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July 31, 2008

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

Re: Office of Personnel Management Office of Inspector General's  
Investigation of Special Counsel Scott J. Bloch

Dear Mr. Fielding:

I am writing to request that you instruct the Office of Personnel Management's Office of Inspector General (OPM IG) to issue a prompt and final determination to their investigation of the complaint filed in 2005 by my clients, a group of career employees of the U.S. Office of Special Counsel (OSC). As my law partner Debra Katz and I have previously advised you, our clients' complaint reported numerous instances of unlawful whistleblower reprisal, politically and religiously-based hiring for career positions, discrimination on the basis of sexual orientation or perceived sexual orientation, and other illegal acts by Special Counsel Scott Bloch. Despite the fact that OPM IG appears to have completed its investigation long ago – no interviews or other investigation regarding my clients' underlying complaint have occurred for at least the past six months, and perhaps the past year – OPM IG has still not released its findings.

As was widely reported in the media on Monday, July 28, the Department of Justice's Office of Inspector General recently concluded that political appointees at DOJ violated the law and DOJ hiring policy by using a pro-Republican political litmus test to hire for hundreds of non-political civil service positions. The DOJ IG investigation began in early- to mid-2007, after the firing of nine U.S. attorneys in December 2006, and completed within approximately one year. By contrast, my clients have now waited nearly three-and-a-half years for redress.

A final report of investigation in the OSC complaint is urgent not only for my clients, but for a full public understanding of the issues raised by the DOJ report, since many of the issues raised in my clients' complaints mirror what occurred at DOJ. Just as DOJ's Inspector General reported that political officials had hired numerous lesser-qualified attorneys because they attended the Christian, conservative Regent University Law School, my clients' complaint reported that OSC officials hired several career

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employees primarily because they attended the Christian, conservative (and at the time only provisionally accredited) Ave Maria Law School. Just as the DOJ IG report concluded that officials fired or refused to hire employees based on their sexual orientation or perceived sexual orientation, my clients reported years ago that Mr. Bloch fired them because of their perceived sexual orientation or perceived support for enforcing sexual orientation protections for federal government employees. Just as the DOJ IG report concluded that officials there had based their non-political hiring on their political loyalties, my client's complaint about OSC raised significant evidence that Mr. Bloch and his staff evaluated whistleblower and Hatch Act investigations based on partisan politics. Even one of Mr. Bloch's top deputies, James Byrne, in announcing his resignation earlier this month, concluded that "the independence and very existence of the Office of Special Counsel are – and shall remain – at risk" because of Mr. Bloch's "political agendas and personal vendettas." The lack of a final resolution from OPM IG thus harms not only the specific complainants in that case, but hinders the public's understanding of the scope of this problem in other federal agencies, and what must be done to appropriately address it.

Not only does the lack of a finding by OPM IG delay important remedial changes within OSC, it will hamper redress for DOJ employees, as well. The typical avenue of redress for federal career employees denied positions because of their political views or perceived sexual orientation, such as the hundreds of employees at DOJ, is to file a complaint with the OSC. This represents nothing more than a farce if their complaints are determined at OSC by officials who have themselves engaged in the same political litmus tests, discrimination on the basis of sexual orientation, and refusal to abide by federal civil service laws. Aggrieved employees at DOJ, OSC, and other federal agencies deserve to know whether their cases are in fact being determined on these unlawful grounds, and how the Bush Administration intends to address the matter. That can only be accomplished by release of OPM IG's final report.

While we understand that Mr. Bloch is currently being investigated by a grand jury regarding possible criminal conduct, there is no reason that such a proceeding should delay the issuance of a final resolution by OPM IG regarding my clients. The issuance of a final resolution to OPM IG's civil investigation would not adversely affect the criminal proceedings. Moreover, waiting for the end of the criminal investigation into Mr. Bloch would, if Mr. Bloch is indicted, seem to suggest that OPM IG should wait until after preparation for a trial, through the trial itself, and then until after possible appeals of the trial result before issuing its report of investigation – a delay of several years further, and an obviously unfair and completely untenable result.

As the Supreme Court and the federal Courts of Appeal have long recognized, "justice delayed is justice denied." Rohr Indus., Inc. v. Washington Metro. Area Transit Auth., 720 F.2d 1319, 1327 (D.C. Cir. 1983); accord Guardians Ass'n v. Civil Serv.

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Comm'n of City of New York, 463 U.S. 582, 627 (1983). I appreciate your efforts to help bring my clients' long wait for justice to an end.

I look forward to hearing from you.

Sincerely,



Avi Kumin

- cc: Senator Joseph Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee  
Senator Susan Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee  
Senator Daniel Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia  
Senator Claire McCaskill, Senate Homeland Security and Governmental Affairs Committee  
Rep. Henry Waxman, Chairman, House Oversight and Government Reform Committee  
Rep. Tom Davis, Ranking Member, House Oversight and Government Reform Committee  
Rep. Danny K. Davis, Chairman, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia  
Rep. Kenny Marchant, Ranking Member, House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia  
Clay Johnson III, Deputy Director for Management, Office of Management and Budget  
Patrick E. McFarland, Inspector General, Office of Personnel Management