Response of IG Gerald Walpin and the OIG
To the Complaint

This response is divided into two parts: (A) Whether the complaint fits within the jurisdiction of the Integrity Committee; and (B) The merits of all allegations in the complaint.

A. Jurisdiction

The jurisdiction of the Integrity Committee is limited to "Administrative Misconduct," which is defined as "a violation of law, rule or regulation; gross mismanagement; gross waste of funds; or abuse of authority in the exercise of official duties or while acting under color of office" or "potentially involves conduct so serious that it may undermine the independence or integrity reasonably expected of an IG" (Policies and Procedures of the Integrity Committee ¶ 8(a)). Further, even the exercise of that jurisdiction is limited to the Inspector General and those who directly report to the IG (if so designated for inclusion within the Integrity Committee's jurisdiction by the IG[1]) (*id*. at ¶1).

The complaint addresses certain of my conduct as IG, but most of the specifications relate to conduct of non-direct report staff.

Thus, the only specifications against me personally are (1) that I did not stay within Mr. Brown's view of the role of an Inspector General, which "is not intended to act as an advocate for suspension or debarment" (p. 1), and (2) that I improperly communicated with the press. While he also, in his conclusionary last paragraph, asserts that "Mr. Walpin overstepped his authority by electing to provide [Mr. Brown's] Office with selective information and withholding other potentionally significant information" (p. 3), the only such information mentioned as not being disclosed was a summary of an interview done by "CNCS [*sic:* actually OIG] Investigators" which **they** "did not include in their response or disclose it to [Mr. Brown's] office" -- a charge (discussed below and shown to be meritless) against two OIG investigators, not against me personally.

[1] I have not yet so designated, although having heard the reasons for so designating direct reports as discussed by Chairman Kaiser at the recent CIGIE conference, I plan to do so.

Neither of these specifications falls within the Integrity Committee's jurisdiction, and, thus, both should be promptly dismissed.

Paragraph 8(c) of the Policies and Procedures of the Integrity Committee authorizes prompt closure of a case, where the Integrity Committee determines that "the allegation does not meet the threshold [jurisdiction] standard, is frivolous, is not supported by meaningful documentation, concerns a matter within an IG's discretion to investigate, or otherwise lacks potential merit." I have already shown that the allegations do not meet the threshold jurisdiction requirements. I will now show, in this discussion of the merits, that the complaint fails all of these standards concerning the merits of the complaint.

B. Merits of the Complaint

The complaint contains the following subjects in its specifications: (i) the IG overstepped his limited authority; (ii) OIG's use of the suspension sanction; (iii) OIG investigators' withholding information from the U.S. Attorney's Office; (iv) IG's and OIG staff's communication with the Press; and (v) OIG's opposition to the settlement agreement.

(i) Allegation IG Overstepped Limited Authority

I do not question Mr. Brown's initial description (p. 1) that the IG "is to conduct an unbiased investigation, and then," if the IG so decides, "forward that investigation to" a United States Attorney's office which would have decisional authority on "whether the facts warrant a criminal prosecution, civil suit or declination." Aside from that almost axiomatic statement, Mr. Brown's view that an IG has no further role in the process is simply wrong.

First, neither I nor my investigative staff refer the results of every investigation -- all of which are conducted in an unbiased professional manner -- to a United States Attorney's office; our referrals are only of those matters which we believe establish wrongdoing warranting criminal and/or civil prosecution. And when we make such referrals, we explain to the United States Attorney, as clearly as we can, why we believe the facts call for criminal (and/or civil) prosecution if we so believe. This is particularly necessary in the context of grant fraud, as involved here, as distinguished from contract fraud, with which most U.S. Attorney offices are

more familiar. For that reason, in my referral letter, I discussed that difference, and quoted one of Mr. Brown's ultimate supervisors, the Deputy Attorney General, in emphasizing the importance of prosecuting "grant fraud," and the Deputy Attorney-General's support of "an energized and empowered IG community working in tandem with . . . Federal prosecutors" to achieve that end. That is exactly what this OIG tried to do here, but could not obtain Mr. Brown's in tandem cooperation -- only his opposition after media and political pressure was exerted.

I am informed that it has been the custom in my office, before I commenced as IG, to send a referral with such a covering letter. Aside from personally communicating the seriousness of the OIG's decision to make the referral, it serves as an Executive Summary of the referral, which here was 33 pages long. Most United States Attorney's offices to which I have forwarded referrals with such an "executive summary" cover letter, always containing my explanation of why I believed the conduct warranted prosecutorial action, have expressed appreciation for such explanations and summaries. Indeed, when I, together with Supervisory Special Agent ("SSA") Morales and Special Agent Wingers, met with Mr. Brown and several of his fellow Assistant U.S. Attorneys, on August 25, 2008, they complimented us on our referral and the personal interest we took in it by traveling to California to meet with them.

Mr. Brown's view that an IG has no further role, or even voice, in the OIG referral is contrary to the responsibility imposed on IGs by Congress. The Senate Report, explaining the purpose of the Inspector General Act of 1978, specifies that the IG has the duty to "[a**]ssume a leadership role** in any and all activities which he deems useful to promote economy and efficiency in the administration of programs and operations or prevent and detect . . .waste in such programs and operations." S. Rep. No. 95-1071, at 27 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2702 (emphasis added).

Mr. Brown's misunderstanding of the proper role of the IG is further shown in his assertion that the IG is the "investigative arm of the CNCS Agency." The IG is statutorily made independent of the CNCS Agency, with responsibility to oversee and criticize what CNCS is

doing if the IG believes that the agency is thereby wasting Federal funds -- including the waste of the right to recovery Federal funds from a grantee that misused Federal funds granted to it.

(ii) The Suspension Referral

Mr. Brown makes several complaints relating to OIG's role in the suspension procedures: (a) the IG should not "act as an advocate for suspension or debarment" (p. 1), but the IG "apparently advocated to have St. HOPE, Johnson and Gonzalez immediately placed on a list of parties suspended from receiving federal funds" (p. 2); (b) Mr. Brown "learned" of the IG's advocacy for suspension "through Sacramento Bee [local newspaper] articles quoting extensively from a *press release issued* by Mr. Walpin's office" (*id.*; emphasis in original); and (c) it was "extremely questionable for Mr. Walpin to issue a press release." I now discuss each of these "complaints" as they relate to the suspension.

(a) IG's Advocacy for Suspension

Mr. Brown provides no basis on which he says he obtained the understanding that the IG "is not intended to act as an advocate for suspension or debarment." The Suspension and Debarment procedure exists to protect all Federal funds by denying new funds to an individual or entity who/which has shown by uncovered facts not to be trustworthy or responsible in the prior use of Federal funds. These facts ordinarily do not become apparent through magic; rather, most often such irresponsibility is uncovered by an OIG or other investigative agency. For the Suspension and Debarment procedure to work to protect Federal funds, the investigative agency, upon determining that the facts it uncovered warrant suspension, must make a recommendation of suspension to the agency's Suspension and Debarment official. That is exactly what OIG did here.

The procedure used, as is my understanding from conferences, programs and conversations with other IGs, is followed by OIGs generally, and requires the OIG's recommendation (*i.e.,* advocacy) for suspension, presentation of all relevant facts, and an explanation of why these facts warrant suspension. That is what OIG did here. Significantly, neither the Suspension and Debarment Official who received my "advocacy" of suspension, nor the Corporation General Counsel, to whom we provided a copy of that "advocacy," ever objected

to it. Indeed, after months of review of the facts and arguments provided, the Suspension and Debarment Official, with the advice of the Corporation's General Counsel, ordered the suspensions, thereby adopting OIG's recommendation.

(b) When And How Mr. Brown Learned of the Suspension Recommendation

Mr. Brown not only learned of OIG's recommendation for suspension long before, as he asserts in his complaint, he read the Sacramento Bee article reporting it on September 25, 2008,[2] but in fact he and his office assisted OIG in its suspension recommendation by submitting a letter, requested by the Suspension and Debarment Official as needed before that official would issue the Suspension orders.

On June 30, 2008 -- almost three months before the suspension was ordered -- Supervisory Special Agent Morales discussed the OIG recommendation for suspension with Assistant U.S. Attorney John Vincent. Agent Morales informed AUSA Vincent that the Suspension and Debarment Official, who was being advised by the Corporation's General Counsel, had asked the United States Attorney's Office to provide a letter requesting that, if a suspension were ordered, no fact finding take place in the suspension proceeding until the U.S. Attorney completed his investigation. Shortly thereafter, on July 9, 2008, Agent Morales provided AUSA Vincent with a copy of the OIG's Suspension recommendation and referral. Further, on August 25, 2008, when I, together with SSA Morales and SA Wingers met with then AUSA Brown and AUSAs Newman and Vincent, the OIG Suspension recommendation and referral and the letter requested by the Suspension and Debarment Official were both discussed. At the end of the session, the U.S. Attorney's office advised that it would provide the requested letter. On September 9, 2008, then AUSA Brown provided SSA Morales with a letter signed by U.S. Attorney McGregor Scott, asking that, if a suspension order were issued, there not be any "fact finding . . .until [the U.S. Attorney's] office completes review of the referral." (A copy of that letter is attached as exhibit A).

Given this knowledge and involvement, the only thing that the United States Attorney's Office did not know was whether and when the Corporation would act. OIG did not know

[2] As a factual matter the Sacramento Bee first reported the suspension on its web site on September 24, 2008.

either. This should be no surprise to anyone with experience with suspension and debarment. A leading Government Contracts treatise points out, "an agency is not required to provide notice that it is contemplating the suspension of a contractor. Usually, once a contractor receives notice that it has been proposed for debarment or suspension, it has already been included on GSA's List of Parties excluded from Federal Procurement and Non-procurement Programs." Cibinic & Nash, Formation of Government Contracts, 3d (1998), 487. The treatise states further, "no notice of contemplated proceedings is required." *Id*. at 488.

Ultimately, by letters dated September 24, 2008, the Corporation suspended St. HOPE, Johnson, and Gonzalez from further participation in Federal procurement and non-procurement programs. The effect of such a suspension is government-wide and applies to new, but not to existing, programs, contracts, and grants.

Mr. Brown's assertion of lack of advance knowledge and surprise at the suspension procedure is clearly without factual basis.

(c) The Propriety of the OIG Press Release

First, the Sacramento Bee's report on its web site on September 24, 2008, and in its morning edition on September 25th, was based on its own discovery of the names of suspended parties on the publicly accessible List of Excluded Parties that the General Services Administration maintains, together with copies of the suspension letters that GSA had received from the Corporation. OIG made no comment and issued no press release on September 24, 2008.

While the U.S. Attorney's Office therefore did not learn of the Suspension Order from the newspaper article quoting extensively from OIG's press release, it is certainly correct that, after the newspaper's initial report of the suspension, OIG issued a press release on September 25, 2008 (Exhibit B hereto). In that press release, OIG largely repeated the grounds for suspension set out in the Notice of Suspension, issued by the Corporation's Suspension and Debarment Official and publicly posted on the GSA web site, thanked the Corporation for

"implementing [OIG's] recommendation," and noted the "important[ce]" of the "immediate action . . . taken" to "protect the public interest from the potential repetition of this conduct."

Mr. Brown purports to quote (p. 2) from the OIG press release an excerpt that "if we find really egregious stuff and we want to stop the bleeding, we seek immediate suspension . . . . '" [quote marks and ellipse provided by Mr. Brown]. OIG does not use such language and, as a review of the press release establishes, did not use such language in it.

Also, Mr. Brown is, at best, misleading, in asserting (p. 2) that "the IG publically released the findings of his investigation." The only "findings" set forth in the OIG press release were the findings made by the Suspension and Debarment Official in, and as the basis for, his Order of Suspension. While OIG had presented facts to support such findings -- and additional findings not endorsed by the Suspension and Debarment Official -- in its recommendation for suspension, the only findings set forth in OIG's press release were those found in the Suspension and Debarment Official's Suspension Order.

We discuss below the propriety at OIG's issuance of press releases or other means of communicating to the public what it is doing (see pp. 12-15 *infra*). I here note that suspension and debarment orders specifically warrant publicity to help avoid inadvertent violations by other agencies of the suspension and as a deterrent against fraud by all grantees who thereby know of a swift and meaningful sanction for wrongdoing. It is because of those public benefits, which follow from publicity, that I have heard, at IG conferences at which Suspension and Debarment have been discussed, that public announcements with the greatest possible dissemination are recommended. Indeed, Mr. Brown's objection is the first time that I have heard such objection voiced, despite a number of news stories reporting suspensions.

(iii) The OIG Investigators' Alleged Withholding
of Information From the U.S. Attorney's Office

Mr. Brown charges that "CNCS investigators had interviewed Mr. [Herinder] Pegany [the Principal of an elementary school] and had obtained a . . . statement from him, *but did not include it in their report or disclose it to my office*" (p. 3; emphasis in original). The ellipse in

that quotation is for the word "similar," by which Mr. Brown asserted -- falsely -- that the statement OIG investigators had obtained from Mr. Pegany was "similar" to Mr. Pegany's "statement," furnished in March 2009 by Mr. Johnson's attorney, which contained a lawyer's report that Mr. Pegany had said to him that "St. HOPE AmeriCorps members had performed after-school tutoring at his school."

As reflected in the OIG's investigators' memorandum of what Mr. Pegany told them (copy annexed as Exhibit C), Mr. Pegany stated he had no relevant personal knowledge: while he stated that "members were assigned to his school to conduct tutoring in the after school program between 3 p.m. and 5 p.m.," he then stated that "he did not know how many members were assigned to his school . . . because he did not directly supervise the members." Of course, the relevant fact was not whether, administratively, any members had been "assigned" to tutoring; it was whether the members in fact performed such tutoring. As to that, in addition to his denial of supervising the members, he stated that he had not "physically observed members on a daily basis . . . conducting tutoring."

The information Mr. Pegany gave to OIG investigators thus was not "similar" to what Johnson's attorney provided (a copy of what Johnson's attorney provided is attached as exhibit D to allow comparison). It is therefore difficult to understand Mr. Brown's representation of similarity, in view of the fact that he was provided a copy of the OIG investigators' memorandum of the interview after Mr. Brown had received the later memorandum of Mr. Johnson's attorney's interview of Mr. Pegany.

Given Mr. Pegany's statement of the lack of any personal knowledge of AmeriCorps' members actually tutoring, it is not surprising that experienced OIG investigators did not include the Pegany "non-statement" in the OIG Report or provide a copy with the many documents provided to the U.S. Attorney's office. Simply put, OIG does not provide to U.S. Attorney's office **all** documents prepared as memoranda of work done during an investigation (and OIG's Special Agents so informed Mr. Brown when they met with him), but rather all documents which provide usable evidence, whether probative of guilt or innocence. Particularly given the lack of personal knowledge provided by Mr. Pegany, I fully understand, as I previously told Mr. Brown,

the good faith judgment call made by these two experienced Agents not to include that memorandum in the referral to the United States Attorney's office. That decision certainly does not warrant the charge against them of any intent to conceal.

Mr. Brown writes to the Integrity Committee that "St. HOPE's counsel provided evidence that **they asserted** helped establish that a significant portion of the AmeriCorps grant funds were appropriately expensed" (p. 3), citing only the memorandum of Johnson's counsel purporting to summarize what Mr. Pegany told him. In OIG's promptly provided analysis of the letter from Johnson's attorney, we pointed out that the OIG interview of Mr. Pegany directly contradicted the memorandum summary of the interview of him by Johnson's attorney, and proposed that OIG investigators re-interview Mr. Pegany so that his actual knowledge could be obtained. Having been an Assistant U.S. Attorney, and having worked with many in that position, I know that it would be improper merely to accept a defense counsel's assertions of what a witness has said, without having an investigator from the involved law enforcement agency interview that witness -- particularly when the law enforcement investigators had already interviewed the witness and obtained information that was inconsistent with the lawyer's subsequent recitation of what the witness told him. Yet, Mr. Brown declined to wait for that re-interview and entered into the settlement in reliance solely on Johnson's attorney's assertion.

Mr. Brown also appears to charge OIG with misleading his office by quoting an internal heading in OIG's referral (although he does not indicate it was only a heading) that was titled "AmeriCorps Members Performed No Tutoring." The text under that heading recites the facts, based on personal knowledge of those interviewed, that substantiate that summary. And, as already discussed, the Pegany statement obtained by OIG Special Agents certainly did not contradict the information the OIG Special Agents obtained from all others interviewed, because it did not establish Mr. Pegany's knowledge that AmeriCorps members in fact did any tutoring.

Finally, Mr. Brown asserts (p. 2) that, in our August 25th meeting, he and his staff "expressed [their] concerns that the conclusions in this report seemed overstated and did not accurately reflect all of the information gathered in their investigation." What Mr. Brown and his colleagues said was that they would be studying all of the files that OIG had provided to see

if criminal intent and knowledge could be established for a criminal prosecution; they never expressed any concern concerning the existence of a viable civil case. The second part of Mr. Brown's above-quoted sentence, which, as we recall, was not expressed at the meeting, is extremely puzzling. The only specification by Mr. Brown is his complaint letter of an inaccurate representation in the OIG referral relates to counsel's memorandum of an interview of Pegany. But Mr. Brown, at the time of our August 25th meeting, had neither the OIG memorandum reflecting no personal knowledge on Mr. Pegany's part, nor the later obtained memorandum by Johnson's attorney. Thus, Mr. Brown could not have concluded at that time that the referral "did not accurately reflect all of the information gathered in" the OIG investigation.

Mr. Brown correctly states that, at the August 25, 2008, meeting, he asked about the absence of any audit which would provide the amount of misspent grant funds. OIG then responded that an audit was neither feasible nor needed, and is not used in many investigations. OIG explained that the allegations in this case involved misuse of AmeriCorps members, and not to missing or misused funds, making an audit not warranted.

Subsequently, on September 11, 2008, AUSA Newman asked OIG auditors to prepare a report on St. HOPE's financial records to determine the extent of St. HOPE's liability to return any or all of the grant funds that it had received. OIG auditors advised AUSA Newman that an attempt should be made to obtain the pertinent financial records, many of which had not previously been produced. With AUSA Newman's concurrence, OIG prepared and served a subpoena requiring production of 16 specified types of documents.[3] The subpoena, which was served on October 1, 2008, required St. HOPE to produce, among other things, its "General ledger and other accounting records detailing transaction-level support for Federal and match expenditures claimed on financial status reports" filed by St. HOPE.

After partial productions by St. HOPE, repeated requests by St. HOPE for more time, and notice to St. HOPE's attorney of St. HOPE's non-compliance, on November 24, 2008,

[3] The grant provisions and relevant regulations required St. HOPE to maintain most of the 16 specified types of documents (and good business practices would have called for the maintenance of the remainder), but St. HOPE had not produced them in response to the earlier requests from OIG's investigators. St. HOPE's failure to respond to those requests made the subpoena necessary.

SSA Morales sent AUSA Newman a list, prepared by OIG auditors, of the documents that would be needed to prepare a fiscal review of St. HOPE and which should have been provided in response to the subpoena. AUSA Newman knew of the problems OIG was having in getting St. HOPE to comply with the subpoena.

On December 2, 2008, SSA Morales asked AUSA Newman for assistance in enforcing the subpoena. Two weeks later, AUSA Newman asked OIG to draft an affidavit to support an enforcement proceeding that he would commence. OIG provided a draft affidavit on January 8, 2009. On January 22, 2009, two weeks later, AUSA Newman asked OIG to make certain changes to the draft. The next day, January 23, 2009, OIG made the requested changes and e-mailed the amended affidavit to AUSA Newman. AUSA Newman and OIG agreed that St. HOPE's failure to produce documents that it was required to maintain gave them no comfort that they could rely on St. HOPE for financial transparency. Yet, the U.S. Attorney's office took no action to enforce the subpoena.

On February 4, 2009, AUSA Newman advised SSA Morales that St. HOPE's attorney was furnishing additional documents, and that OIG auditors should base their report on the documents that St. HOPE provided, even though a big void in the required documents remained. By letter dated March 18, 2009, OIG provided its report. In its letter, OIG noted that St. HOPE had failed to provide the following documentation: "Source documentation for costs charged to the grant; complete general ledger (only a partial ledger was produced); reconciliation of costs charged on the Financial Status report to the general ledger, including match funds; explanation of the methodology for allocating costs between match and federal share; [and] identification of the accounting system used." In other words, there were gaping holes in the documentation. But to demonstrate OIG's cooperation with the USA's office, OIG's audit staff prepared its report.

The report's conclusion was straight forward:

> "None of the costs charged to the grant are allowable, primarily because the AmeriCorps members' service activities were not consistent with the grant requirements.
>
> * * *

> "Contrary to . . . grant requirements and prohibitions, we found that St. HOPE AmeriCorps members performed little, if any, of the service agreed to and stipulated under the grant. Instead, they were used for non-authorized and prohibited activities, including services that displaced St. HOPE employees, a violation of 42 U.S.C. § 12637 *Non duplication and Non displacement*. We also found instances where AmeriCorps living allowances and benefits were unlawfully used to supplement the salaries of St. HOPE employees. Another grant requirement is that all allowable cost must be adequately documented. . . . . We found an almost total lack of documentation to support St. HOPE's performance of the grant, despite our repeated requests to St. HOPE for grant-related documents."[4]

(iv) IG's and OIG Staff's Communications With The Press

Mr. Brown appears to have a total lack of knowledge of an IG's responsibility to use the press in a proper manner to publicize the OIG's activities and to correct misinformation in the press concerning the work of the OIG. Every communication by OIG with the press was entirely proper. Indeed, in an unsuccessful attempt to maintain cordial relations with Mr. Brown's office, I, on at least two occasions, withdrew my decision to communicate with the media, bowing to the request from his office to do so, even though I believed and stated that their objection was without merit.

IG offices are not intended to shy away from communicating to the public through the media. Most, if not all, IG offices today have web sites which quickly provide the public, and the media, prompt access to what IGs are doing. Posting of press releases and reports to Congress promptly occur to allow media reporting of IG positions and activities.

At the conference of IGs held just last week, one of the subjects discussed was the need for IGs to be pro-active in disseminating their activities to the press. One respected IG quoted Senator McCaskill's instruction to IGs to "raise their voices and be heard on their positions." He advised his colleagues that it was important to get information out to the public as soon as possible. Another well respected IG admonished the IG community for failing to get sufficient

[4] OIG named the duplicative AmeriCorps member-employees in the referral and this letter, neither of which was a public document. OIG did not publicly disclose either. Even so, in a March 24, 2009, editorial, the Sacramento Bee named both individuals. The inclusion of the names in the editorial indicates that someone other than OIG disclosed the referral, the letter, or both.

information into the public through the media. No one expressed any contrary view. With this understanding, I turn to Mr. Brown's specific assertions concerning the media coverage.

Mr. Brown is correct in stating that "this matter received significant local press coverage" (p. 1). Although Mr. Brown attempts to suggest that OIG was responsible for all or most of the press coverage, the fact is that the sources of media information were many, including the United States Attorney's office itself (Ex. E, F, and G), counsel for respondents (Ex. F), Mr. Johnson's campaign manager-spokesman (Ex. G),[5] a staff attorney for California's Governor (Ex. H), and persons who had been interviewed by OIG investigators (Ex. I).

Mr. Brown's asserts (p. 2) that, "on September 5, 2008, an IG spokesperson informed the newspaper that the matter had been referred to [the U.S. Attorney's office]" and "that a 'referral means that it's our opinion that there is some truth to the initial allegations . . . . '" While there would have been nothing wrong in relating that truism, the person, indentified as providing that statement denies that he so stated. According to William Hillburg, he was called at home on the evening of September 4, 2008, by reporters from the Sacramento Bee who were seeking to confirm a report from an unidentified source that the United States Attorney's Office had received a referral from OIG. Mr. Hillburg repeatedly told the reporters that he could not comment on the existence of a referral. During the call, the reporter told Mr. Hillburg that the United States Attorney had just confirmed the existence of a referral and then hung up. While as already stated, it is a truism that OIG does not make a referral to a U.S. Attorney's office unless OIG believes there is truth and support for the allegations in the referral, Mr. Hillburg did not make such statement to the reporter. OIG made no comment on the story that ran in the Sacramento Bee the next day, September 5, 2008, which, according to the reporter's statement to Mr. Hillburg, had come from the U.S. Attorney's office.

One objective circumstance demonstrates that OIG was not the source of information about the referral to the United States Attorney's office. The OIG identified those St. HOPE

[5] On one day, a call was received at OIG asking for the IG's comment on a comment made by a Johnson spokesman that the IG was anti-black, anti-catholic, and anti-Jew. The response given was that the IG could not comment because he was in synagogue for Yom Kippur services. The IG refrained from responding to these and other personal attacks.

employees, who had been enrolled as AmeriCorps members so as to subsidize St. HOPE's payroll charges, in both the referral and in the March 18, 2009, letter submitting its financial report. Neither was publicly disseminated by OIG, but both were provided to the U.S. Attorney's office. OIG did not otherwise identify the names of those St. HOPE employees. Yet, in a March 24, 2009, editorial, the Sacramento Bee named both individuals, requiring the conclusion that someone else identified them to the newspaper.

Mr. Brown refers (p. 2) to a telephone 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 the matter under investigation." That is hardly a full and fair recitation of that conversation. In fact, I clearly stated that, as long as the U.S. Attorney's criminal investigation remained open, I would not -- and had not -- commented to the media on **that** subject. But I just as emphatically stated that the OIG press release and comments on the suspension and debarment proceeding were appropriate in performance of the OIG's responsibilities, separate and apart from the referral for prosecution to his office.

As already discussed above (p. 5 n.2), the GSA's website report of the suspension was on September 24, 2008, while OIG's press release on the suspension was issued on September 25, 2008. It is therefore impossible to understand Mr. Brown's reference to this press release as being "on the eve of the Mayoral Election," which was more than a month later. Likewise, as to Mr. Brown's assertion that the U.S. Attorney "felt compelled to inform the media that our office did not intend to file any criminal charges," because "of Mr. Walpin's public pronouncements on the [supposed] eve of the mayoral election:" the newspaper did not report that statement until November 6, 2008, **after** the November 4, 2008 run-off election.

On March 24, 2009, after a Sacramento Bee editorial blamed OIG for "dragging on" its investigation which allowed the suspension of Johnson to remain in place, I wrote a letter to the editor pointing out that the ball was in Mr. Johnson's court because he had not used the appeal process, of which he had been advised by the Suspension and Debarment Official, to present facts contradicting the factual findings that official had made to support his suspension

order. Indeed, Mr. Johnson had merely, since the suspension order had been issued, sought and obtained several one-month extensions of his right to appeal.

When **I** informed AUSA Newman that I had sent a letter to the editor on March 24, 2009, Mr. Brown called me and asked me to withdraw the letter. I told him that I would not because, as he knew, the editorial had incorrectly blamed OIG for delaying a decision on lifting the suspension. However, in an attempt again to work with the U.S. Attorney's office, I offered to revise the letter and limit it to the rules relating to suspension, including its purpose, and Mr. Johnson's ability to seek rescission of the suspension by presenting facts contradicting the findings on the basis of which the suspension was ordered. In response to that offer, I was informed by AUSA Newman that I should leave my initial letter as the one to be published, and it was on March 31, 2009.

Finally, Mr. Brown is correct that, in response to continued Sacramento Bee editorial pressure to lift the suspension and end any claim against Mr. Johnson, I did inform Mr. Brown's office of another letter that I intended to send to the editor of the Bee and provided a copy to his office. Although I disagreed with Mr. Brown's request not to publish it -- on which he obtained the Corporation's General Counsel's support -- I agreed not to send it solely in the hope that it would provide some comity to a relationship which had become strained due to OIG's insistence on not bargaining away the suspension as part of a settlement of amounts due to the Corporation for past wrongs.

Therefore, none of OIG's communication with the public and the media was improper.[6]

(v) The Settlement Agreement

Mr. Brown's attack on me and OIG staff would never have occurred if, as Mr. Brown writes (p. 2), I had not "made it clear the [OIG] would advocate and seek to control [by advocacy] the outcome so that St. HOPE and Mayor Johnson were debarred . . . . " It was my

[6] Mr. Brown's own practice to issue press releases on actions taken by his office, even before any determination by an impartial hearing officer (here, the Suspension and Debarment Official) or judge, itself raises questions as to his motive for attacking OIG for issuing a press release announcing the decision by the Suspension and Debarment Official to suspend Mr. Johnson, Ms. Gonzalez, and St. HOPE. See examples of Mr. Brown's press releases annexed as exhibit J hereto.

view then, and remains my view today, that the suspension and debarment procedure was created to protect Federal funds from disbursal to any entity or individual whose past dealings with the Government establish lack of sufficient responsibility to be trusted with more Federal funds. The Suspension and Debarment Official had found that lack of responsibility in finding six specific instances of diversion and misuse of Corporation grant funds. Although neither Mr. Johnson nor either of the two other suspended respondents ever submitted a single fact to dispute those findings, the U.S. Attorney's Office and the Corporation's General Counsel insisted that the settlement include rescission of the suspension and a prohibition against debarment.

Further, the settlement agreement, signed by the U.S. Attorney, the Corporation's General Counsel, and the Suspension and Debarment Official (who is the acting CFO of the Corporation and advised by the General Counsel) is devoid of any protection of the Corporation's right to receive the even small amount of money St. HOPE agreed to pay in settlement. As St. HOPE is insolvent, the absence of any obligation imposed on either Johnson or Gonzalez, and the absence of any guarantee or security to ensure payment, makes the settlement a farce. (Please see the full discussion of the many defects in the settlement agreement at pages 19-24 of the Special Report to Congress, submitted herewith).

In an attempt to suggest benefit to the Government from the Settlement Agreement, Mr. Brown disingenuously quotes an article in the Sacramento Bee that "Johnson and his non-profit will repay half of the $847,673 in grants," knowing that newspaper summary is factually incorrect. Mr. Brown knows that the Settlement Agreement was carefully drafted so that no obligation is imposed on Mr. Johnson to pay to the Corporation a single penny of the amount supposedly to be paid to the Corporation by St. HOPE.[7]

OIG was 100 percent correct in opposing the settlement agreement, although, until it was signed and made public, the U.S. Attorney's office and the Corporation had excluded OIG from any involvement in -- even the ability to comment on -- the terms of the Settlement

[7] Mr. Johnson agreed only to advance to St. HOPE most of the initial payment that St. HOPE was obligated to pay to the Corporation, with the proviso that Mr. Johnson can, at any time after the payment, demand that St. HOPE repay to him that advance.

Agreement. OIG is proud that it refused to go along with the U.S. Attorney's office and the Corporation in bowing to the media and political pressure that resulted in this hasty settlement, contrary to the interests of the United States Government.

It is indicative of Mr. Brown's anger at OIG staff that he gives credit (p. 3) for the supposed ability of the Corporation to obtain this recovery to the Corporation's General Counsel office and describes OIG role as a hindrance and of no help. This demonstrates his personal anger at OIG for expressing views against the terms of the settlement. He cannot dispute that no settlement (even this bad one) would have been possible without the hard work of OIG Special Agents Morales and Wingers, who dug up all the facts concerning the misuse of AmeriCorps members. Yet, Mr. Brown gives them no credit.

Recent Event

As we were concluding this response, we received information that Rick Maya, who had replaced Mr. Johnson as Executive Director of St. HOPE Public Schools, had, on April 9, 2009 (the same date of the Settlement Agreement) had resigned, for among the reasons, (i) "a Board member of St. HOPE Academy had asked one of our Board members, Sam Oki, to access our e-mail system in order to copy and erase Kevin Johnson's e-mails" and he "had deleted Mr. Johnson's e-mails" while "our e-mail system was under a Federal subpoena;" (ii) "Kevin Heistand, whose status . . . clearly presents a conflict of interest, . . . gave false statements to the State Treasurer's Attorney"; and (iii) "our previous year's financial statements and records . . . were being 'stored' in Kevin Johnson's personal storage facilities" -- although such documents had been subpoenaed by OIG. This additional information underlines OIG's objection to the haste to execute this settlement.

Conclusion

Neither jurisdiction nor merit supports the complaint filed against the IG and OIG staff. It should be promptly dismissed.

As is clear from the text of this response, no one person within OIG has personal knowledge of all relevant facts set forth above. This response has therefore been prepared to

provide the collective knowledge of all OIG personnel with knowledge of relevant facts, each of whom, by signing below, following the IG's signature, is signifying that the facts set forth herein are correct and truthful to the extent that each signatory was involved in facets contained in this response.

Gerald Walpin
Inspector General

John Park
Special Assistant to the IG

Stuart Axenfeld
Assistant Inspector General for Audit

Jeffrey Morales
Supervisory Special Agent

Wendy Wingers
Special Agent

William Hillburg
Director of Communications