Special Report to Congress
From
The Office of Inspector General
Of
The Corporation for National and Community Service

This special report is issued to Congress in performance of the Congressional mandate to this Office of Inspector General for the Corporation for National and Community Service ("Corporation"), that we keep Congress "fully and currently informed . . . concerning . . . serious problems, abuses and deficiencies relating to the administration of programs and operations administered or financed by" the Corporation. 5 U.S.C. ¶ App. §§ 3, 4(a)(5).

Summary

Following a thorough investigation by Special Agents of this Office of Inspector General ("OIG"), on August 7, 2008, we sent a referral for criminal and/or civil prosecution to the United States Attorney for the Eastern District of California, concerning St. HOPE Academy ("St. HOPE"), a grantee from the Corporation, and its two principals, Kevin Johnson and Dana Gonzalez. Earlier, on May 21, 2008, OIG sent to the Corporation's Debarment and Suspension Official a referral requesting prompt suspension of St. HOPE, Johnson and Gonzalez from being able to receive or participate in future grants of Federal funds. Based on the detailed facts establishing misuse of the grant funds provided to St. HOPE, the Debarment and Suspension Official, on September 24, 2008, specified six acts of diverting grant funds to non-grant purposes, found that "immediate action is necessary to protect the public interest," and suspended all three respondents "from participating in Federal procurement and nonprocurement programs and activities." Although the notice of suspension afforded each respondent the opportunity to lift the suspension by submitting "specific facts that contradict" the findings contained in the Suspension notice, none of the respondents exercised that right.

Even so, on April 9, 2009, the Corporation, by the Debarment and Suspension Official and the Corporation's General Counsel, joining the United States Attorney for the Eastern District of California, but excluding the OIG (which had been the sole moving force in both proceedings), executed a settlement agreement of questionable value, but which vacated the

suspensions and precluded the debarment of any of the respondents -- all without any facts to contradict the previous findings which, the Debarment and Suspension Official had found, required holding that these respondents were each not responsible, and therefore should not receive further Federal funds.

This 180-degree turnaround was based on the change of circumstances of Respondent Johnson, who had, after directing St. HOPE's misuse of the grant funds provided to it and receiving the suspension notice, become Mayor of Sacramento. The suspension was lifted because, as one Corporation official put it, the Corporation could not "stand in the way of Sacramento" -- thereby effectively stating that, while Respondent Johnson was not sufficiently responsible to receive further Federal funds in his management position as a grantee, he suddenly became sufficiently responsible when elected Mayor of a city receiving substantially more Federal funds -- akin to deciding that, while one should not put a fox in a small chicken coop, it is fine to do so in a large chicken coop!

The settlement accepted by the Corporation leaves the unmistakable impression that relief from a suspension can be bought. In addition, media pressures and political considerations both appear to have impacted the Corporation's decision here.

The Corporation -- in a departure from talking to and working with OIG on any matter in which OIG has an interest and/or involvement -- refused to discuss this "settlement" with OIG and obtain OIG's views on the terms, and merely informed OIG of the "done deal" after it had been signed. The Corporation not only improperly "sold" a suspension away as part of a monetary settlement, but, due to its rush to conclude the "settlement" without any OIG input, entered into a settlement that does not even protect the Corporation's ability to receive the amount promised by St. HOPE in it. Further, the Corporation's action represented an unnecessary insult to the OIG staff, which had worked unselfishly long and hard to uncover the facts which substantiated the charges.

A. The Grant

After submitting a proposal to the California Service Corps (the California State Commission), St. HOPE was awarded a three-year grant under which it received AmeriCorps grant funds (totaling $847,673 in direct grants and in education awards for AmeriCorps members assigned to St. HOPE) that originated with the Corporation. In its proposal, St. HOPE itself wrote the requirement that the grant funds must be used for the purpose of:

> "(1) providing one-on-one tutoring to [Sacramento] elementary and high school students;
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> "(2) managing the redevelopment of one building a year in the Oak Park [the Sacramento neighborhood in which St. HOPE operates]; and
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> "(3) coordinating logistics, public relations, and marketing for the Guild Theater and Art Gallery events, as well as hands-on workshops, guest artist lectures, and art exhibitions for Sacramento High School for the Arts and PS7 Elementary School [in Sacramento]."

Ex. 1.

Those specified activities were to accomplish the following purposes:

> "(1) to improve the reading and math achievement of 100 elementary and high school students . . . as part of the after school program; (2) to stimulate economic growth in Oak Park by managing the redevelopment of the Walton Pediatrics building, an investment of $1.6 million into the community; (3) to increase arts programming in Oak Park; and (4) to recruit and train 500 volunteers to complete 10,000 hours of service in Oak Park."

Ex. 2.[1]

Significantly, the grant documents restricted St. HOPE's ability to change its plan and grant obligations. The grant application that St. HOPE filed through the California State Commission (which is named "California Service Corps") provided, in part, "[sub]grantee may not revise the [described] 'Scope of Work,'" for which the grant funds were to be used, "without written approval" of the California Service Corps. Ex. 3. St. HOPE never sought or obtained that required written approval. Further, any "changes in the scope, objectives or goals of the Program" could not be made without "prior written approval of the [Corporation's] AmeriCorps

[1] The grant paperwork for the 3-year grant and for the second and third years contains the same language as in the first quotation above. The second quotation is substantially identical, with only the identity of the building to be redeveloped being changed and the numbers of volunteers recruited and trained being reduced.

Program Office." Ex. 4. Again, no such prior written approval was sought or obtained by St. HOPE.

Finally, the "Agreement Summary" portion of the grant, which the California State Commission provided to St. HOPE with the Notice of Grant Award, expressly reiterated that, when St. HOPE spent grant funds, its spending had to be in compliance "with all provisions of the grant [and] . . . in accordance with . . . [the] representations made in support of the approved Grant Application." Ex. 5.

The requirement that grant funds be used only for the community service purposes specified in the grant precluded St. HOPE from using the grant funds to pay for any of the expenses it had or would have had without the grant. Thus, unless expressly provided for in the grant, St. HOPE could not use grant funds to pay all or part of the salaries of its employees or the costs associated with its administrative or management structure. Further, the controlling statute, 42 U.S.C. § 12637, prohibits grant funds or service-providers financed with grant funds from being used to fill positions that have been or reasonably could be filled by someone in the community. See also 45 C.F.R. § 2540.100(f).

In the context of St. HOPE, these restrictions meant that, among other things, St. HOPE's AmeriCorps members, who were supposed to be tutoring, could not be put to work washing Johnson's car, running personal errands for him, helping him to land a new school contract across the country from Sacramento, or engaging in partisan political activities;[2] likewise, St. HOPE could not take its employees and, without changing their job duties, make them AmeriCorps members and pay them, in full or part, with grant funds -- all of which, as discussed below, the evidence establishes was done with AmeriCorps members.

B. OIG Becomes Involved

It is, in retrospect, ironic that it was the Corporation (through its Office of Grants Management), together with the California State Commission, which, on April 17, 2008, advised

[2] 45 C.F.R. § 2520.65(a)(5) specifically prohibits use of AmeriCorps members for "partisan political activities, or other activities designed to influence the outcome of an election to any public office."

this Office of the irregularities at St. HOPE, thereby sparking this OIG investigation. Promptly, on April 23, 2008, two OIG Special Agents, Supervisory Special Agent Jeffrey Morales and Special Agent Wendy Wingers, from this Office traveled from Washington, DC, to Sacramento to investigate that information. When those Agents deployed, neither they nor this Office had reached any conclusions whether the allegations were true, much less had any predetermined outcome in mind. Rather, they were as interested in disproving as in proving the allegations.

While those Agents were in Sacramento, on April 25, 2008, the Sacramento Bee (the local newspaper) related that, after a teacher at Sacramento High School reported that Kevin Johnson had inappropriately touched a female student who told the teacher about the incident, Johnson's personal attorney and business partner investigated the complaint for the school. The Sacramento Bee reported that the student later recanted, and that Sacramento police investigators found no merit to her complaint. It also reported that the teacher resigned and, in his resignation letter, asserted, "St. HOPE sought to intimidate the student through an illegal interrogation and even had the audacity to ask me to change my story." Ex. 6.

We immediately recognized what appeared to be improper handling of this allegation by St. HOPE **and** unethical conduct by Mr. Johnson's attorney in investigating, supposedly on behalf of St. HOPE, a serious allegation of misconduct by that attorney's business partner and client. *See, e.g.*, California Rules of Professional Conduct Rule 3-310 "Avoiding the Representation of Adverse Interests."[3]

St. HOPE said that it had handled the allegations properly, but the Sacramento Bee reported that California law required that law enforcement authorities be notified immediately when school officials learn of such an allegation, and that, despite that requirement, the female

[3] (B) "A [lawyer] shall not accept or continue representation of a client without providing written disclosure to the client where…the [lawyer] has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter,. . .
(C) A [lawyer] shall not, without the informed written consent of each client…accept representation of more than one client in a matter in which the interests of the clients potentially conflict…"

Of course, Mr. Johnson, an interested party, could not provide that consent on behalf of St. HOPE. Only the Board of Directors could do so after full written disclosure. While in these circumstances, it would have been a breach of the Board's fiduciary duty to have consented, there is no evidence of either full disclosure to the Board or its consent.

student was questioned as part of the school's investigation -- by Johnson's business partner and attorney -- before the police were called.

Between April 23 and June 28, 2008, those OIG Special Agents made five trips related to the investigation, conducted 26 interviews and reviewed a substantial quantity of documents. Significantly, when our Agents twice asked to interview Mr. Johnson, the response was, first, that Mr. Johnson did not have time for an interview, and, when the second request was made to his attorney, the Agents were told that they must first brief Mr. Johnson's attorney on the facts known to the Agents after which Mr. Johnson's attorney would decide if Mr. Johnson would be interviewed. The Agents then briefed Mr. Jacobs with the relevant facts but, despite the Agents' repeated requests for an interview with Mr. Johnson, Mr. Jacobs responded that Mr. Johnson's schedule would not permit time for that purpose -- *i.e.*, Mr. Johnson effectively declined to be interviewed.

Although this office was not the source, OIG's involvement did not pass without press notice. As early as April 26, 2008, the Politicker.com website reported that "a governor's office staff attorney confirmed that federal officials began [an] inquiry after seeing the newspaper's [*i.e.*, the Sacramento Bee's] coverage." Ex. 7. Subsequently, on June 30, 2008, the Sacramento Bee reported that OIG agents made "a second visit to Sacramento in late May, after extending their initial stay in April by several weeks."[4] Ex. 8. While "[f]ederal officials" would not comment on the investigation, some of those interviewed talked with the Bee's reporter. *Id*.

On Friday, September 5, 2008, the Sacramento Bee reported, "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 yesterday." The Sacramento Bee quoted, among others, the spokesman for this Office and then-United States Attorney McGregor Scott. What the Sacramento Bee does not say is that the spokesman for this Office did not confirm or deny the existence of a referral.[5] The Sacramento Bee does state, "U.S.

[4] OIG Agents were in California from April 23 to May 9, 2008, and again from May 27 to May 30, 2008. In addition, an OIG Agent traveled to West Point, NY, on May 13, 2008.

[5] The spokesman for this office was called by a reporter for the Sacramento Bee and asked, among other things, whether this OIG presented a referral for prosecution to the United States Attorney; the OIG spokesperson told the

Attorney McGregor Scott confirmed Thursday evening that 'we are in receipt of the Inspector General's report and we are . . . reviewing it.'" Ex. 9.

D. The Suspension

The Federal government has created a Debarment and Suspension procedure, covering all Federal agencies, to protect all Federal agencies from giving Federal funds to a person or entity which, in prior dealings with any single agency, has shown a lack of responsibility to use in a proper manner Federal funds entrusted to that person or entity. Under the controlling regulations, a person or entity may be suspended when there "exists . . . adequate evidence to suspect . . . commission of fraud, . . . making false claims, . . . or commission of any other offense indicating a lack of business integrity or honesty that seriously and directly affects [the person's or entity's] present responsibility . . . or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."
2 C.F.R. §§ 180.700(b), 180.800 (a)(4), (b).

On May 21, 2008, this office forwarded to the Debarment and Suspension Official a 13-page recommendation, signed by the Inspector General and the Supervisory Special Agent on this investigation, that St. HOPE, Johnson and Gonzalez be suspended, detailing the evidence substantiating their violations, and thereafter provided to that official the voluminous evidence relied upon. After studying all the evidence provided, and obtaining the legal advice and assistance of the Corporation's General Counsel, the official issued his decision: By letters dated September 24, 2008, the Corporation suspended St. HOPE, Johnson, and Gonzalez "from participation in Federal procurement and nonprocurement programs and activities." Exs. 10, 11, 12.[6]

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reporter that he could neither confirm nor deny the existence of a referral. At that point, the reporter learned that the United States Attorney had confirmed its existence, and rang off, telling our spokesman that there was no further need to talk with him.

[6] That the official issued his decision without notice to the respondents is consistent with prescribed procedure. 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 is already included on the GSA's List of Parties excluded from Federal Procurement and Nonprocurement Programs." Cibinic & Nash, Formation of Government Contracts, 3d (1998), 487. The treatise states further, "No notice of contemplated proceedings is required." *Id*. at 488.

In the Notice of Suspension, the Corporation's Debarment and Suspension Official stated that the information that he received "is adequate to allow me to suspect that there has been on your part a willful failure to perform in accordance with the terms of a public agreement, and other causes of so serious or compelling a nature that it affects your present responsibility." Exs. 10, 11, 12 at 2 (internal citations omitted). And, "[t]he evidence is adequate to suspect that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you." *Id*. He then provided respondents with notice of the specific instances of the diversion and misuse of Corporation grant funds that, in his judgment, warranted suspension (and followed each by the textual explanation providing additional specification):

1. Using AmeriCorps members to "recruit[ ] students for St. HOPE Academy;"
2. Using AmeriCorps members for political activities in connection with the "Sacramento Board of Education election;"
3. Taking grant-funded AmeriCorps members "to New York to promote the expansion of St. HOPE operations in Harlem;"
4. Assigning grant-funded AmeriCorps members to perform services "personally benefiting . . . Johnson," such as "driving [him] to personal appointments, washing [his] car, and running personal errands;"
5. "Supplementing staff salaries by converting grant funds designated for AmeriCorps members," by enrolling two St. HOPE Academy employees "into the AmeriCorps program for the 2004/2005 grant year" without changing their duties, thereby improperly using grant funds so that one St. HOPE employee's "salary was then paid through the AmeriCorps program," plus she "received an [AmeriCorps] living allowance and an education award," and the other employee's salary, which was not paid from the grant, "was supplemented by both an AmeriCorps living allowance and an education award;" and
6. Improperly using AmeriCorps "members to perform non-AmeriCorps clerical and other services" that "were outside the scope of the grant and therefore were impermissible" for "the benefit of St. HOPE."

Id. at 2-3.

The Suspension notice then advised each respondent:

> "In accordance with 2 C.F.R. 180.720-745, within 30 calendar days of your receipt of this notice, you may submit, in person, in writing, or through your representative information and argument in opposition to this suspension, including specific facts that contradict the statements contained in this notice."

Id. at 3.

Notwithstanding the fact that their responses were due within 30 days after their receipt of the letters, we have been informed that no respondent made any submission to seek rescission of the suspension, and instead all requested multiple extensions of time, which the Corporation granted.[7]

On September 25, 2008, the suspension was reported by the media. On September 26, 2008, Mr. Johnson issued a statement (Ex. 13), calling the suspension "politically motivated," and proclaiming that he had "cooperated with the Federal government from day one," and that he "instructed attorneys to formally fight these crazy meritless allegations." There were many untruthful assertions in his statement: *E.g.*, (1) Clearly no one from OIG in Washington, DC, had any interest in the Sacramento Mayoral election, and therefore could have no political motivation for an investigation into St. HOPE, **commenced** in April 2008, **at the request of the Corporation**, but we did have our sworn obligation to investigate and pursue credible allegations of fraud and misuse of Corporation grant funds; (2) Mr. Johnson had in fact refused to cooperate with the OIG investigation -- he had, as described above, effectively declined to make himself available for an interview; and (3) He had clearly not instructed his attorneys to fight the suspension by following available procedures to seek to lift the suspension by providing facts which contradicted the findings made by the Suspension Official which warranted the suspension.

After the primary election and before the November run-off, on October 27, 2008, a weblog entry posted by a Sacramento Bee writer reported that, following referral of the OIG report to the U.S. Attorney's Office, the writer talked to the U. S. Attorney. The entry continued, "When I asked him about the report last month, U.S. Attorney McGregor Scott told me that he was 'sensitive to the bigger picture,' and promised to move 'as expeditiously as we can in a

[7] We believe that any records relating to the suspension process are held by the Corporation's Debarment and Suspension Official, its Office of General Counsel, or both.

professional manner to make the decisions required of us in a timely manner.' By timely, I hoped Scott meant before the election. That's just nine days away." Ex. 14.

In the November run-off election, Johnson defeated the incumbent mayor. Shortly after the election, on Thursday, November 6, 2008, the Sacramento Bee reported that the United States Attorney had announced a decision not to file any criminal charges (Ex. 15). As OIG had received no such notice from that office, the IG spoke to the United States Attorney who informed the IG that he had been misquoted. On the following day, the Sacramento Bee reported that the correct statement was that the United States Attorney "has asked for additional information and is awaiting an answer from Federal investigators," and made clear that "[n]o final decision has been made about whether there is any basis to proceed on either a civil or criminal front." Ex.16. The Sacramento Bee also wrote, "He [*i.e.*, McGregor Scott] also said the Inspector General's office is conducting a 'line-by-line audit' of [St. HOPE's] Hood Corps." *Id.*[8]

E. Post-Election Events

Those November elections also resulted in the election of Barack Obama as President, who was sworn in on January 20, 2009. One of President Obama's first initiatives resulted in the enactment of ARRA, the stimulus legislation. With the prospect that stimulus funds might make their way to Sacramento, Johnson and the City each began looking at the effect of the suspension on the City's ability to receive and spend new Federal money from procurement and non-procurement programs.

In early March or before, both the media and Johnson directed their attention to the potential effects of the suspension of now-Mayor Johnson and Gonzalez, who was reported by the Sacramento Bee on January 29, 2009, to be an unpaid volunteer to his administration (Ex. 17).

The Sacramento Bee reported that "[s]hortly after Johnson's election last November, City Attorney Eileen Teichart hired Frederick M. Levy [a Washington, D.C. attorney] - regarded as an

[8] The Sacramento Bee wrote, "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." Ex. 16.

expert on government contracting and compliance - to determine whether Johnson's inclusion on that [suspension] list posed an issue when it sought Federal funding." The Sacramento Bee continued that Levy, in his opinion provided to the City on March 13, 2009, had concluded that the "City of Sacramento likely is barred from getting Federal money -- including tens of millions the City is expecting from the new stimulus package -- because Mayor Kevin Johnson is on a list of individuals forbidden from receiving Federal funds." Ex. 18.

At this point, Johnson still did not exercise his right to seek to have the suspension lifted by submitting to the Debarment and Suspension Official "specific facts that contradict the statements contained in" the suspension notice -- the requirement, as he had been informed, to seek lifting of the suspension.

Instead, Johnson's lawyer, Matthew G. Jacobs, wrote three letters. In the first (Ex. 19), dated March 16, 2009, to Assistant United States Attorney Kendall Newman,[9] Mr. Jacobs wrote that the purpose of his letter was "(1) to establish that at least a large portion of the moneys provided to St. HOPE Academy . . . pursuant to the Grants was utilized to perform services within the scope of work of those Grants, (2) to establish St. HOPE's poor current financial condition, and (3) to demonstrate through accounting records the specifics of how St. HOPE spent the grant monies." Ex. 19. Mr. Jacobs quickly acknowledged that "[w]e have not yet been able to fully accomplish the third objective, although we are willing to continue trying . . . ." -- despite the express requirement that St. HOPE was required to maintain such records (*e.g.*, Section V E of the AmeriCorps Grant Provisions) and thus an admission that St. HOPE had failed to perform in that regard as required by the grant provisions. While Mr. Jacobs asserted that the principal of PS7 Elementary School and several former St. HOPE AmeriCorps members could confirm that those members "did indeed spend many, many hours engaged in direct, one-on-one tutoring," he ignored the mandate, in the grant application (Narrative pp. 25-26) (Ex. 20), that all tutoring done must be documented in Tutoring Logs, which St. HOPE never was able to produce. Mr. Jacobs offered "to continue to work toward a more robust determination that grant monies were used in furtherance of the Grants" – a "more robust determination" that, of

[9] Newman sent a copy of that letter to OIG, which was received on March 26th, although not all exhibits were provided to us.

necessity, could only mean documentation as required by the Grant provisions; but, this offer was, as will be shown, ignored by the Corporation in what quickly became an express train to lift the suspension.

Significantly, Mr. Jacob's 14–page, single-spaced letter did not address any of the six specifications (quoted pp 10-11 above) which were the basis for the suspension.

Mr. Jacobs, in his second letter, also addressed to AUSA Newman, dated March 18, 2009, confirmed the settlement offer he had telephonically communicated to AUSA Newman, of a cash payment of $50,000 plus a stipulated judgment in the amount of $250,000, both to be paid by St. HOPE (Ex. 21).

Mr. Jacobs wrote a third letter, dated March 31, 2009, to the Corporation's Debarment and Suspension Official (Ex. 22). Again, Mr. Jacobs did not address any of the six specifications in the Suspension Notice. Instead, he complained about the fairness of the suspension process. He said that the suspension was not challenged because, among other reasons, none of those suspended had applied for or were applying for Federal funds. He explained, "[h]owever, now that there appears to be an issue regarding whether federal agencies will permit an entirely separate entity altogether -- the City of Sacramento -- to participate in federal programs because of the Corporation's placement of our clients (and particularly, Mayor Johnson) on the Excluded Parties List, this matter has become extremely urgent, and must be resolved immediately." He ended by claiming that the suspension violated respondents' constitutional rights and threatened that, unless the Corporation "immediately withdraw[s] or rescind[s] its suspension," he would "seek legal redress with the courts."

F. U.S. Attorney's Consultation With OIG

From the first involvement of the United States Attorney's office, when OIG sent its referral, the United States Attorney's office had dealt solely, as is customary, with the OIG as the investigatory agency which had done the investigation and made the referral. The United States Attorney's office had not contacted the Corporation.

AUSA Newman early on recognized that he needed, and requested, OIG's help to obtain critical documents, books and records from St. HOPE which, under the grants, it was required to maintain, but had never produced for examination. For example, the General Ledger, a required financial document, which essentially records all receipts and all disbursements, with source and recipient identification, was never fully produced, despite repeated requests by OIG agents. 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 it received. OIG auditors advised that an attempt should be made to obtain substantial amounts of St. HOPE's financial records which had not been produced. With AUSA Newman's concurrence, OIG then prepared and, on October 1, 2008, served on St. HOPE (with a copy provided to AUSA Newman) a subpoena requiring production of 16 specified types of documents (Ex. 23), including "General ledger and other accounting records detailing transaction-level support for Federal and match expenditures claimed on the financial status reports" filed by St. HOPE. The grant provisions and relevant regulations required St. HOPE to maintain most of the 16 specifications 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 OIG agents' earlier requests.

After repeated requests by St. HOPE for extensions of time, partial productions, notice to St. HOPE's attorney of St. HOPE's non-compliance -- on all of which AUSA Newman was kept informed -- on November 24, 2008, Special Agent Morales forwarded to AUSA Newman a list, prepared by OIG Auditors, of the St. HOPE documents needed to perform a fiscal review, and which should have been produced in response to the subpoena. On December 2, 2008, OIG asked AUSA Newman for assistance to enforce the subpoena to obtain full compliance. Two weeks later, AUSA Newman asked OIG to draft an affidavit in support of an enforcement proceeding he would commence. OIG proposed and then provided that affidavit on January 8, 2009, and, on January 22nd, AUSA Newman asked for certain alterations, which were done with a corrected affidavit e-mailed to AUSA Newman on January 23rd. AUSA Newman and OIG agreed that St. HOPE's failure to produce documents it was required to maintain provided us no comfort that we could rely on St. HOPE for financial transparency.

On February 4th, AUSA Newman informed OIG Supervisory Special Agent Morales that St. HOPE's attorney was furnishing additional documents and that OIG auditors should provide their report based on the documents St. HOPE provided. OIG auditors did so, providing their report on March 18th (Ex. 24). The report 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." 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.
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> " * * *
>
> "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 service 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.
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> "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."

As noted above, AUSA Newman forwarded to OIG Mr. Jacobs' letter of March 16, 2009, which was received by OIG on March 26th. On Friday, March 27th, when the IG first saw the letter, he asked Agents Morales and Wingers to provide him with their comments by Monday, March 30th. The IG analyzed both Mr. Jacobs' letter and the Agents' memorandum, and on March 31st requested the Agents' assistance in drafting a response which we prepared and sent to AUSA Newman on April 6**,** 2009.

On April 1, 2009, the United States Attorney's Office appeared to continue working with OIG, as the investigative agency with which it would work, by asking this Office for OIG's views regarding a potential settlement, conveying terms that respondents had proposed (we later learned, on March 18th), which were $50,000 immediately and $250,000 over five years. AUSA Newman asked that we provide a proposed counter-offer and the minimum amount we believed would be acceptable. Although the IG stated that it was important for the United States Attorney's office to have OIG's response to Mr. Jacobs' March 16, 2009, letter to be able to analyze OIG's settlement views, AUSA Newman stated that he would like to have our views on the dollar amount of a settlement and thereafter receive our response to Mr. Jacobs' letter. He also demurred to the IG's suggestion that he wait until we had been able to obtain the Corporation's views, which we had sought to take into account in providing our views. He insisted that we provide our views on April 2nd. (His reason for such a rushed schedule later became apparent, as discussed below.)

Therefore, on April 2, 2009, the IG provided the following to AUSA Newman in a telephone conversation: (i) an opening counter-offer of $170,000 immediately (covering the amount paid for education awards from the National Service Trust funds) and $400,000 over five years; (ii) the minimum of $100,000 immediately, an additional $70,000 in one year, and $300,000 over the following four years; (iii) sufficient guaranties of payment; (iv) any settlement being pushed on the basis of factual assertions made in Mr. Jacobs letter could not be properly evaluated by the U.S. Attorney's office without OIG's reply, to be shortly provided, to Mr. Jacobs' letter, and OIG's interviews of the witnesses on whom Mr. Jacobs relied, which, the IG said, we would expeditiously do; and (v) that it would be improper to include the suspension in any settlement because that issue must be decided on whether the respondents are responsible for future grants, not whether they have paid for prior misuse of grant funds. In one of our March conversations with Acting U.S. Attorney Larry Brown, he had referred to the suspensions as "the 800-pound gorilla" in any settlement negotiation.

OIG had kept the Corporation's General Counsel, Frank Trinity, informed of both the settlement proposal made by respondents' attorney and OIG's position, including that it would be improper to negotiate the suspension as part of any monetary settlement. Mr. Trinity stated

that he agreed that it would be improper. As to the monetary terms of the settlement, on April 1, 2009, the IG informed the Corporation's Director of Grants Management, Margaret Rosenberry, of St. HOPE's settlement proposal terms and asked her to provide OIG with the Corporation's analysis for OIG to consider. The IG left a voicemail message to the same effect for Mr. Trinity. We did not obtain that Corporation input on the monetary amount in time to meet AUSA Newman's schedule for OIG to take that into consideration.

In the afternoon of April 2, 2009, after the IG had spoken with AUSA Newman, Ms. Rosenberry, together with a member of Mr. Trinity's staff, Irshad Abdal-Haqq, met with members of OIG staff to review the facts and seek the Corporation's view on the monetary amount of any settlement. Special Agents Morales and Wingers set forth the relevant facts -- including highlights of Mr. Jacobs' March 16, 2009, letter -- provided them documents as requested, and told them that, if they wanted any other documents, they had only to ask. At no time did either request a copy of Mr. Jacobs's March 16th letter.[10]

After the IG's April 2, 2009, telephone conversation with AUSA Newman, he and his office suddenly ceased talking with OIG personnel about this case. He apparently did not like (i) our opposition to any settlement that voided the suspension without allowing the Debarment and Suspension Official to determine, based on evidence, including any contradictory evidence respondents would furnish, whether Johnson and the other respondents were sufficiently responsible to be trusted with more Federal funds, and (ii) our view that Mr. Jacobs' summary of what his witnesses said should not be the basis of triggering a settlement, without giving OIG Special Agents an opportunity to interview those witnesses (although, during their investigation, the OIG Agents asked St. HOPE's Attorney for the current addresses, the response had been that they were not known to St. HOPE). Instead, as we were informed late in the evening of April 2,

[10] The Corporation's General Counsel, who was **not** present at that meeting, subsequently accused OIG of withholding the letter and declined to reconsider when OIG pointed out to him that the letter was the subject of discussion at that meeting. Indeed, OIG agents present stated at the meeting that they thought it necessary to re-interview the Principal of PS7, who Mr. Jacobs wrote in his letter had told him that the AmeriCorps members had in fact performed tutoring -- contrary to what the Principal had previously told the Agents. In addition, they reported that, of the nine interviews on which Mr. Jacobs relied in his letter, the agents had interviewed only two (one member and the PS7 Principal) and they had provided information contradictory to Mr. Jacobs' interviews. The Agents also informed Ms. Rosenberry and Mr. Abdal-Haqq that they had told AUSA Newman that, if any weight was being given to those interviews, the Agents wanted to reinterview two of them and interview the others, but AUSA Newman had stated that he put no weight in those interviews by Mr. Jacobs.

2009, by e-mail from Mr. Trinity, AUSA Newman "reached out to [Mr. Trinity]," immediately following my advice to him of OIG's position on settlement, and AUSA Newman and Mr. Trinity agreed that AUSA Newman's "office will deal with [Mr. Trinity] as the point of contact." (Ex. 25). From that date, the United States Attorney's office started dealing solely with Mr. Trinity. [11]

On Monday, April 6, 2009, as OIG had promised AUSA Newman, OIG e-mailed him our seven page analysis of and response to Mr. Jacobs' March 16, 2009, letter (Ex. 26). We provided a copy of this letter to Corporation General Counsel, Mr. Trinity. Noting that "Mr. Jacobs concedes that St. HOPE cannot 'demonstrate through accounting records the specifics of how St. HOPE spent the grant monies'," OIG showed AUSA Newman why the explanations that Mr. Jacobs offered for that failure were without merit. First, as to AUSA Newman's assertion that it was normal for grantees not to have documentation, our letter pointed out that it was absurd to suggest that a Federal agency would overlook the absence of required financial documentation. Contrary to Mr. Jacobs' assertion that OIG, not St. HOPE, had the St. HOPE invoice documentation, OIG noted that OIG did not have the "contemporaneous invoices St. HOPE provided to" the California State Commission. Moreover, Mr. Jacobs' general assertions that St. HOPE generally did what it was supposed to do with the Federal funds failed for lack of support. Our letter pointed out that the grants did not set out general obligations, "but rather fix[ed] more specific objectives and methods to document the use" of the Federal funds.

Likewise, our letter pointed out that Mr. Jacobs failed to provide documentary support for his assertion that some tutoring had been done. The grant program required that a "Tutoring Log" be kept, but none was ever produced in response to OIG requests. OIG noted that Mr. Jacobs' reliance on "interviews" was misplaced because, while OIG obtained 26 interviews -- almost all of people in the Sacramento area -- Mr. Jacobs primarily relied on conversations with individuals from remote areas whom OIG could not interview because, as already noted, when OIG had asked for the current addresses of those individuals, St. HOPE's attorney said that that the information was not available. In addition, for all but two individuals, Mr. Jacobs did not

[11] While Mr. Trinity wrote in that e-mail that the U.S. Attorney would also continue to seek OIG's input, in fact the U.S. Attorney's office, once it had received Mr. Trinity's agreement to by-pass OIG, never again communicated with OIG and dealt solely with Mr. Trinity.

provide interviews of people OIG had talked to, and the interviews of those two individuals by OIG and by Jacobs were contradictory. Finally, Mr. Jacobs' reliance on a telephone conversation that he put into the text of an e-mail is hardly a procedure most conducive to obtaining the facts.

Later that day, Tuesday, April 6, 2009, the Corporation informed OIG of its evaluation of the claims against St. HOPE to OIG. In an e-mail to Supervisory Special Agent Morales, the Corporation's Office of Grants Management gave a value of $250,000 - $335,000, exclusive of penalties. Remarkably, the low figure is lower than the offer that St. HOPE had made.

G. The Settlement

Without informing OIG -- and without seeking OIG's input on the terms and provisions of the settlement agreement -- on April 9, 2009, the United States Attorney announced the settlement of the Government's claims against St. HOPE, Johnson and Gonzalez. Ex. 27. The Settlement Agreement was signed on behalf of the Government by AUSA Newman, William Anderson "Acting Chief Financial Officer and Debarment and Suspension Official on behalf of the Corporation for National and Community Service," and Frank R. Trinity "General Counsel on behalf of the Corporation for National and Community Service."

1. The Settlement Agreement Terms

The Settlement Agreement (Ex. 28) provided:

(i) St. HOPE would make an immediate payment of $73,836.50, and execute a stipulated judgment for an additional $350,000, to be paid $35,000 annually for ten years, plus 5% annual interest.

(ii) "to assist St. HOPE in paying" the initial $73,836.50 amount, Johnson agreed to pay St. HOPE $72,836.50 and Gonzalez agreed to pay St. HOPE $1,000.00 "in time for St. HOPE to make the Initial Payment . . . pursuant to the terms of this Settlement Agreement." Further, it provides that "Johnson and St. HOPE may enter into an agreement whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations."

(iii) "Johnson and Gonzalez shall register to take an on-line course offered by Management Concepts titled 'Cost Principles'" and "complete the course within 120 days . . . , and shall provide written verification under oath of having completed the course."

(iv) "The Corporation shall terminate the suspension of St. HOPE, Johnson and Gonzalez . . . " and "agrees not to institute debarment proceedings against" them "so long as they comply with their obligations under this Settlement Agreement."

(v) St. HOPE, but not Johnson and Gonzalez, "agrees that it may be considered a high-risk grantee by the Corporation for a period of two years."

(vi) "St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C §§ 547 (b)(3) and 548 (a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the $73,836.50."[12]

2. Analysis of the Settlement Agreement

Analysis of the Settlement Agreement makes clear that it was a rush job to paper a settlement, while failing to contain provisions to protect the Government's ability to receive even what, on the surface, it was supposed to receive:

(i) Johnson and Gonzalez were, as the Settlement Agreement recites, the President and Chief Executive Officer, and Executive Director, respectively of St. HOPE. Thus, they directed and were responsible for the misuse of Grant funds which led to the Settlement Agreement. Johnson is reported to be more than financially able to pay the full judgment due the Government. On the other hand, St. HOPE is, as discussed below, in poor current financial condition, to say the least. Moreover, as a not-for-profit entity, whatever assets it has and will have in the future are from grant funds and charitable contributions. Yet, except for the advance to St. HOPE of funds for St. HOPE's initial payment -- under a provision which allows Johnson to get it back from St. HOPE -- Johnson assumes no liability for the amount the Government

[12] The cited sections do not, in fact, define solvency, but instead deal with preferences. As the $73,836.50 was essentially an exchange transaction, which could have been accomplished as well by Johnson's and Gonzalez's payment directly to the Government on St. HOPE's behalf, it is questionable that this reference has any relevance, other than further wallpapering.

should be repaid. The effect is to penalize the charitable entity, not the people who misused it. If that charitable entity were not burdened by a 10-year obligation to repay, it could put those funds to use serving a community purpose. Penalizing the CEO would have properly penalized the person responsible for the misdirection of the charitable entity, without detracting from funds being directed for community purposes.

(ii) The Government received no guaranty of, or security for, the ten annual payments of $35,000 plus interest which was the only payment promised to the Government, in addition to the initial $73,836.50 payment. As discussed below, the facts known to the Corporation, when it signed the Settlement Agreement, make obvious that St. HOPE's financial condition permits no assurance that these amounts will be paid.

(iii) While Johnson and Gonzalez provided St. HOPE with respectively $72,836.50 and $1,000.00 so that St. HOPE could make its initial payment of $73,836.50, the Settlement Agreement permits Johnson and St. HOPE to "enter into an agreement whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations." Significantly, no time period is specified before St. HOPE may so agree, and no standards are set forth objectively to determine that condition; thus, there is no protection against St. HOPE's immediately paying it back to Johnson. That is particularly true given that the Agreement contains St. HOPE's warranty that it is currently solvent. And if St. HOPE repays Johnson and is thereafter unable to make any or all of the ten annual payments, the Government has no recourse against Johnson even to disgorge that repayment of $72,836.50.

(iv) St. HOPE agreed "that it may be considered a high-risk grantee by the Corporation for a period of two years" -- presumably burdening St. HOPE's ability freely to obtain grant funds. But St. HOPE, as an entity, does not act by itself as a robot; for it to have acted improperly, it had to have been directed by Johnson and Gonzalez, its CEO and Executive Director. Yet, those who directed the wrongdoing are authorized to seek and receive control over new Federal grant funds without any high-risk label.

(v) Johnson's and Gonzalez's agreement to "register to take an on-line course offered by Management Concepts titled 'Cost Principles'" is pure wallpapering. One of our leading Certified Public Accountants has advised that this course is designed primarily for accountants and those performing accounting and bookkeeping functions, not to train someone in ethical issues involving the misuse of funds for a purpose other than for which it was provided. A review of the course book (Ex. 29) requires that conclusion in the listing of the following "Learning Objectives:"

"•discuss factors affecting allowability of costs;

"•classify costs as typically direct or indirect;

"•determine the allowability of selected items of cost;

"•review grant application budgets to determine cost allowability;

"•analyze spending decisions to determine whether they are allowable;

"•gain insight into grant cost disallowances by exploring agency and court decisions."

As already noted, the misuse here did not involve accounting "cost principles," but the ethical misuse of Federal grant funds for personal use and benefit of the CEO, contrary to the specified purpose for which the grant funds had been provided.

(vi) The Corporation's acceptance of St. HOPE's warranty that "it is currently solvent . . . and will remain solvent following payment to the United States of the" $73,836.50 underlines the wallpaper nature of this Settlement Agreement.

First, the warranty that the payment of the $73,836.50 will not cause St. HOPE to become insolvent is meaningless. That payment could cause St. HOPE to become insolvent only if the payment came from St. HOPE's assets or, conceivably, if St. HOPE accepted a liability to repay that amount. The Settlement Agreement was written carefully to avoid either condition, and to allow St. HOPE to agree to repay Johnson only at an unspecified time in the future, *i.e.*, after St. HOPE's payment of the $73,836.50, thus making axiomatic that the payment could not make St. HOPE insolvent, if it were solvent before that payment. The Agreement, however, allows such repayment by St. HOPE to Johnson the following day or anytime thereafter.

Second, significantly, Johnson was not required to warrant St. HOPE's solvency or guarantee St. HOPE's payment of the full amount to be given to the Government.

Third, and most significant, the information provided by St. HOPE itself, known to the Corporation, casts overwhelming doubt on St. HOPE's solvency, its ability to continue as a "going concern" (the customary audit term), and establishes that St. HOPE is in such a precarious financial condition that it is highly unlikely that St. HOPE will ever pay the remaining $350,000 to the Corporation.

As the Settlement Agreement recited, St. HOPE's cash flow and current assets did not allow it to pay the $73,836.50 initial installment. Johnson and Gonzalez had to provide those funds.

Also, Mr. Johnson's attorney, in his March 16, 2009, letter, himself described St. HOPE's financial condition as "precarious." He recited that, as of January 31, 2009, St. HOPE had net assets of $2,943,700 and total debt of $1,876.620, with $1,502,762 of the total assets being "accounts receivable, which St. HOPE will likely not realize." Excluding that amount from the realizable assets results in more debt than assets, or insolvency. Even all the assets as listed are not available to St. HOPE to pay its debts: Johnson's attorney disclosed that "'the investments' category reflects a $1,122,642 endowment from a separate 501(c)(3) organization, the St. HOPE Foundation, in an account at Merrill Lynch" which "are controlled by the Foundation, not St. HOPE."

Further, Johnson's lawyer disclosed that, for the single month of January 2009, St. HOPE sustained a net loss of $57,750 and for the eight months ending January 31, 2009, St. HOPE sustained a new loss of $725,103, and described St. HOPE as "hemorrhaging cash at an alarming rate."

Clearly, continuation of this "hemorrhaging cash at [that] alarming return" in the future would make the Corporation's collection from St. HOPE even more dubious. And Johnson's attorney disclosed that St. HOPE's "projection shows that for each month between February and

June 2009, except for April, St. HOPE will sustain a net cash loss of between $50,808 and $91,739." Johnson's attorney therefore concluded that "it is readily apparent that St. HOPE will soon be completely out of cash, with little or no revenue to supplant the loss." He concluded that "for current purposes, the 'ending cash' accessible funds total for April 2009 is $38,139; May 2009 is -$12,669; and June 2009 is -$74,477" with "next fiscal year's projections look[ing] even worse" -- which, he then represents, project "ending cash' as really -$136,285 in July 2009 and -$632,171 in June 2010."

That reality makes the Corporation's release of Johnson and Gonzalez from their joint liability in return for this worthless judgment against St. HOPE a waste of a Corporation cause of action asset and, frankly, a farce.

(vii) As discussed below, the stated motivation for both the Corporation and the U.S. Attorney to rush into this settlement was to rescind the suspension of Johnson which precluded the City of Sacramento from receiving Federal grant funds. As already noted, the suspension procedure exists to protect Federal funds so that they are not entrusted into the control of someone who has, by his previous record with Federal funds, been shown not to be trustworthy. Thus, if the Corporation and the U.S. Attorney wanted to reconcile both the protections of the suspension procedure and the desire to allow the flow of Federal funds to Sacramento, they could have insisted that an independently appointed "Federal Funds Guardian" be appointed to review and safeguard the City's use of Federal funds, in place of the Mayor, until (and if) the Debarment and Suspension Official made a determination that the factual record presented to him warranted no suspension or debarment. While such provision might have been politically distasteful to Johnson, the responsibility of both the Corporation and the U.S. Attorney's Office was to protect Federal funds without regard to any impact -- favorable or unfavorable -- on Johnson's popularity. But, no such provision was even suggested by either the Corporation or the U.S. Attorney's Office.

* * *

If OIG had been allowed to provide our analysis of the Settlement Agreement before the Corporation rushed to sign it, our office would have provided the above objections. In fact, any

attorney, interested in protecting his/her client's interests, would have seen these same objections. But the Corporation rushed to execute the Settlement, rather than taking the time needed to obtain OIG's comments and thereby protect the interests of the Corporation and Federal taxpayers.

H. Media and Political Pressure for Settlement

Shortly after the Sacramento Bee endorsed Mr. Johnson for Mayor on October 19, 2008 (Ex. 30), the Sacramento Bee's weblog first suggested, on October 27, 2008 (Ex. 14), that the "U.S. Attorney should resolve St. HOPE and Johnson questions." That did not cause any material expedition of the U.S. Attorney's progress.

Suddenly, with the enactment of stimulus legislation, a well-orchestrated push to force a settlement, which would include the lifting of the suspension -- without Johnson's need to provide facts to contradict the grounds for the suspension -- commenced. On March 16, and 18, 2009, as noted, Mr. Johnson's attorney wrote two letters to AUSA Newman requesting such settlement and lifting of the suspension. On Sunday, March 21st, the Sacramento Bee headlined an article "Mayor's status may imperil Sacramento's Federal stimulus funds, lawyer says," and reported that, in a statement, Johnson "said he is confident the issue can be resolved quickly" (Ex. 18). On Tuesday, March 24, 2009, the Sacramento Bee published an editorial "AmeriCorps case needs resolution" and opined that "[t]his is a case where everybody would be better off if the nonprofit and the IG reach a repayment settlement for the errors and move on" (Ex. 31).[13] On April 1, 2009, the Sacramento Bee reported that "Sacramento Mayor threatens to sue over his suspension from receiving U.S. funds" (Ex. 33), quoting Johnson's attorney's letter of March 31, 2009, to the Debarment and Suspension Official, a copy of which had apparently been provided to the Sacramento Bee by Johnson's attorney's simultaneously with forwarding it to the Corporation. Finally, on April 3rd, the Sacramento Bee published another editorial that a "repayment settlement" should be reached (Ex. 34).

[13] Misstatements in this editorial prompted the IG to respond to defend the OIG. Ex. 32.

I. Serious Adverse Effects of this Rushed Settlement

Between August 7, 2008, when OIG made its referral to the United States Attorney's Office, through at least February 2009**,** there was no communication to the OIG that the U.S. Attorney's Office sought to expedite the review and conclusion. Indeed, our Agents' requests to expedite subpoena enforcement to obtain documents from St. HOPE were, to put it mildly, not handled in an expedited manner.

The only circumstance that changed was the sudden media and political pressure to settle the matter monetarily and lift the suspension. These pressures had the desired effect. OIG, which has the responsibility to ensure the non-fraudulent and non-wasteful use of Federal grant funds, and to protect Federal funds in the future from those who have shown lack of responsibility, was not diverted from its responsibility. But the U.S. Attorney's Office and the Corporation -- both of which also are duty-bound to protect Federal funds -- were detoured from that obligation.

The first hint was when the Acting U.S. Attorney described the suspensions as the "800 pound gorilla" obstacle to reaching a conclusion of OIG's referral to his office. Then, after it was made clear that OIG would not agree to any settlement that rescinded the suspensions without an evidentiary showing that convinced the Debarment and Suspension Official that his previous findings were not correct, the U.S. Attorney's Office stopped dealing with OIG and found a more pliant and sympathetic partner in Corporation management. As Nicola Goren, the Corporation's Acting CEO, said to the IG, in the presence of Mr. Trinity -- in response to the IG's comment that no facts have been presented to alter the findings made by the Debarment and Suspension Official (with the advice of Mr. Trinity) -- Mr. Johnson's lack of responsibility, as demonstrated in the findings, had to be ignored because the Corporation could not "stand in the way of Sacramento getting stimulus money." A similar statement was made by Acting U.S. Attorney Brown; "The lifting of the suspension against all parties, including Mayor Johnson, removes any cloud whether the City of Sacramento will be prevented from receiving much-needed federal stimulus funds" (Ex. 27). Significantly, neither the Corporation's Acting CEO nor the Acting U.S. Attorney ever suggested that the suspension was lifted because the evidence did not support the suspension decision made more than six months before on the basis of

specific findings of wrongdoing. They could not make such representation because the factual record before the Debarment and Suspension Official remained unaltered.

The decision by the Corporation and the U.S. Attorney to cut out OIG and agree to this Settlement Agreement was injurious to the Federal government as a whole and specifically to the Corporation and the hard-working and dedicated staff of the Office of Inspector General.

First, the settlement sends the signal that acceptance of a grantee or its principal as "responsible" can be purchased in a monetary settlement, overriding all evidence of wrongdoing previously found to warrant a suspension, without the presentation of any contradicting evidence. Settlement Agreements are supposed to settle the liability of the grantee and its principals for past wrongdoing. The Federal government created the suspension process to insulate all parts of the Federal government from providing Federal funds to those whose past conduct, with respect to any one agency, demonstrates that they are not sufficiently responsible to be awarded Federal funds from that agency or any other in the future. Reimbursing the Federal government for past irresponsible conduct, when caught, does not by itself provide evidence of responsibility in the future to handle Federal funds in a proper manner.

Second, as discussed above, the Settlement Agreement, poorly drafted (except as it was drafted to favor Johnson), provides no protection of the Corporation's interests. While papering it to appear, as the Sacramento Bee reported (Ex. 35), on April 9, 2009, that "Johnson and his nonprofit St. HOPE Academy have agreed to give back half of the $847,673 in federal grants it received," in fact that is false. Johnson is paying nothing; while he advanced $72,836.50 to St. HOPE for St. HOPE to pay its obligation under the Settlement Agreement, Johnson has no obligation to pay one cent of the grant-half touted to be paid back to the Corporation, and he can very promptly even obtain reimbursement from St. HOPE of the amount he advanced to St. HOPE.

Moreover, as discussed above, St. HOPE's financial condition is so precarious that it is unreasonable to count on St. HOPE to be able to make the ten years of payments provided by the Settlement Agreement.

In these circumstances -- and assuming *arguendo* that repayment of one-half of the Federal funds provided to St. HOPE (but not used as required by the grant terms) is an appropriate monetary settlement -- no attorney representing the interests of the Corporation should agree to that settlement without security or guaranties. It is obvious that leverage was on the side of the Corporation's attorneys, as Johnson badly wanted the settlement. Yet, the Corporation's attorneys accepted a settlement with no security or guaranties. In these circumstances, the touting of this settlement as monetarily in the Corporation's interests in that it will receive back one-half of what it provided to St. HOPE is an attempt to pull the wool over the public's eyes.

Likewise, as discussed above, Johnson's agreement to take a course for accountants and bookkeepers -- but not an ethics course -- is more wallpapering to fool the public.

If OIG had been consulted on this Settlement Agreement instead of being excluded, OIG would have pointed out these and the other obvious deficiencies discussed above in the Settlement Agreement. All of them make a mockery of the time, energy and money that OIG expended in performing its duty -- to investigate and bring to justice anyone who engages in fraud, waste and abuse of Federal funds.

That raises the third adverse impact of this Settlement Agreement. When the IG assumed the position of Inspector General, he told Corporation management and his staff that he believed the OIG existed to help the Corporation ensure that Congressional funds provided to it are in fact used for the Corporation's specified (and good) purposes, and are not wasted or fraudulently taken. To accomplish that end, the IG believed, and has so acted since then, in having frequent direct communication with Corporation management, and, absent some unique circumstance (which has not occurred), keep Corporation management informed of OIG activities, findings and recommendations. Until this episode, Corporation management has done the same.

While OIG and the Corporation have not agreed on all issues, we have openly discussed them and neither has shut the other out in full disclosure of what is intended to be done and in seeking the other's views before finalization.

What the Corporation did here in shutting OIG out of the finalization of an investigation and our audit section's review which OIG had, as normal procedure, totally controlled, unnecessarily tore asunder the trust OIG had in Corporate management.

But even worse, it has, understandably, adversely affected the morale, and attitude towards the Corporation, of the hard-working dedicated OIG staff. These men and women -- investigators and auditors -- have spent long hours investigating, reviewing, analyzing, and acting on the voluminous evidentiary record they created, and which caused the Corporation Debarment and Suspension Official to find that it created a sufficient record warranting suspension of St. HOPE, Johnson and Gonzalez. Also, they provided an evidentiary record to support criminal charges and/or full civil recovery against them. As detailed in the IG's April 6, 2009, letter to AUSA Newman, there could be no doubt that Gonzalez, whom Johnson delegated to sign required representations to the Government to obtain grant funds, made misrepresentations to obtain those funds; indeed, in interviews conducted by OIG agents, she admitted sufficient facts to support a criminal charge. These agents also provided more than sufficient evidence to establish that the grant terms were violated as to the full amount of grant funds St. HOPE received, and evidence that Johnson personally directed all of St. HOPE's activities, including particularly the use of AmeriCorps members. Such evidence would readily support the imposition of civil penalties to be paid directly to the U.S. Treasury of two to three times the amount of established damages under the Federal False Claims Act -- an amount that neither the Corporation nor the U.S. Attorney's Office even bothered to ask for or leverage in its so-called settlement negotiations with Johnson, Gonzalez, and the St. HOPE's lawyers.

The OIG staff rightfully feel that no good reason existed to sell their time and effort for a worthless settlement that "cleanses" the respondents' wrongdoing. And even more distasteful to them is that, after all they did on this matter, the U.S. Attorney and the Corporation shut them out from any input on, or knowledge of, the settlement until it was executed and publicly announced.

This was an exercise of, at least, terribly poor judgment by the Corporation and the United States Attorney's Office which, apparently, had another agenda -- not that of protecting Corporation grant funds.

Conclusion

As we indicated at the beginning of this report, we believe it is OIG's obligation under statute to report these matters to you. In addition, it is the IG's position that he does so because, as long as he is in this position, he will stand by OIG's hard working staff whenever they are improperly treated for doing their job, and doing it well.

The IG and members of OIG staff are available to discuss this with you or your staff, at your request. Please call the IG directly at (202) 606-9390.

Respectfully submitted,

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