



U.S. DEPARTMENT OF JUSTICE

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Eastern District of California*

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April 29, 2009

Kenneth W. Kaiser, Esq.
Chair, Integrity Committee
Counsel of the Inspectors General on Integrity and Efficiency
c/o Criminal Investigative Division
Federal Bureau of Investigation, Department of Justice
935 Pennsylvania Avenue, NW
Washington, DC 20535-0000

Re: United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez

Dear Mr. Kaiser:

I am the Acting United States Attorney for the Eastern District of California. I am writing to express my Office's concerns about the conduct of the Corporation for National and Community Service (CNCS) Inspector General, Gerald Walpin, and his staff in the handling of United States v. St. HOPE Academy, Kevin Johnson & Dana Gonzalez.

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. However, in this case Mr. Walpin viewed his role very differently. He sought to act as the investigator, advocate, judge, jury and town crier.

Very briefly, this matter resulted from the alleged misuse of AmeriCorps grant funds by St. HOPE Academy, and the involvement in the alleged misuse by St. HOPE's then Chief Executive Officer Kevin Johnson, and Executive Director Dana Gonzalez. Kevin Johnson is a former NBA basketball player, and was a Sacramento mayoral candidate, subsequently elected Mayor, when this matter first came to light during fall 2008. Thus, this matter received significant local press coverage.

This matter was referred to our Office on August 7, 2008. However, even before our Office officially received this matter, we learned about it in April and June 2008 through articles in the Sacramento Bee newspaper, including comments from an IG spokesperson. Moreover, we considered the IG referral somewhat unusual in that it was accompanied by a letter from Mr. Walpin (enclosed) explaining that he viewed the conduct in this case as egregious and warranted our pursuing the matter criminally and civilly.

Within a few weeks thereafter, on August 25th, we met with Mr. Walpin and 2 investigators from his office. We expressed our concerns that the conclusions in their report seemed overstated and did not accurately reflect all of the information gathered in their investigation. We also highlighted numerous questions and further investigation they needed to conduct, including the fact that they had not done an audit to establish how much AmeriCorps money was actually misspent.

Despite our expressed concerns and the need for further analysis, the next we learned of this matter was again through the Sacramento Bee newspaper. First, on September 5, 2008, an IG spokesperson informed the newspaper that the matter had been referred to our Office, but also added that a "referral means that it's our opinion that there is some truth to the initial allegations..." Second, Mr. Walpin apparently advocated to have St. HOPE, Johnson and Gonzalez immediately placed on a list of parties suspended from receiving federal funds. We learned of that determination through Sacramento Bee articles quoting extensively from a *press release* issued by Mr. Walpin's office on September 25, 2008. Not only was it extremely questionable for Mr. Walpin to issue a press release, it contained statements such as: "[i]f we find really egregious stuff and we want to stop the bleeding, we seek immediate suspension..." Moreover, the IG publically released the findings of his investigation.

On September 26, 2008, I participated in a conference call in which then U.S. Attorney McGregor Scott emphatically informed Mr. Walpin that under no circumstance was he to communicate with the media about a matter under investigation. We also informed Mr. Walpin that his actions were hindering our investigation and handling of this matter. In fact, as a result of Mr. Walpin's public pronouncements on the eve of the mayoral election, McGregor Scott felt compelled to inform the media that our Office did not intend to file any criminal charges.

During the following months our Office was involved in actively pursuing a potential civil case in this matter, working with investigators in the IG's office, obtaining additional discovery, and negotiating a possible resolution. On March 24, 2009, the Sacramento Bee published an editorial (enclosed) that this matter needed prompt resolution. On that same day, an attorney in my Office telephoned Mr. Walpin concerning the ongoing efforts to attempt to resolve the matter. First, although Mr. Walpin stated that he did not make debarment determinations, he made it clear that he would advocate and seek to control the outcome so that St. HOPE and Mayor Johnson were debarred for 3 years. Second, he stated that he had sent a *letter to the editor* to the Sacramento Bee. I promptly called Mr. Walpin and asked him to retract the letter, and reminded him about our previous admonition that he should not be communicating with the press. I advised Mr. Walpin that Kevin Johnson's status as Mayor did not entitle him to a "free pass", but the matter merited a certain level of sensitivity. Needless to say, my comments fell on deaf ears, and the Sacramento Bee gladly ran Mr. Walpin's letter as a special editorial (enclosed).

Negotiations continued between my Office and counsel for St. HOPE and Mayor Johnson. As part of that process, St. HOPE's counsel provided evidence that they asserted helped establish that a significant portion of the AmeriCorps grant funds were appropriately expended. For example, the referral from the IG expressly concluded that St. HOPE "AmeriCorps Members Performed No Tutoring." However, the evidence St. HOPE provided included a statement from Herinder Pegany, the Principal of an elementary school, stating that St. HOPE AmeriCorps members had performed after-school tutoring at his school. When asked to review this material, members of Mr. Walpin's office revealed that CNCS investigators had interviewed Mr. Pegany and had obtained a similar statement from him, *but did not include it in their report or disclose it to my Office.*

When confronted by the non-disclosure, Mr. Walpin sought to defend why his office had not included all of the relevant material in their referral. Moreover, Mr. Walpin advised an attorney in my office that once again he was writing to the Sacramento Bee (enclosed). Only by calling upon General Counsel for CNCS were we able to convince Mr. Walpin not to send his letter to the newspaper.

Ultimately, despite the hindrance of Mr. Walpin, due to the extraordinary assistance of CNCS 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. Although I have stated repeatedly in this letter that our Office does not believe in trying a matter in the media, it is worth noting that in a column in the Sacramento Bee newspaper the day after the settlement was announced, the columnist concluded: "Johnson and his nonprofit will repay half of the \$847,673 in grants. Johnson will take an online course on federal grants. And Sacramento is clear to tap millions in federal dollars....The conclusion wasn't a slap on the wrist or fraud. It was the system rising above those who cheapened it."

In summary, the IG should be a fact-finding impartial investigative arm of the CNCS agency. Although I recognize that a strong IG is necessary to ensure that allegations of wrongdoing are investigated, I believe that Mr. Walpin overstepped his authority by electing to provide my Office with selective information and withholding other potentially significant information at the expense of determining the truth. I believe that rather than ensuring protection of a respected federal agency, he tarnished its reputation. Please contact me if you need additional information.

Sincerely,



LAWRENCE G. BROWN
Acting United States Attorney

Enclosure

cc: Alan Solomont, Chairman CNCS
Stephen Goldsmith, Vice Chairman CNCS
Nicola Goren, Acting CEO CNCS



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Gerald Walpin**



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**Office of Inspector General
Corporation for National and Community Service**

FOR IMMEDIATE RELEASE

Contact:

William Hillburg, Director of Communications
(202) 606-9368

WASHINGTON, DC (September 25, 2008) - The Federal agency in charge of the AmeriCorps volunteer program on Wednesday (September 24) suspended St. HOPE Academy, Kevin Johnson, its founder and former president, and Dana Gonzalez, executive director of St. HOPE's Neighborhood Corps, from all access to Federal grants and contracts for up to one year.

The decision of the Corporation for National and Community Service ("Corporation") resulted from a recommendation made by the Office Inspector General ("OIG"), which was based on information developed in an investigation of St. HOPE and its principals, which is ongoing. The suspension, which immediately went into effect September 24, bars St. HOPE Academy, Johnson and Gonzalez from receiving or using funds from any Federal agency for up to one year, or pending completion of the OIG investigation.

The OIG, in its recommendation for suspension, cited numerous potential criminal and grant violations, including diversion of Federal grant funds, misuse of AmeriCorps members, and false claims made against a taxpayer-supported Federal agency.

"I appreciate the Corporation's action in implementing our recommendation and in supporting our ongoing investigation," said Inspector General Gerald Walpin. "Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken. Between now and the completion of the OIG's investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals."

In its written suspension decision, the Corporation cited numerous AmeriCorps grant violation and diversions of Federal funds. It stressed that "the diversion of grant funds is so serious a violation of the terms of the grant agreement that immediate action via suspension is required to protect the public interest and restrict the offending parties' involvement with other Federal programs and activities."

Under the terms of its Corporation grant, St. HOPE officials agreed to deploy their Neighborhood Corps AmeriCorps members to tutor students at its charter schools, redevelop one building per year in Sacramento's Oak Park neighborhood and coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery.

The cited violations of St. HOPE's grant agreement included:

- Misusing AmeriCorps members, financed by Federal grant funds, to personally benefit Kevin Johnson, including driving him to personal appointments, washing his car and running personal errands.
- Unlawfully supplementing St. HOPE staff salaries with Federal grant funds by enrolling two employees in the AmeriCorps program and giving them Federally funded Corporation living allowances and education awards.
- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento School Board candidates.
- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.
- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.
- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions, and has 30 days to respond to the Corporation.

During the suspension period, St. HOPE Academy, Johnson and Gonzalez will be included in the Excluded Parties List System, a database maintained by the U.S. General Services Administration (www.epls.gov). The list is used by all Federal agencies to determine the eligibility of individuals and organizations to receive Federal grants and contracts.



The 114th Size of The Sacramento Bee

This story is taken from [Sacbee / Breaking News / E-mail Alerts -- Breaking News](#).

Feds investigating St. HOPE find 'numerous' potential violations

By Terri Hardy - thardy@sacbee.com

Published 11:52 am PDT Thursday, September 25, 2008

Federal agents investigating Kevin Johnson's St. HOPE nonprofit volunteer program found "numerous potential criminal and grant violations," according to a press release issued today by a federal inspector general.

For the first time, the inspector general's office revealed details of its months-long probe. On Wednesday, the findings of that investigation triggered a halt of federal funding to Johnson, a former top St. HOPE executive Dana Gonzalez and at least a portion of the St. HOPE organization.

The suspension of funding will last up to 12 months or until the completion of the federal probe, according to federal officials. In a contract with the federal volunteer program AmeriCorps, St. HOPE's service group received \$807,000 between 2004 and 2007.

"Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken," said Gerald Walpin, Inspector General for the Corporation for National and Community Service, in the press release. The corporation oversees AmeriCorps.

Added Walpin: "Between now and the completion of the investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals."

Johnson is challenging Mayor Heather Fargo in the Nov. 4 election for Sacramento's top elected post. Johnson and St. HOPE officials have said they are cooperating in the investigation. They maintained in earlier interviews that any problems with the Hood Corps grant were limited to minor administrative errors.

Hood Corps no longer receives federal funding, and Gonzalez left the organization in August.

Federal agents in April launched an investigation into St HOPE's Hood Corps operation after The Bee raised questions about the program. Agents recently turned over findings from their investigation to the U.S. Attorney's office in Sacramento, where prosecutors will decide whether to file charges.

Among the potential violations federal investigators identified in the inspector general's statement:

- Misusing AmeriCorps members, financed by federal grant funds, to personally benefit Johnson, including driving him to personal appointments, washing his car and running personal errands.
- Unlawfully supplementing St. HOPE staff salaries with federal grant funds by enrolling two employees in the AmeriCorps program and giving them federally funded corporation living allowances and education awards.
- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento school board candidates.
- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.
- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.
- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

In its contract with AmeriCorps, St. HOPE agreed to tutor students at its charter schools, redevelop a building a year in Sacramento's Oak Park neighborhood and to coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery, according to federal officials.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions and 30 days to respond to the corporation, the statement said.

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KJN



OFFICE OF INSPECTOR GENERAL

August 7, 2008

Lawrence G. Brown, Esq.
First Assistant United States Attorney

John Vincent, Esq.
Chief of the Criminal Division

Kendall J. Newman, Esq.
Chief of the Civil Affirmative Section

Office of the United States Attorney
for the Eastern District of California
501 I Street
Suite 10-100
Sacramento, CA 95814

Re: Kevin Johnson and Dana Gonzalez

Via Federal Express

Dear Messrs. Brown, Vincent, and Newman:

I am forwarding to each of you herewith our referral to your office for criminal and civil prosecution of Kevin Johnson and Dana Gonzalez, respectively President/CEO and Executive Director of the St. HOPE Academy ("SHA"), for false and fraudulent conduct in connection with \$845,018.75 in Federal funds, disbursed to and for SHA under a grant to SHA covering grant years 2004-05, 2005-06, and 2006-07. Accompanying the 30 page referral are two binders of supporting documents referenced in the referral providing evidentiary support for the statements in the referral. (I have not burdened Mr. Brown with the evidentiary binders, but, if I am incorrect in my assumption that he would prefer not to receive them, I will forward another set to him on his request.)

As detailed in the accompanying referral, Mr. Johnson converted for his personal use and for the use of St.HOPE Academy (Mr. Johnson's controlled entity) the portion (\$677,310.77) paid directly to SHA, and fraudulently caused the Government to disburse the balance (\$167,707.94) to persons not entitled to benefit. Violations of various Federal penal statutes, including obtaining by fraud Federal funds under a grant (18 U.S.C. § 666), filing of false and fraudulent claims (18 U.S.C. § 287), and the making of false and fraudulent statements (18 U.S.C. § 1001) are detailed.



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I would hazard a guess that most U.S. Attorney's offices have had experience in prosecuting those violations in the context of a for-profit Government contractor, but not in the context of a not-for-profit Government grantee. No one hesitates for a moment in prosecuting a for-profit Government contractor who executes a contract with the Government to produce a specified product, but instead uses the Government funds for other purposes, such as financing other non-contract activities, and, to obtain the Government funds, misrepresents to the Government that the funds had been used for the contract specified activities. This type of criminal conduct has occurred, for example, in the cost-plus contract context, when the contractor uses its labor and material for a non-contract activity but charges those costs to the Government contract.

That is essentially what our accompanying referral shows occurred here, except that the recipient was not a for-profit entity but a not-for-profit entity, obtaining Government funding by proclaiming its purpose was to do a specific and identified type of activity to benefit the community, and instead used the funds and labor financed by the Government for other purposes.

Prosecution here would be in furtherance of the formation late in 2006, by the Criminal Division of the Justice Department of the National Procurement Fraud Task Force, of which I am now a member. As the Deputy Attorney General then stated, in announcing this new endeavor, because " [w]e simply cannot tolerate fraud and abuse in government contracting, it is necessary" to increase criminal enforcement in areas of procurement fraud" -- which he specifically defined as including "grant fraud" -- to make clear to the "public" that "anyone who is cheating the system will be held accountable." To that end, the DOJ "encourage[s] agencies to refer more cases for civil and criminal prosecution." And DOJ, in the announcement of this initiative, stated that "the key to a renewed and sustained effort against procurement fraud is an energized and empowered IG community working in tandem with Federal prosecutors." That is exactly what this IG office is endeavoring to do here.

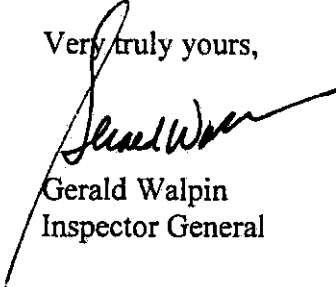
In some ways, this type of crime is worse in the not-for-profit context than in the for-profit context. While I certainly do not minimize the importance of preventing fraud and improper conversion of Government funds in the for-profit context, the primary damage to the Government is usually money. In contrast, in the not-for-profit context about which I write, the damage to the Government has two important aspects: certainly improper taking of Government funds is one; but the second is the serious adverse effect it has to this important Government program to incentivize Americans to volunteer for the benefit of the community and those in need of assistance. At the heart of this referral is AmeriCorps, a Congressionally-mandated program, involved here, to obtain mainly young-adult Americans who contribute a block of their time to revitalize a community and tutor young disadvantaged in order to raise their educational prowess. When those who sign up to do this work (for a *de minimis* living allowance and, on completion of the required number of hours, an Education Award up to a maximum of \$4725 which can be used for tuition or payment of college loans), are not used to do the specified tutoring and community improvements, but instead for menial tasks, these volunteers become discouraged and, when the reality of their AmeriCorps time becomes known to prospective volunteers, it turns them off and disparages the reputation of the AmeriCorps program as a whole.

In addition, because the grant world seems to have its own means of communication, the fact that principals of a grantee engaged in this type of conduct without any significant penalty weakens any deterrence against similar conduct by others.

Because of the importance that I and my office put on this referral, I, together with my two Special Agents, Jeffrey Morales and Wendy Wingers, who have pursued this investigation, would like to meet with the three of you in your office to discuss this matter, at the earliest time after you have had an opportunity to review it. I will call you to discuss a date that meets your schedule.

When we fix on a date, I would appreciate the opportunity of greeting Scott McGregor, the U.S. Attorney, or, at his decision, having him join in our discussion. For that reason, I am forwarding to him a copy of this letter (without the accompanying material) with a cover note.

Very truly yours,



Gerald Walpin
Inspector General

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Opinion

Editorial: AmeriCorps case needs resolution

Published Tuesday, Mar. 24, 2009

Since AmeriCorps began in September 1994, about 2,600 nonprofit and community groups a year have worked with volunteers to improve communities. For their service, volunteers get a \$4,725 education award for college or graduate school and a living allowance.

Unfortunately, but not surprisingly, some nonprofit organizations working with AmeriCorps volunteers have run into problems that range from human error and ignorance of regulations to outright fraud.

In Sacramento, St. HOPE Academy's Neighborhood Corps ("Hood Corps" for short), received federal grants from 2004 to 2007. Under these grants, AmeriCorps volunteers were supposed to tutor students at St. HOPE's charter schools, redevelop one building a year in Oak Park and coordinate marketing and logistics for the Guild Theater and 40 Acres Art Gallery.

The AmeriCorps' office of the inspector general began looking at Hood Corps in April 2008; in preliminary findings last September, it found that two St. HOPE employees received AmeriCorps living allowances and education awards – duplicating their salaries.

The inspector general also found that AmeriCorps volunteers were engaged in activities beyond the scope of the grant – such as recruiting students for Sac High and for a new charter opening in Harlem and doing clerical tasks at Sac High. The IG found that AmeriCorps volunteers were driving St. HOPE founder Kevin Johnson around, washing his car and picking up his dry cleaning. They also handed out fliers recommending a slate of Sac City school board candidates.

Johnson has admitted "administrative errors." The usual remedy in these cases is repayment.

In some cases, there is also a fine. (That's what happened when the YMCA of New York was found to be padding AmeriCorps volunteer hours in a tutoring program).

In Sacramento, the IG's findings have not led to criminal charges. In November, the U.S. attorney said the material submitted by the IG fell short of proving criminal conduct and sent the case back for more information. The matter is dragging on.

Normally, such slowness wouldn't matter. But in this case, the IG took the unusual step of suspending St. HOPE Academy, Johnson (now Sacramento's mayor) and former Hood Corps

director Dana Gonzalez (now a mayoral volunteer) from receiving federal funds for up to a year pending completion of the investigation.

Now, the city of Sacramento has received an opinion that Johnson's suspension may preclude the city from getting federal funds if he influences their use. And the IG's office has "declined to say when the review would be finished."

Given the potential consequences of a suspension, the IG's office should either expedite the case – getting repayment and/or fines under way – or lift the suspension if the case is expected to drag on indefinitely. The original reason for suspension was to protect the public from "potential repetition of this conduct" while the investigation was ongoing. Johnson and Gonzalez have stepped down from their positions at St. HOPE and Hood Corps, so that should no longer be a concern.

This situation cries out for resolution. This is a case where everybody would be better off if the nonprofit and the IG reach a repayment settlement for the errors and move on.

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My View: The federal aid ball is in Johnson's court

Special to The Bee

Published Tuesday, Mar. 31, 2009

Your March 24 editorial, without basis, attacks my Inspector General office for "dragging on" with our investigation of St. HOPE Academy and its principals so that the city of Sacramento may be precluded "from getting federal funds" due to the fact that on Sept. 24, 2008, Mr. Kevin Johnson was suspended "from receiving federal funds."

The relevant law – which I would have thought that you would have researched before writing your editorial – demonstrates that you are targeting the wrong entity for any delay of the determination of whether Johnson's suspension was appropriate.

Some background: As inspector general, I am duty-bound to take action to uncover and to prevent fraud and waste in the almost \$1 billion of taxpayers' money that is disbursed by the Corporation for National and Community Service.

Under controlling regulations, suspension from receiving or controlling federal funds is one of the tools available, where there "exists ... adequate evidence to suspect ... commission of fraud ... making false claims ... or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects (the person's) present responsibility ... or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."

For a suspension to occur, my office must recommend the suspension to the deciding official (who is not in my office) and provide adequate evidence to support the suspension to the deciding official. That was done here. The suspending official there- after notified Johnson of the suspension.

Most important is that the regulations give any person or entity suspended – including Johnson – the right "to contest a suspension" by "provid(ing) the suspending official with information in opposition to the suspension ... within 30 days after (receipt of) the Notice of Suspension." The opposition submission cannot rely on "a general denial"; instead, it must include "specific facts that contradict the statements made in the Notice of Suspension."

Thus, contrary to your editorial, the ball on the suspension has been in Johnson's court since

the order of suspension was issued.

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an "unusual step," the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

Your editorial also refers to a criminal investigation or civil monetary recovery or settlement. I do not comment on such matters unless they are public.

But, in any event, those legal avenues are irrelevant here as they are in no way connected with the ability of the city of Sacramento to obtain federal funds – only the suspension order has that effect.

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Gerald P. Walpin is the inspector general of the Corporation for National and Community Service.

202+606+9388

*Ken Johnson
916-554-2439*

12:05... p.m. 04-02-2009

1/1

4/2/09

Letter from G. Walpin

Mr. Johnson was entirely within his legal right to continue litigating the issue of his suspension in the press by disseminating his lawyer's letter to the Deciding Official, rather than using the legal procedures available to him to apply to lift the suspension by submitting "specific facts" to show that he did not commit the specific wrongdoing of which he was advised in the Notice of Suspension.

The Office of Inspector General will not, however, join in this litigation in the media by commenting on the facts which are to be decided by the independent Deciding Official.

In response to the repeated questions by your newspaper seeking information as to the number of suspensions in the past, the Office of Inspector General is not the Deciding Official and does not have such records. But we will note the obvious irrelevancy of those questions. Is the newspaper suggesting because, in this office's experience, most grantees do not commit criminal acts, and therefore only a very small percentage of grantees are referred for criminal prosecution, that a grantee who does commit a criminal act should not be prosecuted? Likewise, the suspension sanction is utilized only where warranted to protect Federal funds. Given the current atmosphere, in which all elements of our country -- government, media, and citizens in general -- are properly asking for greater protections against misuse of taxpayers' money, all Inspectors General cannot be asked to do less.