

Final Jeopardy for Richard Cordray

Is the CFPB stonewalling?

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On April 5, 2017, Richard Cordray, the director of the Consumer Financial Protection Bureau, gave his semi-annual testimony before the House Financial Services Committee. Jeb Hensarling, the committee's chairman, [spent several minutes](#) grilling the former *Jeopardy!* champion on a passage about CFPB stonewalling in [my National Review article](#), *The Tragic Downfall of the Consumer Financial Protection Bureau*:

The unwritten policy [of the oversight unit's supervising attorneys] was "never give them what they ask for" ... Soon, a career professional in the unit who had resisted pressure to engage in witness coaching and other unethical practices was reprimanded for insubordination and reassigned. The inspector general investigated and issued a report to Cordray that concluded the reprimand was unwarranted and the supervisors had engaged in obstruction.

Cordray testified that the article was based on hearsay and opinion, and that he was uncertain which incident the excerpt described. The sparring continued until Hensarling revealed he knew little beyond what he'd read. The director then said he was unaware of any published report, and the chairman moved on.

Media stories about the hearing barely mentioned the exchange, but the reprieve was temporary. While the serious nature of the conduct uncovered by the investigation certainly warranted a published report, the inspector general, whose only other client is the Federal Reserve, had been reluctant to anger the bureau. The report was not just unpublished – it was camouflaged.

The passage in the article, like the additional facts below, was based not on hearsay, but rather on interviews with witnesses to, among other things, the presentation of the investigation's findings and recommendations. The facts are disturbing.

The career professional, X, had received glowing performance reviews and awards during many years of federal service. She and a former Democratic senate staffer were hired in 2013 to help the two oversight supervisors respond to document and information requests. The former staffer handled congressional inquiries, while X was assigned the less dangerous inspector general investigations. One of the supervisors often told X that Cordray berated her whenever inspector general reports included negative findings, and therefore any such findings would be considered X's failure.

In team meetings, the supervisors instructed both junior attorneys to construe requests as narrowly as possible, and encouraged them to summarize rather than produce original documents. For example, if

Congress or the inspector general requested certain emails, the attorneys should produce a spreadsheet selectively describing the messages, but not the actual emails. The supervisors attempted to shield themselves from liability with comments like “that’s what I would do, but it’s up to you.”

The supervisors also instructed the junior attorneys to prepare CFPB employees for investigators’ interviews by presenting possible questions and suggesting the interviewees’ answers; telling interviewees to intentionally misinterpret questions whose answers would reveal CFPB shortcomings; forbidding employees from bringing documents to interviews to refresh their memories (the investigators might request copies); and ordering interviewees not to name other employees who might help the investigators (the inspector general’s office was denied direct access to the CFPB’s intranet, which contained policies, procedures, and employees’ titles and contact information). The junior attorneys were to attend all interviews, and the supervisors would debrief the interviewees afterward.

The supervisors themselves engaged in witness coaching. For example, during a prep session for a 2013 investigation of the computer systems that protect consumers’ personal information collected by the CFPB, one of the supervisors instructed a senior technology employee not to tell investigators he had recommended security controls that the bureau had not implemented.

Frustrated that X was not following her “advice,” one of the supervisors ordered X to copy her on all project-related emails and include her in all telephone calls with document-producing employees. During one such call on December 2, 2013, the supervisor suggested an employee in the Consumer Response division provide a summary in lieu of requested documents. The employee privately told X he felt uncomfortable doing so, and produced the original documents. The supervisor was furious.

On January 10, 2014, X initiated a confidential meeting with the CFPB general counsel to express her concerns about the unethical and possibly illegal practices. When they met again on March 4, 2014, X said the problem had worsened and she would probably file a grievance against the supervisor. The general counsel discouraged the grievance, and then told the supervisor about the meeting.

Two days later, the supervisor slapped X with a formal reprimand. The general counsel sent the inspector general a copy and said that the insubordinate employee responsible for the CFPB’s slow document production had been dealt with. The next day, X asked the inspector general’s office to investigate the supervisors’ obstruction and the reprimand designed to cover it up, and subsequently filed a grievance.

The inspector general’s office conducted a thorough investigation and confirmed X’s allegations. On May 13, 2014, an associate inspector general sent a letter to one of the supervisors and the CFPB general counsel describing some of the most egregious practices. The office then issued the bureau “protocols” it would have to follow to prevent future obstruction. Shortly thereafter, senior officials from the office met with Cordray, the CFPB general counsel, and the two supervisors to discuss the investigation findings and protocols.

On June 2, 2014, the CFPB settled X’s grievance by expunging the supervisor’s reprimand and performance review from X’s record and transferring her out of the oversight unit. Like the consent orders signed by most CFPB enforcement targets, the settlement agreement included no admission of facts or wrongdoing, and made no mention of the inspector general’s investigation.

Based on my experiences as a staffer on the Financial Services Committee the following year, the bureau’s oversight unit never curbed its improper practices in congressional oversight inquiries.

Hensarling began the April 5 hearing by calling for the president to remove Cordray for cause, which the

law defines as “inefficiency, neglect of duty, or malfeasance in office.” The inspector general is likely to comply with congressional requests for documents and information regarding this matter.



Lawyer and published author, Rubin is currently taking time off to focus on writing. Formerly Senior Counsel and Chief Advisor, Regulatory Policy, on the staff of the House Financial Services Committee; Partner at Hunton & Williams; Enforcement Attorney at the Consumer Financial Protection Bureau; Senior Special Counsel at the US Securities and Exchange Commission; Managing Director at investment bank; and criminal prosecutor.