

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5051  
Minority (202) 225-5074

June 18, 2009

Mr. Lawrence G. Brown  
Acting United States Attorney  
Eastern District of California  
501 I Street, Suite 10-100  
Sacramento, CA 95814

Dear Mr. Brown:

The President's decision to remove Gerald Walpin from his post as Inspector General of the Corporation for National and Community Service ("CNCS") has raised concerns about the White House's methods and motives. Because it appears that the President failed to provide notice and justification to Congress in accordance with the Inspector General Act, I have asked the White House Counsel's Office to provide a full and complete explanation of its reason for terminating Mr. Walpin. My request has been echoed by a bipartisan group of Members from both chambers of Congress, and our questions and concerns reflect growing public sentiment that an explanation must be provided to avoid the appearance of an inappropriate act of political retribution.

In response to questions from Congress, the White House cited a complaint filed by your office regarding Mr. Walpin's conduct as Inspector General ("IG") as one of the primary reasons for the President's action.<sup>1</sup> The complaint, submitted to the Chair of the Integrity Committee at the Council of the Inspectors General on Integrity and Efficiency ("CIGIE"), expresses your "concerns about the conduct of [CNCS IG] Gerald Walpin and his staff in the handling of *United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez*."<sup>2</sup>

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<sup>1</sup> Letter from Norman L. Eisen, Special Counsel to the President, to Chairman Edolphus Towns and Ranking Member Darrell Issa, June 16, 2009 (explaining that the President decided to remove Mr. Walpin after learning that the Acting US Attorney for the Eastern District of California, "a career prosecutor who was appointed to his post during the Bush Administration, had filed a complaint about Mr. Walpin's conduct with the oversight body for Inspectors General, including for failing to disclose exculpatory evidence."). [hereinafter Eisen Letter]

<sup>2</sup> Letter from Lawrence G. Brown to Kenneth W. Kaiser, Chair, Integrity Committee, Council of the Inspectors General on Integrity and Efficiency (CIGIE), Apr. 29, 2009 [hereinafter Complaint].

Through your experience as Acting United States Attorney and your career in the Justice Department, I have no doubt you have developed an appreciation for the work and contributions of Inspectors General. As Ranking Member of the House Committee with direct responsibility for oversight of the IG community, I am very familiar with their important role and I, like the President, “recognize fully the importance of their independence.”<sup>3</sup>

Despite our collective experience with the IG community and the guidance we have received from the President, we have different interpretations of the IG’s role in an investigation of waste, fraud and abuse. In your complaint, you outline what you believe that role is:

In our experience, the role of an Inspector General is to conduct an unbiased investigation, and then forward that investigation to my Office for a determination as to whether the facts warrant a criminal prosecution, civil suit or declination. Similarly, I understand that after conducting such an unbiased investigation, the Inspector General is not intended to act as an advocate for suspension or debarment.<sup>4</sup>

I could not agree more that the most effective IG’s are unbiased investigators who thoroughly and objectively report their findings to Congress and the Justice Department when appropriate. However, in certain circumstances an Inspector General is perhaps the individual best positioned to advocate for, or against, suspension or debarment based on evidence gathered through an unbiased investigation. When there is evidence, like there is in the St. HOPE matter, that a grantee misused federal funds, and the very same grantee is in a position to receive additional federal funds, decisive advocacy against such an outcome serves as a safeguard against further misuse of taxpayer dollars. Furthermore, when the political atmosphere leads an IG to conclude that evidence of wrongdoing is being intentionally ignored for partisan political reasons, an IG is presented with a difficult choice. In such circumstances, an IG should proactively offer his recommendation to the agency’s Suspension and Debarment official, as failing to do so would trivialize the value of his thorough and impartial investigation.

The underlying theme of your complaint against Mr. Walpin is your belief that his vigorous pursuit of an appropriate and equitable CNCS response to the wrongdoing of a grantee overstepped his limited role. This sentiment is contrary to the responsibility imposed upon the IG by Congress, as Mr. Walpin himself pointed out in his response to your complaint. The IG’s role was envisioned as one of leadership in any investigation of waste, fraud and abuse. According to the Senate Report accompanying the Inspector General Act of 1978, the IG has the duty to:

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<sup>3</sup> Eisen Letter.

<sup>4</sup> Complaint at 1.

Assume a leadership role in any and all activities which he deems useful to promote economy and efficiency in the administration of programs and operations or prevent and detect ... waste in such programs and operations.<sup>5</sup>

Congress envisioned an active role for the IG in any investigation. Fulfilling the IG's leadership obligations as imposed by Congress requires conducting a thorough and impartial investigation, advocating on behalf of the remedy he or she deems appropriate, and responding to public interest in the matter. To complain that doing so exceeds the scope of the IG's responsibility demonstrates a lack of familiarity with the model that we in Congress envisioned in creating that role.

To support your general assertion that Mr. Walpin exceeded his authority by advocating for suspending an individual determined by a preponderance of the evidence to have been misusing federal dollars, you cite certain behavior in your complaint to the Integrity Committee. Specifically, you point to (1) Mr. Walpin's interaction with Sacramento media, and (2) Mr. Walpin's alleged failure to include information gathered in various interviews of an elementary school principal in his report to Congress and in disclosures to your office.

The OIG's Special Report to Congress shows that Mr. Walpin's staff conducted a thorough investigation. Given the completeness and thoroughness of the product of the OIG's investigation, any complaint about the competence of Mr. Walpin must be supported by substantial evidence.

#### The Investigation of St. HOPE Academy

In response to a funding proposal presented to the California State Commission, St. HOPE Academy was awarded a three-year grant under AmeriCorps, a program administered by CNCS. The grant funds (totaling \$847,673 in direct grants and in education awards for AmeriCorps members assigned to St. HOPE) were to be used for tutoring, community re-development, and arts programming.<sup>6</sup> St. HOPE was being run by founder Kevin Johnson, who also served as the school's principal, and Executive Director Dana Gonzalez.

In response to allegations first reported by CNCS and the California State Commission, Mr. Walpin deployed OIG Agents Jeffrey Morales and Wendy Wingers to Sacramento. The alleged misconduct included claims that AmeriCorps tutors assigned to St. HOPE were put to work washing Mr. Johnson's car, running personal errands, and engaging in partisan political activities.<sup>7</sup> It was also alleged that St. HOPE converted its own employees to AmeriCorps members in order to use grant funds to pay them.<sup>8</sup> To investigate the allegations made by CNCS and the California State Commission, OIG

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<sup>5</sup> S. Rep. N. 95-101, at 27 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2702.

<sup>6</sup> Special Report to Cong. from the OIG of CNCS at 3. [hereinafter Special Report]

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

agents made five trips to Sacramento, conducted 26 interviews and reviewed a substantial quantity of documents between April 23 and June 28, 2008.<sup>9</sup>

Having gathered enough evidence to reasonably suspect that St. HOPE officials were misappropriating grant funds and to prevent further abuse, OIG filed paperwork on May 21, 2008 with CNCS's Suspension and Debarment Official requesting the "suspension of St. HOPE, Johnson and Gonzalez from being able to receive or participate in future grants of Federal funds."<sup>10</sup>

On or about September 5, 2008, the OIG turned over the case to your office. Accompanying the referral from OIG was a cover letter signed by Mr. Walpin explaining his belief that the evidence gathered through OIG's investigation merits pursuit of criminal and civil penalties.<sup>11</sup>

After reviewing the evidence collected by OIG agents in the course of their investigation, CNCS's Suspension and Debarment Official ruled on September 24, 2008 that "immediate action is necessary to protect the public interest" and suspended Johnson, Gonzalez, and St. HOPE (collectively, "Respondents").<sup>12</sup> The Official notified the Respondents that the decision to suspend was based on evidence deemed "adequate to allow me to suspect that there has been on your part a willful failure to perform in accordance with the terms of a public agreement, and other causes of so serious or compelling a nature that it affects your present responsibility."<sup>13</sup> The Notice of Suspension informs Respondents that the OIG's investigation was ongoing.<sup>14</sup>

The OIG's investigation into the alleged abuses at St. HOPE generated local media attention. The *Sacramento Bee* printed several articles updating the case as it progressed.<sup>15</sup> Coverage of the investigation spiked when an article revealing the St. HOPE investigation had been turned over to your office appeared in the *Sacramento Bee* on September 5, 2008, prompting a statement from Mr. Johnson defending himself against the allegations in the referral to your office.

More coverage was generated when Mr. Johnson and the other Respondents received Notices of Suspension from the CNCS Suspension and Debarment Official. The announcement of, and public comment about, that decision by OIG should have had no bearing on the investigation then underway in your office.

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> Complaint at 2.

<sup>12</sup> *Id.*

<sup>13</sup> Notices of Suspension from William Anderson, CNCS Debarment and Suspension Official, to Kevin Johnson, Dana Gonzalez, and St. HOPE Academy, Sept. 24, 2008 (internal citations omitted).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., David Finnigan, *Sacramento mayoral candidate's non-profit now being examined by federal officials*, Politicker.com (Apr. 26, 2008), available at <http://www.politicker.com/california/2641/sacramento-mayoral-candidates-non-profit-now-being-examined-federal-officials> (last visited June 17, 2009); Dorothy Korber, *Hood Corps probe expands*, SACRAMENTO BEE (June 30, 2008).

Public interest in the matter escalated after Kevin Johnson was elected Mayor of Sacramento in November 2008.<sup>16</sup> Because it became clear that Sacramento's eligibility to receive stimulus funds was in jeopardy due to Mr. Johnson's suspension, local media frequently wrote about the situation and sought interviews and comments from those involved. Stakeholders sought ways to resolve the situation in a way that would allow Sacramento to receive needed federal dollars, and articles stoked public misperceptions about some of the finer points of the process of resolving the matter.

Whether or not you agree with the views Mr. Walpin publicly expressed regarding the best way to resolve the matter in order to allow Sacramento to receive stimulus dollars is irrelevant. The IG Act in no way limits the ways in which an IG chooses to interact with the media and the public.

You further allege that Mr. Walpin failed to include exculpatory evidence in his report to Congress and in disclosures to your office. You refer to information gathered by Mr. Johnson's attorney in an interview with elementary school principal Herinder Pegany, who claimed AmeriCorps volunteers actively tutored students at his school.<sup>17</sup> In your complaint, you claim OIG investigators interviewed Mr. Pegany and "obtained a similar statement from him."<sup>18</sup> Notes from OIG's interview of Mr. Pegany state that Pegany told OIG investigators he did not know how many tutors were assigned to his school, he did not directly supervise the tutors, and he did not physically observe tutors on a daily basis.<sup>19</sup>

The OIG's referral identifies evidence to support the allegation that the Respondents used AmeriCorps members to wash Mr. Johnson's car, run personal errands, and other abuses of the terms of the grant. Even if Mr. Pegany did in fact provide evidence that tutors were engaged in activities within the scope of St. HOPE's grant in a particular instance, the Respondents do not appear to be exculpated. Whether this interview report constitutes exculpatory evidence, as your complaint states, may not be such an easy question to answer.

Last Wednesday night, the White House fired Mr. Walpin. As you know, many in Congress believe the White House's statement to House and Senate leadership that it "is no longer the case with regard to this Inspector General" that the President has "the fullest confidence" is inadequate according to the requirements put in place by the IG Reform Act.<sup>20</sup> The Committee's investigation into whether or not the President's action complied with the requirements of the IG Act requires us to consider whether or not the material considered by the White House is reliable.

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<sup>16</sup> Dorothy Korber and Terri Hardy, *Investigators turn St. HOPE report over to U.S. attorney*, Sacramento Bee (Sep. 5, 2008).

<sup>17</sup> E-mail from Daniel J. Croxall to Herinder Pegany, Mar 7, 2009.

<sup>18</sup> Complaint at 3.

<sup>19</sup> Memorandum of Interview of Herinder Pegany, Principal, PS7 Elementary School, by OIG Special Agents Jeff Morales and Wendy Wingers.

<sup>20</sup> Letter from the President to H. Speaker Nancy Pelosi, June 11, 2001.

The allegations that form the basis for your complaint seem very ordinary, which makes the fact that you pursued sanctions against Mr. Walpin seem extraordinary by contrast. This begs certain questions about the reasons the complaint was filed. We are interested in hearing from you to better understand your motivations and rationale for filing your complaint. Because of this Committee's role as the principal oversight Committee in the House of Representatives with specific jurisdiction over IGs as set forth in House Rule X, I am obligated to examine this matter carefully. In order to assist the Committee with its investigation, please provide full and complete answers to the following questions as soon as possible, but no later than close of business on June 24, 2009:

1. With whom did you consult in determining whether or not to file a complaint with CIGIE's Integrity Committee?
2. Did anyone at the White House communicate concerns or recommend you file a complaint with CIGIE's Integrity Committee? If so, who and when?
3. Did any CNCS employee or member of the Board of Directors communicate concerns or recommend you file a complaint with CIGIE's Integrity Committee? If so, who and when?
4. Did any OIG staff member communicate concerns to you or recommend you file a complaint with CIGIE's Integrity Committee? If so, who and when?
5. Did any other person communicate concerns to you regarding Mr. Walpin's conduct as CNCS IG? If so, who and when?
6. Did you consult Integrity Committee Chairman Kenneth W. Kaiser prior to filing your complaint? If you did, when did you communicate with Mr. Kaiser?
7. Please identify and produce any communications between your office and the Integrity Committee regarding Mr. Walpin.
8. Were you contacted by any member of the White House staff as part of its evaluation of Mr. Walpin's performance as IG? If you were, who contacted you, and when did you have communication with White House staff?
9. Did you recommend to the White House that Mr. Walpin should be removed from his post as IG?
10. Have you ever previously filed a complaint with CIGIE (or its predecessor organizations)? If you have, please explain.

11. Has a United States Attorney in the Eastern District of California ever previously filed a complaint with CIGIE or its predecessor organization? If such a complaint has been filed, please describe the circumstances of the complaint.
12. Is there statutory or other authority upon which you base your claim that Mr. Walpin's communication with the *Sacramento Bee* or other media outlets was inappropriate? If so, what?
13. In your complaint, you state that you "understand ... the Inspector General is not intended to act as an advocate for suspension or debarment."<sup>21</sup> What is the basis for this understanding?
14. In your complaint, you state that "we considered the IG referral somewhat unusual in that it was accompanied by a letter from Mr. Walpin explaining that he viewed the conduct in this case as egregious and warranted our pursuing the matter criminally and civilly."<sup>22</sup> Why do you consider Mr. Walpin's letter unusual?
15. In what specific ways did Mr. Walpin's public comments interfere with the United States Attorney's investigation of the Respondents?
16. In what specific ways did Mr. Walpin's referral cover letter interfere with the United States Attorney's investigation of the Respondents?
17. Mr. Walpin was instructed by then United States Attorney McGregor Scott that he was not "to communicate with the media about a matter under investigation."<sup>23</sup> Which of Mr. Walpin's subsequent communications with the media refer to material facts of a criminal investigation or civil monetary recovery or settlement (as opposed to describing the process of such recoveries)?
18. Are you interested in being nominated by the President to be the United States Attorney for the Eastern District of California (U.S. Attorney)? If you are, with whom have you expressed this interest?
19. Have you had any communications with any member of the White House staff related to your interest in being nominated permanently for the position of U.S. Attorney? If you have, when and with whom?
20. Have you had any communications with any Member (or their staff) of the California Congressional delegation regarding your interest in serving as the

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<sup>21</sup> Complaint at 1.

<sup>22</sup> *Id.* at 2 (internal citation omitted).

<sup>23</sup> *Id.* at 2.

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United States Attorney for the Eastern District of California? If you have, when and with whom?

Your answers to these questions will provide a more complete explanation of the circumstances surrounding Mr. Walpin's removal, thereby allowing the Committee to ensure Inspectors General are allowed to conduct their important function in accordance with the protections of the IG Act.

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Steve Castor or Jonathan Skladany of the Committee staff at (202)225-5074.

Sincerely,



Darrell Issa  
Ranking Member

cc: The Honorable Edolphus Towns, Chairman