The Firing of the Inspector General for The Corporation for National and Community Service

Joint Staff Report
111th Congress
Senate Finance Committee
Sen. Charles E. Grassley, Ranking Member

House Committee on Oversight and Government Reform
Rep. Darrell Issa, Ranking Member

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Background

This inquiry began on Thursday June 11, 2009, when Inspector General Gerald Walpin contacted Senate Finance and House Government Oversight Committee staff. Walpin notified Committee staff that on the previous evening, President Barack Obama's Special Counsel for Ethics and Government Reform had given him an ultimatum to resign or be terminated within one hour. The Counsel to the President delivered this ultimatum without prior notice or consultation with Congress, despite newly enacted statutory provisions requiring that Congress receive 30 days prior notice of the removal of an Inspector General. Since that time, Committee staff has conducted witness interviews and reviewed over 4,300 pages of documents related to this matter. However, the review is necessarily incomplete because the White House has withheld key documents and information from Congress. No Committee with the authority to compel production of those documents has taken the steps necessary to do so. With those limitations noted, this report describes what the staff has learned about the circumstances surrounding the removal of Gerald Walpin as Inspector General at the Corporation for National and Community Service.

I. Executive Summary

President Barack Obama made national service a priority during his campaign for the White House. Perhaps the most prominent feature of the President's plan to increase levels of national service is an expansion of the size and scope of the AmeriCorps program. AmeriCorps is managed by the Corporation for National and Community Service ("CNCS," "the Corporation," or "the Agency"), the nation's largest grant-maker for service and volunteer activities. President Obama signed the Edward M. Kennedy Serve America Act of 2009 ("Serve America Act") on April 21, 2009, expanding the AmeriCorps program from 75,000 to 250,000 positions.

First Lady Michelle Obama has involved herself in the President's effort to increase national service by making personnel decisions at the Corporation. According to notes from a March 12, 2009 CNCS Board call, "the First lady will be playing a central role in the national service agenda."[1] In June 2009, the First Lady's former chief of staff was installed as an adviser to the Corporation. The First Lady has also been tasked with appointing the Corporation's next Chief Executive Officer.

While candidate Obama ran for the Democratic nomination and subsequently for President on a platform based in part on increased national and community service, CNCS Inspector General Gerald Walpin was overseeing an investigation of St. HOPE Academy, a charter school founded and operated by Kevin Johnson, a former NBA star and self-described friend of Barack Obama.[2] Johnson was alleged to have misused AmeriCorps grants by having members wash his car, run personal errands, and engage in

[1] CNCS Board Call Notes, Mar. 12, 2009.
[2] Interview with ABC Sacramento News 10, Oct. 30 2008, available at http://www.youtube.com/watch?v=BMDmce4H0Z4& (last visited Sep. 21, 2009).

partisan political activities. Based on evidence gathered by the Office of the Inspector General, Kevin Johnson was suspended from eligibility to receive federal grants on September 24, 2008.

Despite Johnson's misconduct and subsequent suspension, the voters of Sacramento elected him Mayor in November 2008.

In February 2009, Congress passed the American Recovery and Reinvestment Act ("ARRA"). Because Sacramento's eligibility to receive stimulus funds under ARRA was supposedly in jeopardy due to Mayor Johnson's suspension, local media frequently wrote about the situation and sought interviews and comments from those involved.[3]

The U.S. Attorney's Office for the Eastern District of California and the Corporation's leadership began working on a settlement that would reinstate Johnson's eligibility to receive federal funds. Acting U.S. Attorney Lawrence Brown excluded the Office of the Inspector General from settlement negotiations. Despite IG Walpin's repeated requests to participate in settlement negotiations, he was ignored, apparently because of his opposition to any settlement that would remove Johnson from the suspended parties list.

With Walpin shut out of the process, the settlement reinstated Johnson and St. HOPE Academy's eligibility to receive federal funds. The settlement also included a payment schedule by which the school, not Johnson, would repay half of the total grant amount. The settlement includes no meaningful guarantee that the United States will actually collect any payments from the cash-strapped school.

On May 20, 2009, Gerald Walpin appeared before the Corporation's Board of Directors to express his displeasure with the settlement negotiated by CNCS's General Counsel Frank Trinity and the U.S. Attorney's Office. Walpin also criticized the complacency of the Corporation's leadership under Acting CEO Nicola Goren.

During his presentation to the Board, Walpin explained his intention to issue a statement calling for an FBI investigation into the destruction of Kevin Johnson's e-mails while they were under subpoena as part of a federal investigation. This was the first the Board heard of e-mail destruction by St. HOPE personnel, leading members to ask Walpin for further explanation. Walpin then appeared confused and disoriented to some Board members while attempting to respond to their questions. There was concern among Board members that Walpin had experienced some sort of unspecified medical event.

Following Walpin's presentation at the May 20 Board meeting, Board Chairman Alan Solomont immediately contacted the White House Counsel's Office. Solomont, whose New England Obama fundraising committee raised more money per capita than any other region during the 2008 campaign, arrived at the White House on the afternoon

[3] Ryan Lillis, Tony Bizjak and Denny Walsh, *Mayor's status may imperil Sacramento's federal stimulus funds, lawyer says*, SACRAMENTO BEE, Aug. 5, 2009.

of May 20 unannounced[4] and shared concerns about Walpin's fitness to continue serving as IG with White House Counsel Gregory Craig. Craig directed Solomont to take his concerns to Special Counsel to the President for Ethics and Government Reform Norman Eisen.

Within hours of making remarks critical of the Corporation's leadership, the process by which Walpin would be removed from his post was in motion. Eisen's investigation of Solomont's concerns appears to have been limited to speaking only with Goren and Trinity,[5] the very people Walpin criticized in his remarks at the May 20 Board meeting that precipitated Solomont's trip to the White House.

In the following weeks, no one from the White House contacted Walpin or anyone else from his office to confirm the accuracy of the information Solomont says led him to contact the White House Counsel. Nor did the White House contact each of the other Board members to obtain their recollection of events. On June 10, 2009 at approximately 5:20 p.m., Eisen informed Walpin by telephone that the President wished to remove him from his post as Inspector General and presented Walpin with a choice: resign or be terminated. Walpin would not resign, and so he was terminated within 45 minutes of the phone call.

Removing Gerald Walpin based solely on complaints from leadership of the Agency he was charged with overseeing undermines the IG Act, especially in the absence of any serious effort to obtain both sides of the story. The President is required by law to give 30-days notice to Congress before removing an IG and to explain the reasons for doing so. These requirements serve to protect the independence of IGs, whose relationship with agency management is necessarily adversarial at times. Moreover the legislation requiring prior notice to Congress was co-sponsored by then-Senator Barack Obama.

In response to concerns voiced by a bipartisan group of Senators and Congressmen, the White House first relied on a complaint filed by Acting U.S. Attorney Lawrence Brown to justify its action. Subsequently, the White House pointed to Walpin's behavior at the May 20 Board meeting to justify his removal. Finally, Norman Eisen urged House and Senate investigators to conduct their own inquiry into Walpin's fitness for the IG post. Eisen assured staff their own investigation would confirm that the President acted prudently and with the full consultation and consent of the Board.

Congress's investigation revealed Eisen's inquiry was limited to such an extent that it appears the President removed Gerald Walpin based on incomplete and misleading information. Eisen relied entirely on information provided by Solomont and Walpin's chief adversaries Nicola Goren and Frank Trinity. In many cases, their concerns about Walpin's fitness to serve as IG lacked merit. Often, their concerns amounted to

[4] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Interview with Alan Solomont, July 15, 2009 [hereinafter Solomont interview].

[5] However, lack of cooperation and transparency from the White House as well as CNCS prevented staff from obtaining a full picture of what steps Eisen took to gather information concerning Walpin.

complaints that Walpin was difficult to work with. Because Eisen apparently did no further investigation and engaged in no genuine consultation with Congress, the White House failed to implement the IG Act as intended.

Eisen's failure to thoroughly and authentically investigate the basis of the complaints about Gerald Walpin and the White House's refusal to provide details about its inquiry fueled speculation that Walpin was removed for pursuing a political ally of the President. A request for intervention from a Member of Congress and the involvement of the First Lady in the Corporation's management further complicated the effort to determine the basis for the President's action.

Eisen admitted to Congressional investigators that before the President removed Gerald Walpin, he was sensitive to the possibility that Walpin's firing would appear to have been politically motivated. He claimed that (1) the firing was an act of "political courage" because the White House expected that perception, (2) the firing was necessary because Walpin was incapable of being aggressive enough, and (3) the firing was intended to send a message to the IG community that the Administration wanted more aggressive watch dogs, rather than passive lap dogs.

Eisen's claims are not credible. Despite his stated concern that the dismissal would look political, he took no steps to consult with or even notify Congress prior to giving Walpin an ultimatum. The White House's loose interpretation of the requirements of the IG Act and failure to use a transparent process to effectuate Walpin's removal deprived the President of an opportunity to explain his action in an appropriate way. The fallout from the sloppy handling of complaints from the Corporation's management is likely to have a chilling effect on the IG community, which must now operate more cautiously in light of the Administration's swift response to criticisms of agency leadership and allies of the President without affording any due process to the Inspector General.

II. Findings

- The President's plans to increase the size and scope of AmeriCorps make it clear that CNCS and its mission are important to the White House.

- Kevin Johnson often described himself as a personal friend of the President and First Lady. According to Johnson, "I'm friendly with Barack."

- The decision by the Corporation's Suspension and Debarment Official to suspend St. HOPE Academy and former Chief Executive Kevin Johnson was based on sufficient evidence gathered by the Office of the Inspector General ("OIG"). The decision to suspend protected the Corporation from further misappropriation of funds while OIG and the Justice Department completed their respective investigations.

- Because the U.S. Attorney's Office was not open to a settlement that did not remove Kevin Johnson from the list of suspended parties, Acting U.S. Attorney Lawrence Brown and CNCS General Counsel Frank Trinity cut Gerald Walpin out of settlement negotiations.

- Faced with mounting political pressure, the U.S. Attorney's Office and the Corporation's General Counsel set aside the financial interests of the United States in favor of a politically palatable settlement. Because the settlement reached collects payment from St. HOPE and not Johnson, and because of the school's precarious financial condition, there is no assurance the United States will ever be repaid.

- In a complaint to the Integrity Council of the Council of Inspectors General on Integrity and Efficiency ("CIGIE"), Brown alleged Walpin's interaction with Sacramento media was inappropriate. Brown also alleged Walpin failed to disclose exculpatory evidence. Documents and testimony obtained by congressional investigators do not support the substance of Brown's complaint.

- At a May 20, 2009 CNCS Board meeting, Gerald Walpin complained about the settlement of the St. HOPE matter to the Corporation's Board. Walpin also stated his intention to call for an FBI investigation into destruction of evidence under subpoena in a federal investigation by St. HOPE personnel. When asked to clarify this statement, Walpin suddenly appeared confused and disoriented to CNCS Board members and staff. However, the OIG's Deputy said he merely appeared to have lost his place in his notes. The IG went home early later that day due to a strong headache and upset stomach.

- Immediately following the May 20, 2009 Board meeting, Chairman Alan Solomont arrived unannounced at the White House to complain about Gerald Walpin. Solomont is a powerful Democratic fundraiser. Under Solomont, the

New England Obama committee raised more money per capita than any other region. Whether an Agency head without fundraising background would have had such unfettered access to the White House Counsel is unknown, but Solomont's history creates the appearance that political considerations may have played a role in the process that led to Walpin's removal from office.

- On May 20, 2009, Solomont met with White House Counsel Gregory Craig. Craig assured Solomont the matter would be reviewed by his office and referred him to Special Counsel to the President Norman Eisen. At the time, Eisen was not in his office. As Solomont was leaving the White House on his way through the parking lot, he ran into Eisen. There, he initially made his case for the removal of Gerald Walpin.

- In an effort to comply with the requirements of the IG Act, the White House sent a letter to House and Senate leadership on the evening of June 11, 2009 stating that Walpin would be removed in 30 days. The White House's letter did not comply with the notice and reason requirements of the Inspector General Act. Rather, Walpin received an ultimatum on June 10, 2009 and communicated that ultimatum to members of Congress himself beginning the evening of June 10, 2009.

- According to Norman Eisen, his inquiry into the allegations against Gerald Walpin involved speaking with members of the CNCS Board to confirm that a consensus existed. In fact, the White House's "investigation" appears to have consisted entirely of conversations with Board Chairman Alan Solomont and CNCS Acting CEO Nicola Goren and General Counsel Frank Trinity. In some cases, Eisen's statements during briefings to Congress are explicitly contradicted by witness testimony.

III. Barack Obama Announced Ambitious Plans for CNCS

The Corporation for National and Community Service was created as an independent agency of the federal government by the National and Community Service Trust Act of 1993.[6] Although a government agency, the Corporation acts much like a foundation, serving as the nation's largest grant-maker supporting service and volunteerism.

Headquartered in Washington, D.C., the Corporation's Board of Directors and Chief Executive Officer are appointed by the President and confirmed by the Senate.[7] The Chief Executive Officer oversees the Agency, which includes about 600 employees operating throughout the United States and its territories.[8]

The mission of CNCS is "to improve lives, strengthen communities, and foster civic engagement through service and volunteering."[9] In support of its mission, the Corporation provides grants, training and technical assistance to developing and expanding volunteer organizations.[10]

The Corporation's best-known program is AmeriCorps. AmeriCorps facilitates community service opportunities for individuals with national and local service organizations.[11] These individuals, or members as they are called, receive a stipend in exchange for a year of service.[12] According to the AmeriCorps website, since its creation in 1993 more than 250,000 individuals across the country have served communities through a variety of programs funded by CNCS/AmeriCorps.[13] AmeriCorps programs include City Year, Habitat for Humanity, and Teach for America.[14]

However, AmeriCorps has long faced problems with waste, fraud and abuse. In 1995, AmeriCorps gave a large grant to ACORN, and AmeriCorps recruits were assigned to lobby for legislation, collect dues, register voters, and participate in political demonstrations. After scrutiny, ACORN was required to return a $1.1 million dollar grant. In another case, a Texas environmental group was given $2.5 million to hire AmeriCorps volunteers, but less than half of the AmeriCorps volunteers completed their

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[6] CNCS website, available at http://www.nationalservice.gov/ (last visited Sept. 18, 2009).
[7] *Id.*
[8] *Id.*
[9] CNCS Mission Statement, available at http://www.nationalservice.gov/about/role_impact/mission.asp (last visited Aug. 27, 2009).
[10] *Id.*
[11] AmeriCorps website, Impact of AmeriCorps, available at http://www.americorps.gov/about/role_impact/index.asp (last visited Aug. 27, 2009).
[12] *Id.*
[13] *Id.*
[14] *Id.*

time with the organization. Nevertheless the organization kept all of the money, costing taxpayers over $100,000.[15]

A. The Obama Administration's Relationship with CNCS

FINDING: ***The President's plans to increase the size and scope of AmeriCorps make it clear that CNCS and its mission are important to the White House.***

Barack Obama made national service a priority during the earliest part of his campaign for the Democratic nomination. A prominent feature of the President's plan to increase levels of national service is an expansion of the size and scope of AmeriCorps. Since taking office, the President has frequently touted the new role of CNCS programs in his vision for a vast national service network. First Lady Michelle Obama has joined the President in making service a national priority. The unprecedented growth of CNCS in terms of federal funding and number of grantees significantly raised the profile of the formerly inconspicuous federal agency.

As early as December 2007, then-candidate Obama made national service a part of his platform. It was then, at a campaign stop in Iowa, he issued a "Call to Serve."[16] If elected, Obama pledged to increase opportunities for Americans of all ages to serve their country, detailing a plan to encourage participation in programs designed to support the national agenda during his presidency. One of the main components of this initiative was a vast expansion of AmeriCorps.

Within days of the November 2008 election, CNCS Board Chairman Alan Solomont contacted the President-Elect's transition team.[17] Solomont was informed the transition team was reviewing personnel and policy at every federal agency, including CNCS.[18] Solomont pledged to "ensure that national service is appropriately prioritized" as the transition team planned the new Administration.[19]

In December 2008, President-Elect Obama's transition team spent time on-site at the Corporation's headquarters.[20] The transition team "flagged … key issues" for the Corporation's Board, one of which was ensuring CNCS had the "capacity to be ready for growth."[21]

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[15] Shawn McBurney, "AmeriCorps the Pitiful," CAGW Special Report, Oct. 30, 1998, available at: http://www.cagw.org/site/PageServer?pagename=reports_americorps (last visited October 7, 2009).
[16] Organizing for America Press Release, *Obama Issues Call to Serve, Vows to Make National Service Important Cause of His Presidency*, Dec. 5, 2007.
[17] CNCS Board Call Notes, Nov. 13, 2008.
[18] *Id.*
[19] *Id.*
[20] CNCS Board Call Notes, Dec. 11, 2008.
[21] *Id.*

On the eve of his inauguration, Barack Obama asked Americans to "make an ongoing commitment to [their] communities."[22] The President's call to service attracted a record number of applications to AmeriCorps. In March 2009 alone, AmeriCorps received 17,000 applications; nearly triple the number from March 2008.[23]

Further strengthening his commitment to public service generally and AmeriCorps specifically, President Obama signed the Edward M. Kennedy Serve America Act of 2009 ("Serve America Act" or the "Act") at an elementary school in Washington, D.C. on April 21, 2009.[24] The Serve America Act fulfills several of the President's campaign promises regarding a renewed focus on service. Most notably, the Act more than tripled AmeriCorps membership levels, from 75,000 to 250,000 positions.[25] The new positions will support a variety of programs including Education Corps; a Healthy Futures Corps; a Clean Energy Corps and a Veterans Corps.[26]

During a publicity call touting the Act, White House Director of Domestic Policy Melody Barnes stated the Act is "the most sweeping expansion of national service programs in many, many years. … [W]e really believe this is just the beginning."[27]

Funding for the unprecedented expansion of AmeriCorps came in part from the "stimulus," the American Recovery and Reinvestment Act of 2009 ("Recovery Act"). The Recovery Act included $201 million in funding for CNCS to support an expansion of AmeriCorps programs.[28] Stimulus funding is intended to put approximately 13,000 additional AmeriCorps members in service, "meeting needs of vulnerable populations and communities during the current economic recession."[29] These funds may also be used to provide current grantees with relief during the current economic climate and to improve CNCS information technology systems.[30]

The Administration's vision for CNCS is crystallized in the President's FY2010 Budget. In a letter to colleagues summarizing the effect of the President's budget on CNCS, Acting CEO Nicola Goren describes its implications:

> The President is requesting $1.149 billion for the Corporation and its programs, a $259 million or 29 percent increase over the FY 2009 enacted level. … Overall, this budget also makes clear that

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[22] Letter from Obama Transition Team, Dec. 17, 2008.
[23] Alan Solomont, White House Press Briefing, Apr. 21, 2009.
[24] CNCS Press Release, Edward M. Kennedy Serve America Act of 2009, available at http://www.nationalservice.gov/about/serveamerica/index.asp (last visited Aug. 27, 2009).
[25] CNCS Press Release, Highlights of the Edward M. Kennedy Serve America Act of 2009, available at http://www.nationalservice.gov/about/newsroom/releases_detail.asp?tbl_pr_id=1283 (last visited Aug. 27, 2009).
[26] Lynn Sweet, *The Scoop from Washington*, Chi. Sun-Times, Apr. 21, 2009 [hereinafter Sweet Article].
[27] Melody Barnes, White House Press Briefing, Apr. 21, 2009.
[28] CNCS Press Release, American Recovery and Reinvestment Act of 2009 Agency Recovery Plan, available at http://www.nationalservice.gov/pdf/09_0606_recovery_plan_cncs.pdf (last visited Aug. 27, 2009).
[29] *Id.*
[30] *Id.*

> national service is a high priority for President Obama, and demonstrates his faith in the power of service to transform lives and communities.[31]

The President's focus on national service during his campaign and since taking office confirms it will be one of the most prominent features of his Administration. This fact, coupled with the First Lady's involvement with that mission make it clear that CNCS is important to the White House.[32]

IV. Kevin Johnson's Friendship with Barack Obama

FINDING: ***Kevin Johnson often described himself as a personal friend of the President and First Lady. According to Johnson, "I'm friendly with Barack."***

Described frequently by the media as a "supporter" of President Obama, Kevin Johnson relied on his relationship with then-candidate Obama before and after the Sacramento election to enhance his profile.[33] When asked about their relationship during an October 2008 interview with Sacramento's ABC affiliate, Johnson freely discussed his work on behalf of Obama during their respective campaigns:[34]

> I'm friendly with Barack, I've endorsed him from Day One. … His national office out in Chicago has asked me to go out and speak for him in the last few weeks, which I'm doing. I'm going to be out today at Sac[ramento] State. I flew to Dallas earlier and campaigned for him there before a primary. … I got a chance to sit down with him a couple of times while he was running for President. He's excited about our race in Sacramento. I'm excited that he's going to create an office of urban renewal that will benefit a city like Sacramento. So I'm looking forward to working with him and his staff.

In an interview after taking office, Johnson responded to questions about his plans for a trip to Washington for the Inauguration and his expectations for collaborating with the First Family by elaborating further on his relationship with then-President Elect Obama:[35]

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[31] Letter from Nicola Goren to Colleagues, May 7, 2009.

[32] The First Lady addressed 5,000 attendees at the National Conference on Volunteering and Service, which was attended by most members of the CNCS Board. Mrs. Obama called on all Americans to respond to the President's call to service. CNCS Press Release, First Lady Michelle Obama Issues Call to Service to Nation's Volunteer Leaders, June 23, 2009.

[33] *See, e.g.*, Ann Sanner and Pete Yost, *Obama Removes AmeriCorps IG*, ASSOC. PRESS, June 12, 2009; Margena A. Christian, *Ex-NBA star Kevin Johnson elected mayor of Sacramento*, ASSOC. PRESS, Nov. 2, 2009.

[34] Interview with ABC Sacramento News 10, Oct. 30, 2008, available at http://www.youtube.com/v/1KHEZg9pSE8 (last visited Aug. 27, 2009).

[35] Interview with Interview with ABC Sacramento News 10, Dec. 19, 2008, available at http://www.youtube.com/v/1KHEZg9pSE8 (last visited Aug. 27, 2009).

> I'm part of the Conference of Mayors, and I believe we as a group will get a few minutes with the President. If not, we'll be back. Sacramento is high on his list of priorities. We are going to get him out here. …His wife, Michelle Obama, these are folks I know very well. Everything I do, I'm trying to figure out how can I leverage these folks?

In a December 2008 interview, Johnson described his familiarity with the President Elect. "I know Barack Obama," Johnson told NBA.com's John Hareas.[36] "I consider him a friend and I endorsed him very early even before I decided to run for Mayor. … In all of the times that he and I have been together, we've never talked about playing basketball …."[37]

Shortly after the election, Johnson acknowledged that he is so closely associated with the President that he has earned a nickname: "Little Barack." Appearing on *The Colbert Report*, Johnson told host Stephen Colbert "they call me Little Barack … I'm OK with that!"[38] Colbert responded by dubbing Johnson "Baby Barack."[39]

Similar to the First Lady's relationship with CNCS, this relationship between the President and the target of an OIG criminal referral contributed to the appearance that the IG was removed for political reasons.

V. Inspector General Gerald Walpin Investigated Kevin Johnson

St. HOPE Academy was founded in 1989 in a portable classroom at Sacramento High School as an after-school program.[40] In 1992, Sacramento native Kevin Johnson, then a star point guard with the NBA's Phoenix Suns, collaborated with public school officials and other Sacramento stakeholders to construct a 7,000 square foot facility for the school.[41] The new complex was comprised of classrooms, a library, small computer lab, recreation room, counseling room, chapel, study hall, dining area and administrative offices. Johnson intended the new St. HOPE Academy "to revitalize inner-city communities through public education, economic development, civic leadership and the arts."[42]

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[36] John Hareas, "Q&A with Mayor-elect Kevin Johnson," NBA.com, Dec. 1, 2008.
[37] *Id.*
[38] Interview with Stephen Colbert, *The Colbert Report*, Comedy Central, Nov. 11, 2008.
[39] *Id.*
[40] St. HOPE website, available at http://www.sthope.org/history-1.html (last visited Aug. 27, 2009).
[41] *Id.*
[42] *Id.*

After retiring from the NBA in 2000, Johnson returned to his hometown of Sacramento and assumed the role of CEO of St. HOPE.[43]

In response to a funding proposal presented to the California State Commission, St. HOPE Academy was awarded a three-year grant under AmeriCorps in 2004. From July 2004 to December 2005, St. HOPE received $847,673 in direct grants and education awards for AmeriCorps members assigned to St. HOPE.[44] These taxpayer funds were to be used for tutoring, community redevelopment and arts programming.[45] When the grant was awarded, St. HOPE was managed by Johnson and Executive Director Dana Gonzalez.

Specifically, the grant required funds to be used for the purpose of:[46]

- "(1) providing one-on-one tutoring to [Sacramento] elementary and high school students;

- "(2) managing the redevelopment of one building a year in the Oak Park [the Sacramento neighborhood in which St. HOPE operates]; and

- "(3) coordinating logistics, public relations, and marketing for the Guild Theater and Art Gallery events, as well as hands-on workshops, guest artist lectures, and art exhibitions for Sacramento High School for the Arts and PS7 Elementary School [in Sacramento]."

A. The Investigation of St. HOPE

In response to allegations first reported by CNCS and the California State Commission, CNCS Inspector General Gerald Walpin deployed Agents Jeffrey Morales and Wendy Wingers to Sacramento to investigate the use of federal dollars in contravention of St. HOPE's funding agreement. The alleged misconduct included claims that AmeriCorps tutors assigned to St. HOPE were put to work washing Johnson's car, running personal errands, and engaging in partisan political activities.[47] It was also alleged that St. HOPE converted its own employees to AmeriCorps members in order to use grant funds to pay them.[48]

While in Sacramento, Agents Wingers and Morales became aware of allegations of inappropriate contact between Johnson and three female St. HOPE students. Mr. Johnson's attorney, Kevin Hiestand, approached at least one of the students describing

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[43] Kevin Johnson Biography, available at http://www.kevinjohnsonformayor.com/about/bio (last visited Aug. 27, 2009).
[44] Special Report to Cong. from the OIG of CNCS at 3 [hereinafter Special Report].
[45] *Id.*
[46] St. HOPE Academy Grant Proposal at 3.
[47] *Id.* at 4.
[48] *Id.*

himself only as "a friend of Johnson's," and "basically asked me to keep quiet."[49] According to her interview with OIG investigators, about one week later, Kevin Johnson offered her $1,000 a month until the end of the program, which she refused to accept.[50] Moreover, the OIG uncovered evidence of two other female St. HOPE students reporting Johnson for inappropriate sexual conduct towards them.[51] These are not the first such allegations. Johnson was also accused of fondling a young woman in the mid 1990's, but no charges were ever filed.[52]

Walpin included details about these allegations in his criminal referral to the U.S. Attorney's office because they, "seriously impact … both the security of young [AmeriCorps] Members placed in the care of grantees and … the ability of AmeriCorps to continue to attract volunteers."[53]The facts outlined in the referral give rise to reasonable suspicions about potential hush money payments and witness tampering at a federally funded entity. Yet, it is unclear what, if anything, the U.S. Attorney's office did to investigate these allegations or whether the White House obtained a copy of the referral from CNCS or the Justice Department during the course of its review.[54]

These serious allegations, and the evidence for them cited in the referral, provide important context for Walpin's insistence that the St. HOPE matter should not have been settled without further inquiry. Complaints from CNCS management or Board Members about Walpin allegedly being too aggressive in his pursuit of the St. HOPE matter might appear much more reasonable without knowledge of the evidence in the referral. In order to fully evaluate Walpin's performance and form an independent judgment about the quality of his office's work, however, a review of the referral would be essential.

The content of the referral tends to undermine any notion that the OIG investigation was driven by inappropriate motives on the part of Walpin. Rather it appears to have been driven by non-political, career investigators simply following the facts. The OIG agents were alerted by a story in the *Sacramento Bee* describing an apparent violation of California state law.[55] California state law classifies teachers and administrators as "mandated reporters," requiring them to report suspected child abuse to authorities.[56] The *Bee* reported that contrary to California law, Johnson's lawyer and

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[49] Referral from Office of Inspector General of the Corporation for National and Community Service to The Office of United States Attorney for the Eastern District of California Concerning Kevin Johnson – President/Chief Executive Officer and Dana Gonzalez – Executive Director, St. HOPE Academy, Sacramento, California, Pg. 28 [hereinafter "OIG Referral"].
[50] *Id*.
[51] *See* OIG Referral, Exhibits 12, 19, 20, and 22.
[52] Johnson Again Addresses Sex Allegations, KCRA News, April 18, 2008, http://www.kera.com/news.15925136/detail.html. (last visited Sep 29, 2009).
[53] OIG Referral pg. 30.
[54] The CNCS Board was at least generally aware of the allegations. According to former CNCS CEO David Eisner, during a Board meeting Walpin told him and the Board that "Kevin Johnson used the girls for his own salacious purposes." [54] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Interview with David Eisner, Aug 11, 2009.
[55] Terri Hardy, *Investigation of girl's allegations against Kevin Johnson raises questions*, *SACRAMENTO BEE*, Apr. 25, 2008 [hereinafter Hardy].
[56] CA Penal Code 11166.

confidant, Kevin Hiestand, told school officials not to report the incidents because he was conducting his own internal investigation.[57]

Hiestand conducted his investigation of the allegations under the guise of serving as the school's Title IX officer.[58] Hiestand served previously as Johnson's spokesman during his NBA career.[59] At the time of the investigation, Hiestand was vice president of Johnson's private development company.[60] Hiestand interviewed the victims and witnesses, including a teacher who had heard of the allegations. According to the teacher, "Hiestand told me he had met with [one of the victims] and that she had told a different story and that I should change my story to fit the one they had been told."[61]

Erik Jones, the St. HOPE teacher who eventually reported one of the victim's allegations to the police, resigned in protest over the way the matter was handled by the school. In his resignation letter, Jones wrote "St. HOPE sought to intimidate the student through an illegal interrogation and even had the audacity to ask me to change my story."[62] Another St. HOPE official, Jacqueline Wong-Hernandez, also left St. HOPE because of the way the allegations were handled.[63]

Michelle Rhee, who is currently Chancellor of the District of Columbia Schools, was a St. HOPE board member at the time. According to Wong-Hernandez, Rhee learned of the allegations and played the role of a fixer, doing "damage control."[64] Wong-Hernandez's OIG interview summary states, "When there was a problem at St. HOPE, Ms. Rhee was there the next day taking care of the problem."[65] After Wong-Hernandez informed Rhee of the allegations of Johnson's inappropriate sexual conduct, Rhee told her she was "making this her number one priority, and she would take care of the situation."[66] Soon after that, Wong-Hernandez heard that Kevin Johnson's lawyer had contacted the victim.[67] Wong-Hernandez resigned and told Rhee in her exit interview that her reason was St. HOPE's handling of the incident.[68] According to her OIG interview:

> In 2007, AmeriCorps Member [redacted] told Ms. Wong-Hernandez that Mr. Johnson, while in [her] apartment, inappropriately touched her, and she described what happened.

[57] Hardy.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Referral, Exhibit 22.
[64] *Id*.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

> Ms. Wong-Hernandez reported the information to HR and was told to report it to Tom Bratkovich, the Chief Financial Officer, which she did. Mr. Bratkovich informed Ms. Wong-Hernandez that he would take care of the matter. Thereafter, Ms. Wong- Hernandez learned that Kevin Heistand contacted [redacted] to discuss it. Later, Mr. Johnson informed both [redacted] and Ms. Wong-Hernandez that he and [redacted] had spoken the night before and everything was okay between them. In June 2007, Ms. Wong-Hernandez resigned, stating St. HOPE Academy's handling of the [redacted] incident was the reason.[69]

Agents Wingers and Morales "immediately recognized what appeared to be improper handling of this allegation by St. HOPE and unethical conduct by Mr. Johnson's attorney in investigating, supposedly on behalf of St. HOPE, a serious allegation of misconduct by that attorney's business partner and client."[70] The mishandling of these allegations by Johnson and his attorney, coupled with the allegations of misappropriated grant funds by St. HOPE, gave rise to a series of subsequent visits to Sacramento by OIG Agents Wingers and Morales.

The OIG eventually sent a referral to the U.S. Attorney's office detailing the allegations, including interviews of the alleged victims who had come to Wong-Hernandez. According to her OIG interview summary:

> [Redacted] related that Mr. Johnson joined her about midnight in going into her apartment in order to review the grades entry on which she had been working. When she got up to her apartment, she set the papers "on the kitchen table and started working." Mr. Johnson walked back to her bedroom and returned to ask [redacted] whether she had an extra blanket. When [redacted] started walking out of the bedroom, Mr. Johnson "climbed into the top bunk" and suggested that she work in that room "to be comfortable," and she did so. After completing the grade input, she asked him to review it. He then "came down, and sat next to me in the bottom bunk," and asked her to make certain changes. "He then layed down behind me, cupping his body around mine like the letter C. After about 2-3 minutes or so, I felt his hand on my side where my hip bone is. I jumped up and said I was done. He then asked how long it would take for me to get ready for bed. I said only a few minutes feeling weird. After I washed my face (2-3 minutes) and brushed my teeth, I came out of my bedroom and saw him still sleeping on my bed. So I went to the kitchen, washed the dishes, cleaned up a little, then went back and he was still sleeping, so I grabbed the blanket from the top." As she walked out, he woke

[69] *Id.*
[70] Special Report at 5.

> up, got up, told her to get in her bed, and walked out, saying "he'll lock the door on the way out."
>
> The next morning, her roommate, [redacted], came into [redacted] room at about 5:30 a.m. and said Mr. Johnson was sleeping in their living room.[71]

To investigate misconduct at St. HOPE, OIG agents made five trips to Sacramento, conducted 26 interviews and reviewed a substantial quantity of documents between April 23 and June 28, 2008.[72] The presence of federal agents in Sacramento attracted local media attention because Johnson was running for mayor of Sacramento at the time.

As early as April 26, 2008, California state officials confirmed that an investigation of St. HOPE was underway.[73] In June, the *Sacramento Bee* reported the investigation was "ongoing."[74] A spokesman from the Office of the Inspector General was contacted by the *Bee* for that story and asked whether the matter had been referred to the United States Attorney.[75] Neither story included a comment from the OIG about any specific aspects of the investigation. There is no evidence OIG initiated any of the press coverage.[76]

Having gathered enough evidence to reasonably suspect St. HOPE officials were misusing grant funds and to prevent further abuse, OIG filed paperwork on May 21, 2008 with CNCS's Suspension and Debarment Official. The Inspector General requested the "suspension of St. HOPE, Johnson and Gonzalez from being able to receive or participate in future grants of Federal funds."[77]

On August 7, 2008, OIG referred the case to the United States Attorney in Sacramento.[78] Accompanying the referral from OIG was a cover letter signed by IG Walpin explaining his belief that evidence gathered through OIG's investigation merited pursuit of criminal and civil penalties.[79] It is unclear what steps, if any, the U.S. Attorney undertook to examine the alleged sexual misconduct and offers of payments to the victims. The U.S. Attorney did not respond to Committee inquiries.

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[71] OIG Referral, Exhibit 19.
[72] *Id.* at 6.
[73] David Finnigan, *Sacramento mayoral candidate's non-profit now being examined by federal officials*, POLITICKER.COM, Apr. 26, 2009.
[74] Dorothy Korber, *Hood corps probe expands*, *SACRAMENTO BEE*, June 30, 2008 [hereinafter Korber article].
[75] Special Report at footnote 5.
[76] *Id.* at 6.
[77] *Id.* at 1.
[78] Referral from the Office of Inspector General of the Corporation for National and Community Service to The Office of United States Attorney for the Eastern District of California Concerning Kevin Johnson – President/Chief Executive Officer and Dana Gonzalez – Executive Director St. HOPE Academy, Sacramento, California, August 7, 2008.
[79] *Id*.

On September 5, 2008, the *Sacramento Bee* reported the referral of the St. HOPE case to the Justice Department.[80] The story explicitly stated that an OIG spokesman declined to comment on the case.[81] Through spokesman William Hillburg, OIG neither confirmed nor denied the existence of a referral to the *Bee*.[82] Instead, the referral was confirmed by U.S. Attorney McGregor Scott, who told the *Bee* "we are in receipt of the Inspector General's report and we are … reviewing it."[83]

B. Kevin Johnson and St. HOPE are Suspended

FINDING: ***The decision by the Corporation's Suspension and Debarment Official to suspend St. HOPE Academy and former Chief Executive Kevin Johnson was based on sufficient evidence gathered by the Office of the Inspector General ("OIG"). The decision to suspend protected the Corporation from further misappropriation of funds while OIG and the Justice Department completed their respective investigations.***

Evidence gathered in the course of OIG's investigation of St. HOPE was presented to CNCS Suspension and Debarment Official William Anderson. After reviewing the evidence collected by OIG agents in the course of their investigation, Anderson ruled on September 24, 2008 that "immediate action is necessary to protect the public interest" and suspended Johnson, Gonzalez, and St. HOPE (collectively, "Respondents").[84] Anderson 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."[85] The Notice of Suspension also informs Respondents that the OIG's investigation is ongoing.[86]

The Notice of Suspension cited the specific instances of misuse of grant funds relied on by Anderson for his decision to suspend. The reasons listed in the Notice are:[87]

1. Using AmeriCorps members to "recruit students for St. HOPE Academy;"

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[80] Dorothy Korber and Terri Hardy, *Investigators turn St. HOPE report over to U.S. Attorney*, *SACRAMENTO BEE*, Sept. 5, 2008 [hereinafter Korber and Hardy].
[81] *Id.*
[82] Special Report at footnote 6.
[83] Korber and Hardy.
[84] 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) [hereinafter Notices of Suspension].
[85] *Id.*
[86] *Id.*
[87] Special Report at 8, quoting Notices of Suspension.

2. Using AmeriCorps members for political activities in connection with the "Sacramento Board of Education election;"

3. Taking grant-funded AmeriCorps members "to New York to promote the expansion of St. HOPE operations in Harlem;"

4. Assigning grant-funded AmeriCorps members to perform services "personally benefiting . . . Johnson," such as "driving [him] to personal appointments, washing [his] car, and running personal errands;"

5. "Supplementing staff salaries by converting grant funds designated for AmeriCorps members," by enrolling two St. HOPE Academy employees "into the AmeriCorps program for the 2004/2005 grant year" without changing their duties, thereby improperly using grant funds so that one St. HOPE employee's "salary was then paid through the AmeriCorps program," plus she "received an [AmeriCorps] living allowance and an education award," and the other employee's salary, which was not paid from the grant, "was supplemented by both an AmeriCorps living allowance and an education award;" and

6. Improperly using AmeriCorps "members to perform non-AmeriCorps clerical and other services" that "were outside the scope of the grant and therefore were impermissible" for "the benefit of St. HOPE."

The suspension was announced on OIG's website. That announcement, coupled with the September 5 story in the *Bee* disclosing the involvement of the U.S. Attorney's Office, prompted Johnson to enter the public discourse himself. On his campaign website, Johnson issued a statement. In the statement, Johnson implied OIG's investigation was politically motivated and criticized OIG's announcement of his suspension on its website:

> I remain confident that the U.S. Attorney will decide not to proceed when it conducts a non-political review of the allegations. The U.S. Attorney's Office does not have a website with "NEWS FLASH" across the top that's more fitting for the National Enquirer website than that of a federal government agency. The U.S. Attorney's Office respects the law and only proceeds when it is purposely violated, not just to get headlines. The U.S. Attorney's Office does not have a political agenda, and has a policy, in fact, of not making announcements on the eve of an election. [88]

[88] Website, *Kevin Johnson for Mayor*, available at http://www.kevinjohnsonformayor.com/facts/item/id:1085/pid:1389 (last visited Aug. 28, 2009) [hereinafter "*Kevin Johnson for Mayor* Website").

This statement fails to mention that the OIG did not actually begin the investigation of Johnson on its own initiative, but rather in response to a referral from CNCS.[89] To conclude the statement, Johnson's campaign seized upon the public interest in the St. HOPE matter in an attempt to discredit Walpin. After listing five "points you should know" regarding the St. HOPE investigation, Johnson's campaign stated its concern about the timing of and motivation for OIG's announcement of the Justice Department referral, "particularly given the background and comments of the Inspector General about the KKK."[90]

The Johnson campaign did not provide any context for its allusion to Walpin's remark, which left the misimpression that Walpin may have said something that would evidence a racial motivation for his investigation of Johnson. In fact, however, the remark in question was a comment Walpin made when introducing former Massachusetts Governor Mitt Romney at a Federalist Society Convention in 2005.[91] The context was unrelated to either Johnson or the Ku Klux Klan. Walpin introduced Romney by saying "Today, when most of the country thinks of who controls Massachusetts, I think the modern-day KKK comes to mind, the Kennedy-Kerry Klan. One person who has been victorious against that tide in Massachusetts is Massachusetts Governor Mitt Romney." By referencing Walpin's remark out-of-context, in response to the *Bee* article, the Johnson campaign escalated the rhetoric swirling around the St. HOPE matter. Prior to this statement by the Johnson campaign, there is no record of public ad hominem attacks by any of the parties making statements about the St. HOPE matter.

C. Involvement of the U.S. Attorney's Office

FINDING: ***Because the U.S. Attorney's Office was not open to a settlement that did not remove Kevin Johnson from the list of suspended parties, Acting U.S. Attorney Lawrence Brown and CNCS General Counsel Frank Trinity cut Gerald Walpin out of settlement negotiations.***

The United States Attorney's Office first became involved in the St. HOPE matter when U.S. Attorney McGregor Scott received a referral from the OIG. Referrals are made by investigators when they encounter evidence of possible federal crimes or other misconduct, which only the Justice Department has authority to pursue.

In response to the referral, the U.S. Attorney's Office asked OIG to evaluate which charges to the grant were allowable in order to determine an appropriate civil remedy. Assistant United States Attorney ("AUSA") Kendall Newman collaborated with OIG to prepare and serve a subpoena on St. HOPE requiring production of financial

[89] S. Finance Comm. Staff Interview with Jack Park, June 17, 2009; E-mail from Gerald Walpin to Emilia DiSanto, Chief Investigative Counsel, Senate Finance Comm., October 29, 2009.
[90] *Kevin Johnson for Mayor* Website.
[91] Scott Helman, *Romney Rips SJC's Justices on Values*, BOSTON GLOBE, Nov. 11, 2005.

records.[92] The subpoena specified 16 types of documents, including accounting ledgers and financial status reports.[93]

After St. HOPE failed to adequately respond to the subpoena, AUSA Newman asked OIG to draft an affidavit in support of an enforcement hearing.[94] OIG did so.[95] Subsequently, St. HOPE provided additional information to OIG in response to the subpoena. OIG prepared a report for the U.S. Attorney's Office based on the totality of the documents produced in response to the subpoena, per the instructions of AUSA Newman.[96]

OIG assigned the total costs for the grant period in question at $847,673.[97] The report noted a variety of financial records subpoenaed were never provided by St. HOPE, and concluded "none of the costs charged to the grant are allowable, primarily because the AmeriCorps members' service activities were not consistent with the grant requirements."[98]

The Notice of Suspension issued to each Respondent included a description of the showings required to lift the suspension.[99] Respondents were notified that to dispute the suspension, they must present to the Suspension and Debarment Official "specific facts that contradict the statements contained in [the Notice of Suspension]."[100]

Matthew Jacobs, attorney for Kevin Johnson in the matter of his suspension, opted to involve the U.S. Attorney rather than make showings to the Corporation's Suspension and Debarment official. Jacobs contacted Newman with a settlement offer: a cash payment of $50,000 plus a stipulated judgment in the amount of $250,000, both to be paid by St. HOPE.[101]

On April 1, 2009, approximately two weeks after receiving the settlement offer from Kevin Johnson's attorney, AUSA Newman asked OIG for its opinion.[102] Newman insisted OIG provide its opinion by April 2, the next day.

On April 2, OIG recommended a settlement of between $100,000 - $170,000 to be paid immediately (the sum total of all education awards given to St. HOPE from the National Service Trust) and between $370,000 - $400,000 over five years. Walpin recommended the settlement include sufficient guaranties of payment back to the taxpayers. The Inspector General also advised the U.S. Attorney's Office that:

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[92] Special Report at 13, Subpoena No. 08-027-S4.
[93] *Id.*
[94] *Id*. at 13.
[95] *Id.*
[96] *Id.* at 14.
[97] OIG Report to AUSA Kendall Newman, Mar. 18, 2009 at 1.
[98] *Id.*
[99] Notices of Suspension.
[100] *Id*.
[101] Special Report at 12.
[102] *Id*. at 15.

> [I]t would be improper to include the suspension in any settlement because that issue must be decided on whether the respondents are responsible for future grants, not whether they have paid for prior misuse of grants.[103]

This was the last communication between the U.S. Attorney's Office and OIG. Late in the evening of April 2, Walpin was notified by e-mail from CNCS General Counsel Frank Trinity that Newman "reached out to [Trinity]."[104] The two mutually agreed Trinity would be the "point of contact" for the U.S. Attorney's Office while negotiating a settlement with Kevin Johnson and the Respondents.[105] From that point on, the U.S. Attorney's Office dealt solely with Trinity.[106]

The removal of the Inspector General from the negotiation of the settlement process was contrary to the Corporation's "practice for the Inspector General's Office to serve as point of contact with the United States Attorney's Office on pending civil recovery matters."[107] The General Counsel's role is usually limited to "communicat[ing] the agency's approval of the terms of any settlement agreement."[108]

VI. Gerald Walpin Criticized CNCS Leadership

Historically, Gerald Walpin had a professional and respectful relationship with the Corporation's management and Board of Directors.[109] However, the process of settling the St. HOPE matter strained his relationship with Acting CEO Nicola Goren and General Counsel Frank Trinity.

Shut out of the settlement process by Lawrence Brown and Frank Trinity and of the belief that serious problems existed at the Corporation, Walpin issued a Special Report to Congress criticizing the settlement of the St. HOPE matter. Shortly thereafter, Walpin criticized Goren and Trinity at a meeting of the Corporation's Board of Directors.

The hostile response by the Corporation's management to Walpin's vigorous pursuit of an effective settlement of the St. HOPE matter was inconsistent with what Congress envisioned. According to the Senate Report accompanying the IG Reform Act:

> [T]he IG Act gives the Inspectors General a high degree of operational autonomy and authorizes a direct reporting channel to

[103] *Id.*, citing the substance of a telephone conversation between IG Gerald Walpin and AUSA Kendall Newman.
[104] *Id.* at 17.
[105] *Id.*
[106] *Id.* at footnote 11.
[107] Memorandum from Frank Trinity to Nicola Goren, May 18, 2009.
[108] *Id.*
[109] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Stephen Goldsmith, June 25, 2009 [hereinafter Goldsmith interview].

> Congress. **It is critical that agency management respect this independence and not attempt to retaliate against a vigorous Inspector General by threatening his or her tenure** or budget, or otherwise interfere in effective oversight by the IG.[110]

Despite the clear intent of Congress, Walpin's adversarial relationship with the Corporation's management ultimately led to his removal.

A. The Office of the Inspector General Issued a Special Report to Congress

On May 6, 2009, the Office of Inspector General delivered a Special Report to the Acting Chief Executive Officer of the Corporation criticizing the settlement of the Corporation's claims against St. HOPE Academy, Kevin Johnson, and Dana Gonzalez. The Special Report was issued pursuant to section 5(d) of the Inspector General Act of 1978 ("IG Act"), as amended.[111] Section 5(d) of the IG Act requires the IG to report immediately to the agency head whenever the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations."[112] Such reports are to be transmitted unchanged to Congress within seven days, and are therefore known as "Seven-Day Letters."[113]

The use of a Seven-Day Letter is rare. On average, only one is issued annually for the entire IG community.[114] Prior to delivering the report to Congress, Inspector General Walpin contacted Capitol Hill staff to discuss the seven-day letter and to indicate that he believed sending it could result in retaliation against him by CNCS management.[115] Just two weeks later, the Board's chair was in the White House Counsel's Office arguing that the situation with the Inspector General was untenable.

1. The U.S. Attorney's Office and CNCS General Counsel Frank Trinity Negotiated an Ineffective Settlement of the St. HOPE Matter

FINDING: ***Faced with mounting political pressure, the U.S. Attorney's Office and the Corporation's General Counsel set aside the financial interests of United States taxpayers in favor of a politically palatable settlement. Because the settlement collects payment from St. HOPE, and not Johnson, and because of the***

[110] S. Rep, 110-262 (emphasis added).
[111] Letter from Gerald Walpin to Sen. Edward Kennedy, May 13, 2009.
[112] The Inspector General Act of 1978, as amended, 5 USC App. 3, § 5(d).
[113] Terry L. Cooper, "Handbook of Administrative Ethics," Marcel Dekker, Inc., 2001 at 389.
[114] CRS Report No. 98-141 GOV, "Statutory Offices of Inspector General: A 20th Anniversary Review," Nov. 20, 1998 at 15.
[115] S. Finance Comm. Staff Interview with Gerald Walpin, May 5, 2009.

school's precarious financial condition, there is little assurance the United States will ever be repaid.

On April 9, 2009, in a Justice Department Press Release, the United States Attorney announced a settlement of all civil claims had been reached. In the settlement, St. HOPE agreed to repay one half ($423,836.50) of the $847,673 in AmeriCorps grant funds it received.[116]

An initial payment of $73,836.50 was due immediately.[117] Of that amount, Johnson paid all but $1,000 on behalf of St. HOPE "to assist St. HOPE in paying the settlement."[118] St. HOPE may repay Johnson if and when it has the financial ability to do so.[119] Dana Gonzalez agreed to repay the remaining $1,000 of the immediately due amount.[120]

The remaining $350,000 is to be paid by St. HOPE in annual installments of $35,000 for the next ten years, plus five percent annual interest.[121] CNCS General Counsel Frank Trinity testified the ten-year payment schedule makes the settlement amount "more collectable."[122]

St. HOPE entered into a Stipulation for Consent Judgment to provide assurances that the settlement amount can be collected.[123] A stipulated judgment allows the United States to receive a default judgment against St. HOPE in case the school fails to make payments in accordance with the agreement, thereby allowing collection of the settlement amount through an enforcement action.

The fact that the Settlement Agreement required the immediate payment of $73,836.50 by Johnson and Gonzalez underscored the precarious financial condition of St. HOPE. To assuage concerns about the school's ability to pay, St. HOPE certified that it meets the legal requirements for solvency:

> St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(I)(B)(ii)(I), and will remain solvent following **payment to the United States of the Settlement Amount.**[124]

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[116] Dept. of Justice Press Release, "United States Settles Claims Arising Out of St. HOPE Academy's Spending of AmeriCorps Grants and Education Awards," Apr. 9, 2009 [hereinafter DOJ Press Release].
[117] *United States v. St. HOPE Academy*, Settlement Agreement § III, 1(a) [hereinafter Settlement Agreement].
[118] *Id.* § III, 1(b).
[119] *Id.*
[120] *Id.* § III, 1(c).
[121] *Id.* § III, 1(d).
[122] Trinity interview.
[123] Settlement Agreement § III, 1(d).
[124] *Id.* § III, 14 (emphasis added).

Considering the "payment to the United States of the Settlement Amount" referred to above is covered by Johnson and Gonzalez, this guaranty is meaningless.

Furthermore, this meager pledge of solvency from St. HOPE does little to counterbalance the description of St. HOPE's financial condition by Johnson's own attorney. In a March 16, 2009 letter to Assistant United States Attorney Kendall Newman, Johnson attorney Matthew Jacobs writes:

> The second purpose of this submission is to establish St. HOPE's **precarious financial condition**. Toward that end, we have attached four schedules reflecting that **dismal condition**.[125]
>
> * *
>
> As is evident, St. HOPE is **hemorrhaging cash at an alarming rate**.[126]
>
> * *
>
> When this schedule is coupled with the cash flow projection schedules described below, **St. HOPE's financial condition looks grim indeed**.[127]
>
> * *
>
> The schedule also shows extremely limited sources of revenue. As a matter of simple arithmetic, it is readily apparent that **St. HOPE will soon be completely out of cash, with little to no revenue to supplant the loss**.[128]
>
> * *
>
> In short, these schedules demonstrate what I told you when we spoke and what Malcolm Segal has been telling you: **St. HOPE's financial condition is precarious, at best**.[129]

Jacobs attached four schedules to his letter to confirm for the U.S. Attorney's Office that his characterization of St. HOPE's financial condition was not hyperbole.[130] This information was known to the Corporation and the U.S Attorney at least as early as March 16, 2009, during the earliest stages of the settlement negotiation process.[131]

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[125] Letter from Matthew Jacobs to AUSA Kendall Newman, March 16, 2009 at 11 (emphasis added).
[126] *Id.* (emphasis added).
[127] *Id.* at 12 (emphasis added).
[128] *Id.* (emphasis added).
[129] *Id.* at 13 (emphasis added).
[130] *Id.* Ex. Q, R, U, V.
[131] Letter from Matthew Jacobs to AUSA Kendall Newman, March 16, 2009.

In an attempt to secure the ability of the United States to collect from St. HOPE in case of a default judgment, the U.S. Attorney included a term in the Stipulation for Consent Judgment allowing the "United States [to] record the Consent Judgment herein as a lien against any of St. HOPE's real properties until such judgment is satisfied."[132] CNCS General Counsel Frank Trinity acknowledges that in a case where St. HOPE became insolvent, the Government's lien on St. HOPE's real property is secondary to the interests of the primary mortgagor, making collection difficult and unlikely.[133] This guarantee is further devalued by the fact that the "St. HOPE group of entities appears to be an interlocking miasma;" the land on which St. HOPE Academy is situated is actually owned by St. HOPE development, of which Kevin Johnson was President. [134]

The U.S. Attorney's decision to agree to a settlement that collected payments from an entity that "will soon be completely out of cash" instead of from Johnson and Gonzalez personally significantly undermines the value of the agreement and shields them from full accountability for their inappropriate actions. Because the U.S. Attorney agreed to collect from St. HOPE, a charter school that relies on federal funds and charitable contributions to operate, rather than from Kevin Johnson, who earned more than $31 million during his 12-year NBA career,[135] the United States taxpayers are unlikely to collect anything more than the initial immediate payment of $73,836.50. The terms of the Stipulation for Consent Judgment do little, if anything, to mitigate the risk assumed by the United States by entering into this settlement.

In addition to ignoring the precarious financial condition of St. HOPE during settlement negotiations, the U.S. Attorney and Frank Trinity also ignored Kevin Johnson's willingness to personally pay to resolve civil matters. In 1997, Johnson agreed to pay $230,000 to resolve claims brought by a Phoenix teenager who alleged Johnson molested her.[136] Phoenix prosecutors declined to file criminal charges in the matter.

2. The U.S. Attorney's Office and Frank Trinity Reinstated Kevin Johnson in Response to Political Pressure

The settlement negotiated by Newman, Brown and Trinity terminated the suspensions of Johnson, Gonzalez, and St. HOPE upon payment of the immediately due amount by Johnson and Gonzalez.[137] In the Corporation's response to the Inspector General's Special Report to Congress about the St. HOPE matter, Acting CEO Nicola

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[132] *United States of America v. St. HOPE Academy*, Stipulation for Consent Judgment § 6.
[133] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Interview with Frank Trinity, July 6, 2009 [hereinafter Trinity interview].
[134] E-mail from Gerald Walpin to Frank Trinity, June 25, 2008.
[135] Basketball-reference.com, "Kevin Johnson," available at http://www.basketball-reference.com/players/j/johnske02.html (last visited Sept. 9, 2009).
[136] Terri Hardy and Dorothy Korber, *Johnson agreed to pay teen girl $230,000, draft of document shows*, *SACRAMENTO BEE*, May 20, 2008.
[137] *Id.* § III, 3(a) - (e).

Goren asserted "the notion that the Corporation was unduly influenced by outside political or media pressure is not true."[138]

Interviews and documents show this is not the case. According to Acting U.S. Attorney Lawrence Brown:

> The agreement reached strikes a proper balance between accountability and finality. St. HOPE Academy must pay a significant amount for its improper handling of AmeriCorps funds. **The lifting of the suspension against all parties, including Mayor Johnson, removes any cloud whether the City of Sacramento will be prevented from receiving much-needed federal stimulus funds.**[139]

This statement shows the U.S. Attorney's motivation to reach a settlement was not to protect the financial interests of the United States, but rather to remove Johnson from the suspended parties list in order to ensure Sacramento's eligibility to receive stimulus funds. To do so, Brown cut Gerald Walpin out of settlement discussions after OIG submitted a proposal that did not include lifting Johnson's suspension.

When Sacramento was faced with having its stimulus allocation held up due to the suspension of the mayor, elected officials began actively voicing concerns. One representative took action after being contacted by Kevin Johnson, whose office "called everybody" to make sure stimulus funds would not be jeopardized by his suspension.[140]

During a March 28, 2009 interview with KCRA-TV, Sacramento's Congresswoman indicated that she contacted White House officials and other members of the federal government on behalf of Johnson.[141] Because of the White House's failure to cooperate, it is unclear which officials were contacted and whether or to what extent they were involved in the process that ultimately led to Walpin's removal.

According to Walpin, the expression of concerns by political leaders at the urging of Kevin Johnson coincided with a period of increased pressure on him to settle the St. HOPE matter. Walpin said, "It was during that period when suddenly I had this pressure to settle the case against Johnson. I took the position that the suspension should not be lifted and that's what I believe caused people to say they had to get rid of me."[142]

The most expedient and apolitical means by which the U.S. Attorney could have guaranteed Sacramento's eligibility to receive federal funds would have been to appoint the City Manger or Treasurer as a "Federal Funds Guardian." The Mayor is in no way

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[138] Letter from Nicola Goren to Speaker Nancy Pelosi, June 18, 2009.
[139] DOJ Press Release (emphasis added).
[140] The Capital Hour with Eric Hogue, July 24, 2009, available at http://hoguenews.com/?page_id=13 (last visited Aug. 31, 2009).
[141] *Id.*
[142] The Capital Hour with Eric Hogue, July 24, 2009, available at http://hoguenews.com/?page_id=13 (last visited Aug. 31, 2009).

required, by statute or otherwise, to sign as the "recipient" of federal dollars on behalf of the city of Sacramento. Johnson himself was aware of this. According to his public statement responding to the referral of the St. HOPE matter to the Justice Department, "Under our system of city government, it's the city manager, not the Mayor, that engages with the federal government on contracts."[143] As Gerald Walpin noted in the Special Report to Congress, "While such a provision might have been politically distasteful to Johnson, the responsibility of both the Corporation and the U.S. Attorney's Office was to protect federal funds without regard to any impact – favorable or unfavorable – on Johnson's popularity."[144]

Faced with mounting pressure from the public and possibly from Members of Congress and Administration officials, the U.S. Attorney's Office and the Corporation's General Counsel set aside the financial interests of the United States in favor of a politically palatable settlement. An example of an effective settlement would have (1) maintained the joint and several liabilities of Johnson and Gonzalez, (2) maintained the suspension of Johnson and Gonzalez so as to allow the suspension review process to run its course without interference, and (3) appointed a "Federal Funds Guardian" to guarantee Sacramento's eligibility to receive federal dollars.

Perhaps most importantly, an effective settlement could have been an effective deterrent to fraud; there is no shortage of anecdotes about misuse of federal funds at charter schools. A settlement holding the individual responsible rather than the school would serve as notice to careless and criminal school principals that someone is in fact watching, and that individuals will be held accountable personally for their actions.

3. CNCS Relied on Lawrence Brown's CIGIE Complaint Instead of Responding to OIG's Special Report

FINDING: ***In a complaint to the Integrity Council of the Council of Inspectors General on Integrity and Efficiency ("CIGIE"), Brown alleged Walpin's interaction with Sacramento media was inappropriate. Brown also alleged Walpin failed to disclose exculpatory evidence. Documents and testimony obtained by congressional investigators do not support the substance of Brown's complaint.***

Because OIG's Special Report was issued as a "Seven-Day Letter," the Corporation is required to submit the report to Congress within seven calendar days.[145] Accompanying OIG's Special Report should be the Corporation's response in the form of "a report … containing any comments" it deems appropriate.[146]

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[143] Website, Kevin Johnson for Mayor, available at http://www.kevinjohnsonformayor.com/kjfm/?m=200809 (last visited Sept. 18, 2009).
[144] Special Report at 23.
[145] The Inspector General Act of 1978, as amended, 5 USC App. 3, § 5(d).
[146] *Id.*

Instead of forwarding the Special Report to Congress with comments, the Corporation relied on a complaint against Gerald Walpin filed by Acting U.S. Attorney Lawrence Brown to justify withholding its response:

> We are constrained from commenting substantively on the Inspector General's Special Report because we have been advised that the Acting United States Attorney for the Eastern District of California has formally communicated concerns about the Inspector General's conduct in this matter to the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency.[147]

Acting U.S. Attorney Lawrence Brown submitted his complaint to the Chair of the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") on April 29, 2009. The complaint stated Brown's "concerns about the conduct of … Gerald Walpin and his staff in the handling of *United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez*."[148]

In the complaint, Brown outlined what he believed to be the role of an Inspector General in an investigation of waste, fraud and abuse:

> 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.[149]

The underlying theme of Brown's complaint against Walpin is a belief that his vigorous pursuit of an appropriate and equitable CNCS response to the wrongdoing of a grantee exceeded the scope of the IG's role. His argument runs contrary to the responsibility imposed on the IG by Congress. 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:

> Assume a leadership role in any and all activities which he deems useful to promote economy and efficiency in the administration of

[147] Letter from Nicola Goren to Sen. Edward Kennedy, May 12, 2009.
[148] Complaint.
[149] Complaint at 1.

> programs and operations or prevent and detect … waste in such programs and operations.[150]

Congress clearly envisioned an active role for the IG in any investigation. In the St. HOPE matter, fulfilling the leadership obligations imposed by Congress required the IG to conduct a thorough and impartial investigation, advocate on behalf of the remedy the IG deemed appropriate, and respond to public interest in the matter. To complain that doing so exceeded the scope of the IG's responsibility demonstrated Brown's lack of familiarity with the model envisioned by Congress in creating that role.

To support the general assertion that Walpin exceeded his authority by advocating for suspending an individual who was determined by a preponderance of the evidence to have been misusing federal dollars, Acting U.S. Attorney Brown cited specific behavior. Specifically, Brown points to Walpin's interaction with Sacramento media, and Walpin's alleged failure to include the contents of an interview conducted by OIG during settlement discussions with the U.S. Attorney's Office.[151]

On October 9, 2009, about four months after Walpin was given the resign-or-be-fired ultimatum, CIGIE's Integrity Committee informed Walpin his response to the complaint had, "sufficiently and satisfactorily addressed the matter and that further inquiry or an investigation regarding the matter was not warranted."[152] In its letter, the Integrity Committee did not cite any procedural reason for closing the case without further action. Even though the case was arguably moot since the President had already removed Walpin, the Integrity Committee appears to have examined the merits of the complaint and Walpin's response in order to conclude that no investigation was warranted. The following is an analysis of why the complaint appears to have been without merit.

A. Gerald Walpin's Interaction With Sacramento Media Was Limited and Permissible

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. To clarify his opinion of the process, Walpin decided to make his views public through editorials submitted to the *Sacramento* Bee, in which Walpin specifically stated that he does "not comment on [criminal investigation or civil monetary recovery or settlement] matters unless they are public."[153]

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[150] S. Rep. N. 95-101, at 27 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2702.
[151] See Complaint.
[152] Letter from Kevin L. Perkins, Chair, CIGIE Integrity Committee, to Gerald Walpin, former Inspector General, CNCS (Oct 19, 2009).
[153] Gerald Walpin, *My View: The federal aid ball is in Johnson's court*, *SACRAMENTO BEE* (Mar. 31, 2009).

Acting U.S. Attorney Brown cites OIG's comments in the *Sacramento Bee* as the source from which his office first became aware of the St. HOPE matter. Brown observed that one story "include[s] comments from an IG spokesperson."[154] Mr. Brown fails to place the quote from IG spokesman William Hillburg in context:

> Federal officials would not talk about the Hood Corps investigation but said their rules are clear. "No church on our time, and it cannot be required," said William O. Hillburg, a spokesman for the inspector general's office conducting the investigation. "No political activity at all on our time, and it can't be required. No residential requirement at all."[155]

These comments from Mr. Hillburg neither addressed any specific aspects of the St. HOPE investigation, nor did they confirm or deny that such an investigation was even taking place. Instead, Hillburg's comments merely recited federal law regarding permissible expenditures of federal grants.

Brown again mischaracterized a comment from Hillburg in a story announcing the referral of the St. HOPE matter to the U.S. Attorney's Office. Brown claims Hillburg disclosed the referral to a *Sacramento Bee* reporter. In fact, the *Bee*, on its website on September 24, 2008 and in the next day's morning edition, reported "its own discovery of the names of suspended parties" by reviewing a list maintained by the General Services Administration (GSA).[156]

The comment from Hillburg in the *Bee*'s article, cited by Brown as objectionable in his complaint to CIGIE, is a general comment about OIG practice:

> A spokesman for the agency conducting the probe said he could not comment specifically on the case. But, any "referral means that it's our opinion that there is some truth to the initial allegations, backed up by our investigation of the matter," said William O. Hillburg, spokesman for office of inspector general for the Corporation for National and Community Service.[157]

In fact, the referral was confirmed for the *Bee* by U.S. Attorney McGregor Scott. Scott told *Bee* reporters "we are in receipt of the Inspector General's report and we are ... reviewing it."[158]

In his CIGIE complaint, Brown also objected to an OIG press statement following the *Bee*'s article disclosing the referral of the St. HOPE matter. In OIG's press statement, the Inspector General merely "repeated the grounds for suspension set out in the Notice

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[154] Complaint at 2.
[155] Korber article.
[156] Response of Gerald Walpin and the OIG to the [U.S. Attorney's CIGIE] Complaint.
[157] Korber and Hardy.
[158] *Id.*

of Suspension, issued by the Corporation's Suspension and Debarment Official and publicly posted on the GSA website."[159]

The IG Act in no way limits the ways in which an IG chooses to interact with the media and the public. In fact, Walpin attended programs detailing to Inspectors General the importance of making public statements.[160] There is no guidance from CIGIE regarding IG interaction with the media. Moreover, the statements Brown cites as objectionable were made by an OIG spokesman, not Walpin himself.

B. Gerald Walpin Did Not Withhold Material Relevant to Settlement Negotiations

Acting U.S. Attorney Brown also based his CIGIE complaint on an allegation that Walpin failed to provide exculpatory evidence to his office during settlement discussions. Brown refers to information provided by Herinder Pegany, an elementary school principal who claimed St. HOPE AmeriCorps members performed after-school tutoring at his school.

Notes summarizing Pagany's interview by OIG agents show Pegany did not know how many tutors were assigned to his school, did not directly supervise the tutors, and did not physically observe tutors on a daily basis.[161] Because the substance of the interview reveals Pegany had no knowledge of the actual activities of tutors assigned to his school, his observations are of little investigative value.

The OIG's referral gathered an abundance of evidence sufficient to prove Respondents used AmeriCorps members to wash Mr. Johnson's car, run personal errands, and other abuses of the terms of the grant. For example, Ms. Alair, a teacher and staff member at St. HOPE, observed members "driving Kevin Johnson to different functions, running errands, getting water," and being Mr. Johnson's "personal staff."[162] Duties that were supposed to be performed by AmeriCorps volunteers, such as tutoring, were not completed according to some St. HOPE employees. Ms. Maccini, who worked at St. HOPE for 3 ½ years, stated that "I did not see … members tutoring students."[163] Even if Pegany's interview did in fact provide information indicating tutors were engaged in activities within the scope of St. HOPE's grant in a particular instance, the Respondents were by no means exculpated. Walpin never claimed Respondents misappropriated the entire federal grant. The entirety of the evidence against them is more than adequate to justify suspension.

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[159] *Id.*
[160] H. Oversight and Gov't Reform Comm. Minority Staff Interview with Gerald Walpin, Sept. 17, 2009 [hereinafter Walpin Sept. 17, 2009 interview].
[161] Memorandum of Interview of Herinder Pegany, Principal, PS7 Elementary School, by OIG Special Agents Jeff Morales and Wendy Wingers.
[162] Complaint at 14.
[163] Criminal Referral, Ex. 13

Brown concluded his letter by stating "Ultimately, despite the hindrance of Mr. Walpin, due to the extraordinary assistance of General Counsel Frank Trinity and associate General Counsel Irshad Abdal-Haqq, we were able to negotiate a resolution of this matter very favorable to the interests of the United States."[164] An examination of the settlement shows this is not the case.[165]

B. CNCS May 20, 2009 Board Meeting

FINDING: ***At a May 20, 2009 Board meeting, Gerald Walpin complained about the settlement of the St. HOPE matter to the Corporation's Board. Walpin also stated his intention to call for an FBI investigation into destruction of evidence under subpoena in a federal investigation by St. HOPE personnel. When asked to clarify this statement, Walpin suddenly appeared confused and disoriented to CNCS Board members and staff. However, the OIG's Deputy said he merely appeared to have lost his place in his notes. The IG went home early later that day due to a strong headache and upset stomach.***

On May 20, 2009, Walpin was scheduled to brief the Corporation's Board of Directors about the St. HOPE settlement as part of the Board's thrice-annual meetings.[166] By then, the Corporation was "positioned as [the] hub of service and social innovation by [the White House].[167] The First Lady was highly-involved in the Corporation's service events and was only a week removed from addressing CNCS staff.[168]

The Board was concerned the timing of Walpin's briefing could disrupt the Corporation's "very positive" relationship with the White House.[169] In remarks to the Board in advance of Walpin's briefing, Board Chairman Alan Solomont expressed "concern about potential for damage being done [because of the] bad timing" of the IG's presentation to the Board.[170]

Walpin opened his presentation to the full membership of the Board at the Corporation's headquarters with critical remarks about the "anything goes attitude" at the Corporation and about the Board's complacency since the departure of former CEO David Eisner.[171] According to Walpin's notes from the Board meeting, he and Eisner "did not always agree but always communicate[d] and [had] no hostility."[172] Since

[164] Complaint at 3.
[165] *See supra* Sec. VI.A.1.
[166] Solomont interview.
[167] Board Retreat Notes, May 19-20.
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] Trinity interview.
[172] Gerald Walpin CNCS Board Meeting Notes, May 20, 2009 [hereinafter Walpin notes].

Eisner left, Walpin witnessed a "change in culture, enforcement of rules, and attitude towards OIG."[173] Walpin stated the "OGC [Office of General Counsel] appears to be in charge of all matters in which OIG [is] involved."[174]

Walpin alleged Acting Chief Executive Officer Nicola Goren and General Counsel Frank Trinity were involved in developing and distributing the complaint filed by Lawrence Brown with CIGIE's Integrity Committee to Congress.[175]

During the Board meeting, Walpin described for the Board how the U.S. Attorney's Office pressed for a settlement in response to media and political pressure.[176] Walpin said the U.S. Attorney's Office asked "for OIG['s] position on the settlement." On April 1, 2009[177] Walpin explained to the Board that he advised the U.S. Attorney not to rush into a settlement.[178] According to Walpin's notes, the U.S. Attorney told him he would not wait any longer to settle the matter.[179] Then, "suddenly AUSA called Trinity directly … Trinity stopped talking to OIG."[180]

Walpin expressed his displeasure to the Board about the terms of the settlement.[181] Walpin objected to lifting the suspension because Johnson and Gonzalez never made showings to the Corporation's Suspension and Debarment Official in accordance with the procedure outlined in the Suspension Notice.[182] Walpin also objected to collecting money from St. HOPE instead of from Johnson and Gonzalez themselves. Walpin described Johnson and Gonzalez as "active wrongdoers," and St. HOPE as the "vehicle they used."[183] Walpin told the Board he considers the settlement "wallpapering."[184]

During his presentation to the Board, Walpin alerted the Board about a "sequel" to the St. HOPE matter. Walpin was referring to the resignation of Rick Maya from his post as Executive Director of St. HOPE Public Schools.[185] On April 9, 2009, Maya notified the St. HOPE Public Schools Board of his resignation because of, among other things, the deletion of Kevin Johnson's e-mail from the school's archiving system while

[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Eric Tanenblatt, June 26, 2009 [hereinafter Tanenblatt interview].
[182] Walpin notes.
[183] *Id.*
[184] *Id.*
[185] *Id.*

such e-mails were subject to federal subpoena.[186] Maya's resignation was preceded by the resignation of two members of the St. HOPE Board based on similar concerns.[187]

Prior to the meeting, Walpin drafted a public statement calling for the FBI and a special prosecutor to investigate the destruction of evidence at St. HOPE.[188] Walpin submitted the statement to William Hillburg, OIG's Communications official.[189] Walpin made his presentation to the Board under the impression the statement had been publicly released.[190]

Walpin's presentation to the Board was drawn largely from prepared remarks.[191] According to Stephen Goldsmith, former chair of the Corporation, his statement was "articulate" and made a "persuasive case."[192] Board member Stephen Goldsmith testified Walpin's argument against the terms of the St. HOPE settlement was "totally appropriate."[193]

Walpin's presentation to the Board lasted approximately 45 minutes. It was interrupted by Solomont, who objected to certain aspects.[194] Solomont expressed his disappointment with Walpin's tough statements against CNCS's senior managers. Apparently picking sides, he asked Walpin to refrain from what he termed "ad hominem attacks" on Goren and Trinity.[195] Solomont testified that he was referring to Walpin's comments about Trinity's "hostility" toward OIG and Goren's allowance of an "anything goes attitude."[196]

Walpin was then asked to clarify his remarks about issuing a public statement calling for an FBI investigation.[197] Walpin testified that he believed the Board was aware OIG released his statement about the destruction of evidence by St. HOPE officials prior to the meeting.[198] Board members asked Walpin about his plan to issue "another" statement.[199] Walpin "argued that what they were saying was not the case."[200] Walpin was assured by several Board members he had in fact told them he intended to release "another" statement.[201] Board members may have confused Walpin's description of his

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[186] Letter from Rick Maya to Members of the St. HOPE Public Schools Board of Directors, Apr. 9, 2009.
[187] *See, e.g.*, Letter from Robert Trigg to Members of the St. HOPE Public Schools Board of Directors, Apr. 2, 2009; Letter from Tracy Stigler to Members of the St. HOPE Public Schools Board of Directors, Mar. 20, 2009.
[188] Walpin Sept. 17, 2009 interview.
[189] *Id.*
[190] *Id.*
[191] *See, e.g.*, H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Stan Soloway, July 1, 2009 [hereinafter Soloway interview].
[192] Goldsmith interview.
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Solomont Interview*
[197] *Id.*
[198] Walpin Sept. 17, 2009 interview.
[199] *Id.*
[200] Board Meeting Notes of Frank Trinity, May 20, 2009 [hereinafter Trinity notes].
[201] *Id.*

previously-released statement for an announcement of his intention to release a second statement related to St. HOPE.

Interviews of Board members showed that several believed Walpin was calling for an FBI investigation of the St. HOPE settlement itself.[202] This is not the case – Walpin's intention to involve the FBI was limited to calling on the Bureau to investigate Maya's allegation that evidence material to a federal investigation was intentionally destroyed subsequent to receipt of a subpoena.

Solomont asked Walpin to share a copy of his forthcoming public statement calling for the FBI's involvement.[203] In response, Walpin asked Solomont what statement he was referring to.[204] Board members confirmed for Walpin that he had in fact mentioned his intention to call for the FBI's involvement.[205] Walpin reviewed his notes in an attempt to determine what the Board was referring to.[206] A review by Congressional investigators showed that Walpin's notes make no mention of the FBI whatsoever.[207]

Walpin made his presentation under the assumption the Board was aware OIG previously released a statement calling for the FBI's involvement.[208] Walpin also mistakenly assumed the Board was aware of the destruction of evidence at St. HOPE, which had been reported earlier that morning. However, some Board members were not aware of the allegations of destruction of evidence.[209] The presentation of new and complicated material to the Board contributed to the general confusion among members and Walpin himself.[210]

Approximately four weeks later, the FBI announced its investigation into allegations that St. HOPE personnel destroyed Kevin Johnson's e-mail during the St. HOPE investigation.[211] Acting U.S. Attorney Lawrence Brown told the *Associated Press* he asked the FBI's Sacramento division to determine whether e-mails written by Johnson were deleted while subject to a Justice Department subpoena.[212]

As the Board and Walpin attempted to resolve the confusion, some Board members observed indications of what they perceived as a possible medical event. Some of those present at the Board meeting recall Walpin's eyes not being able to "see the page" as he reviewed his notes.[213] Several Board members said Walpin appeared

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[202] Soloway interview.
[203] *Id.*
[204] Trinity interview.
[205] *Id.*
[206] *Id.*
[207] Board Meeting Notes of Gerald Walpin, May 20, 2009 [hereinafter Walpin notes].
[208] Walpin Sept. 17, 2009 interview.
[209] Solomont interview.
[210] *Id.*
[211] *FBI Investigating Kevin Johnson's Calif. Nonprofit*, ASSOC. PRESS, June 17, 2009.
[212] *Id.*
[213] *See, e.g.*, Trinity interview, H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Hyepin Im, July 13, 2009 [hereinafter Im interview]..

"confused" in response to the Board's questions. Board members also recall periods of silence during which Walpin attempted to locate information in his notes.[214]

Unable to resolve the confusion, and in the interest of putting an end to what had developed into a "very uncomfortable situation," Solomont moved to adjourn the meeting.[215] Walpin objected to adjourning and asked the Board for more time to resolve the lingering confusion.[216] Walpin was told the Board's schedule required them to move on, and he left with Special Assistant Jack Park.[217]

Concerned Walpin's confusion may have been triggered by a medical condition; Board member Eric Tanenblatt left the meeting room to call Park.[218] Tanenblatt expressed concern about Walpin's condition on behalf of the Board. Park assured him Walpin had merely been confused by the Board's questions and was not experiencing any sort of medical emergency.[219] However, later that day, Walpin went home early, suffering from a severe headache and an upset stomach.[220] Because neither the Board nor the White House made any further attempt to gather information from Walpin or anyone in his office, they remained unaware of his illness at the time of dismissal.

Meanwhile, the Board discussed an appropriate response to Walpin's presentation. Walpin was "clearly not himself" after finishing his prepared presentation.[221] Board members had "never seen him like this before."[222] Tanenblatt returned to the meeting to find the Board considering whether to inform the White House about "what had just transpired."[223] Because Walpin's demeanor gave rise to "concerns about his competence" the Board decided the White House needed to be apprised of the situation.[224] Several Board members testified the decision to notify the White House was unanimous.[225]

Without a formal vote, the Board quickly decided Solomont was the appropriate person to go to the White House. Contrary to the impression left by Norman Eisen in his briefing to Congress, Board members testified Solomont was not dispatched by the Board to ask for Walpin's removal.[226] Instead, Solomont was sent to the White House to notify the White House Counsel's Office about Walpin's behavior during the Board meeting in

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[214] *See, e.g.*, Goldsmith interview.
[215] Tanenblatt interview.
[216] Trinity interview.
[217] Solomont interview.
[218] Tanenblatt interview.
[219] *Id.*
[220] S. Finance Comm. Staff Interview with Jack Park, June 17, 2009; E-mail from Gerald Walpin to Emilia DiSanto, Chief Investigative Counsel, Senate Finance Comm., October 29, 2009.
[221] Trinity interview.
[222] Goldsmith interview.
[223] Tanenblatt interview.
[224] Solomont interview.
[225] *Id.*
[226] *See, e.g.*, Soloway interview.

order to allow the White House to investigate the matter and determine the appropriate next steps.[227]

VII. Gerald Walpin Is Fired by President Obama

Alan Solomont's trip to the White House following the May 20, 2009 CNCS Board meeting set in motion the events that ultimately led to Gerald Walpin's removal. His access to the White House ensured the concerns of the Board would be heard immediately. Solomont shared more than just his observations from that day's Board meeting; he made the case for Walpin's removal.

Interviews and documents show the information shared by Solomont appears to be the only known basis of the White House's subsequent justification for the removal of Gerald Walpin.

A. CNCS Board Chairman Alan Solomont is a Prominent Democrat Fundraiser

FINDING: ***Immediately following the May 20, 2009 Board meeting, Chairman Alan Solomont arrived unannounced at the White House to complain about Gerald Walpin. Solomont is a powerful Democratic fundraiser. Under Solomont, the New England Obama committee raised more money per capita than any other region. Whether an Agency head without fundraising background would have had such unfettered access to the White House Counsel is unknown, but Solomont's history creates the appearance that political considerations may have played a role in the process that led to Walpin's removal from office.***

A Boston-based nursing home mogul and philanthropist, Alan Solomont is a powerful Democratic fundraiser. Solomont began raising money for Democratic candidates as early as Michael Dukakis's 1982 Massachusetts gubernatorial campaign and continued to work for him during his presidential run six years later.[228] After great success raising money for Bill Clinton, Solomont was named his party's Finance Chairman in 1997.[229] In 2000, President Clinton appointed Solomont to the Board of the Corporation.[230] He was a leading fundraiser for Democratic presidential candidates in 2000 and 2004, once bringing in $4 million at a single event.[231] During the 2004 presidential election, he was responsible for raising $35 million.[232]

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[227] *See, e.g.*, Im interview.
[228] Ken Silverstein, *Donor Scorecard: Alan Solomont*, HARPER'S, Apr. 16, 2007 [hereinafter Silverstein].
[229] *Id.*
[230] Brian Mooney, *With Kerry out, key aide shifts to Obama*, BOS. GLOBE, Jan. 26, 2007.
[231] Silverstein.
[232] *Id.*

Solomont also raised money for then-candidate Obama. Under Solomont, the New England Obama committee raised more money per capita than any other region.[233] According to the Boston Herald:

> Local Democrats drooling over sugarplum federal posts around New England already have begun whispering their Christmas wishes to a quiet group of local kingmakers who have President-elect Barack Obama's ear. "I have a list that's bigger than Santa Claus, and I know exactly who's been naughty and nice," joked Alan Solomont.[234]

On August 7, 2009, Solomont was nominated by President Obama to serve as the U.S. Ambassador to Spain.[235]

B. Alan Solomont Went to the White House

FINDING: ***On May 20, Solomont met with White House Counsel Gregory Craig. Craig assured Solomont the matter would be reviewed by his office and referred Solomont to Special Counsel to the President Norman Eisen. At the time, Eisen was not in his office. As Solomont was leaving the White House on his way through the parking lot, he ran into Eisen. There, he initially made his case for the removal of Gerald Walpin.***

On the afternoon of May 20, 2009, Solomont testified he went to the White House from the Corporation's headquarters after the Board adjourned its meeting. Arriving without an appointment, Solomont headed to the White House Counsel's Office, where he met with White House Counsel Gregory Craig.[236] Craig assured Solomont the matter would be reviewed by his office and referred Solomont to a lawyer in the Counsel's Office, Special Counsel to the President Norman Eisen.[237] At the time, Eisen was not in his office.[238] As Solomont was leaving the White House on his way through the parking lot, he ran into Eisen.[239] Solomont notified Eisen of Acting U.S. Attorney Lawrence Brown's complaint to CIGIE. Solomont also shared his concern about Gerald Walpin's telecommuting arrangement and his behavior during that day's Board meeting.

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[233] *Id.*
[234] Hillary Chabot, *Crowning achievement; Mass. Dems have influence over Obama's picks*, BOS. HERALD, Dec. 26, 2008.
[235] *Mass. native named US ambassador to Spain, Andora*, ASSOC. PRESS, Aug. 7, 2009.
[236] Solomont interview.
[237] *Id.*
[238] *Id.*
[239] *Id.*

1. Gerald Walpin's "Confusion" on May 20, 2009

During his interview with Congressional investigators, Solomont said he described the confusion during the May 20 Board meeting to Eisen. He expressed concern that Walpin's inability to answer the Board's questions might indicate a "medical scenario."[240] Because Walpin's thinking appeared "disorganized, forgetful, and bizarre," Solomont feared that in addition to his pre-existing concerns about Walpin's ability to fulfill his duties, he now had to worry about his competence.[241]

Aside from Eric Tanenblatt's telephone call to Jack Park immediately after the meeting, the Board made no effort to ascertain whether or not Walpin's confusion at the May 20 Board meeting was a one-time event or part of a pattern of behavior that might raise legitimate concern about a possible medical condition. No additional inquiry was made on behalf of the Board with OIG staff or with Walpin directly in order to determine whether there was cause for concern.[242] Board members agree Walpin's difficulty at the Board meeting was completely out of character from Walpin's reputation as an "energetic and forceful" IG who "did his job professionally."[243] None of the members interviewed recalled ever having seen Walpin appear confused on any other occasion during his three-year tenure as IG.

The confusion which lasted for several minutes at the end of the Board meeting was triggered at least in part by the Board's unfamiliarity with new and serious developments in the St. HOPE matter. Board members told Walpin that he had said he intended to issue a second press statement calling on the FBI to investigate the settlement of the St. HOPE matter. Walpin denied it, and the Board pressed him further. Walpin consulted his notes, finding nothing helpful.[244] Solomont moved to adjourn the meeting.[245] Walpin resisted, stating a desire to resolve the confusion.[246] Minutes later, Walpin's deputy confirmed Walpin was not suffering a medical event and explained his behavior arose from the Board's confusing questions.[247] Later that day, Walpin went home early with a severe headache and an upset stomach.[248]

According to interviews with Congressional staff, Walpin's "confusion" during the May 20, 2009 Board meeting did not rise to a fire-able offense in the eyes of the Board. Board member Stephen Goldsmith testified that the events of May 20 did not amount to "cause to get rid of Gerry."[249] Board member Mark Gearan testified that the

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[240] *Id.*
[241] *Id.*
[242] Goldsmith interview.
[243] *Id.*
[244] Walpin notes.
[245] Solomont interview.
[246] *Id.*
[247] Tanenblatt interview.
[248] Walpin interview.
[249] Goldsmith interview.

Board had no pre-existing concerns about Walpin's health as of May 20.[250] Alan Solomont himself testified, "if [Walpin's behavior during the Board meeting] had happened five years ago, there would have been no need to notify the White House."[251]

One week after the White House publicly stated that Gerald Walpin was "confused, disoriented, unable to answer questions" to justify his removal, Walpin's fellow members of the New York Bar responded.[252] In a June 23, 2009 letter addressed to Congress and the Office of the White House Counsel, a bi-partisan group of 146 attorneys stated:

> [S]uch an allegation is totally inconsistent with our personal knowledge of Mr. Walpin who has always, through the present day, exhibited a quick mind and a command of the facts (whether we agree with him or not) and eloquence – essentially the opposite of someone who is "confused, disoriented, unable to answer questions."[253]

Given that the "confusion" on May 20 does not justify his removal, it is necessary to explain various other reasons cited after the fact.

2. Gerald Walpin's Telecommuting Arrangement

Because public service generally and CNCS specifically are an important part of the President's agenda, an IG must be in place who can help the Corporation "rise to meet the challenge of the new and exciting plans."[254] Solomont's impression that Walpin was not the right IG to meet the challenge derived in part from his belief that Walpin no longer had the energy to commit to the job. In November 2008, Walpin submitted a letter of resignation and then rescinded that letter after being urged to stay on as IG by his staff.[255] Prior to Walpin, CNCS had a series of temporary, acting or part-time IG's and the staff felt the office could benefit from greater continuity in leadership. As an alternative to resigning, Walpin proposed a telecommuting arrangement under which he would be in Washington for two or three days each week and otherwise work from his home in New York. The arrangement, according to Solomont, "caused [the Board] some pause."[256]

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[250] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Mark Gearan, July 13, 2009 [hereinafter Gearan interview].
[251] Solomont testimony.
[252] Letter from Norman Eisen to Sen. Joseph Lieberman and Sen. Susan Collins, June 16, 2009.
[253] Letter from Members of the N.Y. Bar to Sen. Joseph Lieberman, Sen. Susan Collins, Sen. Max Baucus, Sen. Charles Grassley, Rep. Edolphus Towns, Rep. Darrell Issa, and White House Counsel Gregory Craig, June 23, 2009.
[254] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Interview with Alan Solomont, July 15, 2009 [hereinafter Solomont interview].
[255] Tanenblatt interview.
[256] Solomont interview.

The telecommuting arrangement was proposed by Walpin on a trial basis.[257] Walpin planned to re-evaluate the arrangement after a five-month trial period.[258] Walpin requested feedback from Corporation management and the Board's Management and Governance ("MAG") Committee about the arrangement.[259] Walpin says he relied on the federal government's official policy encouraging telework to reconcile his desire to reduce travel with his (and his staff's) desire that he continue as Inspector General. Congress legislated in favor of such arrangements that followed appropriate procedures in 2000.[260]

The CNCS Board expressed concerns about Walpin's telecommuting arrangement from the outset, but did not object to Walpin or to the White House until after the May 20th board meeting where Walpin challenged management's decision to settle the St. HOPE case. No Board member recalls ever having had difficulty reaching Walpin or arranging a meeting with him.[261] Moreover, according to Walpin he personally paid the costs associated with his regular travel between New York and Washington, D.C.[262]

VIII. The White House Repeatedly Changed the Explanation for Removing Walpin

Alan Solomont was dispatched to the White House because members of the Board acknowledged that Gerald Walpin, as a presidentially-appointed Inspector General, answers ultimately to the President. Members of the Board testified they trusted the White House would "review the facts and make an assessment."[263]

In response to Solomont's visit on May 20, 2009, the White House Counsel's Office commenced an investigation that ultimately led to Walpin's removal on June 10, 2009. Special Counsel to the President Norman Eisen briefed congressional investigators about the reasons for the President's action one week after Walpin's removal. In his briefing, Eisen claimed the President's decision to remove Walpin was the result of a thorough review of his performance and fitness to continue serving as Inspector General.

Documents and interviews show Eisen's review of Walpin appears to have relied exclusively on three sources of information: Alan Solomont, Nicola Goren, and Frank Trinity.

A. Gerald Walpin was Removed in Contravention of the IG Act

[257] CNCS Management and Governance Committee Meeting Notes, Jan. 27, 2009.
[258] *Id.*
[259] *Id.*
[260] Pub. L. 106-346 § 359.
[261] *Id.*, Goldsmith interview.
[262] Walpin interview.
[263] *E.g.*, H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Laysha Ward, July 17, 2009 [hereinafter Ward interview].

FINDING: ***In an effort to comply with the requirements of the IG Act, the White House sent a letter to House and Senate leadership on the evening of June 11, 2009 stating that Walpin would be removed in 30 days. The White House's letter did not comply with the notice and reason requirements of the Inspector General Act. Rather, Walpin received an ultimatum on June 10, 2009 and communicated that ultimatum to members of Congress himself beginning the evening of June 10, 2009.***

On June 10, 2009, Walpin was travelling by car to attend the Second Circuit Judicial Conference, to which he had been invited by Chief Judge Dennis Jacobs.[264] At approximately 5:20 PM, Eisen called Walpin on his cell phone. Walpin testified he was told the President wished to remove him from his post as Inspector General. Eisen presented an ultimatum: resign or be terminated.[265] Walpin asked why he was being fired and was told, "It's time for a change. The President would like to have someone else in that position."[266]

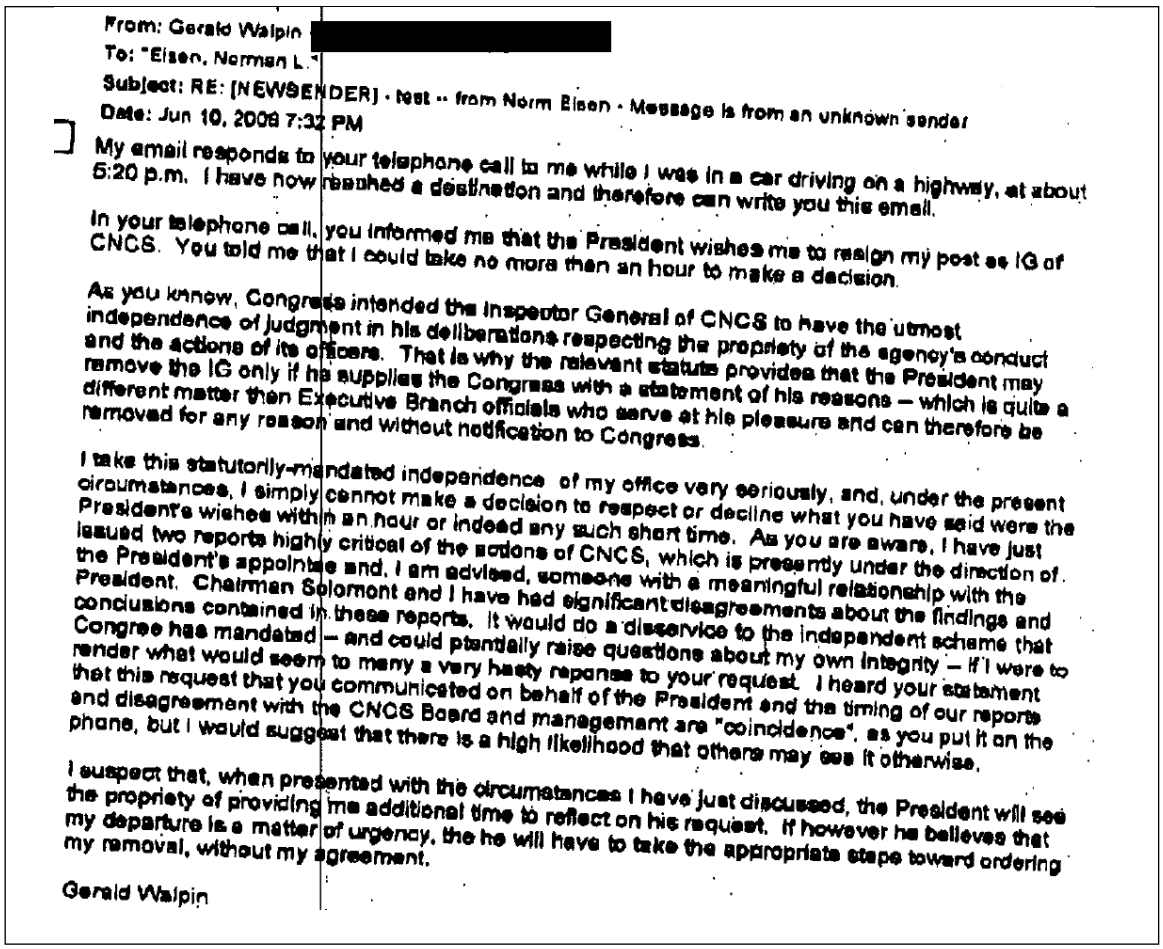
Walpin asked for time to consider his options, and was afforded one hour.[267] Forty-five minutes later, he received another call from Eisen asking for his decision.[268] Walpin informed Eisen he would not tender his resignation.[269] Eisen informed Walpin he was thereby terminated.[270] Walpin told Eisen he recently issued a report critical of the Corporation's management and operation, and asked Eisen if his removal was related to that report. Walpin testified Eisen told him it was "coincidence."[271]

Walpin was placed on administrative leave and informed he was not permitted to return to the Office of the Inspector General.[272] Later, Walpin learned his OIG e-mail account was de-activated.[273]

Having reached his destination, Walpin took the opportunity to respond to Eisen in writing. At 7:32 PM on June 10, he sent an e-mail to Eisen from his personal account explaining the reasons for his decision not to resign.[274] Walpin explained that resigning would compromise the statutorily-mandated independence of the OIG and urged Eisen to consider the President's decision in the context of the Inspector General Act of 1978, as amended by the IG Reform Act of 2008 (the "IG Act").[275] Walpin also observed that his

[264] Walpin Sept. 17, 2009 interview.
[265] H. Oversight and Gov't Reform Comm. Minority Staff Interview with Gerald Walpin, June 11-12, 2009 [hereinafter Walpin June 11-12, 2009 interview].
[266] *Id.*
[267] *Id.*
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Id.*
[272] *Id.*
[273] *Id.*
[274] E-mail from Gerald Walpin to Norman Eisen (June 10, 2009).
[275] *Id.*

removal in the immediate wake of the issuance of the Special Report to Congress about the St. HOPE matter may give rise to public perception that the President's action was politically motivated.[276] Walpin further advised Eisen the President must take the appropriate steps required by the IG Act, as amended, to remove him without his consent.[277]



From: Gerald Walpin [redacted]
To: "Eisen, Norman L."
Subject: RE: [NEWSENDER] - test -- from Norm Eisen - Message is from an unknown sender
Date: Jun 10, 2009 7:32 PM

My email responds to your telephone call to me while I was in a car driving on a highway, at about 5:20 p.m. I have now reached a destination and therefore can write you this email.

In your telephone call, you informed me that the President wishes me to resign my post as IG of CNCS. You told me that I could take no more than an hour to make a decision.

As you know, Congress intended the Inspector General of CNCS to have the utmost independence of judgment in his deliberations respecting the propriety of the agency's conduct and the actions of its officers. That is why the relevant statute provides that the President may remove the IG only if he supplies the Congress with a statement of his reasons – which is quite a different matter than Executive Branch officials who serve at his pleasure and can therefore be removed for any reason and without notification to Congress.

I take this statutorily-mandated independence of my office very seriously, and, under the present circumstances, I simply cannot make a decision to respect or decline what you have said were the President's wishes within an hour or indeed any such short time. As you are aware, I have just issued two reports highly critical of the actions of CNCS, which is presently under the direction of the President's appointee and, I am advised, someone with a meaningful relationship with the President. Chairman Solomont and I have had significant disagreements about the findings and conclusions contained in these reports. It would do a disservice to the independent scheme that Congree has mandated – and could ptentially raise questions about my own integrity – if I were to render what would seem to many a very hasty reponse to your request. I heard your statement that this request that you communicated on behalf of the President and the timing of our reports and disagreement with the CNCS Board and management are "coincidence", as you put it on the phone, but I would suggest that there is a high likelihood that others may see it otherwise.

I suspect that, when presented with the circumstances I have just discussed, the President will see the propriety of providing me additional time to reflect on his request. If however he believes that my departure is a matter of urgency, the he will have to take the appropriate steps toward ordering my removal, without my agreement.

Gerald Walpin

Less than two hours later, Eisen formally notified Walpin in an e-mail that he would be placed on administrative leave with pay and removed from his post "effective 30 days from tomorrow."[278] Eisen attached a letter from Assistant to the President for Presidential Personnel Don Gips notifying Walpin that he was suspended effective immediately.[279] Eisen concluded by expressing his disagreement with "a number of statements in [Walpin's e-mail]" and by thanking Walpin for his service:

[276] *Id.*
[277] *Id.*, Voicemail message from Gerald Walpin to S. Fin. Comm. Minority Staff, June 11, 2009, 9:08 a.m..
[278] E-mail from Norman Eisen to Gerald Walpin (June 10, 2009).
[279] Letter from Don Gips to Gerald Walpin, June 10, 2009.

From: Eisen, Norman L. [redacted]
Sent: Wednesday, June 10, 2009 9:29 PM
To: Gerald Walpin
Subject: Corporation for National and Community Service
Attachments: Walpin 090610.pdf

Dear Mr. Walpin:

As we discussed, the President will be removing you from the Inspector General post, effective 30 days from tomorrow. Until that time, you will be placed on administrative leave with pay, effective immediately. Please see the enclosed letter to that effect. For the record, I disagree with a number of the statements in your email to me this evening. Thank you for your service.

Sincerely yours,

Norman L. Eisen

The following morning at 9:08 a.m., Walpin informed Congressional staff by voice mail of his removal from office. Congress did not receive written notice from the White House until later that afternoon, following the public release of a letter from Senator Grassley to President Obama inquiring about the matter.[280]

Eisen's decision to effectuate Walpin's removal after a 30-day administrative leave period represents a minimal effort to comply with a very narrow reading of the IG Act. In 2008, Congress passed the Inspectors General Reform Act, which was designed to strengthen protections for IGs from interference by political appointees or the White House. Section 3(b) of the Act, which was co-sponsored by then-Senator Obama, requires the President to give Congress 30 days notice before removing an IG:

> An Inspector General may be removed from office by the President. If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall **communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal** or transfer.[281]

This provision strengthens the IG Act, which previously only required the President to notify Congress of the reasons for such action.[282] The IG Reform Act leaves that requirement intact. The Act also requires the President to outline the cause for his decision to remove an IG.[283]

[280] Letter from Senator Grassley to President Obama (June 11, 2009).
[281] Inspectors General Reform Act of 2008, P.L. 110-409, § 3(b) (enacted Oct. 14, 2008) (emphasis added).
[282] The Inspector General Act of 1978, as amended, provides: "An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress." 5 U.S.C. App. § 3.
[283] *Id.*

B. Norman Eisen Misrepresented the Scope of His "Investigation"

FINDING: ***According to Norman Eisen, his inquiry into the allegations against Gerald Walpin involved speaking with members of the CNCS Board to confirm that a consensus existed. In fact, the White House's "investigation" appears to have consisted entirely of conversations with Board Chairman Alan Solomont and CNCS Acting CEO Nicola Goren and General Counsel Frank Trinity. In some cases, Eisen's statements during briefings to Congress are explicitly contradicted by witness testimony.***

The White House's initial explanation for the removal of Gerald Walpin appeared in a June 11, 2009 letter to Congress from the President:

> It is vital that I have the fullest confidence in the appointees serving as Inspectors General. That is no longer the case with regard to this Inspector General.[284]

This explanation did not comply with the IG Act because it is impermissibly vague,[285] so the White House was compelled to write a second letter to Congress later that day to provide further explanation for Walpin's removal.

1. The Evolving White House Explanation

In the second letter, addressed to Senator Charles Grassley, Counsel to the President Gregory Craig provided a new explanation:

> The President intends to remove Mr. Walpin because the President does not have full confidence in him. … [T]he Acting United States Attorney for the Eastern District of California, a career prosecutor who was appointed to his post during the Bush Administration, has referred Mr. Walpin's conduct for review by the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). We are aware of the circumstances leading to that referral and of Mr. Walpin's conduct

[284] Letter from President Barack Obama to Speaker Nancy Pelosi, June 11, 2009.

[285] S. Rep. 110-262. According to the Senate Committee Report accompanying the IG Reform Act, the requirement for written communication of the reasons for removal of an IG was included specifically to discourage removal for political reasons: "The Committee intends that Inspectors General who fail to perform their duties properly whether through malfeasance or nonfeasance, or whose personal actions bring discredit upon the office, be removed. The requirement to notify the Congress in advance of the reasons for the removal should serve to ensure that Inspectors General are not removed for political reasons."

> throughout his tenure and can assure you that the President's decision was carefully considered.[286]

In response to requests from Congress for disclosure of the process by which the White House considered Walpin's removal, Craig issued another letter to Congress on June 16. In that letter, Craig offered a third explanation for Walpin's removal:

> Mr. Walpin was removed after a review was unanimously requested by the bi-partisan Board of the Corporation. The Board's action was precipitated by a May 20, 2009 Board meeting at which Mr. Walpin was confused, disoriented, unable to answer questions and exhibited other behavior that led the Board to question his capacity to serve. Upon our review, we also determined that the Acting United States Attorney for the Eastern District of California, a career prosecutor who was appointed to his post during the Bush administration, filed a complaint about Mr. Walpin's conduct with the oversight body for Inspectors General, including for failing to disclose exculpatory evidence. We further learned that Mr. Walpin had been absent from the Corporation's headquarters, insisting upon working from his home in New York over the objections of the Corporation's Board; that he had exhibited a lack of candor in providing material information to decision makers; and that he had engaged in other troubling and inappropriate conduct. Mr. Walpin had become unduly disruptive to agency operations, impairing his effectiveness and, for the reasons stated above, losing the confidence of the Board and the agency. It was for these reasons that Mr. Walpin was removed.[287]

Facing continued scrutiny from Congress, Craig offered to have Eisen provide briefings to provide additional explanation of the President's action. Eisen briefed House and Senate investigators on June 17, 2009. Eisen attempted to quickly gather information to support the claims made by Gregory Craig in his June 16 letter in advance of the briefings. Eisen contacted two additional members of the Board, Eric Tanenblatt and Stan Soloway. Each was asked to provide his recollection of the May 20 Board meeting.

Armed with this freshly-acquired information, Eisen arrived for his briefings with congressional investigators. Eisen assured investigators his review of Walpin's fitness to continue serving as IG was thorough and revealed a variety of reasons why Walpin's removal was justified. According to Eisen, his investigation into the merits of removing Gerald Walpin involved contacting members of the CNCS Board to confirm the existence

[286] Letter from Counsel to the President Gregory Craig to Sen. Charles Grassley, June 11, 2009 [hereinafter Craig letter to Grassley].
[287] Letter from Gregory Craig to Chairman Edolphus Towns and Ranking Member Darrell Issa, June 16, 2009.

of a "consensus" in favor of removal.[288] Eisen assured investigators he had conducted an "extensive" review at the request of the CNCS Board on or about May 20, 2009.[289] Eisen acknowledged Walpin himself was not interviewed as part of the investigation, nor were any other OIG personnel.[290] As a show of good faith, Eisen offered to allow House Oversight Committee Ranking Member Darrell Issa to suggest nominees to replace Walpin.[291]

2. Norman Eisen Relies on Executive Privilege in Congressional Briefings to Hide the Lack of an Investigation

When briefing Congress, Eisen had the opportunity to describe in some detail the process used by the White House to arrive at the decision to remove Walpin. Eisen declined to do so, citing the Executive privilege to withhold information gathered during the deliberative process.[292] Eisen refused to answer several direct questions posed to him about the details of his investigation.[293] Instead, he spoke generally about Walpin's removal.

Eisen explained to staff that the White House was fully aware of the investigation of Kevin Johnson by Gerald Walpin.[294] Eisen confirmed the President has a relationship with Johnson.[295] Eisen acknowledged that the President's removal of Gerald Walpin "looks bad" in this context. For this reason, Eisen believed the President's decision to remove Gerald Walpin was "an act of political courage."[296] Eisen assured investigators the President's action would be validated once they "got the full story."[297] Instead of providing the full story himself, Eisen encouraged investigators to conduct their own inquiry.[298]

Eisen's reliance on the deliberative process privilege in this case stands in stark contrast to the way the White House responded to Ranking Member Issa's inquiry into the flyover of lower Manhattan by an aircraft used as Air Force One. In response to Rep. Issa's request for information, Gregory Craig provided a memorandum prepared for the White House Deputy Chief of Staff. The seven-page memo, subject "Internal Review Concerning April 27, 2009 Air Force One Flight," details the White House's internal investigation of the flyover. The memo included a list of people interviewed and

[288] H. Oversight and Gov't Reform Comm. Minority Staff Interview with Norman L. Eisen, June 17, 2009 [hereinafter Eisen interview].
[289] Letter from Sen. Charles Grassley to Gregory Craig, June 17, 2009.
[290] Eisen interview.
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.*

documents reviewed in the course of that investigation, going so far as to include sensitive information about personnel responsible for arranging the flyover.

The White House went a step further than merely providing the details of its internal investigation to Congress; the memo was released publicly. On May 8, 2009, at 5:17 PM, a link to the full un-redacted memo appeared on the *Drudge Report*.[299]

The contrast between the White House's willingness to publicly disclose every relevant detail of its investigation into the Air Force One flyover and its unwillingness to disclose similar information in the Walpin matter is remarkable. The administration's evasiveness tends to suggest that no actual investigation took place before Norman Eisen recommended the removal of Gerald Walpin. Both matters involve sensitive information about what amounts to a White House personnel decision. In one case, the White House honored its pledge of transparency because doing so revealed a thorough and appropriate investigation. In the other case, the White House appears to have relied on the deliberative process privilege to hide the fact that, contrary to Mr. Eisen's representations in Congressional briefings, no serious investigation occurred.

IX. The White House's "Investigation"

Between the commencement of the White House investigation on May 20, 2009, and Walpin's removal on June 10, 2009, the White House contacted only two members of the CNCS Board, one of whom was Alan Solomont. Aside from Solomont, no member of the CNCS Board had any substantive input about whether the removal of Gerald Walpin was appropriate.

Having been told by Solomont that some of the Board's concerns about Gerald Walpin's fitness arose from his interactions with the Corporation's management, the White House contacted Acting CNCS CEO Nicola Goren and General Counsel Frank Trinity. The White House did not contact Gerald Walpin or any OIG staff.

A. Eisen Received Substantive Input from Only One Member of the CNCS Board of Directors Prior to Firing Gerald Walpin

CNCS Board Vice-Chairman Stephen Goldsmith was contacted by the White House shortly before Eisen notified Walpin of his removal on June 10.[300] According to Goldsmith, the White House had already decided to remove Walpin and wanted to confirm his support for the action.[301] This call represents the entirety of the White

[299] Drudge Report Archives, May 8, 2009, available at http://www.drudgereportarchives.com/data/2009/05/08/20090508_221727.htm (last visited Sep. 9, 2009).
[300] Goldsmith interview.
[301] *Id.*

House's effort to confirm the Board's support for Solomont's claims prior to removing Gerald Walpin on June 10, 2009.

White House Counsel Gregory Craig's June 11 letter to Congress cited the support of Solomont and Goldsmith. There, Craig stated that Walpin's removal "is fully supported by the Chair of the Corporation (a Democrat) and the Vice-Chair (a Republican)."[302] Craig was unable to cite unanimous Board support for the President's action as of June 11 because the Board's Chair and Vice-Chair were the only two Board members consulted. The remaining members of the Corporation's Board were either asked to support the removal of Gerald Walpin after it was announced or had no contact with the White House whatsoever.

1. The White House Contacted Stephen Goldsmith One Day before Removing Walpin to Ask If He Would Object

On June 25, 2009 staff investigators interviewed Stephen Goldsmith. Goldsmith served as Mayor of Indianapolis for two terms from 1992 to 2000.[303] Goldsmith was chief domestic policy advisor to President George W. Bush during the 2000 campaign and subsequently the President's Special Advisor on faith-based and not-for-profit initiatives.[304] He was appointed by Bush to serve as chair of the Corporation's Board in 2001, a position he held until February 2009.[305] Goldsmith presently serves as the Board's Vice Chairman.

Goldsmith was contacted by the White House on either June 8 or June 9, a day or two before Eisen notified Walpin of his removal on June 10.[306] Goldsmith testified that the White's decision to remove Walpin had already been made by the time he was contacted.[307] Goldsmith testified that he was asked by Counsel Elana Tyrangiel if "we can say you're supportive of removal?"[308] He indicated that he did support the removal.[309] Other Board Members later indicated that they also supported the removal, but they only did so when contacted by the White House after the decision had been made.

Goldsmith testified the White House made no inquiry about the May 20 Board meeting.[310] Goldsmith testified that on May 20, the Board unanimously agreed that the

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[302] Craig letter to Grassley.
[303] Indianapolis Star Library FactFiles, "Stephen Goldsmith," available at http://www2.indystar.com/library/factfiles/people/g/goldsmith_stephen/goldsmith.html (last visited Sept. 11, 2009).
[304] *Id.*
[305] *Id.*
[306] Goldsmith interview.
[307] *Id.*
[308] *Id.*
[309] *Id.*
[310] *Id.*

White House should be notified about Walpin's behavior during the meeting.[311] Goldsmith further testified that the Board did not discuss Walpin's removal.[312]

2. Eric Tanenblatt Was Contacted by the White House After Walpin's Removal

On June 26, 2009, staff interviewed Eric Tanenblatt. Tanenblatt leads the National Government Affairs Group for McKenna Long & Aldridge, LLP.[313] He is the co-founder and past chairman of Hands on Georgia, a statewide program to promote volunteerism. Tanenblatt was appointed to the Corporation's Board in 2008 by President Bush. He serves as the Chairman of the Board's Management and Governance ("MAG") Committee.

Tanenblatt testified that he had no contact with the White House until after the President formally notified Congress of Walpin's removal on June 11.[314] Tanenblatt testified that he was asked for his recollection of the May 20 Board meeting by Norman Eisen and Elana Tyrangiel.[315]

Tanenblatt testified that on May 20 he contacted Deputy IG Jack Park to check on Walpin after he left the Board meeting.[316] Park assured him Walpin did not experience a medical event during the meeting.[317] Park explained Walpin was merely confused by the Board's questions.[318] Tanenblatt testified that when he returned to the Board meeting after calling Park, the Board had reached a consensus to inform the White House about "what had just transpired."[319]

3. Stan Soloway Was Contacted by the White House After Walpin's Removal

On July 1, 2009, staff investigators interviewed Stan Soloway. Soloway is president of the Professional Services Council, a national trade association representing the government professional and technical services industry.[320] Soloway previously served as the deputy undersecretary of defense and concurrently as director of Secretary

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[311] *Id.*
[312] *Id.*
[313] McKenna Long website, Eric Tanenblatt Biography, available at http://www.mckennalong.com/professionals-791.html (last visited Sept. 11, 2009).
[314] Tanenblatt interview.
[315] *Id.*
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] *Id.*
[320] Stan Soloway Biography, available at http://www.acq.osd.mil/dpap/about/Procurement2004/bios/SolowayStanBio-Oct02.pdf (last visited Sept. 11, 2009).

of Defense William Cohen's Defense Reform Initiative.[321] Soloway was appointed to the Corporation's Board of Directors by President Bush in 2007. He serves as Chair of the Board's Program, Budget, and Evaluation Committee.

Soloway testified that on June 13, two days after the President's formal notice to Congress, he was contacted by Tyrangiel and asked to describe his recollection of the May 20 Board meeting.[322] Soloway dictated a statement about the events of May 20 to Tyrangiel.[323] Soloway testified that he was not asked by the White House whether or not he supported Walpin's removal.[324]

Soloway testified that Solomont was not dispatched by the Board to ask for Walpin's removal.[325] Soloway testified that it would not have been appropriate for the Board to advocate for Walpin's removal because "Walpin does not report to the Board."[326]

4. Julie Fisher Cummings Was Contacted by the White House One Day before Her Staff Interview

On July 10, 2009, staff interviewed Julie Fisher Cummings. Cummings is Director of the Max M. & Marjorie S. Fisher Foundation, whose priorities include funding for arts and culture initiatives.[327] Cummings was appointed to the Corporation's Board by President Bush in 2007 and began serving in 2008.[328]

Cummings was neither solicited for her recollection of the May 20 Board meeting nor asked to provide any information prior to the White House's action on June 10. Cummings testified that she first learned of Walpin's removal during the June 22-24 Board retreat in San Francisco.[329]

In fact, Cummings testified that she was not contacted by the White House until July 9, 2009, the day before her scheduled interview with staff investigators.[330] Cummings testified that she was instructed by the White House not to discuss the contents of that conversation with congressional staff.[331] Cummings also testified that

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[321] *Id.*
[322] Soloway interview.
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] United States Artists website, "Peter D. and Julie Fisher Cummings," available at http://www.unitedstatesartists.org/Public2/Donors/USANationalLeadershipCommittee/Cummings/index.cfm (last visited Sept. 11, 2009).
[328] H. Oversight and Gov't Reform Comm. and S. Finance Comm. Staff Telephonic Interview with Julie Fisher Cummings, July 10, 2009 [hereinafter Cummings interview].
[329] *Id.*
[330] *Id.*
[331] *Id.*

she spoke with Frank Trinity several times in preparation for her July 10, 2009 interview.[332]

5. Mark Gearan Was Not Interviewed by the White House

On July 13, 2009, staff interviewed Mark Gearan. Gearan is the current president of Hobart and William Smith Colleges in Geneva, New York. Gearan is a former deputy chief of staff for President Clinton. Gearan was nominated by Clinton to serve as Director of the Peace Corps, a post he held from 1995 – 1999. Gearan was appointed to the Corporation's Board in 2000 by Clinton and re-appointed by President Bush.[333]

Gearan testified that he received an e-mail advising him to expect a call from the White House.[334] However, he was never contacted.[335]

Gearan testified that on May 20, the Board deliberated about the appropriate way to characterize Walpin's behavior to the White House. Gearan testified that the Board decided it was inappropriate to characterize Walpin's behavior as having arisen from a medical condition.[336] Gearan testified the Board decided Solomont would "brief the White House and seek guidance."[337]

6. Hyepin Im Was Not Contacted by the White House

On July 13, 2009, staff interviewed Hyepin Im. Im currently serves as the Founder and President of Korean Churches for Community Development, whose mission is to help churches build capacity to do large-scale economic development activities.[338] Im was appointed to the Corporation's Board by President Bush in 2008 and began serving in January 2009.

Im testified that she was never contacted by the White House about the Walpin matter.[339]

Im testified the Board did not dispatch Solomont to the White House with the intention of removing Walpin.[340] Im further testified that Solomont was sent to share the Board's observations from the May 20 Board meeting with the White House "with the

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[332] *Id.*
[333] Gearan interview.
[334] *Id.*
[335] *Id.*
[336] *Id.*
[337] *Id.*
[338] Biography of Hyepin Im, available at http://www.asianamerican.net/bios/Hyepin-Im.html (last visited Sept. 11, 2009).
[339] Im interview.
[340] *Id.*

expectation that the White House would look into it because doing an investigation is not within the Board's jurisdiction."[341]

7. James Palmer Was Not Contacted by the White House

On July 9, 2009, James Palmer was interviewed by staff. Palmer is a member of the City Council of Tustin, California.[342] Palmer has served as president of the Orange County Rescue Mission since 1992.[343] The Mission, which served 35,000 homeless men, women, and children, is the largest non-profit, faith-based organization in Orange County.[344] Palmer was appointed to the Board by President Bush in 2007.

Palmer testified that he was not contacted by the White House after May 20, 2009.[345]

Palmer testified that the Board decided Solomont should relay Walpin's "confusion" at the May 20 Board meeting to the White House.[346] Palmer testified that Walpin's "confusion" notwithstanding, there was no reason to contact the White House about Walpin.[347] Palmer testified that the Board had no expectation that Solomont's visit to the White House would lead to Walpin's removal.[348]

8. Laysha Ward Was Not Contacted by the White House

On July 17, 2009, staff interviewed Laysha Ward. Ward is the President of Community Relations for the Target Foundation.[349] Ward began her career at Target Corporation in 1991 as sales leader at Target's Dayton, Ohio location.[350] Ward was appointed by President Bush to the Corporation's Board in 2008.

Ward testified that she was never contacted by the White House about the Walpin matter.[351]

Ward testified that on May 20, the Board agreed Solomont should have a dialogue with the White House to share the Board's concerns.[352] Ward testified that she expected

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[341] *Id.*
[342] Tustin, CA website, available at http://www.tustinca.org/citycouncil/palmer.html (last visited Sept. 11, 2009).
[343] CNCS Press Release, Sept. 19, 2007.
[344] *Id.*
[345] Palmer interview.
[346] *Id.*
[347] *Id.*
[348] *Id.*
[349] REUTERS, *Target Names Laysha Ward President of Community Relations and Target Foundation,* Aug. 1, 2008.
[350] *Id.*
[351] Ward interview.

Solomont to present facts to the White House so as to allow them "to review the facts and make an assessment."

B. CNCS Acting CEO Nicola Goren and General Counsel Frank Trinity

During a July 6, 2009 briefing to House and Senate investigators, Trinity refused to answer questions about the content of his conversations with the White House; Trinity was not willing to even explicitly acknowledge any such conversations took place. Trinity cited a vague "White House prerogative" to justify his refusal to answer questions posed by congressional investigators.[353]

Trinity's briefing occurred weeks after Norman Eisen himself advised congressional investigators to conduct their own inquiry into the matter.[354] Eisen specifically suggested talking to the Corporation's leadership, including Frank Trinity.[355]

In order to do so, congressional investigators requested documents and information from the Corporation.[356] The requested documents were initially withheld by Trinity, who cited Privacy Act concerns as the basis not to provide documents to congressional investigators.[357]

Trinity notified investigators that the Privacy Act prevented CNCS from turning over the documents to anyone other than the Committee Chair.[358] Trinity was notified by Senate Finance Committee investigators that "differentiating between requests for information from chairmen of congressional committees and subcommittees and requests from other Members of those committees and subcommittees – particularly the Ranking Member – finds no support in the text of the Privacy Act, any other law, or Senate rules."[359]

Oddly, however, Trinity's alleged Privacy Act concerns did not preclude his office from publicly releasing the requested documents. On June 29, 2009, at 5:19 P.M., via e-mail, the *Washington Post*'s Ed O'Keefe requested documents from CNCS pursuant to the Freedom of Information Act ("FOIA").[360] Just hours later, before providing any of the material to the Senate Finance or House Government Oversight Committee, CNCS Associate General Counsel Thomas L. Bryant provided 42 documents to O'Keefe, who

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[352] *Id.*
[353] Trinity interview.
[354] Eisen interview.
[355] *Id.*
[356] *See, e.g.*, Letter from Ranking Member Darrell Issa to Nicola Goren, June 26, 2009.
[357] Phone call from H. Oversight and Gov't Reform Committee Minority Staff to Frank Trinity, July 1, 2009.
[358] *Id.*
[359] E-mail from Jason Foster to Frank Trinity, July 2, 2009.
[360] E-mail from Ed O'Keefe to Ranit Schmelzer, June 29, 2009.

subsequently posted them on the *Post* website.[361] The Corporation's rapid response may qualify as the fastest in the history of FOIA. The House Oversight Committee did not receive documents from the Corporation until July 2, 2009. Given these circumstances, it seems likely that Trinity's explanation for withholding information was disingenuous. He appears to have been more concerned with selectively releasing a subset of documents to the press than with replying to Congress in good faith.

O'Keefe is responsible for the "Federal Eye," the *Post*'s web log dedicated to coverage of the federal workforce.[362] There, O'Keefe characterized the documents he received from the Corporation. According to O'Keefe, the documents make the case for Walpin's removal based on his response to a parody newsletter and for his conduct during an Equal Employment Opportunity ("EEO") investigation:

> [The] documents … expose a frequently confrontational and petty relationship over the past several years between officials at the Corporation for National and Community Service and the group's inspector general, Gerald Walpin. … Among the documents is a May 2008 parody newsletter published by staff members in Walpin's office and approved by him as a goodbye gift for a retiring assistant inspector general. The newsletter contained several fake news articles, including two with racial and sexual jokes referencing the federal procurement process and the government's use of set-aside programs for minorities and disabled veterans. … The agency also provided a series of memos from January 2009 regarding an equal opportunity complaint filed against Walpin's office. He [Walpin] raised several procedural questions and suggested the investigation was handled unfairly, before admitting in a late January e-mail, "I had no prior experience and therefore no knowledge of the procedure."[363]

The documents provided by the General Counsel's Office show Trinity urged Walpin's removal because he lacked appreciation for EEO norms. During an interview with staff investigators, Trinity presented documents detailing the underlying reasons for this belief.[364] Although he was unwilling to disclose what, if anything, he shared with the White House, Trinity described his own concerns about Gerald Walpin's fitness to continue serving as IG. Trinity cited the parody newsletter and EEO investigation described by Ed O'Keefe on the website of the *Washington Post* more than one week prior.[365]

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[361] Letter from Thomas Bryant to Ed O'Keefe, June 29, 2009.
[362] Ed O'Keefe, "The Federal Eye," available at http://voices.washingtonpost.com/federal-eye/2008/11/welcome_to_federal_eye_part.html (last visited Sept. 16, 2009).
[363] Ed O'Keefe, *Documents Detail Case for Walpin's Dismissal*, WASH. POST Online Ed., July 1, 2009.
[364] Trinity interview.
[365] *Id.*

1. Parody Newsletter

In May 2008, an OIG staffer prepared a parody newsletter to commemorate the retirement of OIG Assistant Inspector General for Support Linda Wallis. The newsletter featured three news items.[366] One, describing in jest Wallis's post-retirement plans, announced Wallis "procured her Federal retirement" from a vendor "known to be owned and operated by a qualified-minority-female-veteran-disabled person."[367] A second item, which appears under the headline "Spitzer Vies to Succeed Wallis," names former New York governor Eliot Spitzer as Wallis's successor, citing his experience procuring prostitutes.[368]

For Your Inspection

"Mission First, People and Occasionally, Integrity Why Not?"

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Office Of Inspector General, Corporation For National And Community Service

OIG Profile

Spitzer Vies to Succeed Wallis

Former New York Governor Eliot Spitzer has emerged as a leading candidate to succeed the retired Linda Wallis as head of procurement for the Office of Inspector General.

Spitzer was most recently associated with Emperor's Club VIP, a New York based-firm that specializes in the procurement of blondes, brunettes and redheads.

"If selected for this important post, I plan to bring a high level of service and satisfaction to the procurement process," Spitzer said in a phone interview from his field office at the Mayflower Hotel in Washington, DC. "My policy is, vendors either put out or get out."

Spitzer also promised to fulfill every possible fantasy for OIG investigators and auditors.

Audit Manager Rick Sampson, when told that Spitzer specializes in redheads, vowed to immediately order a red, fine-point pen from Spitzer if he is selected for the post.

"I can't think of a better man for the job," said veteran procurer Heidi Fleiss. "He's no babe in the woods when it comes to being discrete and moving funds around."

OIG Hotline!
Phone:
E-Mail:

Wallis Procures Permanent Leisure Status

Linda Wallis, the OIG's stalwart Assistant Inspector General for Support, announced today that she has finally procured her Federal retirement. The name of Linda's GSA-approved retirement vendor was not immediately revealed, but it is known to be owned and operated by a qualified minority-female-veteran-disabled person.

Under the terms of her retirement, the vendor will supply Linda with endless sunny days (not to exceed 24 hours each), lazy mornings (ending not later than 11 a.m., GMT), starry nights (exclusions may be granted, in writing, for periods of cloudiness) and bliss (strictly allocated according to the Federal schedule).

Linda said she plans to spend a lot of time doling out hugs and kisses to her adored grandchildren, "but they are going to have to follow my rules to the T."

To that end, Linda has enrolled each grandchild in the General Services Administration's approved vendor list. Several tots will have to wait for Grandma's hugs and kisses for up to three years. They are currently under debarment from procurement and non-procurement programs for spilling chocolate milk on Linda's prized sofa.

Also, to gain access to Grandma's cookie jar and candy drawer, the kids must first obtain a signed and certified Treat Order (Form M&M, as established under the Federal Munchies Control Act of 1972) and may make withdrawals limited to 100 percent of the established per diem.

Linda's legendary knowledge of Federal procurement, and financial regulations and strategies, has served her well in her retirement planning. For example, she and her husband Dale will be retiring to an oceanfront mansion in Palm Beach, Florida. The Wallis's recent home purchase appears as a line item in the OIG budget titled "post-service domicile acquisition positioned for first responder coastal homeland defense."

Linda and Dale will buzz around their retirement estate in a new 2008 Cadillac Escalade with armor plating and 30-inch stereo subwoofers. It was purchased with funds from an OIG account labeled "Hair Gel Expenses, Senior Special Agent Jeff Morales."

Linda's retirement income will be enhanced with the assistance of the innovative "Zero-Based, Post-Service Compensation System" she developed for the OIG. Whenever she and Dale run short of cash, they can merely add a few zeros to their retirement checks.

"There might be something funny going on with Linda's retirement," said Inspector General Gerald Walpin. "But I'll be damned if any of us can figure it out, and we probably never will. We're up against the master Federal procurer and budgeter of all time in Linda Wallis."

Panic is Widespread in Linda Wallis's Wake

Inspector General Gerald Walpin reacted calmly to Linda Wallis's imminent retirement, declaring a state of OIG emergency and ordering all department heads to procure enough office supplies to last 10 years. That effort began in earnest today, as Paola Merino took delivery of 2,000 cartons of Post-its.

Walpin also announced that, henceforth, the Semiannual Report to Congress, a project expertly shepherded by Linda, would be renamed the Triennial Report to Congress and be issued once every three years. He further stated that future OIG budgeting challenges would be reconciled through "creative use of the petty cash account."

With Linda's last day approaching, Audit Chief Carol Bates arranged for Wallis to write and issue 1,500 RFPs for future contract audits, including a planned "Applied-Procedures Evaluation of Costs Incurred by the Corporation for Festivities Marking the 100th Anniversary of AmeriCorps in 2095."

Investigations guru R.J. Walters, facing travel-cost uncertainties, immediately ordered all of his agents into the field to "round up the usual suspects" before Linda retired and to hold them in the OIG evidence room pending adjudication.

"She was always tough, but fair," recalled a former OIG vendor. "At first I was bitter when she had me abducted, flown to a Syrian prison and water-boarded after I had sought an extension on our audit contract. "I'll probably never walk again, but I know the importance of Federal procurement regulations thanks to Linda."

Former Deputy Inspector General Robert Shadowens wished Linda well in a call from his Florida fish camp. He also said he would not attend any retirement celebrations unless compelled to do so by an IG subpoena.

"What's Her Name was a valuable part of my team," said former Inspector General J. Russell George, who was reached by phone at his home, where he was awaiting a termite inspection. "But I'm still mystified why she refused to approve my acceptance of a freebie golf trip to Scotland with that nice Jack Abramoff. C'mon, what harm would it have done?"

[366] Parody Newsletter, May 2008.
[367] *Id.*
[368] *Id.*

Trinity took note of the "objectionable language" in the parody newsletter after he was notified of an employee's complaint.[369] Trinity brought it to Walpin's attention and advised him to release an internal memorandum condemning the humor in the newsletter.[370] Trinity also advised Walpin that he should notify him of any action he decided to take in response to the complaint about the newsletter.[371] Walpin informed Trinity he did not believe the contents of the newsletter were objectionable.[372] Walpin neither issued a warning nor took disciplinary action with regard to the matter, according to Corporation officials.[373] Walpin told the *Washington Post* his staff enjoyed the newsletter's humor and that no one had directly complained about its contents.[374]

2. EEO Investigation

Trinity testified that he had concerns about Walpin's "appreciation for diversity norms."[375] Those concerns arose from the dismissal of Sharon Brown, an African-American female auditor.[376] Brown was one of four auditors working under former Assistant IG for Audits Carol Bates.[377] Three of those auditors were female; all four were minorities.[378]

In 2008, Bates notified Walpin she was investigating Brown for operating a for-profit real estate venture, and providing tax services in April, from her desk at OIG. [379] Bates explained that Brown's work was suffering because she was "constantly on the phone and internet, not working."[380] Bates further notified Walpin that she expected her investigation to result in finding cause for Brown's termination.[381]

Walpin placed Brown on administrative leave pending the completion of Carol Bates's investigation.[382] Walpin subsequently served as the hearing officer at Brown's termination hearing.[383]

Following her termination, Brown named Walpin and OIG in an EEO complaint alleging unfair treatment as a result of her race and gender.[384] Consistent with agency protocol, the Corporation hired an investigator to review the merits of Brown's

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[369] Trinity interview.
[370] *Id.*
[371] *Id.*
[372] H. Oversight and Gov't Reform Comm. Minority Staff Interview with Gerald Walpin, July 7, 2009 [hereinafter Walpin July 7, 2009 interview].
[373] Ed O'Keefe, *The Federal Eye*, WASH. POST, July 1, 2008.
[374] *Id.*
[375] Trinity interview.
[376] Walpin July 7, 2009 interview.
[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.*
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] Sharon Brown EEOC Complaint.

complaint.[385] Walpin submitted to a recorded interview with the investigator and was subsequently given a chance to review the transcript of his interview.[386] Walpin found that the transcript was "totally messed up" and asked for the interview be re-transcribed from the taped recordings.[387] He was informed by the investigator that the tapes had been destroyed.[388]

Walpin, at this point concerned by several aspects of the EEOC investigation, shared his concerns with Nicola Goren and Frank Trinity. In a January 5, 2009 meeting, Walpin expressed concern that the tapes of his interview were destroyed and suggested he and Sharon Brown each be given an opportunity to add to the "completeness" of the investigation.[389] In a January 26 memorandum from Nicola Goren responding to Walpin, she assured him that measures would be taken to address his concerns:

> With regard to your second concern, [the agency's Office of Civil Rights and Inclusiveness or "OCRI"] agrees that interview materials should be kept until all affidavits have been signed and returned to the investigator. I am advised that, because that was not done in this matter, the OIG affiant was given an opportunity (and additional time) to make any corrections desired before signing the affidavit. With regard to your third concern, OCRI has provided assurances that it will review the entire record for fairness and legal sufficiency at the conclusion of the official inquiry. If OCRI determines that the official record is deficient, a supplemental investigation will be ordered.[390]

In her response, Goren agreed Walpin's concerns were legitimate. She assured him they would be addressed. She closed her memorandum by telling Walpin, "I now consider the matter closed."[391]

For Walpin, the matter was not closed. He responded to Goren's January 26 memo on January 29 with additional concerns. In a memo to Goren, Walpin notified Goren that he considered the problems described in his previous memo "systemic."[392] To ensure that Goren did not misinterpret his concerns as unique to the ongoing investigation, he wrote "… [M]y comments were aimed at future EEO complaints, whether against the Corporation or my Office, and were not intended to affect the currently outstanding complaint against my Office."[393]

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[385] Walpin July 7, 2009 interview.
[386] *Id.*
[387] *Id.*
[388] *Id.*
[389] Memorandum from Nicola Goren to Gerald Walpin, Jan. 26, 2009. Walpin also expressed concern that Sharon Brown's affidavit was drafted by her attorney.
[390] *Id.*
[391] *Id.*
[392] Memorandum from Gerald Walpin to Nicola Goren, Jan. 29, 2009.
[393] *Id.*

Frank Trinity testified it was inappropriate for Walpin to communicate concerns about the investigative process to the Corporation's management while the subject of an ongoing EEO investigation.[394] In testimony, Trinity speculated that Walpin's procedural criticisms "may have intimidated" the EEO investigator.[395] Trinity speculated the EEO investigator "felt chilled" by Walpin's complaints, even though Walpin's communications were addressed to CNCS management and intended to establish protocol to ensure future EEO investigations were handled more equitably and professionally.[396]

However, Trinity acknowledged under questioning that Walpin had not actually contacted the EEO investigator directly. Thus, if there were any chilling effect, it would have had to come from elsewhere, such as inquiring about the matters from CNCS management or Trinity's own General Counsel Office.

X. Conclusion

The IG Reform Act was passed due to Congress's concerns about improper political motivation, or the appearance thereof, in the IG removal process. The White House's failure to strictly adhere to the Act's requirements put the concerns of Congress on full display.

In lieu of meeting the requirements of the IG Act, the White House relied on a haphazard process set in motion just hours after Gerald Walpin made remarks critical of the Corporation's Board and management. In response to complaints from a prominent fundraiser with disproportionate access to the White House, Norman Eisen conducted an inadequate investigation that gathered only one side of the story. Instead of engaging in a thorough and deliberate examination of Walpin's fitness for the job at a time when the Administration planned an unprecedented expansion of the Corporation's programs, Eisen opted to rely on information provided by individuals with adversarial relationships with the IG. Notably, Eisen's investigation did not include conversations with anyone from the Office of the Inspector General, including Walpin himself. Eisen did not afford Walpin an opportunity to be heard. In other words Walpin was given no due process.

Eisen's failure to conduct an actual investigation deprived the President the opportunity to faithfully adhere to the IG Act. Essentially, the IG Reform Act requires transparency – the President must give advance notice to Congress before removing an IG and explain the reasons for that action. Because the White House failed to comply with the requirements of the IG Act in its initial letter to Congress, and because there were no findings from a thorough investigation to fall back on in response to congressional inquiries, the White House Counsel's Office orchestrated an after-the-fact smear campaign to justify the President's action. That approach ultimately led to a controversial public relations battle in the media and a federal lawsuit by the former

[394] Trinity interview.
[395] *Id.*
[396] *Id.*

Inspector General.[397] The result is decreased public confidence in the integrity of CNCS programs and the non-partisan, non-political mission of its Office of Inspector General.

Because Norman Eisen's investigation was incomplete and the White House has withheld hundreds of pages of documents from Congress, the claim that Gerald Walpin was removed for legitimate, non-political reasons is unsupported and unpersuasive. There is simply insufficient evidence to conclusively reject the notion that the removal may have been motivated by a desire to exert greater control over the Corporation without interference from an aggressive, independent IG.

The President's action leaves three top positions at CNCS - Chief Executive Officer, Chief Financial Officer and Inspector General - vacant or filled temporarily,[398] at a time when the Corporation is charged with growing to manage 250,000 volunteers while the annual budget rises from $1.19 billion to $6 billion.[399]

Congress has heard testimony from the IG community acknowledging the difficulties faced by temporary Inspectors General. "It is difficult for any [temporary IG] to take an unpopular stand or make a critical policy decision," said Pension Benefit Guaranty Corporation IG Rebecca Anne Batts to Congress in March 2009.[400] This reality will cripple any effective oversight of CNCS as the President rapidly implements an ambitious expansion of its programs and funding.

[397] Stephen Dinan, *Fired inspector general files lawsuit*, WASH. TIMES, July 18, 2009.
[398] CNCS Organization Chart, available at http://www.nationalservice.gov/about/role_impact/organizationchart.pdf (last visited Sept. 10, 2009).
[399] Nancy Lewis, *Obama Fires CNCS watchdog*, YOUTH TODAY, June 11, 2009.
[400] Rebecca Anne Batts, Testimony for the H. Comm. On Oversight and Gov't Reform Subcomm. On Gov't Management, Organization, and Procurement, Mar. 25, 2009.