
# UPDATE AND SUPPLEMENT TO THE INITIAL REPORT:

The Firing of the Inspector General for
The Corporation for National and Community Service[1]

**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

**March 2, 2010**

[1] The initial report and exhibits are available at http://republicans.oversight.house.gov.

## Introduction

On November 20, 2009, we released a 62-page joint staff report detailing the facts and circumstances surrounding President Obama's decision to remove the Inspector General at the Corporation for National and Community Service (CNCS), Gerald Walpin. The initial report found that the White House:

(1) failed to properly implement the Inspector General Reform Act's removal procedures;

(2) made no meaningful attempt to notify and consult with Congress prior to the President's decision;

(3) afforded the Inspector General no due process;

(4) conducted only a cursory review of the facts, obtaining only one side of the story without waiting for a professional, non-partisan review by the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE); and

(5) withheld hundreds of pages of documents from Congress in the course of its inquiry.

Given that the Inspector General had engaged in aggressive oversight of a CNCS grant recipient who was a self-described friend of the President, and that the Chairman of the Board of CNCS was a major campaign fundraiser for the Democrats, these actions by the White House created an appearance that the President removed the Inspector General for improper political reasons. After a careful consideration of the evidence, including numerous witness interviews and over 4,300 pages of documents, we could not conclusively reject the possibility that the removal may have been motivated a desire to exert greater political control over CNCS without interference of an aggressive Inspector General. As noted in the initial report, its conclusion had to be qualified because the White House had instructed CNCS to withhold hundreds of pages of documents in connection with this matter.

Since the publication of the initial report, however, the White House authorized CNCS to produce additional documents to the Committees. The Department of Justice (DOJ/Justice) also provided additional documents. This update and supplement to the initial report will present and analyze some of these additional documents to determine whether the conclusions in the initial report need to be modified in light of the new information.

## New Justice Department Documents

Just a week after the President's Counsel, Norm Eisen, gave CNCS Inspector General Gerald Walpin an ultimatum to resign or be fired, the Senate Judiciary Committee held an oversight hearing at which the Attorney General testified on June 17, 2009. Following the hearing, Senator Grassley submitted a series of written questions for the record related to Walpin's removal and requested related documents from the Justice Department. Ten days after we issued the initial report, DOJ provided responsive documents from the U.S. Attorney's Office in the Eastern District of California related to its communications about Walpin.

The documents were significant because, before his removal, Walpin had criticized the settlement reached between the U.S. Attorney's Office, CNCS, and St. HOPE Academy. St. HOPE was run by former NBA star and self-described friend of President Obama, Kevin Johnson. Walpin's investigation of Johnson and St. HOPE had uncovered misuse of grant funds and resulted in Johnson's suspension from receiving further federal funds. However, after Johnson was elected Mayor of Sacramento, Walpin said there was political pressure to lift the suspension to ensure that Sacramento could receive federal stimulus funds. Walpin contended that the U.S. Attorney's office yielded to political pressure and entered into an excessively lenient settlement with Johnson and St. HOPE merely to ensure the receipt of future federal funds.

The Acting U.S. Attorney, Lawrence Brown, filed a complaint against Walpin with the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE). The White House cited the U.S. Attorney's complaint to CIGIE in discussing reasons for removing Walpin, although CIGIE later dismissed the complaint after obtaining Walpin's response and finding it sufficient to rebut the allegations against him. On the day that CNCS Board Chairman Alan Solomont went to the White House and began the process of removing Walpin, Walpin also complained to the CNCS Board of Directors that the U.S. Attorney's Office worked with CNCS management to exclude Walpin from settlement negotiations even though Walpin's office had been the investigating agency that had uncovered the misuse of funds in the first place.

Given these circumstances, the documents provided by the Justice Department after publication of our initial report shed important new light on the actions of Acting U.S. Attorney Brown. In particular, the documents demonstrate that:

(1) Lawrence Brown was actively seeking a Presidential appointment as the U.S. Attorney at the same time he was negotiating a lenient settlement agreement with Kevin Johnson, excluding the Inspector General from the negotiations, and filing a complaint against Walpin with the Integrity Committee; and

(2) Lawrence Brown and Matthew Jacobs, Kevin Johnson's attorney, frequently exchanged informal emails about Walpin, which do not suggest an appropriately arm's length negotiating relationship.

Rather than diminishing the appearance that politics played a role in the removal of Gerald Walpin, these new documents reinforce that appearance. The new documents make the President's initial explanation that he merely "lost confidence" in the Inspector General seem even less credible.

## A. Lawrence Brown was seeking a Presidential appointment.

In August 2008, the Inspector General sent a referral for criminal and civil prosecution of Kevin Johnson to the U.S. Attorney's Office for the Eastern District of California. That office announced its settlement with Johnson and St. HOPE on April 9, 2009. One document provided by the Justice Department after the publication of our initial report makes it clear that in the midst of his investigation of Johnson, Brown was actively seeking a Presidential appointment to elevate him to the U.S. Attorney position.

On January 5, 2009, Acting U.S. Attorney Lawrence Brown wrote a letter to Senator Dianne Feinstein to express his interest in the appointment. After outlining his professional qualifications, Brown wrote:

> As this is a political appointment, I will note that for the past two years, I have been registered as Decline to State. From 1988-2007, I was a registered Democrat and from 1982-1988, a Republican. As may be evident, I am not a rigid ideologue and discovered that I simply did not fit neatly within either party. I chose to ultimately become an independent because I felt that in my line of work, namely the administration of justice, neither party has a monopoly and its handiwork must be performed in non-partisan fashion. I count myself in the ranks of those who have grown weary of the overly-simplistic "red state/blue state" debates over complex issues and enthusiastically embrace President-elect Obama's call to abandon such labels and become the *united* states [*sic*] of America.[2]

Brown's letter is interesting for two reasons. First, it undermines the notion that Brown's conflict with Walpin demonstrates that the controversy was non-partisan. During public relations battle that ensued after the President's removal of Walpin, allies of the White House often cited Brown's complaint against Walpin as having been initiated by the "Republican U.S. Attorney in California." However, as this letter makes clear, Brown was, in fact, a registered Democrat for 19 years before recently becoming an independent. Second, Brown's letter raises new questions about his potential motivations. It would be reasonable for an already skeptical public to wonder whether Brown excluded Inspector General Walpin from negotiations and settled the St. HOPE matter with Johnson in order to curry favor with the White House because Brown wanted the President to appoint him as U.S. Attorney. The appointment was made after the controversy erupted, and Brown did not receive the promotion he was seeking. Instead, the President appointed Benjamin Wagner on August 6, 2009, and he was sworn in on November 9, 2009. Brown

[2] Exhibit 1: Letter from Lawrence Brown to Dianne Feinstein, Jan 5 2009 (emphasis in original).

subsequently left the U.S. Attorney's office where he had worked since 2003. On January 28, 2010, he was appointed to the Sacramento Superior Court.

### B. Lawrence Brown exchanged emails with Kevin Johnson's Attorney about the Inspector General.

Matthew Jacobs, Kevin Johnson's attorney, frequently sent the Acting U.S. Attorney acerbic and sarcastic emails detailing his complaints about Inspector General Walpin. If Brown had used the Inspector General's zealous advocacy on behalf of the taxpayers as a foil in the negotiations with Jacobs, then perhaps he could have extracted a more favorable settlement for the U.S. government.

Rather than taking that course or simply acknowledging receipt and offering no further comment, Brown chose to send several sympathetic replies to Jacobs. On the afternoon March 24, 2009, Jacobs wrote to Brown:

> Larry, I expressed my outrage over Walpin's letter to the editor to Ken, who I'm sure has communicated it to you, but that did not have the fully cathartic effect I desired so I must try another tack:
>
> 1. The U.S. Attorney (Greg) already told this guy once he's not supposed to speak publicly about federal cases in this District.
>
> 2. He's not supposed to speak publicly about federal cases in this District. The DOJ regs explicitly state that the U.S. Attorney is the primary spokesperson for all federal law enforcement in the District. Moreover, Hilburg has stated repeatedly, and as recently as Saturday's Bee article, that he can't comment on ongoing investigations. So Walpin knows he's not supposed to comment.
>
> 3. WTF is wrong with this guy! First, he tried to effect the election; now he's messing around with the entire region's federal funding! Over this case?!
>
> In all seriousness, the U.S. Attorney needs to stand up and say this isn't right. The U.S. Attorney represents the face of justice in this District, and for this District. Please.
>
> Thanks. Matt[3]

Brown initially replied nine minutes later, "Message heard loud and clear, Matt. I am at a complete loss and do in fact plan to speak with Gerald [Walpin]."[4] Then the next morning Brown replied again, "Off the record, as they say, I have spoken with Mr.

[3] Exhibit 2: Email from Matthew Jacobs to Lawrence Brown, Mar 24, 2009.
[4] Exhibit 2: Email from Lawrence Brown to Matthew Jacobs, Mar 24, 2009.

Walpin this morning and expressed my views in no uncertain terms. I am not going to get into details of what was said."[5]

Jacobs' complaints to Brown about Walpin's communications with the press later formed the basis of Brown's official complaint to CIGIE. CIGIE eventually found the complaints had no merit, so Jacobs was simply wrong about whether such press communications were appropriate. However, CIGIE's decision came after Walpin had already been removed by the President. Prior to receipt of these documents, it appeared that whatever the merits of the complaint against Walpin, at least it originated with the U.S. Attorney's office, which tends to suggest some level of credibility on first blush.

In light of these emails, it now appears that Brown was actually parroting to CIGIE supposed grievances first presented to him by Kevin Johnson's attorney. Moreover, Brown apparently exceeded his authority by failing to obtain the Justice Department permission before filing the complaint against Walpin. The U.S. Attorney's Manual, Section 1-4.150 "Reporting Allegations of Misconduct Concerning Non-Department of Justice Attorneys or Judges" states that, "Allegations of misconduct by non-DOJ attorneys or judges shall be reported to [the Office of Professional Responsibility (OPR)] for a determination of whether to report the allegation to appropriate disciplinary officials." Brown did not follow this guidance to report the allegations he received from Johnson's attorney to OPR. Rather, he apparently repackaged them as his own and sent them directly to CIGIE.

Together with his efforts to obtain a political appointment from the President, Brown's communications with Johnson's attorney contribute to the appearance that Walpin's removal was more about his vigorous pursuit of the St. HOPE matter than about any other legitimate, unrelated factors.

## New CNCS Documents

During the Congressional inquiry into this matter, the President's nomination of CNCS Board Chair Alan Solomont to become the Ambassador to Spain was pending before the Senate. Because Solomont was instrumental in the events that led to the removal of the Inspector General, and because he was the head of the organization withholding documents from Congress at the instruction of the White House, on July 29, 2009, Senator Grassley publicly placed a hold on Solomont's nomination.[6] Since no Committee of Congress with the ability to compel document production in this matter had chosen to do so, the hold was the only means by which the White House could be persuaded to provide documents it would prefer to withhold from Congress. Over the next several months, staff engaged in a series of negotiations with the White House in an attempt to obtain key documents in exchange for releasing the hold.

[5] Exhibit 3: Email from Lawrence Brown to Matthew Jacobs, Mar 25, 2009.
[6] Exhibit 4: Congressional Record S8266, Jul 29, 2009.

The White House eventually authorized CNCS to provide additional documents. Additional documents were provided on November 20, 2009, the day our initial report was published. Still more responsive documents were provided on December 4, 2009 and December 10, 2009. In addition, on December 8, 2009, Committee staff re-interviewed Alan Solomont to question him about details of some of the newly-provided documents.

The key document in the newly produced material was the May 21, 2009 memo from CNCS General Counsel Frank Trinity to Elana J. Tyrangiel of the White House Counsel's Office. It accompanied a set of documents sent from CNCS to the White House on the day after Alan Solomont went to the White House to begin the process of removing Walpin. In the memo, Trinity outlined and provided documents related to several "issues with Gerald Walpin's performance and conduct as Inspector General."[7] As explained in the initial report, these complaints about Walpin formed virtually the sole basis of the White House review since there was no attempt to obtain information from Walpin, others in the IG office, or even directly from the CNCS Board of Directors until after the President had made his decision to remove Walpin.

Trinity's memo, however, reveals that the White House considered issues in deciding to remove Walpin that it did not disclose in the official notice to Congress. Rather than supporting the removal decision, some of the issues cited by Trinity contribute to the appearance that the removal was motivated by improper political purposes. For example Trinity suggested that Walpin's Special Report to Congress was a grounds for removal. Yet, Section 5(d) of the Inspector General act sets out a formal procedure by which notify Congress of serious problems in an agency:

> Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

The communication is known as a seven-day letter because the provision requires the agency to transmit it to Congress, along with its response, within seven days.

If this provision is to be effective in ensuring that Congress is advised of particularly serious problems as quickly as possible, then it cannot be the case that an Inspector General would face retaliation, removal, or other adverse action for transmitting a seven-day letter. Yet, Trinity cited the fact that Walpin drafted and sent a seven-day letter at the top of the list of issues of concern that he sent to the White House.

[7] Exhibit 5: Memorandum for the Record from Frank Trinity, May 21, 2009.

He wrote: "The Inspector General … submitted a 'Seven Day' Special Report to Congress contrary to the applicable provisions of the Inspector General Act."[8]

Trinity's assertion that the seven-day letter was "contrary to the applicable provisions of the Inspector General Act" is apparently based on his belief that Walpin provided copies of his report to Congressional staff prior to the seven day deadline rather than waiting for the agency to transmit the report along with its comments. However, Trinity's assertion is not supported by evidence that Walpin actually transmitted the report prior to the seven day deadline. In any event, there is no prohibition in the Inspector General Act against the Inspector General doing so. In fact, it would be in keeping with the purpose of the provision to ensure that Congress receives the information as quickly as possible. To read the obligation imposed on the agency to provide the report to Congress within seven days as somehow constituting a prohibition on the Inspector General providing earlier notice would run contrary to the goal of ensuring that Congress receives prompt notification of issues identified by the Inspector General.

Trinity's memo to the White House also cites other concerns not disclosed to Congress in the official notice of removal or otherwise communicated to Congress before. Specifically, Trinity raised an issue related to an OIG audit of an AmeriCorps program at the City University of New York (CUNY). Like his review of Kevin Johnson's use of AmeriCorps funds at St. HOPE Academy, the review of CUNY had been a source of contention between Walpin and agency management around the time of his removal. Although CNCS and the White House claimed that the decision was unrelated to CUNY, Trinity lists it in his memo to the White House Counsel's Office, making an unusual allegation that Walpin, "substituted his personal views for policy judgments made by Congress recommending that the Corporation recoup up to $75 million from CUNY."[9] Whatever the merits of the policy dispute between Trinity and Walpin, it seems inappropriate to cite those differences as some sort of basis for removing Walpin from office. The normal course for an agency that disagrees with an Inspector General recommendation is to simply communicate the agency position to the Inspector General and to Congress rather than initiating a termination.

## Conclusion

None of the documents produced after the publication of our initial report undermine or conflict with the conclusions of the report. Arguably, some of the new documents could actually reinforce the public perception that the Inspector General was removed for political reasons. In particular, the revelation that the Acting U.S. Attorney was seeking a Presidential appointment at the time he filed a complaint against Walpin puts that complaint in a different light. Additionally, the transmittal memo to the White House suggests some "issues" with Walpin were considered that were not previously cited by the White House. The transmittal of a report to Congress and policy

[8] Exhibit 5: Memorandum for the Record from Frank Trinity, May 21, 2009.
[9] Exhibit 5: Memorandum for the Record from Frank Trinity, May 21, 2009.

disagreements over a particular recommendation are not valid reasons to propose removing an Inspector General. Moreover, the fact that the White House allowed the documents to be withheld for so long and that it required so much effort to finally obtain them also suggests a lack of transparency that is inconsistent with the goals repeatedly articulated by President Obama for a more open and accountable administration.