing discrimination protections for federal employees. Specifically, I--as the representative of over 150,000 federal employees--would like to know whether the U.S. Office of Special Counsel, intends to retreat from its long-established policy of investigating and taking action in matters involving allegations of sexual orientation discrimination against federal workers.

My concern arises because I understand that you have recently directed that OSC no longer publicize its enforcement of prohibited personnel practice complaints that involve allegations of sexual orientation discrimination against federal workers. Indeed, in recent days, all references on OSC's web-site to its jurisdiction to accept complaints of discrimination based on sexual orientation appear to have been removed.

Thus, I see that previous references to sexual orientation discrimination have been purged from OSC's basic brochure, its complaint form (OSC-11), the "prohibited personnel practice" section of the web-site, the 2-page flyer entitled "Your Rights as a Federal Employee," and the set of training slides for 2302(c) programs, among others. Of particular concern is the removal from the index of press releases issued in 2003 any reference to a press release issued by OSC in June 2003 announcing the settlement of a significant case involving sexual orientation discrimination against an applicant to the Internal Revenue Service, and the imposition of disciplinary action against an IRS supervisor. (IRS employees are exclusively represented by the National Treasury Employees Union). Removal of this press release, in particular, seems to signal a deliberate decision to obscure the history of OSC's enforcement actions, and an abdication of OSC's statutory obligation to enforce the law and to inform federal workers of their rights.

If this revision of OSC material indicates a determination not to enforce the protections against discrimination based on sexual orientation, OSC would be acting contrary to long-established interpretations of its statutory authority. It has long been settled that 5 U.S.C. § 2302(b)(10) covers discrimination based on solely on an employee's status as a homosexual. Former Associate Attorney General (now U.S. Solicitor General) Theodore B. Olson so concluded more than 20 years ago in an Opinion of the Office of Legal Counsel of the U.S. Department of Justice. See 7 Op. O.L.C. 58 (March 11, 1983). In that opinion, Mr. Olson reviewed the extensive D.C. Circuit case law that led the former U.S. Civil Service Commission (now the U.S. Office of Personnel Management) to provide by regulation that a person may not be found "unsuitable for Federal employment merely because that person is a homosexual or has engaged in homosexual acts . . ." Id. at p. 7. Mr. Olson concluded that under 5 U.S.C. §

2302(b)(10) and then-current OPM regulation, "it is improper to deny employment to or to terminate anyone on the basis either of sexual preference or of conduct that does not adversely affect job performance." *Id.* at p. 8.

More recently, as a result of Executive Order 13087 (May 28, 1998), OPM issued government-wide guidance in 1999 that reaffirmed its interpretation that 5 U.S.C. § 2302(b)(10) covers allegations of sexual orientation discrimination. In a publication that remains available today on OPM's web-site, "Addressing Sexual Orientation Discrimination in Federal Civilian Employment: A Guide to Employee's Rights," OPM stated that it "has interpreted this statute [2302(b)(10)] to prohibit discrimination based on sexual orientation. Sexual orientation means homosexuality, bisexuality or heterosexuality."

See <http://www.opm.gov/er/address2/Guide04.asp>.

Moreover, that guide, which I understand was issued with significant consultation with OSC, specifically states that "the Office of Special Counsel is an independent investigative and prosecutorial agency within the Executive Branch that receives and investigates complaints alleging prohibited personnel practices, including those involving discrimination based upon sexual orientation."

See <http://www.opm.gov/er/address2/Guide05.asp>.

OSC's recent actions appear to be in direct contradiction to this established interpretation of the law, as well as to previous OSC policy and procedure. Please respond to this letter by clarifying current OSC policy. If the recent deletions to the OSC web-site indicate that OSC will no longer enforce these basic discrimination protections, I would appreciate a statement of your legal basis for taking that position.

Sincerely,

Colleen M. Kelley
National President

1750 H Street, N.W., Washington, D.C. 20006 - (202) 572-5500
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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 19, 2004

Honorable Scott Bloch
Special Counsel
United States Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Mr. Bloch:

It has come to our attention that the Office of Special Counsel (OSC) recently removed references to unlawful discrimination on the basis of sexual orientation from OSC's website and published materials, including a pamphlet entitled "Your Rights as a Federal Employee." We also understand that OSC has amended its Complaint Form 11, "Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity," so that it no longer references the fact that OSC receives complaints alleging unlawful discrimination related to an employee's sexual orientation. During the confirmation process, you assured us that you were committed to protecting federal employees against unlawful discrimination related to their sexual orientation. We are concerned that the recent changes to OSC publications might give federal employees the opposite impression and we ask that you reaffirm your previously stated commitment and advise us of steps you will take to inform federal employees of their rights and remedies under the law.

As you know, 5 U.S.C. § 2302(b)(10) has long been interpreted as prohibiting discrimination against federal employees based upon their sexual orientation, and, in its Guide to Employee Rights, the Office of Personnel Management (OPM) refers federal employees who believe they have been discriminated against on this basis to the OSC for the investigation and possible prosecution of those complaints. Until recently, OSC's own materials noted the Office's responsibility and commitment to pursuing such complaints.

Furthermore, when your nomination was under consideration before this Committee, you assured us — both in your response to written questions from Senator Akaka and in conversations with our staffs — that you would protect federal employees against unlawful discrimination related to their sexual orientation. Indeed, with reference to specific guidance then in OSC publications, you told us you agreed that "firing someone solely because the person is seen at an event such as . . . [a local Gay Pride Day event] would fall within the prohibitions of" the anti-discrimination laws that OSC must enforce. Again in the context of sexual-orientation related discrimination, you assured us: "Outreach and education will be a vital part of the office if I am confirmed. It is important to ensure that all know their rights and remedies... ." The removal of references to OSC's role in investigating and enforcing complaints alleging

discrimination on the basis of sexual orientation (including the specific example about attendance at a Gay Pride Day event that you discussed in your written submissions to this Committee) appears inconsistent with these assurances.

Accordingly, we ask that you reaffirm the extent and nature of your commitment to protecting federal employees against discrimination on the basis of sexual orientation. Please advise us, specifically, as to whether it remains OSC's interpretation that discrimination based upon sexual orientation is a prohibited personnel practice under 5 U.S.C. § 2302(b)(10), and whether OSC remains committed to investigating such claims of discrimination against federal employees. In addition, please explain OSC's rationale for removing references to sexual orientation from OSC's published materials. Finally, please provide us your assurance that you will restore information and examples into OSC's published guidance to inform federal employees, who believe they have been discriminated against on the basis of sexual orientation, of their rights and available remedies, and please let us know what will be your timetable for accomplishing this.

Thank you for your prompt attention to this matter.

Sincerely,

Arman Collins

J. L. ...

Samuel ...

Carl ...

Congress of the United States

Washington, DC 20515

March 4, 2004

Mr. Scott Bloch
U.S. Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, DC 20036

Dear Scott:

We are writing in regard to your recent decision to remove from the Office of Special Counsel's website and printed materials references to sexual orientation discrimination as well as information about the June 2003 settlement of the first case involving sexual orientation discrimination against a prospective applicant at the Internal Revenue Service.

Although 5 USC 2302(b)(10), which prohibits agencies from discriminating against employees based on conduct that does not affect performance, contains no explicit reference to sexual orientation, since 1974 it has been interpreted by the Office of Personnel Management (OPM), and its predecessor the Civil Service Commission to prohibit discrimination on the basis of sexual orientation.

The Justice Department took a similar stance on the provision in an opinion issued back in 1983 and OPM Director Kay Coles James endorsed this interpretation during her confirmation hearing.

It seems to us your decision to remove references to discrimination based on sexual orientation contradicts an historical interpretation of this important provision that has been reaffirmed several times over the last 30 years.

We have been told your decision came in the course of a legal review of how the statute should be interpreted, but it seems to us clarity already exists on the matter.

It is almost unthinkable that we could stay silent on any issue of discrimination on the basis of anything other than performance in the workplace. This kind of discrimination serves only to limit the number of people who can ultimately be successful.

The bottom line is, people should be judged by the work they do, not by who they are and no one should fear being fired because of their sexual orientation.

Please consider restoring all references to discrimination on the basis of sexual orientation to all of the Office of Special Counsel's published and electronic information.

Sincerely,


Christopher Shays
Member of Congress


Jim Greenwood
Member of Congress


Rob Simmons
Member of Congress

Congress of the United States
Washington, DC 20515

March 4, 2004

Mr. Scott J. Bloch
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Mr. Bloch:

We are writing today in regard to your decision to remove information about sexual orientation discrimination from the OSC's Web site as reported in the Washington Post (February 18, 2004 Page A17). The mission of the OSC is to "safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices."

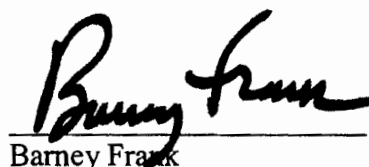
As you know, it is a prohibited personnel practice to discriminate against a federal employee or applicant for employment based on conduct which does not affect their performance or the performance of others. 5 U.S.C. 2302(b)(10). Since at least 1980, and continuing to date, the Office of Personnel Management has interpreted this provision to prohibit discrimination based on sexual orientation. Indeed, in 1983, the then-Assistant Attorney General for DOJ's Office of Legal Counsel, Ted Olson, issued an opinion on behalf of DOJ in which he concluded that it would violate this provision to take an action against an Assistant United States Attorney on the basis of either his sexual orientation or private sexual conduct. He based his conclusion on the long-established interpretation of OPM and its predecessor, the Civil Service Commission, as well as court decisions which pre-dated the enactment of section 2302(b)(10). This interpretation of the statute has also been affirmed in President Clinton's Executive Order 13087, which remains in force, and clearly states that the Federal Government has a uniform policy to prohibit discrimination based on sexual orientation.

In short, discrimination based on sexual orientation is a prohibited personnel practice. As such, we demand that you immediately return the OSC Web site to the state in which you found it upon your arrival. Furthermore, we expect you to publicly acknowledge that discrimination based on sexual orientation is and will remain a prohibited practice.

Gay, lesbian, bisexual and transgender people have always served this country with distinction. They are entitled to work in an atmosphere free of fear of job loss and intimidation. We look forward to your quick action and prompt reply.

Sincerely,


Eliot L. Engel


Barney Frank

John Conyers, Jr.
John Conyers, Jr.

Henry A. Waxman
Henry A. Waxman

Jane Harman
Jane Harman

Lane Evans
Lane Evans

Tammy Baldwin
Tammy Baldwin

Carolyn B. Maloney
Carolyn B. Maloney

Maurice D. Hinchey
Maurice D. Hinchey

Howard Berman
Howard Berman

Michael R. McNulty
Michael R. McNulty

Maxine Waters
Maxine Waters

José E. Serrano
José E. Serrano

Martin T. Meehan
Martin T. Meehan

George Miller
George Miller

Martin Frost
Martin Frost

Tom Lantos
Tom Lantos

Robert T. Matsui
Robert T. Matsui

Edolphus Towns
Edolphus Towns

Jerrold Nadler
Jerrold Nadler

Alcee Hastings
Alcee Hastings

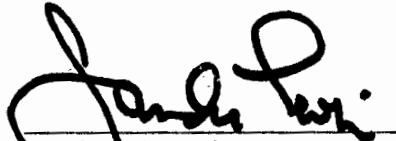
Ed Pastor
Ed Pastor

Sherrod Brown
Sherrod Brown

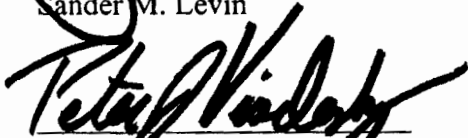
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Peter A. DeFazio

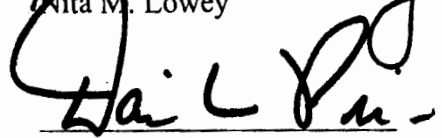
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Martin Olav Sabo

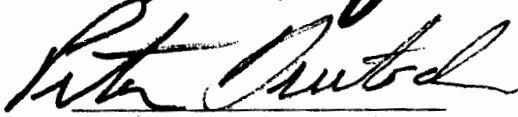
Bobby L. Rush
Bobby L. Rush


Sander M. Levin

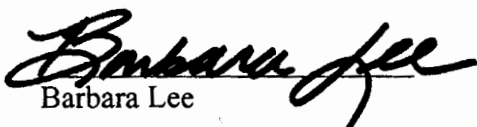

Anita M. Lowey

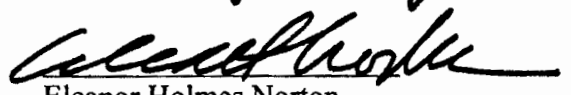

Peter J. Visclosky


David E. Price


Peter Deutsch


Raúl M. Grijalva

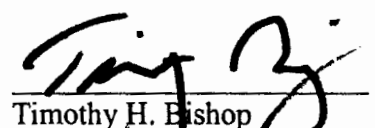

Barbara Lee

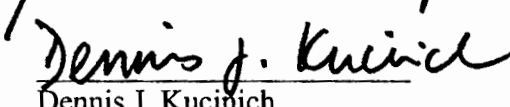

Eleanor Holmes Norton

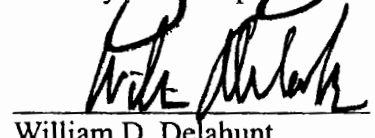

Lois Capps


Sam Farr

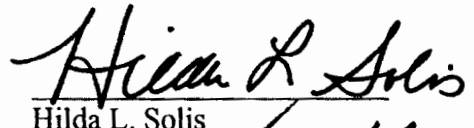

Stephanie Tubbs Jones


Timothy H. Bishop

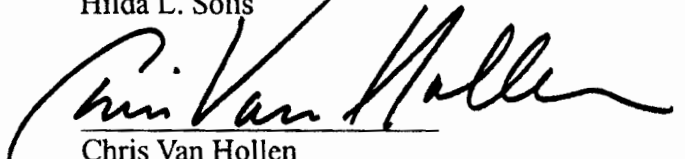

Dennis J. Kucinich


William D. Delahunt

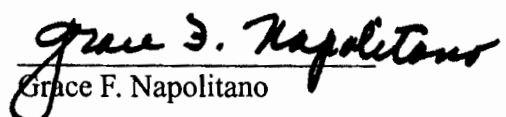

Jim McDermott

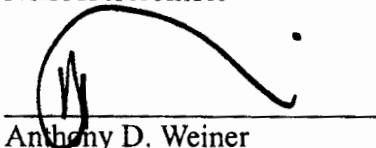

Hilda L. Solis

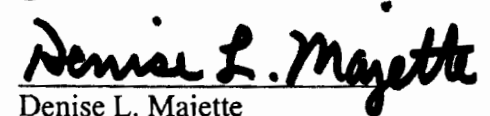

Michael M. Honda


Chris Van Hollen


Neil Abercrombie


Grace F. Napolitano


Anthony D. Weiner


Denise L. Majette

Jim Langevin
James R. Langevin

Pete Stark
Fortney Pete Stark

Michael H. Michaud
Michael H. Michaud

Carolyn McCarthy
Carolyn McCarthy

Janice D. Schakowsky
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James P. McGovern
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Patrick J. Kennedy
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Robert Wexler
Robert Wexler

Joseph Crowley
Joseph Crowley

Anna G. Eshoo
Anna G. Eshoo

Madeleine Z. Bordallo
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John B. Larson
John B. Larson

Frank Pallone, Jr.
Frank Pallone, Jr.

James P. Moran
James P. Moran

John W. Olver
John W. Olver

Mark Udall
Mark Udall

Steven R. Rothman
Steven R. Rothman

Rahm Emanuel
Rahm Emanuel

Linda T. Sanchez
Linda T. Sanchez

Ellen O. Tauscher
Ellen O. Tauscher

Louise McIntosh Slaughter
Louise McIntosh Slaughter

Lynn C. Woolsey
Lynn C. Woolsey



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

LEGAL INTERPRETATION OF DISCRIMINATION STATUTE

FOR IMMEDIATE RELEASE
February 27, 2004

CONTACT: MARY K. MONAHAN
(202) 254-3600

WASHINGTON - Scott J. Bloch, Special Counsel of the U.S. Office of Special Counsel (OSC) today announced he is conducting a review of many aspects of the agency, including personnel, structure of the agency, the backlog of prohibited personnel practice cases and disclosure cases, as well as OSC policies. "We are in the process of evaluating," said Mr. Bloch, "the backlog of prohibited personnel practices, whistleblower disclosures, and Hatch Act cases, to determine how best to utilize the resources we have to improve the efficiency of our office and better serve the federal merit protection system. I have challenged our excellent team to eliminate these backlogs by the end of the year.

"In addition, we are reviewing all policies of the office to determine the legal basis and prudence of each. In the course of this review, we have removed materials from the agency website in several policy areas and are conducting a legal analysis of the basis on which this office has previously reviewed claims of 'sexual orientation' discrimination, particularly the significance of the specific language under 5 U.S.C. § 2302(b)(10). I am dedicated to the principles of fairness and nondiscrimination in federal employment for which this Office is known. The Office, and I personally, remain committed to enforcing all prohibited personnel practices, including discrimination, as the statute says, 'on the basis of conduct which does not adversely affect the job performance of the employee or applicant or the performance of others[,] regardless of an individual's orientation.

EXHIBIT 4

U.S. Office of Special Counsel

Page 2

"It appears that, beginning five years ago, this Office based jurisdiction in this area on the amendment to Executive Order 11487 made by Executive Order 13087. But Executive Order 11487, as further amended by Executive Order 13152, expressly states that it 'does not confer any right or benefit enforceable in law or equity against the United States or its representatives.' Further, Executive Order 11487, as amended, expressly places responsibility for its enforcement and implementation in the EEOC, not in OSC. This raises questions as to my power to enforce this Executive Order and reinforces my decision to conduct a full legal review of this policy. Therefore, OSC has removed these materials until a thorough legal analysis can be completed to clarify this area of the law."

"Under the oath of office I took, it is my obligation to uphold the law," Mr. Bloch continued. "First, we must determine what the law is when, as here, our enforcement power is not based on the plain words of the statute enacted by Congress and interpreted by the courts. We intend to continue enforcement for all manner of personal conduct that falls within the meaning of the statute, and to consult with professionals in my office, as well as outside my office, to ensure that a thorough and fair legal review occurs so that OSC gives the full measure of justice to all federal employees."

OSC is an independent investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

For more information about OSC, please visit our website at www.osc.gov.

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March 31, 2004

Employees are protected from bias for sexual orientation, White House says

By **TIM KAUFFMAN**

Employees are protected from discrimination based on their sexual orientation, the White House says.

The White House position, made in a March 31 statement to *Federal Times*, appears to contradict recent statements by President Bush's appointee to the office that handles such discrimination claims.

"Longstanding federal policy prohibits discrimination against federal employees based on sexual orientation," White House spokeswoman Maria Tamburri said. "President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work."

The government has advised employees since 1980 that discrimination based on sexual orientation is covered as a prohibited personnel practice under the 1978 Civil Service Reform Act and should be appealed to the Office of Special Counsel. The act covers all conduct "which does not adversely affect" performance, although it doesn't specifically list sexual orientation.

Special Counsel Scott Bloch, whose office is responsible for ensuring employees are not discriminated against based on matters unrelated to their work, has questioned publicly whether the law actually protects federal employees from discrimination based solely on their sexual orientation. He removed all materials referencing sexual orientation discrimination from OSC's Web site shortly after beginning a 5-year term in January and said he is reviewing his agency's obligation to enforce such cases.

In a March 10 interview with *Federal Times*, Bloch said his initial reading of the law is that gays, lesbians and bisexuals are protected only if the discrimination is based on conduct unrelated to their jobs, such as attending a gay pride rally.

Tamburri did not make a distinction between sexual orientation and conduct. She said she was unable to comment on whether the White House statement conflicts with Bloch's views and whether the White House had discussed its reading of the law with Bloch. OSC did not have an immediate response to the White House statement.

A group of Democratic lawmakers challenged Bloch's interpretation at a March 31 news conference and said they will be sending a letter to Bush asking him to issue a statement affirming that sexual orientation discrimination is illegal. The letter was being circulated to House and Senate members for their signatures at press time.



DefenseNews.com

ArmyTimes.com

NavyTimes.com

AirForceTimes.com

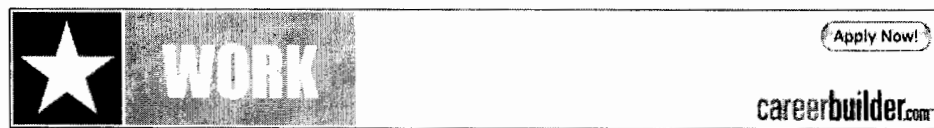
MarineTimes.com

EXHIBIT 5

“The law is clear: Federal employees cannot be discriminated against in employment matters for factors that do not affect their job performance,” Rep. Tammy Baldwin, D-Wis., said. “This may come as a surprise to Mr. Bloch, but being a gay or lesbian American does not affect a person’s job performance.”

Several lawmakers at the news conference said Bush should demand Bloch’s resignation if Bloch does not retreat from his stated position.

Nearly 80 lawmakers from both chambers and parties, but mostly House Democrats, have sent letters to Bloch in recent weeks asking him to reverse his position and acknowledge that discrimination based on sexual orientation is against federal policy. Rep. Eliot Engel, D-N.Y., said House Democratic leaders decided to write to Bush because they have received no response from Bloch.



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(updated April 4, 2003).





U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RESULTS OF LEGAL REVIEW OF DISCRIMINATION STATUTE

FOR IMMEDIATE RELEASE - 4/8/04
CONTACT: CATHY DEEDS
(202) 254-3600

Special Counsel Scott J. Bloch today announced the results of the legal review to determine the extent of jurisdiction of the office to process claims under Title 5, Section 2302(b)(10).

"It is the policy of this Administration that discrimination in the federal workforce on the basis of sexual orientation is prohibited," Bloch stated. "The Office of Special Counsel (OSC) has been engaged in a review of its authority to process claims of sexual orientation discrimination under Title 5, Section 2302 (b)(10), which prohibits discrimination on the basis of 'conduct which does not adversely affect the performance of the employee or applicant or the performance of others.' OSC has always enforced claims of sexual orientation discrimination based on actual conduct. Based on its review, OSC has concluded that such authority exists in cases other than actual conduct when reasonable grounds exist to infer that those engaging in discriminatory acts on the basis of sexual orientation have discriminated on the basis of imputed private conduct. Such inferences apply to all claims under Section 2302(b)(10), including, but not limited to, sexual orientation discrimination claims. The materials formerly on OSC's Web site were not clear about the statutory basis for OSC's authority. OSC believes that the materials currently on its Web site are consistent with the view of the law described above, but intends to review and revise those materials as necessary to ensure that employees are fully aware of the protections provided."

The Office of Special Counsel is an independent investigative and prosecutorial agency. Its primary mission is to safeguard the merit system in federal employment by protecting federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act.

For more information about OSC, please visit our Web site at www.osc.gov.

EXHIBIT 6



**HUMAN
RIGHTS
CAMPAIGN**

March 2, 2005

Honorable Scott Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, DC 20036

Dear Mr. Bloch:

On behalf of the more than 600,000 members of the Human Rights Campaign, we write to express our profound concern regarding the continuing failure of your office to protect gay and lesbian government employees from discrimination on the job. As the nation's largest civil rights organization dedicated to protecting the rights of gay, lesbian, bisexual and transgender individuals, we believe that occurrences at the Office of Special Counsel over the past year have eroded the public's confidence that OSC is still a place where all federal employees can bring their legitimate discrimination claims. We are joined in our concerns by a variety of other groups, including the Project on Government Oversight, the Public Employees for Environmental Responsibility, and the Government Accountability Project.

In the year since you became Special Counsel, you have alarmed the federal workforce by removing all references to OSC's jurisdiction over complaints by federal workers alleging sexual orientation discrimination from OSC's web-site, and its official publications. Your actions triggered a firestorm of controversy, culminating in a statement from the White House confirming that "[l]ong-standing federal policy prohibits discrimination against federal employees based on sexual orientation. President Bush expects federal agencies to enforce this policy and to ensure that all federal employees are protected from unfair discrimination at work."

Notwithstanding this direction from the White House, you have never returned the references to sexual orientation discrimination to OSC's website and you have never provided a clear statement affirming that the law prohibits discrimination against federal employees based upon their sexual orientation.

Most recently, documentation provided to us indicates that your office refused to even investigate the complaint of Michael Levine, a 32 year veteran of the Forest Service, who alleged that

he was subjected to a 14 day suspension from his position in retaliation for engaging in whistleblowing and on the basis of sexual orientation discrimination. The disposition of Mr. Levine's case without investigation is particularly shocking because Mr. Levine provided a written statement from a witness to whom the personnel officer responsible for writing up the charges against Mr. Levine, stated, in reference to Mr. Levine, "don't you just hate these fucking faggots." Further, Mr. Levine also presented extremely compelling allegations of whistleblower retaliation, which your office ignored.

Mr. Levine filed his complaint with your office in November 2003. As noted, Mr. Levine is a 32 year veteran of the Forest Service, with an unblemished record. His 14 day suspension occurred shortly after he filed a complaint with the Inspector General's office about the misconduct of another forest service employee. The complaint alleged that this employee (who reported to the same supervisor as Mr. Levine) was running a sporting goods business from the worksite, that he was often not at work, that he had sold equipment to the Forest Service, and that he had improperly rented a trailer owned by his parents, on behalf of the Forest Service. Mr. Levine's supervisor was implicated in the complaint, as he was alleged to be aware of these actions, and to have done nothing about them.

The charges against Mr. Levine were written by the personnel officer who made the "don't you just hate these fucking faggots" comment described above. The charges were signed off on by Mr. Levine's supervisors, who were implicated in Mr. Levine's disclosures. Among the false charges was a claim (framed by the personnel officer) that Mr. Levine had child pornography on his computer. As a result of this outrageous false charge, Mr. Levine's computer was seized. Nothing improper was found on the computer and he was cleared completely. Thereafter, several other charges were trumped up against Mr. Levine, a 30 suspension was proposed, and a 14 day suspension was ultimately imposed. Because suspensions for less than 15 days are not directly appealable to the Merit Systems Protection Board, Mr. Levine had no choice but to turn to your office for help.

Your office sat on the case for well over a year and then closed the case in the intake unit on January 27, 2004, without even referring it for investigation. The case was handled through the special procedure you have apparently instituted—i.e. all sexual orientation claims are processed under the supervision of one of your political appointees, James McVey.¹

¹The OSC employee who wrote the letter under Mr. McVey's supervision (Tom Forrest) is one of the employees you have brought on board in the last year, through what appears to be a non-competitive secret hiring procedure. It is our understanding that Mr. Forrest is in the same reserve unit as your deputy, James Renne. Mr. Renne himself is on the public record opposing the civil

In any event, the preliminary closure letter sent to Mr. Levine (which is attached) states that while the statement "I hate these fucking faggots" was "an offensive and insensitive comment" the law only protects employees against discrimination based on their off-duty conduct (and presumably not their sexual "orientation"). Further, the letter also states that there is no evidence that the personnel officer who engaged in this hate speech played any part in the personnel action taken against Mr. Levine.

The statement of the law contained in this letter, demonstrates that you continue to take the position that it is not illegal to discriminate against employees based on their sexual orientation.

Further, this case highlights the untenable nature of the legal distinction you have purported to apply. Surely a statement that one "hate[s] these fucking faggots" suggests that the person uttering the statement disapproves, not only of an individual's "orientation" but also of the conduct that presumably accompanies that orientation.

The statement that there was no evidence that the personnel officer played any part in the personnel action also appears untrue, as was readily apparent from the documentation that Mr. Levine supplied to your office. Mr. Levine corrected the inaccurate statements in a response to the preliminary closure letter, but your office ignored them, and closed the case. Copies of all of this correspondence are attached.

In short, Mr. Levine's complaint was closed without even investigating the allegations, despite a clear witness statement. Further, the legal analysis that your office used to dismiss the whistleblower retaliation complaint allegations appears to be entirely without basis, as Mr. Levine's disclosures to the Inspector General regarding conflicts of interest, and unauthorized absences from the worksite, were plainly protected by the Whistleblower Protection Act.

It appears that Mr. Levine, a long time veteran of the federal service, was driven out of his job because he was a whistleblower and because he was gay. Your office, charged with protecting whistleblowers against retaliation and ensuring that employees do not suffer discrimination based on non-merit based factors (including their sexual orientation) did not even see fit to investigate his complaint. One can only conclude that Mr. Levine's sexual orientation was the basis, not only for the Forest Service's actions against him, but also for your office's dismissal of the allegations of his complaint, including his allegations of whistleblower retaliation. This pattern of behavior can only lead to an erosion of confidence that OSC

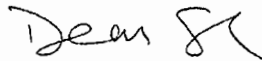
rights of gay and lesbian citizens. See
<http://www.priestsforlife.org/government/sq.htm> .

remains a place that it was intended to be -- a place where federal whistleblowers can bring claims and complaints that only strengthen the integrity of the federal workplace.

As the nation's largest gay, lesbian, bisexual and transgender (LGBT) civil rights organization, the Human Rights Campaign opposes any roll back of workplace protections for LGBT federal workers. We strongly believe that the federal government functions best when staffed with the most talented and most qualified workers, regardless of their sexual orientation. We request clear steps to address the concerns set forth in this letter. Particularly, we ask for clarification on your website that discrimination on the basis of sexual orientation in federal employment is not permitted and will be treated as a prohibited personnel practice by your office. We also ask that you reopen Mr. Levine's case and refer it for an expedited investigation.

Thank you for your time, effort, and consideration. If you have any questions, please do not hesitate to contact Praveen Fernandes on my staff at (202) 216-1559.

Sincerely,



David M. Smith
Vice President for Policy and Strategy



Christopher Labonte
Legislative Director

WORKING FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER EQUAL RIGHTS

1640 RHODE ISLAND AVENUE, NW WASHINGTON, D.C. 20036
PHONE (202) 628 4160 FAX (202) 347 5323 E-MAIL HRC@HRC.ORG

①

Michael Levine
35 Meadow Road
Swall Meadows, CA 93514
February 12, 2004

Complaints Examining Unit
Office of Special Counsel
1730 M. Street, N.W. (Suite 201)
Washington D.C. 20036-4505
Atten: Barbara Wheeler

Re: OSC File No: MA-04-0355

Dear Ms Wheeler:

Although I have already sent your office several documents regarding my case in my complaint of November 4, 2003, I am writing this letter to summarize the events in the order they occurred to put the issues in chronological prospective.

I am in my thirty third year on the Inyo National Forest as the Radio systems Manager responsible for the operation of the Forest radio network. During that time I have received many awards and recognition for my work from the Washington Office, Regional Office and the Forest. No time during my career prior to the events leading to this complaint have I had any disciplinary action taken against me. Since there are many supporting documents with a great amount of detail I will try and be as brief as possible in putting the events in order.

Last March my assistant Kevin Fitzsimmons and I collaborated on an O.I.G. complaint against Mike Allen, our dispatch center manager. I wrote the complaint to the O.I.G. For Mr. Fitzsimmons who felt he did not write letters well (I was blamed however by Mr. Allen for turning him in according to witnesses) the complaint was submitted under Mr. Fitzsimmons name. It involved what we believe was a gross misuse of Mr. Allen's position who often used government facilities to run his sporting goods business and often being at his business location instead of work. We detailed this and other events including selling equipment to the Forest Service and renting his parents trailer for dispatch use. This was such a commonly known situation that many on the Forest wondered why he could get away with this. It is very important to know that Mr. Allen and myself both worked for the same supervisor, Craig Barnes the fire management officer. Mr. Barnes knew about his private business and ignored many of these issues, as he obviously would have been implicated in any of Mr. Allen's misdeeds.

I have known Mr. Fitzsimmons prior to his employment with the Forest Service. I recommended him for the position of electronics technician since I was aware of his knowledge of electronics. There had never been any conflicts between us until the events that started to unfold last May. Mr. Fitzsimmons was having some medical problems that resulted in several emergency room visits. He did have some major anger problems at

the time, a lot of it resulting from conflicting medications, however I was not a target of his frustrations until his one blow up in May. Up to this point he would apologize for getting upset. On this one occasion however he got upset about a work assignment and went to see my supervisor, Craig Barnes. Mr. Barnes at no time ever suggested we all meet to discuss Mr. Fitzsimmons concerns with me as his supervisor, but asked him to write a statement of the events. (Since we were separated from May through September most of this information I found out when we were reunited).

The next I knew about the situation was when Mr. Barnes was standing outside my office waiting for me to return from lunch. He said that law enforcement had confiscated my Forest service computer and all of my disks and CD's. It is very important to note that according to our law enforcement personnel that they *only* Were involved because I was suspected of criminal activity. That activity was having pictures of naked children on my computer. They *would not* have been involved unless it was alleged to have something criminal on my computer. Misuse of government computers would normally fall under our computer group. One of the CD's were pictures of the Saline Valley Hot springs a National Park Campground adjacent to the Forest. The CD was intended to be given to our Deputy Forest Supervisor Bill Bramlette who operates his own private hot spring. The intent was to involve management in some conservation issues regarding the Saline Valley. This has been detailed in great length in other documentation. My computer and disks were returned when law enforcement realized it was not an issue they would be involved with. There were a few distant pictures of nude adults in the campground where nudity is a permitted activity. Paul Merlin our personnel officer, I discovered later was responsible for the claim that I had "kiddy porn" on my computer. His motivations became obvious in his remarks witnessed by Kevin Fitzsimmons, again I did not know about this at the time.

It is my belief that both Craig Barnes and Paul Merlin were involved in a conspiracy against me, each with their own motivations but initiated by the Whistleblower complaint to the O.I.G. The next thing I knew was that I was removed from my office of 32 years. Management told me that when there was a controversy with a subordinate that the supervisor was always removed. (Remember there never was any attempt at any time to get Kevin and I together with management to resolve any issues between us.) There was never any charge against me or suggestion of any wrongdoing. By this time I had hired a Civil Rights Attorney who told me that it was quite clear to him that they were just trying to "get me." He had never heard of this policy of removing the supervisor before which certainly would undermine the entire supervisor-subordinate concept. He also said that I was denied due process in my removal since no charges were made at the time. This all occurred in early May of last year. (I have recently chosen to represent myself due to the continuous expenses of an attorney)

Paul Merlin said that he had to get an outside investigator to resolve the issues. I asked what issues? I was never told. The union president Barry McDonald said that I was in very serious trouble but would not say for what. I was a union member and my subordinate could not file a grievance against me. It turns out there was no formal action filed at all. The most important thing in removing me from my office was to issue a gag

order. I was not to contact Kevin in any way. This was true for the entire summer operating season from May through September. I worked out of the new supervisors office in a small workspace that was used for storage and had no access to any of the equipment I normally use in my job.

I did start to hear of some of Kevin's accusations after a while and finally did see them in a report from the hired investigator. As can be seen in documentation I never really disagreed with many of the charges that involved spending issues etc. and what I would consider normal everyday activity.

At the end of the summer Mr. Fitzsimmons and I were to see a mediator. This is the first time I had seen Kevin all season. He was told by the mediator to repeat certain items outside of mediation to me, which is why I am able to discuss them here. Kevin now felt that he was used by management and told us of the discriminatory remarks made about me by Paul Merlin. This was the first time I heard these remarks, and was shocked at the time. Our mediator, a professional, felt that the worse thing they could have done was to separate us for this time rather than to resolve any issues between us. It was apparent from our conversation that she realized they were just using him and commented more than once to the effect *that she could see we liked each other and I am not used to that when people come to see me.* One of her suggestions was that Kevin, his son and I resume our outside friendship and start doing things together again. Since the Paul Merlin comments came up she told Bill Bramlette our deputy what Kevin said that Merlin said. Bill Bramlette called me that night at home trying to convince me what a liar Kevin was. (Kevin Fitzsimmons will sign an oath and has provided a written statement to confirm Paul Merlin's homophobic remarks, which are in the possession of the OSC)

According to the union Paul Merlin was responsible for all of the letters sent to me by management. Originally my supervisor asked for a 60-day suspension. This was reduced to 30 days in the first suspension letter. When I consulted my attorney he said we would take this to the MSPB (in my response letter.) They then reduced my sentence to 14 days "considering my years of service." We all laughed about that which means we could not take it to the MSPB. In my response letter, which was reviewed by my attorney, I answered all of their charges. I wanted to present this in person. They told me I had only 5 days to ask for an oral presentation. They also said that my priority was to get the new dispatch center working and I could not have time to respond to their charges. This was in October. The date now set to move into the new center due to many other obstacles, which have nothing to do with my responsibilities, is March 15 of this year. To this day I have not had an opportunity to verbally respond to their charges. They gave me an extension to work on my response. This also was to include my request for a verbal hearing. In my response letter I asked Bill Bramlette for a hearing. The same day I asked for one IN WRITING he said I specifically said that I did not want a hearing, which is absurd. They did not want my attorney on the other end of a telephone call. He then went back to Paul Merlin and they said I only had my original 5 days to ask for a hearing from the original date which had long past.

Throughout these proceedings management have taken action against me without notifying my attorney. A letter of representation was sent from my attorney's office to the chief of the Forest Service, the Regional Forester and the Forest Supervisor notifying them of his representation. My attorney called me at home one day and commented that in all of his years as a Civil Rights attorney dealing with many government agencies he had never seen an agency like the Forest Service with a total disrespect for the law or due process. He even mentioned taking this legal issue to the Department of Justice. At no time did Forest management ever suggest that my attorney should deal with our General Counsel office, which I thought was standard procedure in legal matters. It is my assumption that the Forest perpetuated these illegal actions because they chose not to contact their own legal representatives.

The Forest really expected me to give up and retire (of which I am eligible). Mr. Barnes even went to the extent of having Mike Allen look for a temporary replacement for me. (He contacted another Forest, which I found out about). They have done everything in their power to discourage me and have caused me to have medical problems as a result. I have had to seek medical help since this started for both gastric problems and a sleeping disorder. Not only were all of their charges disputed but I have received no warnings prior to them giving me time off which is usually the last step in disciplinary action, not the first.

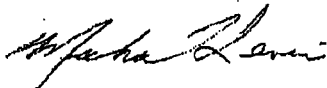
Mr. Barnes has recently transferred to the BLM in Sacramento. It would not be the first time that the Forest Service has transferred managers for other than wholesome reasons.

I am asking the OSC to seek damages as mentioned in my original complaint and personnel action against;

Craig Barnes (now at BLM Sacramento), Jeffrey Bailey Forest Supervisor, Bill Bramlette Deputy Forest Supervisor and Paul Merlin Human Rights Officer. I am charging these individuals for prohibited personnel practices. Specifically violations to Whistleblower Act (reprisal) and violations of OPM regulations- discrimination for sexual orientation.

I believe a thorough investigation is in order, restitution made to me and even consideration of removal of these individuals for misuse of their authority.

Sincerely,



Michael Levine

F

2

Friday, September 26, 2003

While writing my statements in Becky's office back in May of 2003. I was interrupted by Craig introducing me to Paul Merlin the HR person on the forest, We then shook hands and I told him that is was unfortunate our meeting for the first time being under these circumstances. He then shook his head don't you just hate these fuck-n-fagots. I gave him a weird glare and went back to writing my statements.

Kevin M Fitzsimmons
Kevin M Fitzsimmons

9-26-03



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

3

February 18, 2004

Mr. Michael Levine
35 Meadow Road
Swall Meadows, CA 93514

Re: OSC File No. MA-04-0335

Dear Mr. Levine:

In accordance with 5 U.S.C. § 1214(a)(1)(C)(i), the Office of Special Counsel is required to advise you of the status of your request for assistance within 90 days after our initial notice to you that we had received your request. This status update was due on February 12, 2004. We apologize that due to our heavy workload we were unable to send it to you on that date.

This letter is to advise you that this matter has been assigned to me for review. The Office of Special Counsel receives a large number of requests and it is our general practice to review such matters in the order in which they are received. If I have not already done so, I may be contacting you in the near future to discuss your request with you in detail if I need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara J. Wheeler", written over a large, light-colored circular scribble.

Barbara J. Wheeler
Attorney
U.S. Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

④

September 2, 2004

Mr. Michael Levine
35 Meadow Road
Swall Meadows, CA 94102

Re: OSC File No. MA-04-0335

Dear Mr. Levine:

This is a 60-day status update, i.e., 60 days since the last status notice was sent to you concerning your request for assistance to this office. You should have received this notice on June 1, 2004. That was before I was assigned to this case, but I apologize for the delay. In accordance with 5 U.S.C. § 1214(a)(1)(C)(i), the Office of Special Counsel is required to advise you of the status of your request within 90 days after our initial notice to you that we had received your request. We are also required to update that notice every 60 days thereafter. 5 U.S.C. § 1214(a)(1)(C)(ii).

This letter is to advise you that this matter is under active consideration in the Complaints Examining Unit and has been assigned to me for review. The Office of Special Counsel receives a large number of requests for assistance and it is our general practice to review such matters in the order in which they are received.

As we discussed in our telephone conversation of August 30, 2004, I am awaiting a reply from the Program Investigations Division of the U.S. Department of Agriculture, Inspector General's Office. Also, I shall be in Germany pursuant to military orders from Friday, September 3rd until Friday, September 17th. My first day back at the office will be Monday, September 27th.

Sincerely,

A handwritten signature in cursive script, reading "Thomas W. Forrest", is written over a horizontal line.

Thomas W. Forrest
Attorney
Complaints Examining Unit

5

Michael Levine
35 Meadow Road
Swall Meadows, California 93514
November 11, 2004

Honorable Scott J. Block, Special Counsel
U.S. Office of Special Counsel
1730 M. Street, N.W., Suite 218
Washington, D.C. 20036-4505

Ref: OSC File No. MA-04-0335

Dear Mr. Bloch,

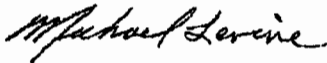
The above case has now been in your examining unit for one year. It has been stated that per 5 U.S.C. 1214(a)(1)(C)(i) that I am to be informed of the status of my case every 90 days. During this period of time I have received only two notices. One on February 18, 2004 by Barbara J. Wheeler; and one on September 2, 2004 by Mr. Thomas W. Forrest.

During this year my case has been assigned to four attorneys. They are Kasandra Robinson, Barbara Wheeler, James McVay and Thomas Forrest.

My last contact was several weeks ago with Mr. McVay who told me that Mr. Forrest had not returned from military service. He also mentioned there may have to be some more attorneys needed to assist. Since that time I have left messages for Mr. Forrest and Mr. McVay, both telephone and email but have not heard from them.

Since my whistleblower case was filed people involved in my case have left my former agency and I have retired. I realize there has been a backlog of cases at the OSC; however I feel if an agency is to perform as designated that a year is far too long to wait for some action.

Thank you for your attention.



Michael Levine

Sent November 11, 2004 by Certified Mail



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

(6)

December 28, 2004

Mr. Michael Levine
35 Meadow Road
Swall Meadows, CA 94102

Re: OSC File No. MA-04-0335

Dear Mr. Levine:

I am writing in response to your above-referenced complaint which you filed with this office on November 13, 2003. It appears from your complaint form and attached documentation that you were suspended for fourteen days from your position with the United States Department of Agriculture, Forest Service, at the Inyo National Forest, California, in September or October of 2003.

The Office of Special Counsel (OSC) is authorized to investigate and seek corrective action on behalf of Federal employees who allege prohibited personnel practices, such as reprisal for whistleblowing. The list of these prohibited employment practices can be found in Title 5 of the United States Code at section 2302(b). The Special Counsel presents allegations of reprisal for whistleblowing and other prohibited personnel practices to the Merit Systems Protection Board. The Complaints Examining Unit has carefully considered the information you provided. Based on our evaluation of the facts and law applicable to your circumstances, as detailed in this status report, we have, however, made a preliminary determination to close our investigation into your allegations. Our factual and legal determinations are as follows:

You complain that the suspension was in reprisal for your assisting one of your employees, Mr. Kevin M. Fitzsimmons, in making a disclosure to the agency Inspector General (IG), and was discrimination based upon your sexual orientation.

Section 2302(b)(8) prohibits an official with personnel action authority from taking, failing to take, or threatening to take or fail to take a personnel action because an employee made "protected disclosures" of information. In order for OSC to establish a violation of 5 U.S.C. § 2302(b)(8), we must be able to show: (1) you made a "protected disclosure" of information, (2) a personnel action was taken, not taken, or threatened, (3) the official who took, failed to take, or threatened the personnel action knew about your "protected disclosure," and (4) the official took, failed to take, or threatened the personnel action because of your "protected disclosure."

A "protected disclosure" is one that the discloser had a reasonable basis to believe evidenced (1) a violation of law, rule or regulation, (2) gross mismanagement, (3) a gross waste of funds, (4) an abuse of authority, or (5) a substantial and specific danger to public health or safety. A disclosure is reasonably based if a "disinterested observer" with knowledge of the essential facts known to and readily ascertainable by the discloser could reasonably conclude that

U.S. Office of Special Counsel
Mr. Michael Levine
Page 2 of 3

the actions of the agency evidenced one of the conditions set forth in 5 U.S.C. § 2302(b)(8). *LaChance v. White*, 174 F.3d 1378 (Fed. Cir. 1999).

You state that you made a protected disclosure in assisting one of your employees file a disclosure with the IG about Mr. Mike Allen, Dispatch Center Manager, selling foods from his personal sporting goods store to the Forest Service, and for using his position to rent a trailer from his parents for Forest Service use.

Based on the information submitted, we are unable to determine that the letter to the IG contains a "protected disclosure." You allege that you disclosed a violation of law, rule or regulation, gross mismanagement and an abuse of authority. Your letter contains, however, no facts describing a violation of a law, rule or regulation. Moreover, the IG office in a letter to the OSC dated October 14, 2004, stated that after carefully reviewing the allegations they had determined that it involved "administrative issues."

For the purposes of the statute at issue here, gross mismanagement "is more than *de minimis* wrongdoing or negligence. It does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing. There must be an element of blatancy. Gross mismanagement means a management action or inaction which creates a significant adverse impact upon the agency's ability to accomplish its mission." *White v. Dep't of Air Force*, 63 M.S.P.R. 90, 95 (1994); *Nafus v. Dep't of Army*, 57 M.S.P.R. 386, 393 (1993). While a Forest Service decision to purchase goods from a private business owned by one of its employees or renting a trailer from the relatives of an employee might appear to be a questionable decision, you have cited no law that such transactions violated. We are not stating that the decisions were wise; we are merely questioning whether they fit within the definition of a protected disclosure.

In any event, because the complaint was made to the IG, if the complaint was a significant factor in the taking of the personnel action there could be a violation of section 2302(b)(9) of Title 5, U.S. Code. You state that Mr. Allen was aware that you at least played a part in filing the complaint. It does not, however, appear from your complaint that he proposed or took any personnel action against you. Rather, the personnel action was proposed by Fire Management Officer Barnes and the decision was made by Forest Supervisor Bailey. You have given us no reason to believe that either of these officials would reprise against you for a complaint you filed against a third party, the dispatch center manager. Accordingly, we are unable to conclude that your complaint to the IG was a factor in the decision to suspend you.

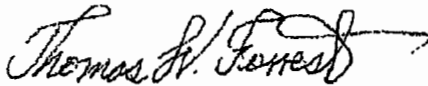
Lastly, you allege that the human resources officer discriminated against you because of your sexual orientation. With respect to this allegation, you report that your employee, Kevin Fitzsimmons, while in the personnel office to file a complaint against you for showing him allegedly inappropriate picture on you office computer, was introduced to the human resource officer. The human resources office, apparently in response to Mr. Fitzsimmons' complaint, shook his head and said "don't you just hate these fuck-n-fagots."

U.S. Office of Special Counsel
Mr. Michael Levine
Page 3 of 3

The intent of 5 U.S.C. § 2302(b)(10) is to prohibit discrimination for non-job related, off-duty conduct. *Merritt v. Dep't of Justice*, 6 M.S.P.B. 493, 506-08 (1981); *OSC v. Harvey*, 802 F.2d 537 at 551 (D.C. Cir. 1986). While this is an offensive and insensitive comment, there is no evidence that the human resource officer played any part in the personnel action taken against you. In the absence of any evidence of any discrimination for off-duty conduct, we found, therefore, no basis for further action concerning this allegation.

As indicated above, we have made a preliminary determination to close our inquiry into your complaint. Before we actually close the file, you may submit comments concerning our determination. Your response must be in *writing* and should address each of the reasons we cited in reaching our preliminary determination to close your complaint. Please clearly identify your *OSC file number* on any correspondence you submit and direct it to the Complaints Examining Unit at the address above. You have *16 days* from the date of this letter to submit your written response. If we do not receive any comments by the end of the sixteen-day period, we anticipate closing this file, at which time we will send you a letter terminating the investigation and advising you of any additional rights you may have.

Sincerely,



Thomas W. Forrest
Attorney
Complaints Examining Unit

7

Michael Levine
35 Meadow Road
Swall Meadows, CA 93514
January 10, 2005

Mr. Thomas Forrest
U.S. Office Of Special Counsel
1730 M Street, N.W. Suite 218
Washington, D.C. 20036-4505

Re: OSC File No. MA-04-0335

Dear Mr. Thomas,

This is in response to your letter of December 28, 2004. Since I am not an attorney I cannot say that I fully understand your letter citing various situations and policies. I will try and explain in my own language and perhaps you might help me understand some of the points you made.

You cite definitions of what constitutes acceptable complaints by the IG office. There are many options to report wrongdoings. I chose the OIG route due to what I believed were conflicts of interests and activities of Mr. Allen. The notice of acceptance of the letter was April of 2003. All actions were taken against me immediately after this reporting in May of 2003. The intent originally by my supervisor was to give me 60 days off, which was reduced to 30 days off after consulting with the union. It was again reduced to 14 days off when my attorney at that time threatened to take it to the MSPB. In their seven charges against me I had no warnings nor allowed to have a hearing. I was removed from my office without any charges being made or even discussion with my supervisor on what was wrong.

Considering no previous action was taken against me until my OIG involvement, and the above listed circumstances, it can be assumed that it was reprisal. Are you now telling me that the issue of reprisal is not valid because the original complaint to the OIG was not considered a valid complaint of wrongdoing under OIG authority? The OIG was the agency I felt would investigate this. My complaint to the OSC was for whistleblower reprisal and had I believe had nothing to do with the nature of the complaint. Why is this not valid? More to the point: if a whistleblower has to prove an allegation, or suffer reprisal, then it makes a mockery of whistleblower protections – it's the reprisal that is wrongful, not an accusation found less than proven beyond a reasonable doubt.

You indicate that the complaint was against Mike Allen, a third party. In actuality the way the Forest Service works in a somewhat privatized setting where vendors and contractors do much of its business the complaint directly involved our mutual supervisor Craig Barnes. He knew and condoned Mr. Allen's activities. He considered it a direct attack against him since he would be held accountable by upper management.

After Mr. Barnes conflict with me he transferred to another agency. They never told me the circumstances, but the conditions at the time made no sense why he suddenly transferred.

Management always supports their staff officers. They may get transferred and often promoted when they are removed from the situation, but that is the way they historically deal with these issues. My complaint would always be considered a complaint against management in their eyes.

I had hired an attorney in May of 2003, Mr. Daniel Bacon. He informed the agency all the way to the Chief of the Forest Service that he was representing me. They never recognized him or involved him in any actions taken against me. He said he was going to file a complaint with the Justice Department. He also said that my removal from my office without any charges was a violation of due process. When he recommended that we file with the OSC, I could not afford the additional fees involved, so I felt I had to go it alone with the OSC.

A lot more happened to me than the 14 day suspension. Continuous harassment did cause -- me to retire in May of 2003, which I always believe was management's objective. I started to suffer medical problems, the result, I believe, of intentionally infliction of emotional distress. They took away my supervision authority and as a result I had no control over operations in the radio shop.

In the case of my second issue, harassment due to sexual orientation in your letter you state ;

"While this is an offensive and insensitive comment, there is no evidence that the human resource office played any part in the personnel action taken against you."

I have to disagree with this statement. Mr. Merlin was the personal officer. He wrote the letters that were signed by management including the nude-children accusation when it was already disproved. Management just rubber-stamped this homophobic, false and reckless accusation.

In my original complaint I only included things that I knew were facts. I did not want to speculate because I always assumed that there would be an investigation.

I had a second employee working for me Jonathan Kuntz, a high school student. It was quite common to hire a student to work after school and during the summer. Students were hired and selected with the cooperation of Bishop High School's guidance department. There had been no issues with Jonathon until I was removed from my office. After a meeting between management and Jonathan's father, management alleged that Jonathan he could no longer work for me. *Mr. Merlin claimed* that Jonathan's father said I was "dangerous". Somehow management always contrived an investigation so that the sexual orientation issue would once again surface. I have no idea what Jonathan was told or what rumors he may have spread. Mr. Merlin would never tell me why the "dangerous" statement was made. He promised to get me a written statement from Jonathan's father but never did. Mr. Merlin defiantly had a tremendous influence on management.

I had never informed anyone in Forest management that I was gay as I believed it was none of their business. The subject never arose before, so the accusation was one based on rumor, second-hand gossip or simple supposition – as groundless as the repeated claims about my people skills, claims again not backed up by anything other than say-so.

Considering the events that I described I feel that an investigation is justified. I have served the government for over 32 years and I deserve better treatment.

Michael Levine



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

8

January 27, 2005

Mr. Michael Levine
35 Meadow Road
Small Meadows, CA 93514

Re: OSC File No. MA-04-0335

Dear Mr. Levine:

On December 28, 2004, the Office of Special Counsel (OSC) sent you a preliminary determination letter, which set forth OSC's proposed factual and legal determinations in the above-captioned matter. You were notified that you had sixteen days to respond to this letter. Your e-mailed response was received on January 10, 2005. In that e-mail you stated that you live in the High Sierra and were unable to immediately reply by mail because of snow. The OSC received your signed and mailed response on January 18, 2005. Your response is considered timely. After considering your response, we are closing the file for the reasons set forth in our May 22, 2003; preliminary determination letter.

The purpose of this letter is to notify you that you have a right to seek corrective action from the Merit Systems Protection Board (MSPB). As we informed you in our closure letter of this date, we have terminated our inquiry into your allegations. Because you alleged that you were the victim of the prohibited personnel practice described in 5 U.S.C. § 2302(b)(8), commonly called reprisal for whistleblowing, you may have the following rights.

You may seek corrective action from the MSPB under the provisions of 5 U.S.C. §§ 1214(a)(3) and 1221 (individual right of action) for any personnel action taken or proposed to be taken against you because of a protected disclosure that was the subject of your complaint to this office. You may file a request for corrective action with the MSPB within 65 days after the date of this letter. The MSPB regulations concerning rights to file an individual right of action with the Board can be found at 5 C.F.R., parts 1201-1206 and 1209. If you choose to file such an appeal you should submit this letter to the Board as part of your appeal.

Sincerely,

A handwritten signature in cursive script that reads "Thomas W. Forrest".

Thomas W. Forrest
Attorney
Complaints Examining Unit

Note: The following document is offered on this web site as voter education information only, and does not constitute an endorsement of any candidate or political party. -- Fr. Frank Pavone

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Executive Summary

SUPREME CONSEQUENCES

Why Catholic Voters Should Care

About the Real Differences Between the Candidates

As faithful Catholic attorneys, we believe that the election of Al Gore would have dire consequences for the future direction of the Supreme Court and of our country. In particular, the liberal judicial activists whom Al Gore would appoint to the Supreme Court would run roughshod over core Catholic values – and over laws, consistent with these values, enacted by the people through their legislators. For example:

- **School choice:** Justices appointed by Al Gore would block laws enabling all students – especially poor kids stuck in the worst public schools – to obtain funds to attend private schools, including religious schools.
- **Pornography:** Justices appointed by Al Gore would prevent communities from taking reasonable steps – such as zoning measures – to protect themselves, and their kids, from pornographers.
- **Abortion regulation:** Justices appointed by Al Gore would mandate a regime of abortion on demand through all nine months of pregnancy. They would invalidate laws ensuring parental consent, parental notification, and informed consent, and would block even the most modest measures to prevent atrocities like partial-birth abortion.
- **Homosexual marriage:** Justices appointed by Al Gore would embrace his view that same-sex couples should have the same legal status as married couples.
- **Boy Scouts:** Justices appointed by Al Gore would require groups like the Boy Scouts to have avowed homosexuals as scoutmasters.

In sum, Al Gore's Supreme Court would be supremely hostile to the most deeply held Catholic values. We urge you to have this in mind as you vote on November 7th.

**Concerned Catholic Law Professors,
and Concerned Catholic Attorneys**

SUPREME CONSEQUENCES

Why Catholic Voters Should Care

EXHIBIT 8

About the Real Differences Between the Candidates

An Open Letter From:

Concerned Catholic Law Professors,

and

Concerned Catholic Attorneys

The pundits agree. The presidential election will be decided by the swing vote, that group of voters who so far have no strong allegiance, or animosity, toward either candidate. And the pundits agree that a large segment of the swing vote is Catholic. Both campaigns are thus actively courting the Catholic vote, particularly in states too close to call.

There are significant differences between the candidates on issues that Catholics should care about. Those differences, however, are largely in the realm of legal policy and philosophy of government, a realm a few steps removed from what voters typically say they care about. Yet the candidates' different views of Government – as a good to be expanded or a necessary evil whose power should be kept in check – will affect profoundly the day-to-day worries voters do care about: protection of the family, safe neighborhoods and streets, excellent schools, and a positive moral culture. Catholic voters should be aware of these differences and decide which candidate promises to serve these goals best.

As attorneys who cherish our Catholic Faith, and the moral values that inescapably flow from it, we are in a position to know how the candidates' views on legal policy and the role of government translate into practical effect on the issues that count for the Catholic voter. First and foremost, we believe the impact on the United States Supreme Court resulting from the 2000 Presidential Election will profoundly and directly affect matters of the deepest and most fundamental consequence to Catholics.

The current philosophical make-up of the Court is split nearly in half. Most every major decision in the last decade has been decided by a razor-thin 5 to 4 margin. With Bill Clinton's appointments, it is clear that this ideological margin currently leans to the left, toward a view that sees no bounds on government's reach and sees individual liberties important to Catholics as limited while constantly expanding notional liberties relating to sexual activity. The Court's current balance is so precarious that a single appointment of a liberal, activist Justice would likely upend several recent precedents that rein in federal power and support society's ability to foster a healthy culture. Appointment of 3 or 4 such Justices, as may be possible given the length of service of many now on the Court, may set in stone, likely for our lifetimes, a host of monumental legal precedents that directly clash with the deepest-held values and principles of Catholic teaching.

Many of today's most critical issues -- striking at the core of Catholic moral teaching -- currently stand by the thinnest of margins.

Just one vote among the nine supreme court Justices was the margin of defeat for Catholics on such precedent-setting cases as the invalidation of a ban on Partial Birth Abortion along with other benchmark cases involving a state's ability to deny special legal privileges to homosexuals and overturning decency laws designed to protect children from the most pornographic cable channels.

Catholic values were upheld by the thinnest margin (5 to 4) on other vital cases such as a failed attempt by the homosexual lobby to force the Boy Scouts to retain openly homosexual mentors and leaders; a

case with significant implications for school vouchers for Catholic and other private religious schools; and cases upholding laws allowing communities to limit adult smut shop locations and activities.

On several of the most critical issues facing Catholics today, there is a very real potential for a Court that is irreconcilably hostile to the most basic Catholic beliefs.

Vouchers for Educational Choice

In some recent cases, the Supreme Court has started to reverse its earlier trend of anti-religion decisions. Earlier this year, for example, in *Mitchell v. Helms*, the Court upheld a program under which local governments lend educational materials and equipment to public and private schools, including religious schools, on an equal basis. Justice Thomas' plurality opinion emphatically rejected hostility towards schools that are "pervasively sectarian," and clearly pointed the way to judicial approval of school choice. Thomas held the program to be "neutral with regard to religion" because it "makes a broad array of schools eligible for aid without regard to their religious affiliations or lack thereof," and because "[i]t is the students and their parents -- not the government -- who, through their choice of school, determine who receives [program] funds." This analysis also would support the constitutionality of a choice program that made religious and non-religious schools eligible on an equal basis, where "[t]he aid follows the child" to the school of his and his parents' choice.

Thomas' opinion, however, only commanded four votes. With two Justices concurring on narrower grounds and three Justices issuing a strident dissent, the Court remains closely divided. Likewise, in *Agostini v. Felton*, a 1997 decision that *Mitchell* built on, the Court divided 5-4 in upholding a similar program. Each and every appointment of a new Justice could tip the balance away from approval of school choice and back to the strict-separation view of *Mitchell*'s dissenters. If the dissenters become a majority, the law will be radically different.

Justice Souter's dissent in *Mitchell* brims with suspicion of religious schools. Souter proposes a strict rule of "non-diversion" under which aid is unconstitutional if any of it can be "diverted" to a religious use. In Souter's view, even aid that is completely non-religious (such as computers and overhead projectors) is forbidden because it could be "diverted" by religious teachers to a religious use. Souter also would hold that aid is unconstitutional if it "supplants an item of the school's traditional expense," on the theory that the aid frees up for religious use funds that otherwise would not be available. Finally, if these tests did not suffice, Souter would strike down a program that provided "substantial" amounts of aid, regardless of the program's features. In his dissent in *Agostini*, Souter similarly argued that even a neutral program is unconstitutional if it "results in support for religion in some substantial degree, or in endorsement of its value."

Whether the next Supreme Court appointments add to the ranks of the *Mitchell* plurality, led by Justice Thomas, or to the ranks of the dissenters, led by Justice Souter should be of critical concern to Catholic voters. Vice President Gore has already promised to appoint Justices who would strike down vouchers as unconstitutional. Even one vote will make an enormous difference not only to the fate of school choice but to the future of religious liberty generally.

Protecting Kids from Pornography

In recent years, the U.S. Supreme Court has struck down measures to protect children from the ever-pervasive pornographic material flooding society through the Internet and smut shops. The adult

pornography industry has seen an explosive growth in revenue since the beginning of the Clinton-Gore Administration. One of the most prominent contributing factors is the absolute refusal of this Administration to prosecute the tens of thousands of pornography trafficking crimes occurring nationwide. This is a complete departure from the Reagan and Bush Justice Departments which vigorously enforced federal laws in this regard.

Many communities have attempted to fight back by banning sales of such material or restricting the locations of such shops, which is fully within their Constitutional rights. Of course, having done so, they often find themselves in the legal cross-hairs of the cash-laden porn industry and, of course, the American Civil Liberties Union (ACLU). Several recent cases have found their way to the U.S. Supreme Court including a decision earlier this year in *United States v. Playboy Entertainment Group, Inc.*

In *Playboy*, a pornographic video company challenged a 1996 federal law requiring cable television operators to make a simple adjustment to block sexually explicit broadcasts to subscribers not desiring such material. Playboy argued that the law violated its free speech rights. The matter hinged on what is termed "signal bleed." Although a sexually explicit broadcast may be "scrambled," many homes were proven to experience this signal bleed in which images are only partially scrambled, yet easily recognizable, and fully audible. The Court was presented with facts indicating that children had been exposed to such material. Yet, the U.S. Supreme court, by a one vote margin, rejected even this reasonable limitation.

In other cases, the Court has upheld citizen efforts to reasonably protect themselves and their kids from harmful pornographic material, but, again, only by one justice's vote.

Here is what the pornography industry and news articles have to say about Gore's treatment of this harmful material:

- o An adult video newsletter admits: "adult obscenity enforcement by the federal government is practically non-existent since the [election of Clinton-Gore]."
- o A leading porn industry lobbyist: "Federal obscenity prosecutions have been on the wane during the Clinton years."
- o A leading porn company executive laments: "If... Republicans get in, we're all going to have a problem."
- o "Gore Has Adult-Entertainment Support...several thousand members of the Internet adult-entertainment industry are expected to endorse Al Gore for President during 'IA2000,' an upcoming trade show in New Orleans."
- o "[A dozen Congresswomen] released a letter [September 28, 2000] asking Mr. Gore to publicly disavow support and return donations from an Internet adult entertainment trade association and a Chicago strip club owner."

Homosexual "Marriage"

The homosexual agenda has apparently become the radicals' legal cause *du jour*. One reason is that Bill Clinton and Al Gore have appointed federal judges, including those to the Supreme Court, who are giving legal legitimacy and force to the homosexual movement.

Al Gore has adopted the homosexual agenda in its entirety. He has promised the same legal privileges for same-sex "couples" as those currently afforded married couples. In explaining his position, Gore makes a distinction without a difference:

"I think there is a difference between marriage as the institution has traditionally been known and celebrated and recognized, and [same-sex] civic unions. But I think the legal protection should be on an equal part... I favor legally recognized [same-sex] civic unions that have the legal protections of the kind that marriage confers."

When asked if he was in favor of relaxing immigration rules to confer U.S. citizenship to non-citizens in a same-sex pairing, Gore explained:

"I favor legal protections for [same-sex] civic unions, and I think the rights that are afforded on an American who gets married to someone from another country should be afforded under a legally protected [same-sex] civic union in the same way."

Sooner or later, the Federal Defense of Marriage Act, which defines marriage as a union between one man and one woman only for purposes of law, will be challenged by the homosexual lobby. Given Gore's views, it is difficult to imagine a Gore Administration, or his Supreme Court nominees, making a serious effort to defend the Defense of Marriage Act.

Boy Scouts Case

An all-out legal and political effort is underway to ban the Boy Scouts from the public square while slandering them as bigots. What was once inconceivable is rapidly becoming possible.

Homosexuals have been campaigning to exclude the Boy Scouts from public spaces for many years, especially in California, Chicago and New York City. All attempts to achieve this through litigation, however, had failed - until the *Dale* case in New Jersey.

The Lambda Legal Defense & Education Fund argued that New Jersey's anti-discrimination law required the Boy Scouts to accept open homosexuals as mentors and leaders. In an unprecedented decision, the New Jersey Supreme Court agreed. The Boy Scouts appealed to the U.S. Supreme Court.

On June 28, 2000, the Court reversed the New Jersey Supreme Court's decision. The vote, predictably, was 5 to 4. Chief Justice Rehnquist wrote the majority opinion, joined by Justices O'Connor, Scalia, Kennedy and Thomas. Justice Stevens wrote a lengthy dissent joined by Justices Souter, and Clinton-Gore appointees Ginsburg and Breyer. Justice Souter also wrote a separate dissent joined by Justices Ginsburg and Breyer. The Scouts got five votes (good news), but they *only* got five votes (bad news).

The Court based its opinion on the Scouts' First Amendment freedom of association. A majority on the Court recognized that the Boy Scout's clear mission was to instill values and accepted the Scouts' assertion that homosexuality is incompatible with those values. The Court then asked whether applying New Jersey's anti-discrimination law to the Scouts would significantly affect the Scouts' ability to advocate its views. The majority held that the Boy Scouts' ability to disseminate their message was significantly affected by Dale's inclusion. The majority reasoned that because Dale was a prominent gay rights activist, his presence in the Scouts would force the organization to send a message that "homosexual conduct [is] a legitimate form of behavior."

It is reasonable to speculate that had Dale not been a gay rights activist, the one vote majority could just as easily have been a one vote (4 to 5) minority; and the Boy Scouts could now be subject to the dictates of the homosexual lobby.

Of greater concern, however, the four dissenters compared "unfavorable opinions about homosexuals"

with adversarial "opinions about certain racial groups" and blamed both attitudes on "sectarian doctrine," i.e. religion. These four Justices of the U.S. Supreme Court – one short of a majority – have already signaled their view that traditional religious opposition to homosexual acts is, in their very powerful opinions, a form of bigotry akin to racism. It is therefore reasonable to expect that just one Gore appointment would create a majority on the Court willing to declare homosexual conduct a constitutional right. The legal morass then faced by the Catholic Church, and other traditional religious institutions, would not be hard to imagine.

Recently, phase two of the operation against the Scouts was initiated when movements across the country sprung up insisting that all public and private groups stop sponsoring such a "bigoted" organization. The primary weapon in this campaign utilizes the numerous policies and ordinances recently promulgated from so many fashionably chic corporate board rooms and council chambers that prevent discrimination on the basis of "sexual orientation." Public or private organizations with such policies are at a real disadvantage to explain how the Scouts should be exempted from these ill-conceived regulations.

This assault against the Scouts has moved at breathtaking speed over the past three months.

At the **Federal** level, there have been two initial skirmishes: one to prevent the Scouts from using any federal park lands and another to revoke their, largely symbolic, federal charter. Both efforts have failed, but they underscore how the homosexual lobby's power has grown exponentially as a result of their friends and allies in the Clinton-Gore Administration.

At the **State** level, Connecticut has been the most aggressive against the Scouts. On May 11, even before the *Dale* decision, the Connecticut Commission on Human Rights and Opportunities removed the Scouts from the list of charities to which public employees could donate. The Scouts then sued and won the right to stay on the list until a further determination is made. That case is still pending and could eventually find its way to the U.S. Supreme Court.

Most of the attacks, however, have been at the **local** level, where public parks and schools have become the battleground. In Chicago, the Scouts had already been banned from the Chicago Public Schools. In San Diego, the ACLU has now sued the city for leasing a public park to the Scouts for \$1 a year, and is considering suing Orange County for allowing the Scouts rent-free access to a Newport Beach site. School systems in New York City, Keene (NH), Framingham (MA) and Bethel (OR) have severed ties with the Scouts, refusing them sponsorship and even the opportunity to recruit. A similar ban is being considered in Madison (WI). Fort Lauderdale (FL) and Tucson (AZ) have both banned public funding for the Scouts. It has been pointed out that in many of the affected locations, the chief victims of this ban are urban youth.

At the **private** level, nine of the 1,400 chapters of the United Way in the United States have withdrawn funding from the Scouts. Chase Manhattan Corporation withdrew, then reinstated its support for the Scouts. The list of battles will surely increase as time passes.

There is a great irony here, and it should not be lost upon Catholic voters. In the name of "tolerance," the foes of the Boy Scouts insist upon intolerance. The Boy Scouts do not seek to impose their views on others; they seek only to be left alone and to decide who their leaders should be by their own standards. It is the homosexual activists who will not tolerate the Boy Scouts' views, and who insist that others not tolerate them. These activists cannot seem to accept public co-existence with groups with a different point of view. Thus in the name of fighting alleged "bigotry," they prove themselves to be the bigots, but

their bigotry threatens to carry the stamp of judicial approval.

Judicial appointments are critical--at *all* levels of the judiciary. Recall that the *Dale* decision only garnered five votes. The next President must be someone who will appoint a Supreme Court Justice, and lower court judges, supportive of the Scouts. This does not even require that the Justice *agree* with the Scouts--just that he or she respect their right to freedom of association, and the rights of other organizations which may be "unpopular."

The attacks unleashed upon the Boy Scouts can be visited upon any respectable, unsuspecting civic or religious organization, such as the Knights of Columbus or the many other Catholic sodalities. Whether they succeed teeters between two distinct factions on the United States Supreme Court separated by a mere one vote.

Partial Birth Abortion

Despite statements made early in his career that unborn human life was entitled to the protection of law, Al Gore has become a proponent of abortion-on-demand.

Al Gore's support for Supreme Court appointments that share his view on abortion means more decisions like *Stenberg v. Carhart*. There, five Justices of the Supreme Court held that Nebraska's attempt to end partial birth abortions, in which the skull of a partially born child is crushed and its contents are "evacuated," was prohibited by the Constitution. In effect, the "pro-choice" majority of the Court, supported by Gore, created a new rule of law that the constitutional "right to choose" included the right to "terminate a pregnancy" even by the most horrific means available. Numerous courts have followed the decision in *Stenberg* to invalidate similar laws enacted in other states.

Gore told Jim Lehrer earlier this year, "I support a woman's right to choose, and I will not have it undermined or weakened or taken away . . . I will insist upon Justices who have an interpretation of the Constitution that's in keeping with the general philosophical approach that I share." What does this mean in a Presidential Election in which, by Gore's own estimates, the next President may appoint as many as three of the nine Justices serving on the Supreme Court? It means that a Gore presidency could continue the trend of appointing activist Justices who will strike down any reasonable measure designed to reduce the epidemic numbers of grave physical and emotional harms from abortion, despite the claims of pro-abortion advocates to make abortion "safe" and "rare."

Not since the disgraceful *Dred Scott* era presaging the Civil War in which the Court held that slaves were property, not citizens, under the Constitution, has a U.S. Supreme Court been faced with such fundamental questions of moral and religious import. Eerily, the Court used language reminiscent of *Dred Scott* in *Roe v. Wade* when it somehow concluded that human beings in their mother's womb were not "persons" deserving Constitutional protection.

The vote of a single Supreme Court Justice stands between the ability of decent Americans to protect human life in all of its forms and the culture of destruction evident in the *Stenberg* decision. Al Gore supports that culture of death, even panders to it. As he has indicated, his Supreme Court appointments would follow his lead.

Parental Notification of Minor Daughters Desiring to Abort Their Children

The effect of *Stenberg* has not stopped at partial birth abortion. The *Stenberg* decision has been applied to prevent simple parental *notification* where a minor child seeks to abort her child. In *Planned*

Parenthood of Rocky Mountain Servs. Corp. v. Owens, Judge Walker D. Miller, a Clinton appointed federal district court judge, applied *Stenberg* to strike down Colorado's Parental Notification Law, a citizen initiated measure that required a physician to notify the parents of a minor child before performing an abortion on her. Judge Miller held that a law which simply required parental notification, but not consent, was inconsistent with the current Supreme Court decisions.

Under this reasoning, it is now impermissible for states to insist that parents simply be informed when other adults are actively guiding their daughters toward a decision of such enormous gravity.

This trend has troubling implications for even some supporters of legal protection for abortions. It means that even the most moderate measures designed to make abortion less frequent, less brutal, and less secretive in regards to parents of minor daughters could be deemed unconstitutional. National Journal's Stuart Taylor, a self-described supporter of "early abortion," recently lamented that "some abortion rights groups do seem to be inching toward a right to choose infanticide, especially when a baby is born with severe disabilities." Mr. Taylor notes that "the Supreme Court's 5-4 decision last term in *Stenberg v. Cahart*, finding a right to 'partial birth' abortion leaves some . . . worried that the Justices are vitiating the traditional legal and moral taboos against baby killing."

Despite the adamant hype of abortion supporters, the overruling of decisions like *Stenberg* and *Roe v. Wade* would **not** outlaw a single abortion. It would merely move the matter to state legislatures. It would return to the people what *Roe v. Wade* took away: the power to make their own "choice" with respect to laws protecting human life.

Free Speech Rights of Pro-life Counselors

Our nation has a proud and enviable commitment to the right to free speech. Protesters need not fear tanks, secret police brutality, or death squads just because they dare to challenge the current political regime.

That proud tradition is in serious jeopardy when it comes to the free speech rights of the pro-life community. Left-leaning, activist judges have begun embracing a double-standard whereby politically incorrect speech – especially that of pro-life citizens – faces severe restrictions and limits while other speech, even vile pornography, receive scrupulous legal protection.

In a series of recent rulings, the Supreme Court has upheld such previously unthinkable restrictions as court-ordered speech-free zones on city sidewalks. Just this year, the Supreme Court upheld a Colorado court's ruling that banned leafleting without permission of the recipient in *Hill v. Colorado*.

In cases concerning the free speech rights of pro-life citizens, both of the Justices appointed by the Clinton-Gore Administration voted to uphold such anti-speech restrictions.

Conclusion

The 2000 Presidential Election presents Catholic voters with a choice: a candidate whose policies will undermine the family, encourage the further decay of the culture, and make it more difficult for parents to raise upright children, and a candidate who will shape legal policy to support the family and marriage, give new life to civic virtue, and protect religious liberty. The most important effect of the candidates' differing views on legal policy will be what kind of men and women they will nominate to the Supreme Court. Although we as believers in government 'by the people' wish it were not the case, our nation's Supreme Court – without constitutional authority – has made itself the country's sovereign moral

referee, a kind of social engineering politburo, laying down legal precedents on substantive moral matters touching the very lives and souls of every American. Yet even as it accords to itself the power to decide what laws are moral, on the pretext of deciding whether they are constitutional, the Court remains perfectly isolated from the political will of the people, *except* when they select a president who will appoint justices who will abide by the Constitution.

This article was not intended to be a technical legal treatise as to how and why we find ourselves under this judicial tyranny. Rather, it is an attempt to lay out for the general public, and Catholics in particular, the real-world implications should the expected two or three vacancies on the Court be filled by Al Gore. Gore has pledged to fill those vacancies with justices adhering to his "living and breathing... constantly evolving" view of the Constitution, a view that renders our nation's bedrock legal document no more than fluff to be blown by prevailing political winds. Few elections in our nation's history stand to imprint the very nature and direction of society like this one. Catholics should understand the candidates' differences, and should choose carefully.

CONCERNED CATHOLIC LAW PROFESSORS

Raymond Marcin

Professor of Law

The Catholic University of America

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Richard Myers

Professor of Law

Ave Maria School of Law

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Dwight G. Duncan

Associate Professor

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North Dartmouth, Massachusetts

Bernard Dobranski

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Spotlight SCOTT BLOCH, OFFICE OF SPECIAL COUNSEL

KEY AGENCIES AND LEADERS CHANGING GOVERNMENT TODAY

New counsel reviews whistleblower, bias laws

Attorney Scott Bloch began a five-year term as head of the Office of Special Counsel in January and quickly ignited controversy by removing from the agency's Web site all references to sexual orientation discrimination as a prohibited personnel action. Bloch then announced he is reviewing the law governing OSC to determine what job protections extend to gay, lesbian and bisexual employees. OSC is an independent agency that investigates claims of discrimination, whistleblower retaliation and prohibited personnel practices. In a March 10 interview with *Federal Times* Senior Writer Tim Kauffman, Bloch discussed his initial reading of the law and other policies he is reviewing. Following are edited excerpts of that interview:

Federal Times: What prompted this review?

Bloch: We're doing a broad review of all policies in the office. I have challenged the agency to reduce the backlogs of cases in three divisions by the end of the year. We have critical backlogs that threaten the very mission of our agency and I believe also threaten the federal government's safety. In conjunction with that, we're doing a broad review of all policies, and jurisdictional issues are being reviewed.

So, with regard to the specific [sexual orientation] issue . . . this actually came up because a member of the senior staff brought it to my attention. The statute directly does not mention sexual orientation, and no case law that I've seen and that anyone's ever offered to me interpreting the statute has ever used the term "sexual orientation" to describe what it protects.

FT: OPM said that phrase applies to such things as religious group affiliations, community groups you belong to, and sexual orientation.

Bloch: What happens is people use sexual orientation as a shorthand for meaning sexual conduct that one associates with sexual orientation. When you're interpreting a statute you have to be very careful to interpret strictly according to how it's written, and not get into loose interpretations unless a court has said, "This is how we interpret it." OPM said conduct, and then used the phrase sexual orientation. And



ROB CURTIS/FEDERALTIMES

Special Counsel Scott Bloch is re-examining whether discrimination laws cover gay and lesbian federal employees.

someone may have jumped to the conclusion that conduct equals sexual orientation, but they are essentially very different. One is a class . . . and one is behavior.

FT: Can you provide an example of how it's different?

Bloch: I can say I have a particular orientation, but it doesn't necessarily mean that I engaged in any conduct as a result of that or preceding that or following [that]. I can say, "Look, I am a Buddhist," but that doesn't mean I ever went to a Buddhist temple, that doesn't mean I ever prayed before a Buddhist statue. It just means I claim to be a Buddhist.

FT: So, by that logic, someone who is gay is not covered, but if someone wore to attend a gay rally and their boss had been there and disciplined the person for doing that, that would be covered?

Bloch: Yes, if the rest of [the provisions] in the statute [were met]. There's more than just conduct in the statutory language. It's conduct that does not adversely affect the job performance of the employee, the applicant or others.

FT: Would attending a gay rally affect someone's job performance?

Bloch: It could if they were doing it during office hours . . . if they took off and they weren't supposed to take off, something of that nature. Can that be [cov-

ered] conduct that does not adversely affect job performance? Of course. It would be like anything anybody does after hours or on their lunch break.

FT: What if a gay applicant is told he won't be hired because he is gay? Is that discrimination? Could he go then to the Office of Special Counsel and say, "This person wouldn't hire me because of something unrelated to my job?"

Bloch: If the supervisor bases his or her decision to hire or not hire based on conduct of that person . . . then that could be a violation. You'd have to look at the underlying facts to make sure it satisfies the standard. The critical question, the initial question for any cases of the kind that you described, is "Where's the conduct?"

FT: But just simply being gay and being denied a promotion or being denied a job or whatever, just for that fact alone, unrelated to anything else, unrelated to anything person could appeal to this office?

Bloch: Right. They can file a complaint in this office . . . but there will have to be a showing of conduct that does not adversely affect that person's job performance or the performance of others.

FT: Do you have any cases under review now related to this issue?

Bloch: Yes, there are two or three.

office holds jurisdiction.

FT: Regarding the backlog, what actions are you taking specifically to deal with that?

Bloch: We are reviewing all the procedures and processes that are in place right now. We're talking with the senior staff, getting their expert advice on whether there's any duplication of efforts reviewing cases that could be shortened or streamlined. We're hiring new people—attorneys and case examiners.

FT: How many?

Bloch: In the area of five to seven. We have to stay within our budget. But I've laid down a rather significant challenge to the agency to get the backlog eliminated by the end of this year, in all areas. Individuals have filed complaints, and some of them have been sitting around for two years, and I just don't think that's right. We are also likely going to bring in a professional assessment team to look at the agency from top to bottom to see where we're being inefficient.

FT: You're also reviewing the Uniformed Services Employment and Reemployment Rights Act, which protects jobs and benefits for members of the armed services. What is the nature of that review?

Bloch: The review is to determine . . . the extent of our jurisdiction over uniformed services employment cases, which we believe is a very important area with the transition of troops in and out of Iraq and Afghanistan. There's been quite a number of claims and incidents reported of people being discriminated against because of their service and not getting benefits or jobs back as the law requires. We're looking at whether certain persons who have been aggrieved have any direct rights to come to this office. We're looking to what extent we can work with the Department of Labor on these cases.

FT: Any regrets over entering this office under a bit of controversy? Anything you wish you would have done differently?

Bloch: No, I'm proud of the decision I made to follow the law and do a full legal review. It's unfortunate that we have a leaker or leakers in our office who went to the press rather than coming to me . . . We need to focus on our mission as an agency and pull together to do what's right for the workers and right for the merit system.

FT: Regarding the review of Transportation Security Administration (TSA) whistleblowers, what's going on there?

Bloch: There are two or three judges who have issued opinions claiming that TSA personnel rules govern any whistleblower complaints because TSA is a distinct entity, at least for another year, within [the] Homeland Security [Department] and thus not subject to the Homeland Security personnel rules, which include whistleblower protection.

FT: So the judges are questioning whether or not someone who works at TSA is covered under the Whistleblower Protection Act?

Bloch: Right. In fact, they've ruled on at least two cases, maybe three, that there's no jurisdiction. Those matters are being appealed to the Merit Systems Protection Board.

FT: Where does your review come in?

Bloch: We have 40 cases that have been filed with the office, so we have to figure out what to do with them. We have about five that are in the investigation phase right now, so it's critical that we know whether we have jurisdiction or not. In addition to that, we need to know what is the appropriate position to take in any cases that are pending. If I believe there's jurisdiction there, I want to intervene and let the board know that the special counsel's

From:
Sent: Friday, April 09, 2004
To:
Subject: From the Special Counsel

Please read the message below.

From:
Sent: Friday, April 09, 2004 10:53 AM
To:
Subject: Updated language for issuance to staff

The Special Counsel has requested that we convey to you that he and his staff have completed their legal review of OSC's jurisdiction to process claims under title 5, section 2302(b)(10), alleging sexual orientation discrimination. Their conclusions can be found in a recently posted press release on OSC's website. If, in the performance of your case-processing duties, current or potential complainants, their representatives, or agency representatives ask about OSC's policy on (b)(10) complaints, you should simply refer them to the press release on our web site as a complete and definitive statement of OSC's policy.

Please also note that 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.

LJWORLD.COM

LAWRENCE JOURNAL-WORLD

KU graduate shares experiences from D.C., Special Counsel Office

By Terry Rombeck, Journal-World

Friday, October 1, 2004

Scott Bloch didn't know much about the U.S. Office of Special Counsel until he was nominated to lead it.

advertisement



Now, just a year later, the office is grabbing headlines for hot-button issues such as border patrols, airline baggage screening and nuclear weapons labs.

"It was kind of a well-kept secret in Washington and outside Washington," Bloch said. "Clearly, our office has seen an increase in cases being in the limelight. We're becoming more high-profile because of it."

Bloch, 46, graduated from Kansas University with a bachelor's degree in 1980 and a law degree in 1986. He practiced law for 15 years at the Lawrence firm Stevens & Brand before joining the U.S. Department of Justice in 2001.

He returned to Lawrence this week to speak and conduct interviews with students at the KU School of Law.

Bloch has been at the center of controversial issues since he arrived in Washington, D.C. At the Justice Department, he led the government's oversight of faith-based programs.

He said the Bush administration had been wrongly criticized for making federal funds available for faith programs. Instead, he said, the administration has made funds available for secular activities of churches -- such as homeless shelters -- while prior administrations didn't make that

distinction and allowed some federal money for worship and other sacred purposes.

"Ironically, the Bush administration has clarified the rules, while they're criticized for loosening the rules," he said.

He also found himself in discussions with other attorneys about issues such as the USA Patriot Act, terrorist detainees and the University of Michigan affirmative action cases.

In his current job, which he started in January, Bloch oversees the government's protection of federal whistle-blowers, protection of veterans' rights and enforcement of the Hatch Act, which restricts the



Thad Allender/Journal-

EXHIBIT 11

political activities of government employees. His term runs for five years.

"It's about the integrity of the executive branch," he said. "It's a watchdog agency, essentially. It's a very mission-driven office. It's a noble cause."

The office handles more than 2,500 cases annually. One recent high-profile case involved Glenn Walp, an official at the Los Alamos National Laboratory who was fired in retaliation for documenting security breaches and other mismanagement. He received a \$930,000 settlement from the University of California.



Bloch also gained headlines early in his tenure when he said he didn't think laws guiding the special counsel's office protected workers against discrimination based on sexual orientation, because those laws guided

discrimination based solely on actions of other individuals. The opinion drew the ire of gay rights groups.

Subsequently, the office announced it would continue enforcement of protections offered for workers thought to be gay.

"We simply said, 'We're going to enforce the law as written,'" Bloch said. "There was a huge, unnecessary hullabaloo about it."

Though he said he missed Lawrence, Bloch said he, his wife and seven children enjoyed living in Washington.

"I practiced law for 15 years in this town," Bloch said. "I loved it. But I saw an opportunity to do something I'd always wanted to do, and I didn't think it would come up again."

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World Photo
 Scott Bloch, head of the U.S. Office of Special Counsel, meets with Kansas University students at KU's law school. Bloch, a former Lawrence attorney, currently lives in Washington, D.C., where he works as a self-described "watchdog" over federal employees.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4605

The Special Counsel

February 14, 2005

The Honorable Henry Waxman
Ranking Member
Government Reform Committee
United States House of Representatives
Washington, D.C. 20515-6250

Dear Representative Waxman:

This letter is a follow-up response to my previous correspondence concerning your and Rep. Danny Davis' January 26, 2005, letter regarding the Office of Special Counsel's (OSC) reorganization plan.

I share with you a 100 percent commitment to protecting federal whistleblowers, the merit system principles, and bringing justice to the federal workforce. These ideals can only be served by reducing the historic backlog in this Agency that I inherited. These backlogs serve only to impede employees' ability to secure justice in a timely manner. My recent reorganization is dedicated to the above-stated goals. Indeed, given the widespread press about these historic backlogs and the GAO report launched before I assumed office, it is indeed ironic that we are now being subjected to such scrutiny for having addressed the backlog, studied the source of the problems, and embodied a creative and long-lasting strategic solution to the problem that will redound to the credit of the federal workforce for years to come.¹

Please know that I am fully compassionate and understanding of the personal burden that reassignments and reorganizations place on individuals. We are trying to minimize each burden to the extent equity, law, and efficiency allow. Of course, I was guided by the dual goals of fairness to all employees and the demands of changing a moribund system that had hampered efforts at securing justice for complainants and providing a source of public trust for all to see.

A review of the steps I have taken will place all that has occurred in the last month in perspective, I hope, and dispel the suspicions and unfounded accusations.

Backlog Reduction

Upon becoming the new Special Counsel, my publicly-stated pledge has been to give full and fair resolution to all cases, especially the unacceptably high number in a backlog. Of these, the greatest challenge was the nearly 700 pending whistleblower disclosure claims in our Disclosure

¹ Indeed, OSC is in the process of finishing a comprehensive response to the GAO report to tell Congress how we have addressed the longstanding problem of backlogs and inefficiency at OSC.

Unit (DU), over 500 prohibited personal practice (PPP) complaints, and over 200 Hatch Act complaints (not to mention the ever-increasing requests for advisory opinions in an historic presidential election cycle). Soon after I arrived at OSC, I created a new Special Projects Unit (SPU) devoted to resolving these older cases and studying how to avoid such backlogs in the future.

I have kept my pledge to Congress and federal employees, and am pleased to report that we have made tremendous progress in our first year. In January 2005, the backlog was reduced to approximately 100 cases, 30 cases, and 40 cases respectively in those three units.² I can state without equivocation that this past year's backlog reduction efforts far surpass any undertaken in the past by this agency.

The talented career staff of OSC performed heroically by rotating in and out of the SPU to help address the persistent backlogs and fairly resolve these claims or refer them for further investigation and prosecution. During the SPU process we have doubled historic referral rates for meritorious cases to the investigation and prosecution unit. I value my experienced employees' input and leadership, which was and is essential to eliminating the backlogs and implementing permanent solutions to make the Agency more efficient and prevent future backlogs. The credit belongs to these dedicated and mission-driven individuals who welcomed the challenge that had never been presented to them in the past.

In addition to the above, I created an Employee Advisory Committee where I meet regularly with employee reps and go over their concerns and ideas, which have led to some internal policy changes and creative solutions to agency concerns nationwide.

In regards to personnel and contractual matters, I have been in full compliance with all civil service laws, rule and regulations, including the Federal Acquisition Regulations (FAR). My able career Legal Counsel and Policy division (LCPL) provides expert advice on all of these issues, and each decision is vetted by our Human Resources Division for compliance with all personnel regulations. Finally, these decisions have been reviewed by the Bureau of Public Debt (BPD), an outside arm of Treasury, who sign and implement our major contract and purchasing orders to assure maximum compliance. Moreover, I have reinstated an old hiring policy from previous Special Counsel's concerning attorney recruitment efforts for "Schedule A" attorney positions.

I also hired an intermittent federal employee under 5 U.S.C. §3109 and 5 C.F.R. §304.103. Intermittent consultants hired under this statute are not contractors as has been alleged. Further, the services of this consultant were clearly directed at helping improve our procedural operations and advice on training initiatives, contrary to the allegation that he was hired for "unspecified services." I believe the insinuations about the "boarding-school headmaster" are both irrelevant and unworthy of professional discourse.

Please know speculation and suspicion regarding the reorganization and hiring practices is without merit. Indeed, our hires since coming to OSC have been with the input of senior personnel

² A less pressing but no less significant issue was a backlog of FOIA cases that were causing us to be unable to get to FOIA claims within a timely manner, which was a result of attrition of employees and our statutory requirements to place DU and PPP cases ahead of FOIA claims. We have cut our FOIA backlog in the last few months in half and are making significant progress toward their elimination in the next six months.

in the career service and include high praise for the performance of such individuals. These individuals include persons from six different ABA accredited national law schools. They comprise four African-Americans, four women, one Hispanic woman, and a disabled Arab-American – a very talented and diverse population of which any agency would be proud. We have openly conducted outreach to wounded veterans to seek their applications to our office on several occasions.

Agency Reorganization

As you know, under my authority found in 5 U.S.C. §1211, I announced an Agency reorganization plan in early January 2005. The reorganization was needed to ensure no future case backlogs would occur and to create internally consistent procedures. I consulted with all the senior management as well as my staff repeatedly throughout the past year. While there was discussion and debate of legal and other issues, at no time did employees express specific concerns to me about policies or procedures that I can recall.

Last year, we hired an independent professional firm to conduct an Agency-wide assessment and make recommendations. These consultants, who work frequently with federal agencies, are listed on the GSA schedule. After looking at several more expensive national firms, OSC hired the consulting firm to do a short term project, in full conformity with the FAR, and signed off on by our BPD contracting officer.

The assessment team had several points of emphasis. They conducted an investigation into the laws, rules and regulations for which OSC has responsibility and evaluated the processes and procedures used by OSC to administer those laws. They interviewed approximately 80% of OSC employees individually and also talked with all employees during numerous focus groups. All of this was done with the intent of giving OSC the best possible advice on how to restructure and manage this agency.

The assessment report was not the only source of information that I used to reorganize the agency. It was one tool among several. It was never my intent that the assessment report would have overriding authority and advice on how to manage and structure the agency. I knew there would be issues within the assessment report that I agreed with and some I would not. My decisions were made by using and consulting all sources of information afforded to me over the first year as the Special Counsel including my own personal discussions with staff and personal observations.

The overall paradigm, consistent with the mission of the Agency, was to delayer the current OSC organization structure, "power down" from a DC-centric organization to a field office structure. This has worked well. Furthermore, I sought to keep valued employees in positions of leadership, and keep existing teams intact as much as possible, since they were working well together. Previously, there were three separate investigative and prosecution divisions (IPDs), each headed by SES, each with different procedures and policies. While the team approach worked well, the inconsistency among the divisions was not feasible. Under the new structure, there will be one IPD made up of four field offices.

The restructuring will also include a new field office in the upper Midwest for nation wide geographic representation. This has generated much interest and concern by some, but I assure you there is good reason for the new office. The management directed reassignment of specific

employees to San Francisco (one SES), Dallas (4 employees) or Detroit (7 employees) is based on the precepts of strategic management of human capital. As you know, relocation is a fairly common practice in the federal workplace. In FY 2003, for example, 22,000 federal employees were relocated, according to a recent OMB report, as reported in GovExec.Com on January 27, 2005.

The field office format will result in more evenly distributed OSC investigations and prosecution resources throughout the nation with approximately 8-10 individuals in each field office and an even distribution geographically throughout the country. The upper Midwest was the only area without an OSC field office. In the 1980's, OSC had six different field offices.

We consulted with GSA about a Midwest field office. Chicago and other regional cities had no federal space available for at least a year and the Chicago space was very expensive. GSA mentioned that Detroit had federal space that was available immediately and required no refurbishing costs.

All of the employees that have been reassigned are valued investigators and prosecutors that will remain assigned to the IPD. The personnel assigned to Detroit are all part of the same existing IPD team. In fact, they are the only wholly existing IPD team, with SES leadership, that was intact at the time of the reorganization. The other members of this division had been previously detailed or reassigned in recent years. Further, the Alternative Dispute Resolution (ADR) employee was also part of this unit and worked closely with the unit's SES who was instrumental in developing the ADR program in recent years.

The individuals assigned to the Dallas office are primarily the remaining members of a unit that had been disbanded throughout 2004. Moving these employees to Dallas allowed us to keep other teams together. This way only one team was materially changed.

In no way were any of these employees "targeted" as has been alleged. Nor were they reassigned for any other improper purpose. The implication that these employees were reassigned because they "complained or disagreed" with managerial policies is absolutely false. I have no idea where this comes from. I have no knowledge of any reassigned employee having any particular disagreement with any OSC policy. In this vein, not a single employee, reassigned or not, has to my knowledge disagreed openly with agency policy. I have been unaware of any specific opposition of management by any one of the reassigned employees in San Francisco, Dallas or Detroit. These were valued employees of OSC.

When we announced the reorganization plan on January 7, 2005, the Human Resources director asked employees to indicate, within ten days, whether they chose to accept the reassignment so we could get the entire process started. The time frame was necessary to continue with the business of the Agency. Some concern was raised about the short initial time frame, so we ultimately extended the total time to 20 days.

You have also asked why we did not seek volunteers for the reassignments. This was not the management approach we wanted to take. We wanted to put the right people in the right job at the right time. We know the individual talents of our employees and we know where they can best serve this agency. Using an ad hoc, shot-gun approach would have drastically reduced the chances for success. Most significantly, the mix-match approach of soliciting volunteers would have destroyed

our management decision to send one intact, successfully operating team to start the new field office. Finally, it is highly doubtful we would have received more than one volunteer, as events after the fact have indicated.

Please keep in mind that the new field office is only one of many parts of the reorganization that will help OSC better meet our mission. We are preparing to change and implement new standard operating procedures (SOP's) for the administrative and substantive handling of cases. This is a large undertaking and can only be accomplished with strong leadership in the field to ensure that these changes actually occur and become the culture of OSC. At the same time, we will implement vigorous new training schedules that will cross-train personnel to work in other areas of the law. In the past, the lack of cross-trained personnel was a major impediment to resolving backlogs before they overwhelmed the agency. The new smaller modular field offices will be more easily trained and capable of addressing future backlogs. Placing senior leadership in the field offices was an integral part of successfully implementing these new SOPs and cross-training initiatives.

In addition, a new customer service unit will be created to better serve the public and federal employees. Having specific personnel assigned for this purpose will help OSC gain a reputation of better customer service within the federal workforce. Currently, this function is handled by rotating OSC investigators and attorneys for specific inquiries from the public and assistance with filing complaints and/or filling out forms.

Lastly, OSC has a full-time FOIA officer and we take these inquiries seriously. Unfortunately, there is also a backlog of FOIA requests that I inherited upon my arrival at OSC. We are working expeditiously to respond to all of them in the order they were received in compliance with the law.

Budget Issues

You also asked about budgeting for the new field office. OSC was facing a shortage of office space in Washington, D.C. The agency plans to have 113 FTE on board by the end of FY 2005, which requires acquiring additional rented space. Initial consideration was given to possible expansion of the Washington, D.C. office. The cost of a DC space expansion in the same building as the headquarters would have been higher in the first year, with escalations every year. Given the now-public budget cuts for FY06, management changed course on the more expensive DC-based office expansion.

When it became clear that there were a variety of reasons for a Midwest Field Office, and that the best solution was an office in Detroit, we analyzed the financial aspects of adding space in Detroit instead of acquiring space in the more expensive location of Washington, DC. The fact that these savings are recurring more than makes up for any one-time costs associated with the startup of a new field office.

Summary


Contrary to your letter to GAO, there is no "possible" violation of any civil service law, rule or regulation. We targeted no specific employees, but instead we were guided by the goals of maximum fairness and efficiency of the service and strategic realignment of resources and human capital by delayering management, and making OSC less DC-centric, to achieve all of the goals stated in my directive. There is no evidence of any wrongdoing or failure to follow all applicable laws and regulations.

In an effort to deal with a chronic backlog and structural inefficiencies we have reassigned 12 persons. Given the expense in time and resources of an investigation for both GAO and OSC, we suggest that this letter provides answers to all questions you had. If you still want to know more, perhaps a staff briefing would be more prudent and useful.

Please be assured that we share the same goal of securing justice for all federal employees who come to the Office of Special Counsel expecting results. OSC exists to create a more efficient federal workforce, root out waste and abuse, and inspire integrity and public trust. I am quite proud of the job that our dedicated career staff has done in the last year.

I look forward to working with you and your colleagues to achieve this and more during my tenure.

Yours truly,



Scott J. Bloch

National Review Online.....print version

Rod Dreher

Scranton Scandal

Traditional Catholics are not immune to sex scandals.

February 7, 2002 9:15 a.m.

Are sex scandals involving Catholic priests the fault of moral and theological liberalism? Some conservative Catholics think so. But an ugly case unfolding now in Pennsylvania involving allegations of homosexual misconduct, alcohol abuse, and financial fraud on the part of a traditionalist religious community suggests otherwise.

In late January, Scranton Bishop James Timlin confirmed to the local media that he had reassigned — but not suspended — the two leaders of the traditionalist Society of St. John, pending the outcome of an investigation into the purported sexual molestation of a young man, who was a minor at the time of the alleged crime. The priests are the Rev. Carlos Urritigoity, the society's superior-general, and his chancellor, the Rev. Eric Ensey. Auxiliary Bishop John Dougherty said the move came in the wake of a January 12 "confidential letter" the diocese received from an adult male alleging molestation against one of the two priests, and improper contact with the other.

Jeffrey Bond, who was tapped by the society to run its planned college, but who has turned on the order after discovering what he considers evidence of financial and sexual impropriety, believes Bishop Timlin's actions are too little, too late. And the grassroots-activist group Roman Catholic Faithful has called for the resignation of Timlin, whom it has accused of foot-dragging to protect the order.

"Last summer, I knew we had to separate the college from the Society," Bond says. "First, because they were raising money in our name but not giving it to us, and second, because I found out that Fr. Urritigoity had a problem with sleeping with young men."

He's not using the verb as a euphemism for sex between the priest and others, which he says he cannot prove. Urritigoity, though, has a strange habit of sharing his bed with seminarians and other young men, say Bond and others formerly associated with the Society. Bond and his lawyer provided NRO with two affidavits and a letter from a Franciscan friar, all of whom say they witnessed activities involving alcohol and improper physical intimacy among Society priests and young men — including teenage boys — in their company.

The Society of St. John began as a breakaway group from the Society of St. Pius X, a traditionalist Catholic order founded by the late Archbishop Marcel Lefebvre. When Bishop Timlin canonically established the Society in his diocese in 1997, he gave its members temporary housing in St. Gregory's Academy, an all-male Catholic boarding school sponsored by the Priestly Fraternity of St. Peter. Jude Huntz, who was head dorm manager, stated in a sworn affidavit that on several occasions, he saw Society members getting male students drunk. Brother Alexis Bugnolo, a Franciscan friar who overnights in the Society's quarters in 1999, says in a letter that he is prepared to testify in court that he witnessed during that stay several instances of homosexual activity among students,

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including one boy who later became a postulant of the Society.

Later that year, Society members relocated into two houses on a vast rural Pennsylvania estate it had purchased for \$2.2 million. That did not end the Society's relationship with St. Gregory's boys, though. One former Society postulant, who was with the order for six months in the year 2000, told NRO that 18- and 19-year-old St. Gregory's graduates would visit Urritigoity on weekends, many of them spending the night in the priest's room, which contained only one, single-sized bed.

A sworn affidavit provided by the 32-year-old California man, who asked NRO to withhold his name, details several instances in which he claims to have seen young men in compromising positions with Urritigoity, and the Society's priests plying young men with booze. On one occasion, the ex-postulant alleges he saw a man who had been extremely drunk the night before, leaving the 37-year-old Urritigoity's bedroom in the morning.

"None of them ever told me they had had intercourse with him, but it was all very weird," the ex-postulant said. He added that when he shared his concerns about "musical bedrooms" with others in the Society, "I was made to feel that I was the one with the problem."

Meanwhile, the Society was presenting to the public an appealing image of a vibrant new religious community based on the Latin Mass, classical scholarship, and Catholic cultural tradition. Its well-designed [website](#) promotes the Society's vision for an ideal Catholic priestly and lay community — including the building of a model traditionalist Catholic village — which brought donations pouring in from sympathetic Catholics.

Behind the scenes, though, the Society was "spending money like a drunken sailor," alleges a prominent Catholic businessman who served on its board of advisers, and who helped the Society raise money.

"I was concerned because they had a certain arrogance and a certain attitude about things," says John Blewett, who is now managing editor of *Latin Mass* magazine. "They were careless financially, and very haughty about what they could do. That's not the kind of humility and attitude one brings to that kind of endeavor."

Matthew Sawyer, an Illinois businessman and former board member, says he was rebuffed by the Society's leadership when he questioned them about what he describes as their "wild spending sprees," and the possible illegal handling of their finances.

"Then I petitioned Bishop Timlin, and he couldn't have cared less," says Sawyer. "He said that's the way they are."

In public letters to the bishop, who is a favorite of traditionalist Catholics, Bond accuses him of looking the other way as he and others presented evidence of the Society's financial mismanagement and sexual shenanigans. Among his allegations: that Timlin knew, or should have known had he done a background check as required by diocesan guidelines, that Urritigoity was a potential danger to boys at St. Gregory's.

Bond provided NRO with a copy of an undated letter, written in Spanish, purportedly sent by a Society of St. Pius X seminary in Argentina to SSPX counterparts in the United States, warning them that Urritigoity had been caught numerous times engaging in homosexual activity while a seminarian there. Bond came across the document while investigating Urritigoity, and says he e-mailed the

information to Timlin on December 8.

"Why did I have to be the one to find this out about Fr. Urritigoity's past?" says Bond. "If Bishop Timlin had bothered to do a background check before he let this guy work with kids, as the diocesan policy says he's supposed to, he would have found it out on his own."

A spokesman at SSPX's American headquarters declined to comment on the letter, calling it "a private communication."

For its part, the Diocese of Scranton issued an angry January 24 statement categorically denying Bond's charges (the official statement, which is not available on the diocesan website, can be found [here](#), along with a short statement by the Society, and responses by Bond. The diocese's statement referred requests for further information to its attorney, but does not identify the lawyer. Calls to the diocese's spokeswoman were unanswered. Nor did the Society answer NRO's request for comment.

The whole mess may soon end up in court. The young man who sent the January 12 letter to Timlin claiming he had been molested by a Society priest is said to be preparing a lawsuit against the Society and the diocese. Bond is also contemplating a lawsuit that would seek to hold the Society and Timlin responsible for the collapse — temporary, he hopes — of the [College of St. Justin Martyr](#).

Meanwhile, both the implosion of the Society and the bishop's actions have left some Catholics feeling angry, betrayed, and alienated from the traditionalist movement.

Sawyer describes the Society's priests as, "Wolves in sheep's clothing. I gave them my all, and they just kicked me in the teeth. They're lawless renegades, and the way they handled their money and property, they've got to be in violation of their 501(c)3 status."

The ex-postulant from California, whose family had donated a large sum of money to the Society, is, like Sawyer, estranged from traditionalist Catholicism.

Blewett, whose *Latin Mass* magazine is the editorial flagship of the movement, agrees that scandals like this rob good people of their hope, and make them cynical. And the fallout will, unfortunately, affect even good traditionalist orders.

"When these brushes tar, they tar widely," he says.

Bond says until this happened, he believed sexual disorder in the clergy was the fruit of modern liturgy and liberal bishops. Now, he says, he has learned the hard way that personal orthodoxy does not guarantee that a bishop will do the right thing when it comes to governing his diocese, particularly in the matter of protecting kids from potential sexual predators. And he is convinced even a bishop as well-liked by Church conservatives as Timlin must be held publicly accountable.

"I've gotten my share of people telling me to be quiet about this, and I keep telling them that you can't say we have to avoid scandal, and let people get harmed," says Bond. "Your duty is to stop the evil and let God take care of the rest. The scandal is caused by the actions of these people, and what you're doing is trying to stop it."

National Review Online.....print version

Rod Dreher

Scranton Scandal-A Follow-up

The bishop speaks.

February 15, 2002 9:20 a.m.

EDITOR'S NOTE: This piece is a follow-up to "[Scranton Scandal](#)," which appeared in NRO on Feb. 7, 2002.

The Roman Catholic bishop of Scranton, Pa., says a campaign against him and the Society of St. John, a conservative religious order based in his diocese, is being waged by a "very determined, very vengeful, and very talented" ex-Society employee who was hired to head a fledgling college under Society sponsorship.

But Bishop James Timlin stopped just short of accusing Dr. Jeffrey Bond of paying him back for refusing to allow the separation of the school from the Society.

"This public campaign began after I refused to give [Dr. Jeffrey Bond] permission to have the college. What his motivations are I cannot say," says Timlin. "I thought we were friends until that happened. He turned on me immediately."

Fr. Dominic O'Connor, a Society priest, echoed the bishop's comment, telling NRO that he finds it odd that Bond only began complaining about alleged sexual improprieties after the bishop, on October 15, 2001, officially turned down Bond's request for the college's independence.

Yet Bond has long maintained he sent an e-mail to Society priests on September 27 — nearly three weeks before the official break — asking them to denounce Urritigoity's alleged bedroom practices.

In a wide-ranging interview, Timlin addressed several allegations made against him and the Society by Bond and others once affiliated with the 19-member religious order. Last Thursday, NRO [reported](#) on a scandal involving allegations of sexual and financial impropriety against priests of the Society. Critics also faulted Timlin for what they consider to be his protection of the Society.

In Timlin's version of events, Bond and Fr. Richard Munkelt, an ex-Society priest, approached him last summer to ask if they could separate the College of St. Justin Martyr — which was then, as now, still on the drawing board — from the Society over "liturgical differences." According to the bishop, Bond and Munkelt wanted to use a 1962 Latin rite mass at the college, and not a more modern liturgy preferred by the Society.

"I was trying to be the go-between here and try to make things amicable," Timlin says. "I said [the separation is] all right with me as long as it's all right with the Society. It's their baby. For you to run with it sounds like a hostile takeover."

Bond denies that questions of liturgy ever entered the dispute, and says he sought the separation because the Society wouldn't give the college proper funding, and because he was becoming

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convinced there were homosexual problems among some Society priests that would compromise the college's mission.

Timlin says Bond then began making accusations that Fr. Carlos Urritigoity, the superior-general of the Society, was sharing his bed with teenage boys — though not necessarily engaging in sexual relations with them.

"When I heard that this was going on, I called the whole bunch of them [Society priests] in and ordered them to stop it," Timlin says. "They denied any wrongdoing, and said they did things like that only when they were crowded. They denied any immoral activity. I told them that they had to understand that in this climate, this is outrageous. You have to avoid even the appearance of evil."

The bishop says the priests were "very obedient" and promised to stop. He insists that there is no evidence that anything "immoral" — by which he means homogenital activity — happened between Urritigoity and the teenage boys. Timlin says he told James Bendell, a lawyer representing Bond, that Urritigoity "may have slept with boys, but that's not a sin. I agreed with [Bendell] that it didn't look right, and it should stop."

Bond still maintains the bishop is being naïve at best, saying that, "People should know their bishop doesn't think there's anything immoral about a boy of 15 or 16 sleeping in bed with a priest in his private chambers."

Timlin says he also dressed the Society priests down over reports that they had served alcohol to minors. According to the bishop, the priests only did so at meals and receptions, and did not get boys falling-down drunk, as some critics have alleged. The bishop said the Society priests told him they didn't realize social drinking of that sort was against the law, and would stop.

In 1999, Timlin learned that a priest-in-training at Urritigoity's previous home, a Society of St. Pius X seminary, had formally accused Urritigoity of having made an unwanted sexual advance on him. Timlin says he sent a fact-finding team to the seminary at once, and they returned with evidence they then presented to an independent review board. The case against Urritigoity, the board decided, amounted to the accused priest's word against his accuser's, and was therefore deemed inconclusive.

"They unanimously recommended that there wasn't anything proven here," Timlin says. "On the basis of that, we put that to rest."

In e-mails and telephone conversations, Bond has said the bishop ought to have informed St. Gregory's Academy, an all-male boarding school where Society priests were functioning as chaplains, of the accusations against Urritigoity (the bishop tells NRO he cannot remember if he did or did not do this). Bond further says that the bishop, with an "inconclusive" judgment from his advisers, should have erred on the side of caution and removed Urritigoity from a ministry in which he had close contact with youth.

Bond has also criticized the bishop for not performing background checks on the Society's priests before allowing them to live and function as chaplains in the boys' school — something that diocesan policy requires of all priests who have close contact with children.

Timlin responds that no background checks were performed because "it never seemed to be indicated. We still don't think it's necessary."

Yet last month, the bishop suspended Urritigoity and his deputy, Fr. Eric Ensey, pending the outcome of an investigation into formal allegations of sexual molestation made by a father on behalf of his son, a former St. Gregory's Academy student.

Both the bishop and the Society's O'Connor lament that graduates of St. Gregory's who have had contact with Urritigoity find their moral integrity, and the Society's, in question.

"I've gotten all kinds of letters from students who were there, who praised [Society priests] to the skies for giving them a manly faith, because of the way they were treated there," Timlin says.

Adds O'Connor: "There's a certain amount of anger developing not only among the Society of St. John, but among alumni of St. Gregory's Academy, that someone would make these suggestions about young men who are not only not homosexual, but who are actually very virile."

Alan Hicks, the headmaster at St. Gregory's, which is controlled by another priestly order, denied that any priest of the Society, while living at the school, shared a bed with teenage boys at the academy. He provided an October 24th letter from Bond in which Bond said there was no evidence that Urritigoity slept with boys of the Academy, and attested to Hicks's prudence.

"That's what I believed at the time happened," Bond replies today. "I thought St. Gregory's was a victim. I now believe Alan Hicks was negligent."

Bond says a former St. Gregory's dorm father admitted to Hicks that he had shared a bed with Urritigoity. When asked by NRO about this allegation, Hicks replied, "I'm not going to comment on that."

Timlin admitted that Urritigoity had been sent for evaluation for homosexual tendencies once before, and was cleared by a psychologist. And the bishop angrily denies Bond's claim that he told lawyer Bendell that he would give Bond a college if Bond would cease his criticism. Says a fiery Timlin: "That is absolutely untrue. There's not a shred of truth in that at all."

Both the bishop and Society priest O'Connor questioned the character and credibility of those making accusations of sexual impropriety against the Society. The bishop said the young man whose formal complaint sparked the January suspension of Urritigoity and Ensey was a "problem child" at St. Gregory's student.

Says O'Connor: "As alumni of St. Gregory's will testify, he was constantly making up stories at the Academy. Two years after the [molestation] incident he alleges occurred, he applied to join the Society" — which doesn't make sense, the priest reasons, if a Society priest had truly harmed the boy.

O'Connor calls "unstable" an ex-postulant who claims to have witnessed on several occasions teenage boys being served alcohol to the point of drunkenness by Society priests, and leaving Urritigoity's room in the morning in their underwear. He characterizes the man as self-centered and resentful, and says the 32-year-old left the Society after several unhappy months for "health reasons."

According to the California man, who asked NRO to withhold his name, he quit the Society because he couldn't stand seeing Urritigoity behaving in what he regarded as a sexually predatory fashion toward teenagers.

"It doesn't surprise me that they would start a disinformation campaign against anybody who accuses them," Bond tells NRO. "I remember before I met Matt Sawyer"-an early donor and adviser to the Society, who pulled out over what he considered its financial irresponsibility — "they were calling him mentally unbalanced. Their willingness to defame people is amazing."

Turning to the allegations of financial misconduct against the Society, Timlin strongly denies that he was unresponsive to complaints made by Catholic laymen advising the Society. The men previously told NRO that they had explicitly warned Timlin that the Society was spending money lavishly and unwisely. Timlin says today that indeed there were serious problems with the Society's finances, but that he moved responsibly to force the priests to clean up their act.

"These are young men, inexperienced in these matters," Timlin says, of the Society. "And I know they have very good taste. They may have been outlandish in their spending, but we've taken steps long ago to correct that. ...Their finances have been under control for some years."

O'Connor says the criticism from the ex-advisers comes because they resented Urritigoity's not taking their recommendations for how best to run the Society. And he denies that luxurious furniture was a foolish purchase.

"They would say to buy an expensive dining-room table was imprudent," says O'Connor. "We have, on the other hand, a benefactor of ours who says the opposite, that what attracted him to the Society was the image of stability we projected."

Though no lawsuits have been filed against either the Diocese of Scranton or the Society of St. John, Timlin is not hopeful that any of these matters will stay out of court.

"There might be a settlement here," he says. "I'd like to bring it to some conclusion, but the lawyers claim there's nothing [to the accusations] at this point. I don't want a lawsuit, but I don't see how we can settle matters without going to court."

O'Connor says the Society still has faithful donors, and that it will weather this crisis and continue with its plans. He believes that Bond is slandering Urritigoity and Society priests, but says no defamation lawsuit will be filed against Bond, owing to expense and the public scandal that would arise from forcing St. Gregory's alumni to testify.

Says Bond: "I've been on the phone with boys from St. Gregory's who say they slept alone with Father U. in his quarters, because that's how he gave spiritual direction. If all the boys say they got their manly faith from these guys, how could it harm them to give depositions? The reason [the Society] won't sue is that we could then put Timlin, Urritigoity, and others under deposition."

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THE SEDUCTION OF THE SOCIETY OF ST. JOHN Homosex and Money Scandal Poison Catholic 'City' - Bishop Tries to Curb Publicity

by Michael Chapman
(Part one of two articles)

Fr. Carlos Urrutigoity, superior general of the Society of St. John, likes to sleep with his seminarians. He also likes to sleep with other young men under his spiritual direction. In bed. Arm in arm. Man to man. Fr. Urrutigoity has a history of such behavior.

Before you explore any other pages on our site-

Not surprisingly, allegations of homosexual activity forced him to leave his first seminary in La Reja, Argentina. Similar rumors surfaced at his second seminary in Winona, MN, where he was dismissed for subversive activities. Now, new allegations may force him to leave the Society of St. John (SSJ), which is in the diocese of Scranton, PA, overseen by Bishop James Timlin.

RCF's Newsletter, A.M.D.G.

But Urrutigoity isn't the only one in trouble. The chancellor of the SSJ, Fr. Eric Ensey, has been accused of repeatedly molesting a young man from a Catholic school near the Society in Shohola, Penn. And both Urrutigoity and Ensey and other SSJ priests are accused of plying high school boys with alcohol. Furthermore, the Society apparently has engaged in gross financial mismanagement of the millions of dollars given to it by devoted Catholics. And it may have committed fraud in soliciting funds for projects that it knew were not feasible.

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Bishop Timlin learned about the homosexual allegations against Fr. Urrutigoity in 1998 - more than three years ago. But Bishop Timlin did not remove Urrutigoity. Nor when news about Fr. Urrutigoity's "sleeping sickness" (i.e., sleeping with young men) surfaced, did the bishop alert parents or donors. The bishop also did not alert students or their parents at the nearby Catholic school -St. Gregory's Academy - where Fr. Urrutigoity and the Society had first taken residency. Bishop Timlin says he told the Society and Fr. Urrutigoity to stop sleeping with young men. And the same goes for the alcohol. Bishop Timlin told the Society they could not serve alcohol to young men under age 21. "I read them the riot act," said Bishop Timlin. "They were very obedient. They said, 'Okay, we'll stop.' That was the end of that."

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Well, not exactly. The Fr. Ensey case, other allegations of homosexual activity, possible fraud, and a charge that the Society and the bishop colluded to cover up the scandal, especially from donors, show that things look very un-Catholic for a low-rung religious group that sells itself as "working toward a Catholic restoration." And like most cases of priests, young men, and alleged homosexual abuse, the Church in Scranton seems to be moving at a glacial pace, its primary goal to save the face of the diocese and the Church.

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Bishop Says No "Immorality" in Sleeping with Boys

The Society of St. John is a clerical association in the Scranton diocese. Bishop Timlin established the association in May 1998. Through direct mail and web page pitches for donations, the Society describes itself as "a new generation of priests working toward a

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Catholic restoration through common life and worship, the founding of schools and colleges, and the development of small communities where an integrally Catholic life may be lived by laity and religious alike."

It's neo-traditionalist advertising. In its slick direct-mail packages the SSJ has pushed the idea that it is building a medieval-like community where all aspects of life are focused on God and the True Faith - a truly Catholic society, 24/7.

The priests who started the Society had been priests or seminarians in the Society of St. Pius X. They were thrown out of the Society of St. Pius X because of subversion: They knowingly conspired to set up their own religious order, the Society of St. John. "They just came here out of the blue," said Bishop Timlin in an interview with RCF. "I set them up." The SSJ priests, ordained and incardinated in Scranton, are priests for that diocese. "They're not a full-fledged religious community, I'm responsible for them," said Bishop Timlin.

The leaders of the SSJ and the main figures in the homosex and money scandal are Fr. Carlos Urrutigoity, Fr. Eric Ensey, Fr. Basel Sarweh and Fr. Daniel Fullerton. In describing Fr. Urrutigoity, Bishop Timlin said, "He's highly intelligent. He's ahead of the pack. He bristles with ideas." Timlin insisted that Urrutigoity "is not a homosexual."

Carlos Urrutigoity first studied as a seminarian under the Society of St. Pius X in La Reja, Argentina. He was dismissed from that seminary reportedly for homosexual behavior. It was alleged, for instance, that Urrutigoity groped other men and would sneak into other mens rooms at night, uncover them and watch them. After his dismissal, Urrutigoity applied for admission to a Society of St. Pius X seminary in Winona, Minn. At that point, the Society of St. Pius X asked Urrutigoity to prepare a defense against the allegations from Argentina. His defense led Society officials to accept him. But they were told, reportedly by Archbishop Marcel Lefebvre himself, to keep a close watch on Urrutigoity. Then, again, accusations of homosexuality surfaced. Urrutigoity allegedly paid excessive and unwanted attention to certain young seminarians. At the same time, Urrutigoity was conspiring with others to form the Society of St. John. Consequently, he was removed from the Society of St. Pius X.

Shortly thereafter, Urrutigoity allegedly made a homosexual advance toward a fellow seminarian who had joined him to start the Society of St. John in Pennsylvania. The seminarian, shocked at the behavior, broke his friendship with Urrutigoity and eventually returned to the St. Pius X seminary in Winona. Bishop Bernard Fellay, SSPX, subsequently informed Bishop Timlin about the incident, calling it "a grievously reprehensible action." Timlin, in turn, assigned Scranton Auxiliary Bishop John Dougherty to investigate the matter.

At the time, Fr. Urrutigoity and his followers were living at St. Gregory's Academy, a Catholic high school for boys, in Moscow, PA under the auspices of the Priestly Fraternity of St. Peter (FSSP). During the July 1999 inquest, the seminarian told Bishop Dougherty, an attorney, and another priest that Fr. Urrutigoity had made an unwanted sexual advance toward him. The seminarian further said that he had no intention of suing the Church or filing criminal charges against Urrutigoity. He only wanted to ensure that Urrutigoity would not get the chance to abuse other seminarians. He warned Bishop Dougherty that if Urrutigoity were not stopped, others would be molested. Bishop Dougherty, according to the seminarian, said to him, "I believe you." Bishop Timlin, for his part, told RCF that he does not know what Bishop Dougherty told the seminarian.

The seminarian further testified that he told Fr. Eric Ensey about the incident who, in

turn, told Fr. Daniel Fullerton. They both confronted Fr. Urrutigoity with the charge and he admitted it, said the seminarian. (Fr. Ensey, facing allegations of homosexual abuse himself, has apparently left the Society; see below.)

Despite Urrutigoity's history and the testimony of the seminarian, Bishop Timlin did not think the case was clear. So he set up a committee composed of lay people and himself, Bishop Dougherty, and a diocesan attorney. They apparently reviewed the facts of the Winona case. They found that "there was no conclusive proof that it happened," said Bishop Timlin. Also, "Fr. Urrutigoity denied it, he absolutely denied that there was anything immoral," says Timlin. When it comes to a priest sleeping with young men, Bishop Timlin says Fr. Urrutigoity's behavior was imprudent but "not immoral."

"Fr. Urrutigoity knows the seminarian," said Bishop Timlin. "They were very good friends. He was a seminarian who has since left. And he refuses to come forward and give any testimony in this case at all." RCF attorney James Bendell notes that the seminarian said he had no intention of suing the Church. Further, the seminarian told an SSPX priest and Dr. Jeffrey Bond, president of the College of St. Justin Martyr, which was at that time affiliated with the Society, that he would testify in court if necessary. However, Fr. Ensey, according to Dr. Bond, convinced the seminarian not to send an affidavit to Bond (see below).

Following that investigation in 1998, Fr. Urrutigoity and his followers were allowed to stay at St. Gregory's Academy. There, they served as chaplains to the boys at the school. But more problems mounted.

While at St. Gregory's, Fr. Urrutigoity and other SSJ priests allegedly gave the high school boys alcohol and coaxed some of them into bed. Two "dorm fathers" reportedly slept with Fr. Urrutigoity, although they deny anything sexual occurred. One source, who asked to remain anonymous, told RCF that Fr. Urrutigoity may have slept with up to 20 boys at the school. "Many of the boys were drunk with Fr. Urrutigoity and then slept with him," said the source. Another source, Fr. Paul Carr, the North American district superior of the FSSP, has disclosed that while he served as chaplain at St. Gregory's in March 1998, he discovered boys drunk in the dormitory. He then found out that members of the SSJ had provided the alcohol to the boys, a serious crime in Pennsylvania.

Bishop Timlin said he knows that Urrutigoity slept with boys at St. Gregory's but that is no reason to inform the boys' parents. The diocesan attorneys advise against that, said Timlin. Further, Fr. Carr told Bishop Timlin last year about Fr. Urrutigoity's behavior. It apparently did not sway the bishop.

At the start of the school year 2001, Fr. Carr told the Academy boys that they could have no contact whatsoever with the SSJ. The school now does not allow the boys to go anywhere alone with a priest.

Society Priests Downplay "Sleeping" Scandal

In August 2001, the academy's headmaster, Alan Hicks, told Dr. Jeffrey Bond about Fr. Urrutigoity's bizarre sleeping habits. Dr. Bond, as noted, is the president of the College of St. Justin Martyr. It was launched in 1998 as a legally separate but integral part of the Society of St. John; until recently, the Society continually marketed the college in its publications for donations.

Dr. Bond, who had previously taught at St. Thomas Aquinas College in California, was persuaded by friends and Fr. Urrutigoity to head the new college. He agreed and relocated with his wife and eight children to Pennsylvania in November 1999. He started working officially for the Society in May 2000. "I was completely sold on the idea," Dr. Bond told RCF. "Fr. Urrutigoity is very charismatic and I trusted him. I can see now with hindsight how naïve I was. But who wouldn't trust what seemed to be honest, traditional-minded priests on a good mission?"

The situation for Dr. Bond, whose main job was to get the college off the ground and running, deteriorated quickly. He soon learned about instances of apparent fraud, dubious bookkeeping, credit card misuse, mismanagement of funds and deceit. "The Society paid my salary, in exchange for teaching their men, but they never gave a penny of all the money they raised to the college," said Dr. Bond. Yet the Society was pitching the college to devoted Catholics to secure donations. Dr. Bond began to take steps to try to preserve the College of St. Justin Martyr and ensure its independence from the Society. But as that struggle ensued, Alan Hicks contacted Dr. Bond. "At first I thought Fr. Urrutigoity had pet, wacky theories about male bonding and was not a homosexual," Dr. Bond told RCF. "Then, more information came in that led me to believe that Fr. Urrutigoity was a homosexual." In a Dec. 8, 2001 email to supporters of the SSJ and "All Concerned Catholics," Dr. Bond explained Fr. Urrutigoity's odd behavior: "I have been told by a number of young men who have slept with Fr. Urrutigoity that he sleeps 'very close,' meaning that he maintains full body contact with his arms around his sleeping partner. These young men have also informed me that Fr. Urrutigoity's modus operandi is to encourage them to come to his room for late night spiritual direction. He then invites them into bed with him under the pretext of their being 'brothers' with no need to concern themselves with any possibility of impropriety. This approach is aided by Fr. Urrutigoity supplying these young men with alcohol to weaken their natural resistance."

Would any rational Catholic parent allow their son to sleep with their parish priest in such a way? What seminary advocates that a superior supply booze to his seminarians and then sleep with them? Yet Bishop Timlin told Dr. Bond: "No sin was committed. I've investigated. There's no immorality."

However, in speaking with RCF, Bishop Timlin noted that once he heard about the "sleeping" matter, he called Fr. Urrutigoity and the other SSJ leaders in for a meeting. "I said 'This is terrible, it looks bad, we have to avoid even the appearance of evil,'" said Bishop Timlin. "I told them, 'You can't do this. In this country, in this climate, people are going to read things into it. You must stop.'" Timlin says he also ordered them to stop supplying alcohol to the seminarians. (It is a criminal offense in Pennsylvania to provide alcohol to people under the age of 21 and people have gone to jail for it.) "We stopped it," said Bishop Timlin. When asked how he knew that, Bishop Timlin said, "because they told me they stopped it. ... They're very obedient." Timlin added that the Society subsequently wrote rules that apparently forbade priests from sleeping with seminarians and banned alcohol from SSJ premises.

Bishop Timlin admitted to RCF that the SSJ leaders "minimized the sleeping" issue in their discussions with him. He also said that "Fr. Urrutigoity admitted that he slept with people [young men] but denied that there was anything immoral about it." Fr. Basel Sarweh, a member of the Society, first told people that Fr. Urrutigoity's "sleeping sickness" was the result of a cultural misunderstanding. As an Argentinean, Fr. Urrutigoity apparently was not tainted by America's puritanical heritage. When that excuse didn't work, Fr. Sarweh started claiming that the sleeping issue was caused by "overcrowding" at the SSJ's property in Shohola. Another SSJ priest, Fr. Daniel Fullerton, explained the "problem" in an email to Catholic apologist and author Michael Davies: "3. The third area of concern is

reception of guests. The Society would like to implement the Benedictine spirituality toward guests: 'In receiving guests, you receive Christ.' At present, our space is limited, having too many members, and having provided lodging for board members of the college. Priests frequently visit us for retreat and rest from their busy and lonely schedules. St. Gregory Academy graduates and their friends have descended en masse upon our dwellings. We have made available whatever space we could; even to opening office and room space to accommodate overnight stays.

"Fr. Urrutigoity has, in my opinion, sacrificed most in this area, allowing his office, hallway, and chapel area (where he sleeps on the floor) to be occupied with, at times, great numbers who don't mind floor and sleeping bag accommodations. Since some concerns about perception in this matter were presented to the attention of our Bishop, he has asked that we establish written pastoral guidelines avoiding all situations that might be occasion for misunderstanding. ..."

Fr. Fullerton did not mention the boozing, the late-night spiritual "guidance," or that Fr. Urrutigoity slept one-on-one with young men in the same bed. The scandal is not about a priest in a sleeping bag in the same room with boys in sleeping bags. It is an issue of a mature and sophisticated priest sleeping in the same bed with boys one at a time behind closed doors. As some sources have explained, Urrutigoity has slept in the same room with other boys, slept one-on-one with boys and done nothing sexual, and slept one-on-one with some boys and reportedly molested them. The point is cover. If someone steps forward and accuses Urrutigoity of homosexuality, he can produce other boys to say they slept with him and nothing happened.

Bishop Timlin's right-hand man, Aux. Bishop Dougherty, reportedly told Dr. Bond and another witness that he believed Urrutigoity was a "cult leader" who was "capable of pederasty at any time." Bishop Dougherty also reportedly said that Urrutigoity was "grooming" young men for sexual encounters. Bishop Timlin said that Dr. Bond "twists things around" and "misquoted Bishop Dougherty." However, Bishop Timlin conceded that Bishop Dougherty "may have made a statement about cult." "I haven't questioned Bishop Dougherty about the cult-like statements," Bishop Timlin told RCF. In response to Timlin's claims about misquoting people, Dr. Bond said, "he' s lying," adding that Dougherty took notes on a yellow pad during their meetings. "I'm waiting for them to say that under oath," Dr. Bond told RCF. He further disclosed that in a conversation with his lawyer, Bishop Timlin suggested that Dr. Bond was emotionally unstable and said that Bond would never work anywhere else after the dust settled on this scandal.

On another note about Fr. Fullerton, he reportedly encouraged young men to swim naked at the Society's property in Shohola. Bishop Timlin was informed of that activity in 1999 but apparently claimed no wrongdoing occurred. That same year, a religious visited St. Gregory's Academy and witnessed instances of inappropriate behavior involving the SSJ. He has now come forward and agreed to name names and provide an affidavit.

Publicity and Molested Boy Force Bishop to Act

In his Dec. 8 email letter, Dr. Bond provided more information about Fr. Urrutigoity and the SSJ. For instance, in addition to the Winona seminarian who said that Fr. Urrutigoity made a homosexual pass at him, another young man under Urrutigoity's spiritual direction has stated that Urrutigoity homosexually molested him. And "a third young man has testified that he, while a minor, regularly slept with Fr. Urrutigoity after being plied with alcohol to the point of intoxication." Furthermore, wrote Dr. Bond, "I have received testimony from a young man claiming that Fr. Eric Ensey homosexually molested him while he was a minor, and that alcohol was used to accomplish that purpose. This latest

testimony may explain why Fr. Ensey has refused to denounce the immorality of Fr. Urrutigoity." Dr. Bond noted that he had not mentioned the Ensey case in earlier letters to Bishop Timlin and the Papal Nuncio, Gabriel Montalvo, because he did not learn about the matter until December 2001.

The allegations against Fr. Ensey are serious. Although the story surfaced last year, Bishop Timlin did not act until he received a copy of a letter from the boy's father on Jan. 12 this year. (The father apparently had initially contacted the Papal Nuncio and Cardinal Hoyos at the Vatican.) As Bishop Timlin told RCF, he then called the father, apologized for any harm done to his son, and said the diocese would investigate the case.

"He [Dr. Bond] went looking then and getting out everybody in the world to come forward and accuse him [Fr. Urrutigoity] of things," said Bishop Timlin. "And they have found one boy down in North Carolina, and I got a letter ... from a father, accusing Fr. Ensey of immoral touching. Immediately, I called the father and apologized. I said this was the first I had heard about it.

... Now we have a live body who's come forward, and they're serious allegations." Bishop Timlin told RCF that an investigation of Fr. Ensey is warranted and that an independent review board will meet quickly to organize the investigation. However, Bishop Timlin said that civil authorities may arrest Ensey and, if so, "it will be settled in the courts."

In a Jan. 15 press release, Roman Catholic Faithful called for a truly independent body to review the case. "Only a full-scale investigation of the Society by an independent commission (not some toadies of the bishop) can expose the degree and severity of the harm done to youth here," said RCF. "How many priests at the Society of St. John are involved in covering up for Fr. Urrutigoity's behavior?" RCF also called for "a communication [to] be sent to the parents of any boys or young men who may have had contact with the priests of the Society of St. John, advising them that their sons may have come in contact with a sexual predator." Bishop Timlin refuses to do this.

"We don't have any plans to notify the parents," he said, adding that diocesan lawyers have advised against such action. Further, said Timlin, "I haven't said anything [in public] - that's true. ... I don't want to come out publicly and say something because that's going to put it in the public forum. And then we're going to be in a real knock 'em out, drag down battle."

Following the receipt on Jan. 12 of the letter from the father in North Carolina, Bishop Timlin ordered Fr. Ensey to leave the SSJ premises in Shohola. And, said Bishop Timlin, Fr. Ensey has asked for permission to leave the Society. Furthermore, in light of the Ensey case and the publicity, Bishop Timlin has ordered Fr. Urrutigoity to leave the SSJ p r e m i s e s . H e h a s d o n e s o and is temporarily residing in Scranton, 40 miles away. However, "if Fr. Urrutigoity is exonerated, he could go back to the Society," said Bishop Timlin. "We will do whatever is indicated." "We're not trying to cover up," said Timlin. "With Christian charity, you can't just throw these people [SSJ] to the wolves. They're human beings too. And it doesn't take away anything from the victims. If there are victims here, our hearts go out to them too. We will do whatever we can to help them." However, Timlin added that if the victims "try to use a lead pipe on us by asking for millions of dollars, we'll have to fight that because we're not responsible. "I'm not responsible for whatever happened, if it happened," said Bishop Timlin. "I'm not liable. That would be our position."

Dr. Bond, in an Open Letter to Bishop Timlin said that the bishop's recent decision to relocate Frs. Urrutigoity and Ensey, without suspending them, allows Timlin to hedge his

bets. "If the bad publicity increases, you will stress the fact that you have removed these priests from pastoral life," wrote Bond. "But if the bad publicity decreases, you will allow them to return to Shohola, or to some other parish, where they will begin anew the cycle of abuse and deception." Bond, like RCF, has called for an independent investigation to determine the extent of moral corruption and possible criminal activity in the Society of St. John.

Several SSJ priests responded to email inquiries about the scandal from Walter Krivitsky, a concerned Catholic. For instance, in a Dec. 10 email, Fr. Sarweh wrote: "[I]t should relieve you to know that these 'reports' are simply not true." In a Dec. 13 email, Fr. Fullerton wrote: "Please rest assured that the reports you are hearing are not true"
A n d i n a D e c . 1 2
email, Fr. Urrutigoity wrote: "The matter you refer to is being handled carefully and diligently by the proper authorities The Society will make a public statement when and if judged opportune. Nobody is hiding and nobody wants to cover up or promote immorality. ..."

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Part Two of this article will address the allegations of financial mismanagement, fraud and corruption in the Society of St. John.

This is a reprint from the Winter 2000/2001 issue of RCF's periodic publication, *Ad Majorem Dei Gloriam*. It is sent without charge to all RCF donor members. To find out how you can subscribe, click here.



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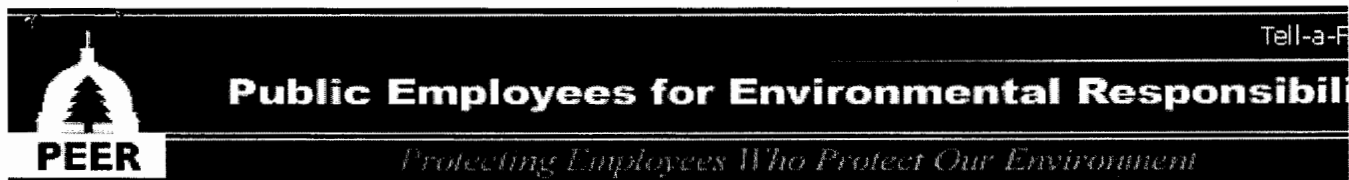


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News Releases

For Immediate Release: November 17, 2004

Contact: Chas Offutt (202) 265-7337

CRONY HIRING BY SPECIAL COUNSEL TARGET OF LAWSUIT — Former Boarding School Headmaster Retained as Consultant

Washington, DC — The agency that is supposed to police compliance with federal civil service rules is itself circumventing civil service rules by using no-bid consultants and hiring on a non-competitive basis, according to Public Employees for Environmental Responsibility (PEER). The U.S. Office of Special Counsel (OSC) is withholding records about its own personnel practices, including a contract with a former Catholic boarding school headmaster to serve as a special consultant, according to a lawsuit filed today by PEER under the Freedom of Information Act.

The current Special Counsel, Scott Bloch, is a religious conservative who had served as deputy director in the Justice Department's Office of Faith-Based Initiatives. Since becoming Special Counsel in January, Bloch has brought in a series of special consultants and non-competitive hires, including recent graduates of the ultra-conservative Ave Maria law school. A number of these new non-competitive hires have been assigned to career positions, working for career managers who had no input into their selection; in fact, the managers did not meet the new hires until the day they started work

"Scott Bloch's personnel practices are taken straight from The DaVinci Code rather than the civil service manual," stated PEER Executive Director Jeff Ruch, pointing to what OSC staff members call Bloch's own "palace guard." "The mission of the Special Counsel is to protect the merit system, not subvert it."

PEER is seeking copies of contracts and work products for –

- Alan Hicks, a former headmaster of St. Gregory's Academy, a Catholic boarding school, who left in the wake of allegations concerning priests sexually preying on young students. Bloch has retained Hicks as a special consultant; and
- No-bid management consultant contracts let by Bloch.

Although OSC is struggling under large and growing backlogs of whistleblower disclosures and complaints, Bloch has increased the number of confidential assistants that report directly to him. By

EXHIBIT 16

PEER's estimates, approximately 10 percent of the OSC staff positions are now personal picks by Bloch. Recently, the long-time Director of OSC's own Department of Human Resources, and her primary assistant, recently resigned their positions, and left the agency, giving only a few days notice.

Ironically, one of OSC's duties is to oversee administration of the Freedom of Information Act (FOIA). Yet, when PEER requested its contract files, OSC sent a form letter stating that "due to the departure" of its FOIA officer "and a queue of pending requests" that there would be some delay in response. Three months later in September, PEER appealed OSC's continued non-response and received another, virtually identical form letter. PEER's suit under FOIA seeks the contract records it originally sought in June.

"The purpose of the Freedom of Information Act is to increase the transparency of government but Mr. Bloch appears dedicated to keep his agency's operations opaque," Ruch added, noting that Bloch has yet to release any documents about what he has done since he took office in January. "How can OSC monitor the Freedom of Information Act when it does not even answer its own mail?"

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[See PEER's lawsuit against the Office of Special Counsel](#)



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U.S. Office of Special Counsel
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SPECIAL COUNSEL REDUCES AGENCY BACKLOG AND ANNOUNCES NEW INITIATIVES FOR 2005

FOR IMMEDIATE RELEASE - 1/7/05
CONTACT: CATHY DEEDS, 202-254-3600
cdeeds@osc.gov

Special Counsel Scott J. Bloch is pleased to announce that the chronic backlog of cases has been reduced for the first time in years, and announced several new initiatives to advance and guard merit system principles, streamline customer service, and improve case processing.

Backlog of Cases Reduced

Upon taking office in January 2004, Special Counsel Bloch publicly pledged to give full and fair resolution to all meritorious cases filed with the Office of Special Counsel (OSC), and worked diligently to reduce the unacceptably high number of backlogged cases. At the end of the first year, he and his team have reduced the pending backlog by over 80 percent. Last year, the number of pending whistleblower claims was 690, prohibited personnel practice claims were more than 600, and Hatch Act complaints numbered nearly 200. Moreover, OSC has doubled the internal referral rate of meritorious cases for further action in the investigation and prosecution unit. Presently, the numbers of pending older complaints are approximately less than 100, 30, and 40, respectively, due to the outstanding work of the professional staff, and several new internal procedures that the Agency divisions will build upon to implement permanent solutions.

USERRA Enforcement Role Expanded

OSC has the sole enforcement authority to prosecute the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 violations among the Federal workforce. USERRA requires full reemployment with benefits to all demobilized Reserve and Guard forces returning to their civilian jobs while also prohibiting any discrimination in employment because of past, present or future military service. Special Counsel Bloch takes this law seriously and has been active in enforcing it. He filed the first ever OSC claim with the Merit Systems Protection Board (MSPB) in June 2004. On December 10, 2004, President Bush signed a new law, the Veterans Benefits Improvement Act of 2004 (PL 108-454), which provides for a three-year demonstration project that authorizes OSC to investigate about half of the Federal sector USERRA claims.

Customer Service Unit Created

A new customer service unit will be created to better serve the public and Federal employees and OSC operational units. Having specific personnel assigned for this purpose will help OSC gain a reputation of better customer service within the Federal workforce. Currently, this function is handled by rotating OSC staff to handle specific inquiries from the public or help with filing complaints and/or filling out forms.

OSC's mission is to serve Federal employees who may have a legitimate complaint and also to the public who may not understand the Agency mission or jurisdiction, or who may have other questions.

New Midwest Field Office Created

EXHIBIT 17

Special Counsel Bloch also announced the creation of a new Midwest Field Office, in Detroit, MI, scheduled to open in March 2005. Presently, OSC has two field offices, in Dallas, TX and Oakland, CA. After extensive discussions with staff and an outside assessment team's review of the Agency structure and organization, the decision was made to enhance field operations and "power down" from a D.C.-centric based operation. The Special Counsel believes that by expanding this modular team approach, it will foster healthy competition and flexibility among more efficient units and will ultimately keep the backlog of cases down. Some DC staff will be reassigned to the field offices in OSC's effort to strategically align the agency to meet critical mission requirements.

Special Counsel Bloch is eager to meet the new challenges in 2005, and build upon successes of the first year. "The mission and goals of OSC remain the same -- to secure justice for all Federal employees who come to this Office expecting results. We will do so in a more timely fashion." Bloch explained, "The reorganization is directly related to the Agency mission to help us create a more efficient Federal workforce, inspire integrity, and safeguard public trust. I have full confidence in my professional staff and believe these changes will strategically place people in the right positions of leadership and allow for greater personal development of our dedicated employees."

The U.S. Office of Special Counsel (OSC) is an independent investigative and prosecutorial agency and operates as a secure channel for disclosures of whistleblower complaints and abuse of authority. Its primary mission is to safeguard the merit system in Federal employment by protecting Federal employees and applicants from prohibited personnel practices, especially retaliation for whistleblowing. OSC also has jurisdiction over the Hatch Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA). For more information please visit our web site at www.osc.gov or call 1-800-872-9855.



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Dispute at Whistle-Blower Office

Counsel Says Backlog Is Reduced; Critics Question Retooling

By Christopher Lee

Washington Post Staff Writer

Thursday, February 24, 2005; Page A19

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The head of the federal Office of Special Counsel, which safeguards the federal merit system and protects whistle-blowers, says he has made substantial progress in eliminating complaint backlogs and contends a controversial reorganization will strengthen the agency.

In a Feb. 14 letter to Rep. Henry A. Waxman (D-Calif.), Scott J. Bloch wrote that he is committed to protecting federal whistle-blowers and that his agency has reduced by 90 percent a backlog of complaints from federal employees about waste, fraud and prohibited personnel practices in federal workplaces.

Bloch wrote that the reorganization, which would send 12 career OSC employees to new assignments in Dallas; Oakland, Calif.; and a soon-to-be-opened field office in Detroit, is designed to improve performance, not punish any employees.

"I share with you a 100 percent commitment to protecting federal whistleblowers, the merit system principles, and bringing justice to the federal workforce," Bloch told Waxman, the ranking Democrat on the House Government Reform Committee.

POLITICSTRIVIA

Monday's Question:

President Bush's interim appointments of federal judges during congressional recesses have been the subject of much debate. Who was the first president to use recess appointments to name a federal judge?

- George Washington
Andrew Jackson
Rutherford B. Hayes
William Howard Taft

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EXHIBIT 18

Bloch's letter was in response to a written query last month from Waxman and Rep. Danny K. Davis (D-Ill.). Three

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government watchdog groups criticized the reorganization last month, saying that Bloch was engaging in the kind of retribution against employees that the OSC is supposed to police and prevent.

The independent agency's job is to safeguard the merit system, prevent the intrusion of partisan politics into the federal workplace and protect federal employees from prohibited personnel practices, notably retaliation against whistle-blowing. Bloch, a lawyer and former Justice Department official, began his five-year term as head of the agency in January 2004.

Critics say Bloch's reorganization is designed to punish employees who have questioned his management practices and policy decisions. The 12 affected employees were told they would be terminated if they did not accept and report to their assignments within a specified period. Seven are currently slated to be fired, four accepted reassignments and one retired, said Jeff Ruch, executive director of Public Employees for Environmental Responsibility.

OSC spokeswoman Cathy Deeds would not confirm the totals, saying "it's premature to discuss it."

In his letter, Bloch maintained that the reorganization was designed to keep backlogs down and decentralize agency operations. "In no way were any of these employees 'targeted' as has been alleged," Bloch wrote.

Ruch took issue with the claim that the backlog of whistle-blower claims has been reduced, saying he suspected that the agency merely dismissed many cases. "We don't know what happened to all of those," Ruch said.

Bloch told Waxman that the agency had whittled down pending whistle-blower claims from nearly 700 cases to 100. Deeds said yesterday that the 600 processed cases involved minor matters or issues previously investigated, and none was referred to Cabinet departments for further scrutiny.

Bloch wrote that about 500 prohibited personnel practice complaints were shaved down to about 30. Deeds said about 20 percent of the 470 reviewed cases are still active and have been referred to OSC investigators. The rest were closed without further investigation, she said.

In a written statement, Waxman said that "the Office of Special Counsel is supposed to protect whistleblowers and taxpayers, yet it appears that hundreds of cases may have been dismissed arbitrarily. We need to investigate how these cases have been handled and whether the Office of Special Counsel is doing its job."

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