Description of document:	Complaint by the Acting US Attorney regarding allegations of abuse of authority and misconduct by the Inspector General of the Corporation for National and Community Service (CNCS), May 20, 2009
Requested date:	15-January-2013
Released date:	28-January-2013
Posted date:	18-February-2013
Source of document:	FOIA Officer Corporation for National and Community Service Office of the General Counsel 1201 New York Avenue, N.W., Room 8200 Washington, D.C. 20525

Office of Inspector General
Corporation for
NATIONAL & COMMUNITY SERVICE

January 28, 2013

This responds to your January 15, 2013, Freedom of Information Act request (request) to Wilsie Minor, the FOIA official for the Corporation for National and Community Service. In it you requested a "copy of the complaint by the Acting US Attorney in early 2009 regarding allegations of abuse of authority and misconduct by the Inspector General of the CNCS" . . . [and] . . . "a copy of the detailed response provided by Inspector General Walpin to the allegations, dated May 20, 2009." Ms. Minor forwarded your request to this office to search for and respond to you concerning any relevant records in the Office of Inspector General.

Enclosed please find a copy of the May 20, 2009 record you requested, redacted accordingly based on considerations of personal privacy pursuant to FOIA exemptions 6 and 7(C). I understand that Ms. Minor will contact you soon under a separate cover concerning the release of the letter written by the Acting United States Attorney.

The decision to withhold information is made on behalf of the Inspector General, who is authorized to determine FOIA disclosures of OIG records. You may obtain administrative review of this action within 60 calendar days from the date of your receipt of this notice. A request for a review will be considered under the regulations for appeals of FOIA request denials at 45 C.F.R. § 2507.7. Any request for review should be addressed to Ms. Robert Velasco II, Chief Operating Officer, Corporation for National and Community Service, 1201 New York Avenue, N.W. Washington D.C. 20525. If you have any questions regarding this response, feel free to contact me at (202) 606-9365.

Very truly yours,

Vincent A. Mulloy
Counsel to the Inspector General

Enclosures

Corporation for
NATIONAL & COMMUNITY SERVICE

OFFICE OF INSPECTOR GENERAL

May 20, 2009

Mr. Kenneth W. Kaiser
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 Ave., NW
Washington, DC 20535-0000

RE: IC 614

Dear Mr. Kaiser:

I received yesterday, May 19th (unfortunately delayed due to our mail irradiation procedures), the letter from you, dated May 12, 2009, providing me with a copy of the complaint filed against me and my staff.

I had first learned of this complaint last week, while I was at the CIGIE Conference, when I was informed that a copy of that complaint had been delivered to thirteen members of Congress, and I then obtained a copy of it.

Our response to the complaint was quickly drafted because, as explained in the previously prepared covering letter below, we seek a decision from the Integrity Committee as promptly as possible because of the improper use of this complaint to impede this office's request for assistance from Congress. Our response was intended for delivery to you today, May 20, 2009. I therefore ask you to accept this covering letter, together with the previously drafted covering letter, and the enclosed response (plus attachments).

Very truly yours,

Gerald Walpin
Inspector General

Attachments

Corporation for
NATIONAL & COMMUNITY SERVICE

OFFICE OF INSPECTOR GENERAL

May 20, 2009

Mr. Kenneth W. Kaiser
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 Ave., NW
Washington, DC 20535-0000

RE: Complaint letter from Lawrence G. Brown
Dated April 29, 2009

Dear Mr. Kaiser:

Having heard your excellent presentation at the recent CIGIE conference, I am well aware of and respect the procedures you and your colleagues on the Integrity Committee have instituted that allow for both careful consideration of complaints and due process for the complaint subject. As you indicated -- and as is natural in most judicial and administrative proceedings -- these procedures do not generally allow for an immediate determination, even if the complaint is frivolous and/or outside of the Integrity Committee jurisdiction. In the ordinary course of complaints to the Integrity Committee, this lapse of time between your receipt of the complaint and the Committee's dismissal, whether one month or a year, does not prejudice the respondent as no public disclosure is made and respondent's performance of his/her duties as an Inspector General is in no way affected.

Unfortunately, on this complaint against me, the existence of the complaint has been publicized and that publication of the complaint has impeded the successful performance of my Office's responsibilities in communicating with and obtaining assistance of Congress -- and, from the sequence of events, it appears that this publication was done for that purpose.

I explain: As set forth in detail in the enclosed Special Report To Congress from my Office, we strenuously objected to what we believed was a decision by the Corporation General Counsel and the Acting U.S. Attorney in Sacramento, CA, to bow to political and media pressures to enter into a settlement of an OIG referral for criminal and/or civil prosecution of undisputed wrongdoing. This settlement agreement was negotiated and executed without permitting OIG's participation or input, and was, my Office believes, contrary to the interests of

U.S. Attorney intended to settle and dismiss all proceedings against the wrongdoers, including the previously-ordered suspension of these wrongdoers -- which of course was within the jurisdiction of the Debarment and Suspension Official, not the U.S. Attorney in California -- I made clear that, while I could not stop them from doing it, it would be my statutory duty to report to congress what I considered to be a "serious or flagrant problem[], abuse[] and deficienc[y] relating to the administration of programs and operations administered or financed by " the Corporation. 5 U.S.C. App 3. § 5(d). In what appears to have been the invocation of the axiom "the best defense is a good offense," the Acting U.S. Attorney sent the complaint letter to you.

If he had done nothing more, I would not be asking you for special expedited determination. But the Acting U.S. Attorney provided a copy of his complaint letter to the Corporation's Acting CEO, Chairman of the Board and the Vice-Chairman of the Board. The Acting CEO then notified 13 members of Congress that the Acting U.S. Attorney had filed this complaint against me. The supposed reason given for so notifying members of Congress was that the Corporation believed that it could not provide a response to the OIG Special Report until the Integrity Committee rendered its decisions on the Acting U.S. Attorney's complaint – although it is clear that the crux of the Special Report, that the Corporation surrendered claims it had against wrongdoers without protecting its right to substantial recovery and directed the lifting of a suspension without any evidence contradicting the findings made when the Hearing Official ordered the suspension, does not depend on the merits of the complaint filed against me.

This action by the Acting CEO is an obvious misuse of the Integrity Committee procedures to avoid responding to the OIG's Special Report to Congress and thereby seek to cause Congress to delay for an indefinite period -- until the Special Report is old news – consideration of the serious issues reported to it and on which OIG seeks Congressional assistance.

For this reason, I ask for immediate dismissal of the complaint. To assist you and your colleagues on the Committee, I am submitting herewith a response to the complaint which first shows that the complaint does not fit within the Integrity Committee's jurisdiction, but then continues to respond to each of the allegations in the complaint. And, as already stated, I enclose a copy of OIG's Special Report to Congress.

I am available to answer any questions or submit any further information if requested. If you would like individual copies of this letter and the enclosures for each member of the Committee, please advise.

Very Truly Yours,

Gerald Walpin
Inspector General

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") [redacted] and Special Agent [redacted], 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 [redacted] discussed the OIG recommendation for suspension with Assistant U.S. Attorney John Vincent. Agent [redacted] 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 [redacted] provided AUSA Vincent with a copy of the OIG's Suspension recommendation and referral. Further, on August 25, 2008, when I, together with SSA[redacted] and SA[redacted] 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[redacted] 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. [redacted] [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 [redacted] told him. In OIG's promptly provided analysis of the letter from Johnson's attorney, we pointed out that the OIG interview of Mr. [redacted] directly contradicted the memorandum summary of the interview of him by Johnson's attorney, and proposed that OIG investigators re-interview Mr. [redacted] 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 [redacted] 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. [redacted]'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 [redacted]. But Mr. Brown, at the time of our August 25th meeting, had neither the OIG memorandum reflecting no personal knowledge on Mr. [redacted]'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 [redacted] 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 [redacted] 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 [redacted] 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 [redacted] and [redacted], 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 [redacted], 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, [redacted], 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) [redacted], 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

[redacted]
Supervisory Special Agent

[redacted]
Special Agent

William Hillburg
Director of Communications

U.S. DEPARTMENT OF JUSTICE

United States Attorney
Eastern District of California

McGregor W. Scott, United States Attorney

Robert T. Matsui
United States Courthouse
501 I Street, Suite 10-100
Sacramento, CA 95814

Phone 916/554-2700
Fax 916/554-2900
TTD 916/554-2855

September 9, 2008

William Anderson
Debarment and Suspension Official
Corporation for National and Community Service
1201 New York Avenue, NW
Washington, D.C. 20525

Re: Suspension Matter Involving St. HOPE Academy, Kevin Johnson, and Dana Gonzalez

Dear Mr. Anderson:

I understand that the Corporation for National and Community Service ("Corporation") is considering suspending St. HOPE Academy of Sacramento, CA and two individuals associated with that organization, Kevin Johnson and Dana Gonzalez. The Office of Inspector General ("OIG") of the Corporation, which has responsibility to investigate violations of law involving Corporation grants, has prepared and submitted to my office a referral for criminal and/or civil proceedings against the above-identified entity and individuals.

This office has made no decision on whether any such proceeding should be commenced, and will make no such decision until careful study of the OIG referral. I am informed, however, that the investigation by and referral from OIG involves facts on which you are relying in your potential suspension.

I am advising you that substantial interests of the Government in legal proceedings contemplated by the OIG referral would be prejudiced if you conduct fact-finding in connection with any suspension until this office has had time to make a determination on the

Exhibit A

legal proceedings recommended by the OIG referral. Hence, should you choose to suspend, I request, as provided under 2 CFR 180.735(a)(4), that you not conduct fact-finding under 2 CFR 180.735 until this office completes review of the referral.

Thank you for your consideration. If you have any questions please do not hesitate to contact Assistant United States Attorney John K. Vincent at (916) 554-2795.

Sincerely,

McGREGOR W. SCOTT
United States Attorney

MWS/mw

cc. Gerald Walpin, Inspector General
Corporation for National and Community Service

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.

Exhibit B

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.

OFFICE OF INSPECTOR GENERAL

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Memorandum of Interview

Person Interviewed: Mr. [redacted], Principal, PS7 Elementary School

Interviewed By: Special Agents [redacted] and [redacted]

Date of Interview: April 25, 2008

Place of Interview: St. HOPE Academy

Case Number: 08-027

Special Agents [redacted] and [redacted] interviewed Mr. [redacted] who explained the various after school tutoring curriculum program for his students at PS7. Mr. [redacted] stated there were Hood Corps members assigned to his school to conduct tutoring in the after school program between 3pm and 5pm. When asked if he knew how many members were assigned to his school, Mr. [redacted] stated he did not know because he did not directly supervise the members. When asked if he physically observed members on a daily basis members conducting tutoring, Mr. [redacted] stated no.

Exhibit C

[redacted]

From: [redacted]@ps7.org]
Sent: Monday, March 09, 2009 9:54 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Phone Call Summary

Mr. [redacted]
Your summary of our conversation on Friday seems accurate.

Also, in response to your email today (March 9), on a daily average we had approximately 5-8 Hood Corps interns (high school students) and 1-2 Hood Corps (high school grads) tutoring at PS7 between 2004-2007.

Please let me know if you need any other information.

[redacted]

From: [redacted] [mailto:[redacted]@[redacted].com]
Sent: Saturday, March 07, 2009 4:31 PM
To: [redacted]
Subject: Phone Call Summary

Dear Mr. [redacted],

Thank you for talking with me yesterday. I enjoyed our conversation. Please review the summary of our conversation below and confirm that it is accurate, or let me know what I missed.

You are the Principal of PS7, a St. Hope elementary school. You directly supervised the Hood Corps members who tutored at PS7 after school during the week.

It was very helpful to have after school tutoring. The Hood Corps members primarily engaged in one-on-one tutoring. You and the teachers would match up students with Hood Corps tutors to provide a structured program and maintain consistency. The tutoring program followed the HOSTS (Help One Student To Succeed) method, which is a widely accepted method based on individualized contact and consistency.

You trained the tutors personally, drawing on your knowledge as an educator and background as an education consultant. Also, teachers would come up with lesson plans for the Hood Corps members to work on with the students. The Hood Corps members would also help out in the classrooms in terms of assisting the teachers with logistics.

The academic results from the tutoring were quite impressive. Star testing numbers rose significantly in part because of the Hood Corps tutors "boost," as well as PS7's fantastic faculty and small classes. For example, California schools must be at an 800 (on a scale from 200-1000) by 2014, but PS7 is already at an 802. You credit the Hood Corps with a significant part of this accomplishment. Each student was tutored 4 days a week. You also noticed significant improvement in the tutees' reading and language skills, which is also due in part to the Hood Corps members' presence.

The Hood Corps members were focused and on task the vast majority of the time. Of course, they were young adults, but they never wasted significant time. You tutored the Hood Corps members before they tutored other students. You would constantly remind them to never lose sight of their roles as leaders. You told them they have to take it seriously, and they did. They knew they couldn't slack off or miss days because it would leave the young students without their tutors. "The whole Hood Corps program emphasized responsibility and being a leader."

The students really cherished their relationships with the Hood Corps members. They were like stars to the students, and they were looked upon as role models. The Hood Corps members had great communication with the students given their relative proximity in age and their status. You noted that sometimes the Hood Corps members could explain something to the students in thirty seconds that might take a teacher a lot longer.

In sum, PS7 greatly benefited from the tutoring performed by the Hood Corps members. There are real, tangible results that stem in part from the Hood Corps members efforts. They were a constant presence on campus, and they worked hard and were very committed.

Sincerely,

[redacted]

400 Capitol Mall, Suite 1400
Sacramento, CA 95814
916.329.9111
[redacted]

THE SACRAMENTO BEE

This story is taken from Sacbee / Our Region

Investigators turn St. HOPE report over to U.S. attorney

dkorber@sacbee.com

Published Friday, Sep. 05, 2008

Federal agents investigating the use of taxpayer dollars by Kevin Johnson's St. HOPE have turned the case over to the U.S. Attorney's Office in Sacramento, officials confirmed Thursday.

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

Since the inspector general's office does not have prosecutorial authority, Hillburg said it depends on federal prosecutors to "decide whether it's a criminal or civil matter – essentially whether they want to put someone in jail or decide to get the money back. They might also say they can't handle it, because it doesn't meet their threshold for prosecution."

Federal agents were dispatched to Sacramento in April to examine Johnson's volunteer program, Hood Corps. They investigated whether the nonprofit misused federal funds, required volunteers to attend church and train for a marathon on the federal dime or mishandled allegations of sexual misconduct.

U.S. Attorney McGregor Scott confirmed Thursday evening that "we are in receipt of the Inspector General's report and we are... reviewing it."

Johnson, facing Sacramento's Mayor Heather Fargo in a November runoff, said in a statement released by his campaign: "Although we have not seen the report, we are confident that it will show only administrative mistakes that St. HOPE already has acknowledged. We look forward to the U.S. Attorney's review and will continue to cooperate fully."

Timothy Zindel, a local assistant federal defender, said it's unlikely that the inspector general's office would turn over the case if it was a "simple non-compliance matter."

"The U.S. Attorney wouldn't handle something like that, unless it's an issue of recovery of funds on the civil side," he said.

A decision on whether to file charges could take from days to months, Zindel said, but he added that because of public interest in the case the process might move faster.

Exhibit E

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

U.S. attorney: No criminal case now against Johnson, Hood Corps

dwalsh@sacbee.com

Published Friday, Nov. 07, 2008

The findings submitted to the U.S. attorney's office thus far from an investigation of Mayor-elect Kevin Johnson and his nonprofit Hood Corps do not warrant criminal charges, U.S. Attorney McGregor Scott said Thursday.

Scott said his office has asked for additional information and is awaiting an answer from federal investigators.

"No final decision has been made about whether there is any basis to proceed on either a criminal or civil front," Scott said.

He said a decision on a possible civil lawsuit – a more common outcome of investigations on the use of funds from the federal AmeriCorps program – awaits the results of an audit being conducted by the Office of the Inspector General for the Corporation for National and Community Service.

Inspector General Gerald Walpin last April began an investigation of Hood Corps, an urban Peace Corps-style offshoot of Johnson's St. HOPE organization.

In September, Walpin's office released the findings of that investigation, alleging Johnson and other St. HOPE officials had improperly diverted some of the $807,000 in federal grant money Hood Corps received between 2004 and 2007.

Citing the seriousness of the allegations, federal officials also announced St. Hope Academy, operator of Hood Corps; Johnson, St. Hope's founder and former president; and Dana Gonzalez, former executive director of Hood Corps, had been suspended from access to all federal grants and contracts for up to a year or until the completion of the investigation.

Walpin turned over the findings to the U.S. attorney's office for a decision on whether the violations cited by agents warranted criminal charges or financial penalties.

But Scott said this week the material submitted by Walpin's office fell short of proving criminal conduct on anyone's part.

"We have asked the investigating agency for information that would enable us to make an informed decision," Scott said. "We are still waiting for an answer."

He also said the inspector general's office is conducting a "line-by-line audit" of Hood Corps.

"Hopefully, the results of that audit will tell us whether there are grounds for a civil lawsuit to

Exhibit F

recoup misspent grant funds," Scott said.

William Hillburg, a spokesman for the inspector general, said Thursday he could not confirm his office was doing an audit and could not comment on the investigation.

Johnson's attorney, Matthew Jacobs, a former federal prosecutor, said Scott's reaction "confirms what we have believed all along. That is, professionals who have the expertise to evaluate evidence would quickly conclude there is no criminal conduct here."

If Scott's office decides there have been only administrative infractions, the matter would be passed back to the Corporation for National and Community Service, which could seek reimbursement of all or part of the grant money, and could claim damages up to three times the amount alleged to have been misused.

Johnson was not available Thursday to comment. His spokesman, Steve Maviglio, said, "The case is essentially meritless from the criminal point of view. We thought there might be some administrative fines, and we're prepared for that."

Frederic Levy, a Washington, D.C., attorney and expert in government contracting and compliance, said prosecutors "look to whether violations were knowing and intentional. The fine print in these grants is sometimes so arcane that inadvertence comes into play."

In its written suspension barring Johnson from receiving federal funds, the corporation cited a number of alleged grant violations, including diversion of funds.

"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," the suspension said.

Hillburg said Scott's preliminary analysis of the investigation does not affect the suspension. "It remains in effect," he said.

Among the specific violations cited in the inspector general's September release:

- 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 school staff salaries with federal grant funds by enrolling two employees in the AmeriCorps program and giving them federally funded living allowances and education awards.

- Improperly using members for banned political activities, namely canvassing for school board candidates.

- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

Call The Bee's Denny Walsh, (916) 321-1189.

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

Federal probe accuses Johnson of improper use of St. HOPE funding

thardy@sacbee.com

Published Friday, Sep. 26, 2008

The federal government Thursday released findings of its investigation into management of the nonprofit St. HOPE volunteer program founded by Sacramento mayoral candidate Kevin Johnson, citing violations that include having youthful participants run personal errands and wash his car.

The findings from the federal probe followed by a day the government's announcement it was barring Johnson, St. HOPE Academy and a former official from access to federal grants and contracts for up to a year.

That, in turn, left city officials scrambling Thursday to figure out what it would mean if Johnson were elected mayor. Questions that the city attorney is looking into include whether Johnson would be able to vote on projects involving federal funds and whether his position at the helm would affect the city's eligibility for federal money.

Meanwhile, worried parents whose children attend Sacramento High and a K-8 school run by St. HOPE called its office Thursday wondering whether the suspension of federal funds would affect their students' education.

St. HOPE, based in Oak Park, runs an array of nonprofit endeavors, including the schools, a development company, an art gallery, and Hood Corps, the urban peace corps program at the center of the investigation. Johnson ran all the St. HOPE programs until he stepped down earlier this year, saying he wanted to focus on his mayoral bid.

The federal funding suspension was triggered by a months-long investigation into Hood Corps' use of AmeriCorps funds. The program received $807,000 between 2004 and 2007. Federal funding for the program was not renewed last year.

In a notice of suspension sent to Johnson on Wednesday, an official from the AmeriCorps agency said evidence indicates that Johnson, as president and chief executive of St. HOPE Academy, improperly diverted grant money.

"The evidence is adequate to suspect that you have committed irregularities which seriously reflect on the propriety of further federal government dealings with you," wrote William Anderson, a debarment and suspension official with the federal Corporation for National & Community Service, which oversees the AmeriCorps volunteer program.

William Portanova, a lawyer representing Johnson, said the former NBA star plans to appeal the suspension. Portanova characterized the violations at St. HOPE as "relatively minor issues

Exhibit G

that have long since been resolved."

"With government funding, differences of opinion lead to public pronunciations of sin," Portanova said. "It's very discouraging to people whose hearts are truly set on helping others."

According to the suspension notices, however, federal agents found "numerous potential criminal and grant violations."

In its contract with AmeriCorps, the notices said, St. HOPE agreed that volunteers would tutor students, redevelop one building a year in Oak Park and help in marketing and operations at the organization's theater and art gallery.

Instead, Hood Corps members were "assigned to perform personal services for your personal benefit, including driving you to personal appointments, washing your car and running errands," the letter to Johnson said.

Hood Corps members also were used "to engage in banned political activities," including canvassing for school board members, and were used to recruit students for St. HOPE's charter schools, "an impermissible activity," according to the letters.

Some were assigned as janitors or clerks at St. HOPE's charter schools, the letters said.

Other violations cited included supplementing St. HOPE school staff salaries with federal grant funds by enrolling them in AmeriCorps, and taking members assigned to Sacramento to New York City to promote St. HOPE's charter school in Harlem.

Johnson's placement on the list of people and agencies off-limits for federal money could last up to 12 months or until the completion of the federal probe into St. HOPE, according to federal officials.

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 or seek restitution. Previous penalties for other groups have ranged from fines to jail sentences.

Rick Maya, who in January replaced Johnson as head of St. HOPE schools, maintained that the suspension would not affect Sacramento Charter High School and P.S. 7, the K-8 school, because they are separate from St. HOPE Academy, which oversees Hood Corps.

Still, Maya said he hadn't gotten any notice from the federal government confirming that the suspension does not affect the broader array of St. HOPE organizations, including the schools. Sacramento High and P.S. 7 received $1.3 million in fiscal 2006-2007, according to St. HOPE financial statements.

A spokesman for the Corporation for National & Community Service declined Thursday to provide additional clarification to The Bee.

"That creates a tremendous amount of instability and concern, which is bleeding into our public schools," Maya said.

Federal officials also declined comment on the ramifications for the city of Sacramento if Johnson is elected mayor while on the banned list. But William O. Hillburg, spokesman for the federal inspector general's office, said individuals suspended from receiving federal funding cannot vote on federally funded programs that come before them as employees or board members.

A larger question, according to City Attorney Eileen Teichert, is whether having Johnson as mayor could jeopardize the city's eligibility for millions of dollars annually from the federal government for such big-ticket items as road and levee repairs.

"I don't have an opinion yet because obviously we've never had to deal with such a situation

in the past," Teichert said. "However, we are in the process of contacting the appropriate persons at the (Office of the Inspector General) to get their opinion as to what the scope of this ruling means, and we will be doing our best to assure that the city and its ability to receive federal funds is protected."

Portanova, Johnson's lawyer, said the suspension would have no effect on Johnson's ability to perform his mayoral duties. "Our conclusion is that it is very clear that Kevin Johnson can act and interact with the United States government ... as mayor of Sacramento," he said.

Johnson, in New York City for a fundraiser, was not available for comment Thursday.

His campaign manager, Steve Maviglio, suggested in an e-mail to The Bee that the federal government had political motives.

In one message, Maviglio referred to Gerald Walpin, inspector general of the Corporation for National & Community Service, as a "controversial right-wing Republican."

Political analysts said the timing of the suspension could prove a blow to Johnson's campaign, given that absentee voting begins in less than two weeks. Still, they said, it's debatable whether voters will weigh the findings above other factors as they consider which candidate to back.

"When you're in a leadership position, you are prone to take some hard knocks as well as some accolades," said Ray McNally, a Republican political consultant who is not involved in the race. "Will it decide this race? No. Is it an issue the voters will look at? Yes."

Call The Bee's Terri Hardy, (916) 321-1073.

Send suggestions to:
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NEWS: CALIFORNIA

Sacramento mayoral candidate's non-profit now being examined by federal officials

By DAVID FINNIGAN

Federal officials on Friday began investigating Sacramento mayoral candidate and ex-NBA star Kevin Johnson's urban nonprofit Hood Corps following a Sacramento Bee story about sexual misconduct concerns surrounding two Hood Corps-connected teenagers.

The Bee reported Friday that a governor's office staff attorney confirmed that federal officials began their inquiry after seeing the newspaper's coverage. Federal officials will check out Hood Corps for possibly failing to report sexual misconduct allegations involving a teenage volunteer and a student.

Hood Corps receives AmeriCorps funding which is covered through the Federal Corporation for National and Community Service, the agency handling the inspector general inquiry of Johnson's non-profit. Though Hood Corps received AmeriCorps funding from 2004 through 2007, the Bee said it currently does not get that funding.

The Bee's Friday story raised questions about the handling of a 17 year old female student's claim, later recanted, that Johnson allegedly touched her inappropriately in 2007.

Johnson wants to unseat incumbent Sacramento Mayor Heather Fargo. On April 15, mayoral candidate Steve Padilla released a Phoenix police report about a 1998 investigation of alleged sexual misconduct involving Johnson and a minor in Arizona. No criminal charges were filed.

David Finnigan can be reached via email at ***noreply@politicker.com***.

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Exhibit H

THE SACRAMENTO BEE

This story is taken from Sacbee / Our Region

Hood Corps probe expands

dkorber@sacbee.com

Published Monday, Jun. 30, 2008

The continuing federal investigation into St. HOPE's Hood Corps has expanded to more deeply scrutinize the volunteer program's use of public dollars, say those familiar with the probe.

Agents Jeffrey Morales and Wendy Wingers made a second visit to Sacramento in late May, after extending their initial stay in April by several weeks. They interviewed teen volunteers, parents, teachers and administrators affiliated with St. HOPE, the nonprofit that operates Hood Corps. They traveled to Humboldt County and West Point.

Initially, the agents were dispatched to Sacramento on April 24 to examine allegations of sexual misconduct, Hood Corps' mandatory church attendance and compulsory physical training – activities prohibited on the federal dime.

Federal officials would not talk about the Hood Corps investigation but said their rules are clear.

"No church on our time, and it cannot be required," said William O. Hillburg, a spokesman for the inspector general's office conducting the investigation. "No political activity at all on our time, and it can't be required. No residential requirement at all."

At issue is $807,000 in federal AmeriCorps money that Hood Corps collected from 2004 to 2007. Though funding for the program was not renewed last year, if theft of public funds is found, fines could be assessed and other federal funding withheld from every program administered by St. HOPE, according to Hillburg.

Kevin Johnson, former NBA star and current mayoral candidate, is St. HOPE's founder and served as CEO until this month. Johnson has built his political campaign on his efforts to improve Oak Park, from redevelopment to charter schools to the Hood Corps, which he has compared to an urban Peace Corps.

Neither St. HOPE nor Johnson responded to questions from The Bee about the investigation. Instead, they issued one-paragraph statements saying they were cooperating with the agents but could not comment on specifics until the probe is complete.

At a televised candidate forum in early May, Johnson was asked about the investigation. "I feel very confident in what St. HOPE has done," he said. "If St. HOPE did not do something as well as it should have, we would certainly rectify that immediately, but we'd have to hear back from them."

The federal investigation was sparked by a report of alleged sexual misconduct last year involving Johnson and two teen volunteers. That report, filed by a teacher at Sacramento

Exhibit I

High School, was found to be without merit by police – but still became the catalyst for the investigation because it was not reported to AmeriCorps.

AmeriCorps currently has 75,000 volunteers – called "members" – serving in 4,100 nonprofits nationwide. Members are paid a small living allowance and, if they put in a specified number of hours, earn an education award for college: $4,725 for 1,700 hours over the course of a year.

About 100 programs currently are under investigation, according to Hillburg. His office is part of the federal Corporation for National and Community Service, one of AmeriCorps' umbrella organizations.

Agents are checking whether St. HOPE's Sacramento High School used Hood Corps funds to augment employee salaries, sources close to the investigation told The Bee.

Among those interviewed by the federal agents was Sheila Coleman, a dance teacher at Sac High and a Hood Corps member in 2005.

That year, Coleman received a salary of $20,225 from St. HOPE public schools plus a $13,000 living stipend for her Hood Corps work, according to documents obtained by The Bee through a public information act request.

Coleman did not return calls for comment.

Allen Young, Coleman's former principal, said the teacher worked full time in 2005 and her salary would have been approximately $35,000.

Young said he learned about St. HOPE's decision to tap into funds for Hood Corps volunteers during a budget meeting when an employee from St. HOPE Human Resources told him of the plan.

"She said we had 'X' amount of money to hire staff. She said some of Sheila Coleman's salary would be paid for from some other tab – Hood Corps," said Young, who also has been in contact with agent Morales. "I didn't give it a second thought. I thought it must be OK to do that."

Allison Alair, a former St. HOPE teacher and administrator, said she met with agent Morales in May and has exchanged e-mails with him since then.

Alair said Morales questioned her about her allegation that Johnson and Dana Gonzalez, a top St. HOPE executive, directed Hood Corps members to help her sell school uniform shirts. "From Day One, Kevin and Dana told me to use Hood Corps students if I needed anything done," she said.

Alair said Morales also asked questions about Johnson's role in Hood Corps.

"He wanted information on Kevin, on his position, on his power," Alair said. "He wanted me to tell him the chain of command and specific examples about how Kevin himself directed certain activities."

Such questions – aimed at nailing down who is responsible – are crucial in every investigation, according to Hillburg.

Hood Corps – short for "Neighborhood Corps – was founded in 1998 by Johnson as a cornerstone of his St. HOPE organization. He continued in an active role in the program during the AmeriCorps years, according to Hood Corps participants and St. HOPE documents.

In its original contract with AmeriCorps, Hood Corps said its volunteers would perform a range of community service including tutoring, public relations for the Guild Theater and art gallery, and managing "redevelopment of one building per year in Oak Park."

Some volunteers said those things were among their duties. But Jonathan Beacham, a full-time Hood Corps fellow in 2004, told The Bee that his main duty was to be assistant manager for Uncle Jed's Cut Hut, a barbershop operated by St. HOPE.

Others told investigators that their tasks differed greatly from the contract, including chauffeuring Johnson, washing a St. HOPE van and scrubbing the toilets at the nonprofit's Guild Theater, according to four former members who spoke to The Bee after talking to the agents.

Changing duties in that way is prohibited, according to Hillburg, because it can undermine the very aspects of a program that won it funding. "You must abide by the contract," he said.

In addition to conducting interviews, Morales and Wingers also are reportedly combing through documents – including timecards – gathered under federal subpoena.

Agents always look hard at volunteers' timecards, Hillburg said, considering them the only true measure of work done.

"They have to be signed by the member and by a supervisor," he said. "If you sign a wrong time sheet, that's fraud and a federal charge.

Tamara Shelton, a full-time 2005 member, said she told the agents she never filled out a time sheet.

"We never kept track – they did that for us," according to Shelton, who dropped out of the program after struggling with the physical training.

Depending on the agents' findings, AmeriCorps investigations can have heavy consequences.

If warranted, Hillburg said, the agency can place a nonprofit or individual employees under a temporary federal suspension, cutting off all federal funding until the probe is completed. After the conclusion of the case, federal officials also can yank federal funding for up to three years – a punishment known as "debarment."

Under debarment, Hood Corps and other St. HOPE programs – including Sacramento Charter High School and PS 7, which last year received $1.3 million in federal funds – could be placed on a national list barring them from receiving any type of federal money, including student lunch funding, student loans – even federally backed mortgages.

"I call it the 'pariah list,' " Hillburg said.

Call The Bee's Dorothy Korber, (916) 321-1061 or Terri Hardy at (916) 321-1073.

Department of Justice

Acting United States Attorney Lawrence G. Brown
Eastern District of California

FOR IMMEDIATE RELEASE
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www.usdoj.gov/usao/cae

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FOLSOM MAN INDICTED IN $40 MILLION PONZI SCHEME

Defrauded 150 Investors, Many from His Church

SACRAMENTO, Calif.—Acting United States Attorney Lawrence G. Brown, FBI Special Agent-in-Charge Drew Parenti, and IRS-Criminal Investigation Special-Agent-in-Charge Scott O'Briant announced that a grand jury has returned an indictment alleging mail fraud, wire fraud, and money laundering against ANTHONY VASSALLO, 29, of Folsom, Calif. for his role in a massive investment fraud scheme that brought in more that $40 million from 150 investors, many of whom he met in church. VASSALLO will next appear in court on April 16, 2009, at 2:00 PM before United States Magistrate Judge Dale A. Drozd.

This case is the product of a joint investigation by the Federal Bureau of Investigation and the Internal Revenue Service-Criminal Investigations. The United States Securities & Exchange Commission assisted with this case.

"In these difficult economic times, it is more vital than ever that federal investigative and prosecutive resources are brought to bear against those who perpetrate large-scale fraud schemes," says Acting U.S. Attorney Brown.

Investment Ponzi Scheme

According to Assistant United States Attorney Robin R. Taylor, who is prosecuting the case, VASSALLO and others operated Equity Investment, Management and Trading Inc. (EIMT) in Folsom, soliciting investors for a "hedge fund" program. He promised investors a rate of return of 3.5 percent per month with little risk of loss.

The indictment alleges that these representations were false and that VASSALLO and others operated EIMT as a vast Ponzi scheme using investor funds to make "dividend" payments to other investors and make risky loans without investor knowledge or consent. Although VASSALLO lost virtually all of the investors' money, and ceased trading in securities in about September 2007, he lulled investors into keeping their funds on deposit by fabricating investment information and reporting positive returns. Neither VASSALLO nor EIMT was registered with the SEC. According to the indictment, rather than investing funds as represented, VASSALLO used investor funds for personal expenses, to purchase a car from Lexus of Sacramento for $103, 215.94, and to make a payment to the Church of Jesus Christ of Latter-Day Saints in Folsom, California for $24,149. The balance of the funds were used to make lulling payments to other investors, lost in risky investments or transferred to third parties without investor knowledge or consent.

Civil Action

On March 11, 2009, the SEC charged VASSALLO and KENNETH KENITZER, 66, of Pleasanton, Calif., with the anti-fraud provisions of the federal securities laws for their roles in

Exhibit J

the fraudulent investment scheme. The SEC obtained a court order against VASSALLO and KENITZER freezing the assets of EIMT. In addition, the SEC seeks injunctive relief, disgorgement of fraud proceeds, and financial penalties. The SEC has frozen $1.2 million found in a bank account controlled by VASSALLO.

VASSALLO originally was charged in a criminal complaint, along with his co-defendant MICHAEL DAVID SANDERS. SANDERS is accused of conspiracy, impersonating a federal law enforcement agent and with attempting to extort monies in connection with plot to recover funds for EIMT investors. He has not been indicted; a preliminary hearing is set for May 1, 2009.

Statutory Penalties

If convicted, VASSALLO faces up to 20 years in prison for the mail and wire fraud offenses; up to 20 years for the money laundering offenses; and up to 10 years in prison the securities law violations, with fines up to twice the value of the victims' losses. SANDERS faces up to five years in prison for the conspiracy, up to three years in prison for impersonating a federal law enforcement agent, and three years for extortion. However, the actual sentence will be dictated by the Federal Sentencing Guidelines, which take into account a number of factors, and will be imposed at the discretion of the court. The charges in the indictment are only allegations and the defendants are presumed innocent until and unless proven guilty beyond a reasonable doubt.

# # # #

Department of Justice

Acting United States Attorney Lawrence G. Brown
Eastern District of California

FOR IMMEDIATE RELEASE
Thursday, May 7, 2009
www.usdoj.gov/usao/cae
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FORMER REALTOR AND LOAN BROKER INDICTED FOR MORTGAGE FRAUD PERTAINING TO PROPERTIES IN ELK GROVE

SACRAMENTO, Calif.—The United States Attorney's Office announced today that a federal grand jury returned a nine-count indictment charging DAMEENE DEDRICK, 35, of Denver, and ROY RICE, 42, of San Francisco, both formerly of Elk Grove, Calif., with four counts of bank fraud, and four counts of false loan statements as part of a mortgage fraud scheme. DEDRICK also was charged with one count of mail fraud.

This case is the product of a joint investigation by the Federal Bureau of Investigation and the Internal Revenue Service- Criminal Investigations.

According to Acting United States Attorney Lawrence Brown, who is prosecuting the case, the indictment alleges that in February 2006, DEDRICK purchased three homes in Elk Grove for a total of approximately $1.1 million. At the time, DEDRICK was a licensed real estate agent. In two of the purchases, ROY RICE, then a loan broker, processed the loan applications. In all three transactions, DEDRICK fraudulently inflated his earnings and represented that each home was to be his primary residence. He further created fictitious W-2 Wage and Tax Statements and earning statements for 2003–2005. RICE was aware of the false statements but nevertheless processed the applications, thereby receiving his commission. All three homes were later foreclosed on, resulting in losses in excess of $500,000.

DEDRICK and RICE are out on bail. They will be arraigned before United States Magistrate Judge Gregory G. Hollows at 2:00 p.m. on Monday, May 11, 2009.

The maximum statutory penalty for bank fraud and false loan statements is 30 years in prison, a fine of up to $1 million, and a five-year term of supervised release on completion of the prison sentence. The maximum penalty for mail fraud is 20 years in prison, a fine not to exceed $250,000, and a five-year term of supervised release. However, the actual sentence will be dictated by the Federal Sentencing Guidelines, which take into account a number of factors, and will be imposed at the discretion of the court.

The charges are only allegations and the defendant is presumed innocent until and unless proven guilty beyond a reasonable doubt.

# # # #

Department of Justice

Acting United States Attorney Lawrence G. Brown
Eastern District of California

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INDICTMENTS UNSEALED IN SCHEMES TO DEFRAUD THE IRS BY FILING FALSE TAX RETURNS

SACRAMENTO, Calif.—Acting United States Attorney Lawrence G. Brown announced the unsealing of two indictments charging three Sacramento residents in schemes to defraud the IRS by filing false tax returns claiming tax refunds.

These cases are the product of extensive investigations by the Internal Revenue Service, Criminal Investigation.

According to Assistant United States Attorney Samantha Spangler, who is prosecuting both cases, a federal grand jury returned an 18-count indictment on April 9, 2009, charging TOBBIYON JERMAINE SIMON, 35, and MONIQUE NICOLE JASPAR, 32, both of Sacramento, with conspiracy to defraud the government with respect to claims for tax refunds, and with 17 counts of filing false claims for tax returns.

From January to March 2007, SIMON and JASPAR prepared false IRS Forms W-2 using personal information from co-conspirators and unlawfully obtained information of legitimate employers who did not employ the co-conspirators. They then prepared and filed fraudulent federal income tax returns for tax year 2006 for the co-conspirators: JASPER through her employment at a tax preparation firm in Sacramento and SIMON via the Internet. The fraudulent tax returns sought approximately $182,553 in refunds. SIMON and JASPAR each expected to receive a portion of the refund as payment for their role in the scheme. The IRS, however, denied most of the refund claims and paid out only about $21,900 in refunds.

The indictment was unsealed yesterday upon the arrest of JASPAR. She was arraigned yesterday before United States Magistrate Judge Dale A. Drozd and released on a $25,000 unsecured bond. Her next court appearance is June 12, 2009, at 10:00 a.m. before U.S. District Court Judge Edward J. Garcia. SIMON remains at large.

On April 23, 2009, an 11-count indictment was unsealed following the arrest of VICK ANTHONY WEST, 42, of Sacramento. A federal grand jury returned the indictment on March 19, 2009, charging WEST with conspiracy to defraud the government with respect to claims and 10 counts of filing false claims. Two of those are allegedly WEST's personal returns, while the other eight were filed by co-conspirators.

The indictment alleges that, from January 2005 until January 2007, WEST conspired with other people to create fraudulent IRS Forms W-2 and in order to file false federal income tax returns seeking refunds to which they were not entitled. He allegedly expected to receive a portion of the refund as payment for supplying the false Forms W-2. WEST and his

co-conspirators attempted to obtain $372,885 from the IRS in refunds, but the IRS denied most of the claims. Instead, the actual loss amounted to $50,382.

WEST appeared yesterday before Magistrate Judge Drozd for arraignment. He was detained pending the disposition of the case. His next court appearance is scheduled for May 26, 2009 at 9:30 a.m. before U.S. District Court Judge John A. Mendez.

The maximum statutory penalty for the conspiracy charges is 10 years in prison. The filing-false-claims charges each carry a maximum statutory penalty of five years in prison. The actual sentence, however, will be determined at the discretion of the court after consideration of the Federal Sentencing Guidelines, which take into account a number of variables and any applicable statutory sentencing factors.

The charges are only allegations and the defendants are presumed innocent until and unless proven guilty beyond a reasonable doubt.

# # # #