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OVERSIGHT OF THE INVESTIGATION OF THE NASA INSPECTOR GENERAL

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON SPACE, AERONAUTICS, AND RELATED SCIENCES

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON SCIENCE AND TECHNOLOGY UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

JUNE 7, 2007

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OVERSIGHT OF THE INVESTIGATION OF THE NASA INSPECTOR GENERAL

THURSDAY, JUNE 7, 2007

U.S. SENATE,
SUBCOMMITTEE ON SPACE, AERONAUTICS, AND RELATED SCIENCES,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT,
COMMITTEE ON SCIENCE AND TECHNOLOGY,
Washington, DC.

The Subcommittees met, pursuant to notice, at 2:09 p.m. in room SR–253, Russell Senate Office Building, Hon. Bill Nelson, Chairman of the Senate Subcommittee, presiding.

OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator NELSON. Good afternoon.

Welcome to this hearing, on a matter of serious concern to the respective committees on the misconduct, or alleged misconduct, of the NASA Inspector General. We want to make a special welcome to our colleagues from the House Science Committee and its Subcommittee on Oversight and Investigations: Chairman Bart Gordon, the Chairman of the full committee, Chairman Miller, the Chairman of the Subcommittee. I want to welcome our colleague from Florida, Congressman Feeney, who is sitting in for the Ranking Member, Jim Sensenbrenner; and, of course, our colleague here, Senator Hutchison, the Ranking Member on this subcommittee.

In April, we received the results of the Integrity Committee's investigation of the NASA Inspector General, Robert Cobb. That independent panel found that Mr. Cobb had abused his office and failed to maintain the appropriate appearance of independence from the agency he is charged with monitoring. Those are the conclusions of the Integrity Committee.

Based on these conclusions of the Integrity Committee, I joined Chairman Gordon and Chairman Miller in calling on President Bush to remove Mr. Cobb from office. My position has not changed. However, some of the conduct described in the Integrity Committee's report is so disturbing that it warrants additional investigation. I am particularly concerned with several specific instances of Mr. Cobb's misconduct:

First, in 2002, foreign computer hackers gained access to sensitive information on a NASA computer, including NASA's most ad-

vanced rocket engine designs, the worth of this information is estimated to be worth $1.9 billion. In such situations, Federal export control laws require notification to the U.S. State Department, but Mr. Cobb ignored the advice of his staff and repeatedly blocked attempts to notify the State Department, for fear that the disclosure would be embarrassing to NASA.

As Exhibit 3 shows, when the Department of Defense was finally asked about the impact of this incident, they reported that the information disclosed may allow our adversaries to develop larger and more accurate ballistic missiles. Who are those adversaries? Adversaries with regard to rocket design are almost any country, not the least of which are Russia, China, North Korea, and now Iran. You get the picture.

The second incident, in December 2004, and again in 2005, Mr. Cobb delayed execution of search warrants in criminal investigations after those warrants had been sworn by an assistant U.S. Attorney and were signed by a Federal judge. The question of obstruction of justice arises.

The third example, in June 2002, the Space Shuttle *Endeavor* was launched with one of the two required range safety systems inoperative. In order to launch, the launch criteria is that both must be operative. Despite the critical safety implications for NASA and the public, Mr. Cobb blocked a NASA OIG investigation of the incident, deferring, instead, to the Air Force, even when it became clear that the Air Force was not thoroughly investigating the matter.

NASA is unique among Federal agencies, its mission is to expand the boundaries of exploration, push the limits of technology, and broaden our understanding of our own planet and the universe. All of these activities carry considerable risk. In many cases risk that can jeopardize the lives of NASA employees, and, with regard to the range safety concerns, could jeopardize the populations of nearby cities on the east coast of Florida.

We've had too much experience with this, with mistakes in the past, and we have lost two Shuttles and 14 astronaut lives. First in 1986 and again in 2003. Investigators from those tragic events determined that a key contributor to the death of those 14 astronauts was a culture that discouraged employees from raising safety concerns.

With this history in mind, it's particularly important for NASA employees to know about concerns about safety, waste, fraud, and abuse, to know that all of that can be reported to a trustworthy inspector general, and have the full confidence that that watchdog will pursue each case thoroughly, professionally, and independently.

The investigations of the two Shuttle tragedies found that, instead of communication being a two-way street, it was from the top, down; and the top management was not receiving the information from the bottom, going up.

Under Mr. Cobb's leadership, the Office of Inspector General at NASA has become dysfunctional. Fear and mistrust permeate the office. More than half of the experienced professionals in the office have left since Mr. Cobb's arrival. The boundaries, or the firewalls, between the IG and the agency's management have been trampled.

The evidence shows us that these are not isolated instances, but that a pattern of misconduct continues even today. As recently as April the 10th, OIG employees raised new concerns about Mr. Cobb's independence from NASA management, and the NASA general counsel destroyed government records in a bungled attempt at damage control related to the Cobb investigation.

Whistleblowers, who rely on the OIG to voice concerns about agency operations, are unwilling to come forward, knowing that this IG will not respond favorably, and may even allow retaliation from management against them.

Congress depends on inspectors general as the first line of oversight at government agencies. That's the law. Without an effective inspector general at NASA, we have no choice but to increase the frequency and intensity of our own oversight activities.

With each new revelation, I am more convinced that the current dysfunction in the NASA OIG is unrecoverable under the current leadership. I am hopeful that the information learned today will be helpful in reconstituting an effective OIG at NASA after Mr. Cobb's departure.

Now, under the procedures that we have set up, each of the respective leaders here will have an opening statement, and I would turn to Chairman Bart Gordon, of the House Science and Technology Committee.

STATEMENT OF HON. BART GORDON, U.S. REPRESENTATIVE FROM TENNESSEE

Chairman GORDON. Thank you, Chairman Nelson. You know, it was 22 years since I was able to call you that, when you were Chairman of the Space Subcommittee in the House of Representatives. And so, I'm glad to refer to you as that again.

And, although this is not unprecedented, it's certainly unusual to have a joint hearing, which I think demonstrates, to the public and to NASA, that this a very serious issue, and that we take it very seriously, and we are very concerned that NASA is being compromised.

In 2002, Mr. Cobb took on a very difficult job when he agreed to sign up to be Inspector General. IGs are probably held to the highest standard of any office in government. The expectations of integrity are so high because the job we set for IGs is so challenging.

The purpose of the IGs, as stated in the 1978 Inspector General Act, is to act as effective watchdogs on agencies from the inside by creating independent and objective offices. Those offices are charged with recommending policies to promote efficiency and effective administration of government, and preventing—detecting fraud, waste, and abuse. It was expected that they would leave no stone unturned in searching for improper behavior.

It's impossible to do that job if there is even a hint of misconduct on the part of the IG. And the lack of independence is a sure sign of a lack of objectiveness. If you view yourself as part of an agency's management team, you can't be an effective check on that management team. And it's very clear that, from the very beginning, Mr. Cobb saw himself as a part of Sean O'Keefe's team.

Senator Grassley was to testify here today, and I would like to quote, at some length, from his testimony. Senator Grassley noted this, "I'm alarmed by the evidence uncovered by the PCIE investigation. In fact, it appears that Mr. Cobb did not act in a manner consistent with the spirit and intent of that statute. According to the evidence, he was used—he has used this important position to interfere in the activities and conduct conducted by the investigative and audit divisions within his office for reasons that appear, at the very least, improper. In fact, Mr. Cobb repeatedly told employees that one of his priorities was to avoid embarrassing NASA. Evidence also indicates that he shied away from bringing investigators against—investigations against high-level NASA officials."

Senator Grassley continues. This is Senator Grassley, "It is clear to me that our ability to trust Mr. Cobb to effectively manage the Office of Inspector General and the vital functions that it seeks to carry out is in question. It seems that Mr. Cobb may care more about protecting NASA from embarrassment than he does about performing the critical functions of his office. An Inspector General must possess temperance, high ethical standards, and a firm understanding of the independent nature of that office. From the evidence presented, Mr. Cobb does not appear to possess those attributes."

I want to concur, today, with Senator Grassley's comments. An IG has to conduct himself or herself in a way—in a fashion that Congress trusts them, that IG staffs believe in them, and that the whistleblower community relies on them. The current NASA IG has failed on every account.

Mr. Cobb, you've—you were chosen Inspector General not for your management skills or your experience in auditing, investigations, financial analysis, public administration, or any of the other skills that IGs, by statute, are supposed to possess; you were chosen to play ball with Sean O'Keefe. Because of that and your own actions, you have been highly unsuccessful as an Inspector General. I hope you will consider this, and, for the sake of yourself and for NASA, you will do the right thing, and you will resign.

I yield back.

Senator NELSON. Chairman Miller—and, of course, each of our statements will be put in, in full, in—your prepared statement, for the record, it will be a part of the record.

Chairman Miller?

STATEMENT OF HON. BRAD MILLER, U.S. REPRESENTATIVE FROM NORTH CAROLINA

Representative MILLER. Thank you, Senator Nelson. Good afternoon.

In January, the Integrity Committee of the President's Council on Integrity and Efficiency completed its investigation of allegations of misconduct by Robert "Moose" Cobb, the Inspector General of NASA. After a 6-month investigation, the PCIE found that Mr. Cobb had abused his authority and exhibited the lack of independence, or had exhibited the appearance of a lack of independence from NASA management. Those are violations of the quality standards for Federal Offices of the Inspector General established under

an executive order. The Integrity Committee said that discipline up to, and including, removal was appropriate.

After receiving the report, the majority leadership of the Senate Subcommittee on Space, Aeronautics, and Related Sciences, Senator Nelson, as well as the Chairman of the House Committee on Science and Technology, Mr. Gordon, and I all—called upon the President to remove Mr. Cobb as Inspector General of NASA.

Mr. Cobb remains in office. The findings of abuse of authority by the PCIE involve Mr. Cobb's abusive and degrading treatment of his staff resulting in massive staff turnover and affecting productivity. Mr. Cobb referred to his professional staffs as "Burons," Mr. Cobb's shorthand for "Bureaucratic Morons," and by other vulgar terms that I will not repeat here.

Rather than dwell on the abusive atmosphere created by Mr. Cobb and its effect on productivity, I want to make sure that the second finding, regarding the appearance of a lack of independence, receives the attention that it requires.

According to the official standards, inspectors general and their staff "have the responsibility to maintain independence so that opinions, conclusions, and recommendations will be impartial, and will be viewed as impartial by knowledgeable third parties." Mr. Cobb has utterly failed to do that.

Perception that Mr. Cobb lacked independence was set in motion during Mr. Cobb's hiring. Shortly after Sean O'Keefe moved from the Office of Management and Budget to NASA, Mr. O'Keefe, NASA's former Administrator, decided that he didn't like the previous NASA Inspector General. He went to the White House and demanded a new one. How Mr. Cobb was selected is not entirely clear, but what is clear is that Mr. O'Keefe personally chose his new Inspector General and established a regime in which Mr. Cobb was part of Mr. O'Keefe's team, and not the independent Inspector General required by law. As Mr. Cobb described it, "Mr. O'Keefe reached a conclusion that I would be the perfect person to conduct the independent Office of Inspector General activities."

Once at NASA, Mr. Cobb called Mr. O'Keefe his "boss," and said he was afraid he would be fired if he displeased Mr. O'Keefe. And why shouldn't he think that, since Mr. O'Keefe had been able to fire the previous NASA Inspector General and pick the new one?

According to some interviewed by the HUD IG staff, who carried out the PCIE investigation, Mr. Cobb was warned, from the beginning, about lacking an appearance of independence, but he ignored those warnings, and the Integrity Committee's record of investigation is full of evidence of his failure to maintain any shred of an appearance of independence.

Mr. Cobb asked NASA officials how to design the IG projects. A December 12, 2002, e-mail, for instance, asked NASA officials to discuss two proposed projects, "so we can take your views into account in designing our activities."

After the *Columbia* accident, there are questions about the independence of the O'Keefe-appointed Accident Investigation Board. Chairman Gordon was one of those asking questions. Mr. Cobb provided an unsolicited personal letter to Congress—unsolicited by Congress, at least—saying that, based on his observations, the Board was independent. But, before sending the letter to Congress,

Mr. Cobb sent a draft to Mr. O'Keefe for his review and comment. Mr. O'Keefe liked the letter a lot.

I could go on and on with more examples of the ways in which Mr. Cobb tried to make himself useful to his friends at the top of the agency, especially Mr. O'Keefe. But what is most important here is that Mr. Cobb is now totally ineffective in his job, and trusted by no one.

As he has made clear in his testimony today, his written testimony submitted in advance, Mr. Cobb has learned nothing from the PCIE investigation. He admits no wrong, he blames others for all of his problems. Mr. Cobb said, in this deposition, that if the current NASA Administrator, Mike Griffin, invited him to go play golf, he would love to go, "By all means, I'm going to go play if he asks. If he wants to invite me out to dinner, I think it would be perfectly appropriate for me to do so." He wants the same kind of relationship that he had with Mr. O'Keefe. Dr. Griffin, to his credit, apparently does not.

Mr. Cobb, you must leave. You have two clients: NASA and Congress. That is clear from the statute, from the Inspector General Act of 1978. That is clear from the quality standards for Federal Offices of Inspector General, which I hope every Inspector General would keep on their desk. Congress is your client, one of only two. It is apparent that Congress does not trust you.

The Committees of the House and the Senate that are responsible for oversight of NASA are sitting before you. All of us have called upon the President to fire you.

You have told our staff that you are afraid to talk to your own staff, because they twist your words. So, you are hiding from your own staff. As one of our witnesses said in written testimony, "Each IG must be willing to accept responsibility for his or her behavior, and acknowledge when their independence has been comprised, fairly or unfairly, and exit office gracefully."

Mr. Cobb, the work of the NASA IG is important. Mr. Cobb, you must leave to preserve what is left of the integrity of your office.

Senator NELSON. Senator Hutchison?

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Well, thank you, Mr. Chairman.

I certainly am pleased to be here with our House colleagues for this joint hearing.

I want to say that I have not called for Mr. Cobb's resignation, because I haven't heard from Mr. Cobb. And I do think that, regardless of how one feels about the allegations made against the NASA Inspector General, or the process by which the allegations were investigated, or the conclusions reached, the hearing certainly has been brought about because of a failure somewhere. The only thing that is—that we can say is that the hearing is part of examination and accountability that can help us find where the problems exist within our jurisdictional areas of responsibility, and how they can be addressed.

I have made no prejudgment. I am, of course, I have to say, very concerned about the nature of the allegations made against the Inspector General of NASA. Some of them, if true, represent conduct

that I find objectionable, and should be changed. However, I also believe it is only fair that the oversight hearing include Mr. Cobb. I think that it is going to be very important to hear the allegations, and then to allow him to respond.

Most of all, I have to say that this subcommittee must ensure that nothing within the NASA institutional structure, including the Office of Inspector General, is allowed to have a negative effect on the ability of NASA to carry out its programs efficiently and safely.

Those would be the primary concerns that I have. I have to apologize right now and say that I'm already late for a meeting that I cannot miss, so I will have to leave. But I will get all of the testimony of this hearing, and then will certainly be part of the collaboration about what should be done about it.

I've talked to Senator Nelson about the issue several times, and I appreciate that he postponed the hearing to try to make sure that we did have all the sides fairly represented, including Mr. Cobb.

So, thank you for that. And I will certainly look forward to our—exercising our responsibility for oversight correctly.

Thank you.

Senator NELSON. Congressman Feeney, standing in for Congressman Sensenbrenner.

STATEMENT OF HON. TOM FEENEY, U.S. REPRESENTATIVE FROM FLORIDA

Representative FEENEY. Well, I'm not sure anybody can stand in for Congressman Sensenbrenner under any circumstances, but it's a pleasure to be here with my Senator, Mr. Chairman, and also Chairman Miller and Chairman Gordon.

I'll be very brief. I want to echo Senator Hutchison's remarks that I have not prejudged this case. I'm interested in hearing from the witnesses, including the expert, Dr. Light, as to the appropriate role of Inspectors General, and look forward to hearing and reviewing the response from Mr. Cobb.

With that, I would like to ask for permission to enter into the record an opening statement from Congressman Sensenbrenner.

Senator NELSON. So ordered.

[The information previously referred to follows:]

PREPARED STATEMENT OF HON. F. JAMES SENSENBRENNER, U.S. REPRESENTATIVE FROM WISCONSIN

There is a line between good governance and interference, and I think we may have crossed it. Without commenting on the merits of any of the investigations, I note that Robert Cobb is one of four inspectors general (IGs) currently under investigation. These investigations are in addition to three investigations that recently forced IGs to resign. All seven of these investigations are in addition to the countless investigations of Executive Branch officials outside of the IG community. The current culture in Washington is becoming one of overzealous oversight.

Inspectors General are our agency watchdogs. Of course, these watchdogs need to be watched—accountability is a hallmark of good government—but when holding officials accountable is more about press releases than it is about fear of wrongdoing, oversight becomes more interference than benefit.

Endless investigations have consequences, even beyond the unnecessary expense to taxpayers. Congressional investigators demand that IGs act independently, but constant investigations undermine that independence. In drafting the Inspector General Act, Congress gave IGs substantial freedom to develop audits and conduct investigations. Congress clearly expected IGs to act independently and rely on their own judgment to determine an effective agenda. Constant investigations undermine

that independence. It is as if we have placed our IGs in front of a firing squad and told them to "speak freely."

One of today's witnesses, Professor Paul Light from New York University, recognized this problem and argued that IGs' agendas were detrimentally influenced by outside powers:

> Compliance monitoring not only generates a much greater volume of findings of failure . . . and thus more opportunities for credit claiming by the Congress and the Administration, but also produces recommendations for actions that are less expensive, more politically palatable, cleaner jurisdictionally, and faster to implement.

Frederick M. Kaiser, Paul C. Light, *Monitoring Government and the Search for Accountability* 23 (1993).

IGs already have the unenviable task of criticizing powerful agency heads, Congressional leaders, and the President, himself—this minefield is inherent in the geography of the IG Act—but the difficulty is compounded if we continue to perpetuate this culture of overzealous oversight.

Beyond the systemic damage it causes, investigations cripple the individual offices under investigation. Robert Cobb was under investigation by the Investigative Committee (IC) of the President Council for Integrity and Efficiency (PCIE) for over a year. As soon as that investigation was behind him, Congressional investigators began their own investigation. Throughout this entire period, NASA's Office of the Inspector General (OIG) has been in a state of uncertainty. Congress and the public have been unsure of whether the office is reliable, OIG staff has been unsure of the future of the office, and Mr. Cobb, himself, has been uncertain of his own future. Some investigations are, of course, necessary, but there are drawbacks, so they should not be undertaken lightly, and the conclusions should not be preordained.

Who would willingly enter this landscape? Endless investigations will, if they have not already, discourage public service. Congress demands that only the most highly qualified individuals serve as IGs, but constant investigations are making the positions ones that qualified individuals are wise to avoid. The job is simply too political and too unstable.

The balance between good Congressional oversight and overzealous investigations should be struck by examining the Executive Branch's processes for holding IGs accountable. Robert Cobb was not exonerated by the IC, but neither did the IC recommend his removal from office. The Subcommittee's Majority has been critical of NASA for discounting the IC's conclusions and formulating its own course of action, but the Majority has done the same thing. While the IC stopped short of recommending Mr. Cobb's removal from office, the Majority has ignored that recommendation and has been demanding his removal for months.

The Majority's second-guessing of the Administration's investigation is especially problematic because, while today's hearing is setting out to prove that Cobb must be removed from office, it is not examining the process that determined that he should not be. The Executive Branch should be given some leeway over its personnel. In the present case, the Administration conducted a costly and thorough investigation of Robert Cobb, NASA's Inspector General. A hearing that condemns the results of a decisionmaking process without considering the process itself, is fundamentally flawed. A hearing that examined the process by which IGs are investigated would have global benefits to the IG community and would eliminate many of the detriments caused by overzealous investigations. Examining the process may not produce bold headlines, but it does produce good government.

Senator NELSON. Now, as we have said, Senator Grassley had asked to be the first witness. And, at precisely the time this committee kicked off, he was called to a meeting with the minority leader, and, therefore, he cannot be here. His lengthy statement will be entered into the record.

But I would just read his concluding paragraph. And this is Senator Grassley, "So, in conclusion, I have some questions that I would like to pose to Mr. Cobb. In answering them, I hope he honestly places the mission of his office ahead of his self-interest. Mr. Cobb, do you believe that an Inspector General can continue to serve if he has lost the confidence of his staff and of Congress? Do you believe an Inspector General can continue to serve who has been found, by an independent investigation, to have abused his

authority? Do you believe an Inspector General can continue to serve if he is perceived as 'in the pockets' of the people he is supposed to investigate? Do you believe an Inspector General can continue to serve if he has acknowledged verbally abusing staff on numerous occasions? These would be my questions to Mr. Cobb. The honest answering of those questions should lead him to make a decision as to what is best for NASA and the American people."

Likewise, Mr. Kenneth Donohue, the Inspector General of the Department of Housing and Urban Development, who conducted the factual investigation into the allegations against Mr. Cobb, is unable to be with us today. He has submitted his written testimony, and, without objection, it will be entered into the record.

Finally, a procedural note for all the witnesses. It is the custom of the House Subcommittee that is represented here today to require sworn testimony from witnesses in oversight hearings. This is not our practice in the Senate Commerce Committee. However, witnesses are reminded of their obligations, under 18 U.S.C. 1001, to provide truthful testimony, and the penalties for failing to do so.

With that, if we could ask the first panel to come up, please, to the witness table.

The panel consists of Ms. Debra Herzog, Senior Attorney, Office of Inspector General, U.S. Post Office, former Deputy Assistant Inspector General for Investigations at NASA; Mr. Kevin Carson, Assistant Inspector General for Audits, Office of Inspector General, the Government Printing Office, former Assistant Inspector General for Audits in NASA; Mr. Lance Carrington, Deputy Assistant Inspector General of Investigations, Office of Inspector General, U.S. Postal Service, former Assistant Inspector General for Investigations at NASA; Ms. Danielle Brian, Executive Director, Project on Government Oversight; Dr. Paul Light, the Paulette Goddard Professor of Public Service, Robert Wagner School of Public Service, at New York University.

So, welcome, all.

Mr. Carson, we will start with you. All of your written statements will be entered into the record. We would like to have you give us your five-minute statements, and then we can get into the questions.

Mr. Carson?

STATEMENT OF KEVIN CARSON, ASSISTANT INSPECTOR GENERAL FOR AUDITS AND INSPECTIONS, OFFICE OF INSPECTOR GENERAL, GOVERNMENT PRINTING OFFICE AND FORMER DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITS, NASA

Mr. CARSON. Mr. Chairman, Members of the Committees, thank you for the opportunity to be here today to discuss my experiences while employed in the NASA Office of Inspector General.

Since March 2005, I have been employed as the Assistant Inspector General for Audits and Inspections at the U.S. Government Printing Office, Office of Inspector General, in Washington, D.C. Previously, I worked over 15 years, between August 1989 and March 2005, for the NASA OIG. While with the NASA OIG, I held a variety of audit positions, including Deputy Assistant Inspector General for Audits, Director of Audit Quality, Program Director for

Safety and Security Audits. Including my employment with the NASA OIG, I've spent approximately 27 years of my career in various Federal audit organizations.

I've been invited here today to provide testimony related to my time and experience in the NASA OIG, while working under the direction of NASA Inspector General Robert Cobb.

I request that my full statement be submitted for the record, and will answer any questions related to its contents.

In early 1999, the previous NASA Inspector General, Roberta Gross, upon the NASA Administrator stating that the agency's number-one priority was safety, appointed me to form a directorate whose specific mission was to audit safety and security issues within NASA. While forming the directorate with a small staff of auditors, the directorate quickly performed a series of audits and issued reports addressing various safety issues, primarily at NASA's manned spaceflight centers. Among the first reports issued by the directorate included safety concerns with Kennedy Space Center's payload ground operations, contractor safety requirements at Kennedy Space Center or Marshall Space Flight Center, Space Shuttle Program management safety observations, controls over the use of plastic films, foams, and adhesive tapes used in and around the Space Shuttle Orbiter vehicles, safety of lifting devices and equipment at Stennis Space Center.

The report on safety of lifting devices and equipment at Stennis resulted from a request by the NASA Associate Administrator for Safety and Mission Assurance. The audit identified significant safety issues related to lifting devices and equipment, and found that Stennis did not safely perform critical lifts of high-dollar items, such as space hardware, one-of-a-kind test articles, major facility components, or personnel. In addition, we found that operators and riggers were not properly trained and certified, operators used cranes with safety deficiencies, and crane maintenance and inspections were inadequate.

At the request of the House Science Committee, we performed an audit of safety related to Kennedy Space Center's payload ground operations, and found various materials used in processing facilities at the Kennedy Space Center consistently failed required tests for flammability resistance, and electrostatic discharge. These potentially hazardous materials included plastic films, foams, adhesive tapes used by payload processing personnel under the Center's payload ground operations contract. These materials have been used without approval of the Kennedy Safety Office since 1992. We also found that NASA had not identified, documented, and appropriately mitigated the risks of using these potentially hazardous materials, exposing personnel and flight hardware to increased risks. We also reviewed USA's controls over the plastic films, foams, and adhesive tapes used in and around Orbiter vehicles and other segments of the Space Shuttle, such as the solid rocket boosters, main engines, and found similar problems.

Each of the highlighted reports addressed potentially serious safety issues within NASA and within the Manned Spaceflight Program. I believe that the success of the safety and security directorate was directly attributable to the outstanding professionalism and work ethic of the managers and staff, and their collective dedi-

cation to the NASA mission. It also helped that the directorate's work was always supported by then-Inspector General Roberta Gross. Although we issued some controversial reports that were not always accepted by the agency, I always felt the directorate had the complete support of senior OIG management, including Ms. Gross.

On two occasions, in 1999 and 2001, the directorate received the OIG Audit Report of the Year Award. One of these reports, related to contractor safety requirements, was transmitted by the NASA Administrator to every NASA center director, who was directed by the Administrator to implement the recommendations at their respective centers.

In April 2002, Robert Cobb was appointed the NASA Inspector General. Although the Office of Audits initially continued to operate as previously, within 3 to 4 months there was a noticeable change. Specifically, there was considerably more involvement in writing, rewriting, and revising a lot of reports by the Inspector General. There was also considerable questioning of the audit results, with Mr. Cobb frequently not agreeing with the conclusions and recommendations in audit reports.

There was also what I would say was a general disrespect shown by Mr. Cobb, for auditors in particular. Mr. Cobb would often make comments like, "Anybody can perform an audit," or, when an auditor would mention something like "compliance with government audit standards," he would make the statement that, "The standards were only something for auditors to hide behind."

He also, on more than one occasion, mentioned to me that the safety audit directorate had produced nothing of value to the agency, that our audits were archeological digs, or that we were too far in the weeds.

It was also during this time period that Mr. Cobb appeared to be providing our reports to agency officials for review and comment, prior to official draft release, in order to determine whether the agency would agree with our findings and recommendations. One such occasion—on one such occasion, a proposed draft audit report on the International Space Station was provided to the NASA general counsel to review prior to official release. The NASA general counsel did not agree with a conclusion in the report related to the potential for NASA noncompliance with various international agreements on the ISS. Prior to the release of the report, the audit team was instructed to remove this section from the report, or the report would not be issued.

In instances like the previous one, if any of the senior audit managers were to disagree with Mr. Cobb or try to defend our conclusions and recommendations, we were subject to severe berating and profane language by Mr. Cobb.

In 2003—in January 2003, the Office of Audits was advised by Mr. Cobb that it would be merged with the Office of Inspections, and that all senior management positions in the reorganized office would be moved to NASA headquarters so that there could face-to-face accountability. Mr. Cobb frequently stated that he wanted these senior managers in Washington so that he could personally "choke them."

In February 2003, the Office of Audits was merged with the Office of Inspections into a new Office of Audits. As part of the reorganization, I was transferred to NASA headquarters and reverted to my former position as director of safety and security audits. It was made clear to me, by both the new AIGA and his deputy, that Mr. Cobb never expected any of the senior managers, like me, who were located at field centers, to accept the transfer to headquarters. The new AIGA even mentioned that Mr. Cobb now had me where he could "choke me."

After arriving at headquarters in April 2003, I had even more contact with Mr. Cobb. It was also during this time that the *Columbia* accident occurred, and the investigation of its cause had begun. As the Director of Safety and Security Audits, my directorate assumed a large role in directing the work of the OIG related to the recommendations of the *Columbia* Accident Investigation Board, which published its final report in August 2003. In response to the CAIB report, I compiled a plan to review the agency's implementation of most of the recommendations. In addition, I was authorized to hire additional technical staff to assist with the work to be performed.

It was also during this period that Mr. Cobb began further interference with the work of the directorate through either constant rewriting of products or attacking the work of the staff and technical experts, to the point where findings and recommendations were either never officially issued to the agency or were issued unofficially by Mr. Cobb to various agency officials, and, thus, never posted publicly to the NASA OIG website.

I have provided examples of such issues in my prepared statement, including findings developed, but never issued, related to the organizational safety recommendations of the CAIB and the failure of the backup Command Destruct System during a 2002 Space Shuttle launch. In response to these issues, Mr. Cobb made statements such as, my staff had spent almost a year reviewing the independent technical authority and safety organizational recommendations of the CAIB, "yet had nothing to show for it," or, with respect to the Command Destruct failure, that it "was the Air Force's problem." There were numerous other——

Senator NELSON. Mr. Carson, I need you——

Mr. CARSON. I'm sorry.

Senator NELSON.—to wrap up.

Mr. CARSON. In summary, by constantly rewriting and—writing and rewriting audit reports, not allowing audits of potentially controversial issues to be performed or reports of completed audits to be publicly issued, constantly denigrating the audit staff in public and in private, intimidating auditors and staff through the use of verbal threats, foul language, and intimidating gestures, Mr. Cobb showed that he lacked independence from agency officials and was willing to go to any length not to issue audit reports that would embarrass the agency. In my opinion, he clearly created and endorsed a hostile work environment.

Thank you. And I would be pleased to answer any questions.

[The prepared statement of Mr. Carson follows:]

PREPARED STATEMENT OF KEVIN J. CARSON, ASSISTANT INSPECTOR GENERAL FOR AUDITS AND INSPECTIONS, U.S. GOVERNMENT PRINTING OFFICE AND FORMER DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDITS, NASA

Mr. Chairmen and Members of the Committees:

Thank you for the opportunity to be here today to discuss my experiences while employed in the NASA Office of Inspector General (OIG).

Since March 2005, I have been employed as the Assistant Inspector General for Audits and Inspections at the U.S. Government Printing Office, Office of Inspector General in Washington, D.C. Previously, I worked over 15 years (August 1989 to March 2005) for the NASA OIG. While with the NASA OIG, I held a variety of audit positions including Deputy Assistant Inspector General for Audits, Director of Audit Quality, and Program Director for Safety and Security Audits. Including my employment with the NASA OIG, I have spent approximately 27 years of my career in various Federal audit organizations.

I have been invited here today to provide testimony related to my time and experience in the NASA OIG while working under the direction of NASA Inspector General Robert Cobb. In order to talk about this time period, I must first discuss my experience with the organization prior to Mr. Cobb's appointment in April 2002.

NASA OIG Prior to 2002

In early 1999, the previous NASA Inspector General Roberta Gross, upon the NASA Administrator stating that the agency's Number One Priority was "Safety," appointed me to form a directorate whose specific mission was to audit safety and security issues within NASA. While forming the directorate with a small staff of auditors, the directorate quickly performed a series of audits and issued reports addressing various safety issues primarily at NASA's manned space flight centers. Among the first reports issued by the directorate included:

- IG–00–028 Safety Concerns with Kennedy Space Center's Payload Ground Operations, March 30, 2000;
- IG–00–035 Contractor Safety Requirements at Kennedy Space Center and Marshall Space Flight Center, June 5, 2000;
- IG–01–017 Space Shuttle Program Management Safety Observations, March 23, 2001;
- IG–01–034 Controls Over the Use of PFA's In and Around the Space Shuttle Orbiter Vehicles, August 31, 2001; and
- IG–01–042 Safety of Lifting Devices and Equipment at Stennis Space Center, September 28, 2001.

During the first 2 years the directorate was in existence, we also issued several other reports related to issues such as controls over Foreign National Visitors at NASA Centers, Management and Administration of International Agreements at NASA, and NASA Oversight of Contractor Exports of Controlled Technologies. The directorate was also responsible for audits of classified NASA Programs and Projects.

Some of the highlights of the reports issued included the report on Safety of Lifting Devices and Equipment at Stennis which resulted from a request by the NASA Associate Administrator for Safety and Mission Assurance. The audit identified significant safety issues related to lifting devices and equipment and found that Stennis did not safely perform critical lifts of high-dollar items such as space hardware, one-of-a-kind test articles, major facility components, or personnel. In addition, we found that operators and riggers were not properly trained and certified, operators used cranes with safety deficiencies, and crane maintenance and inspections were inadequate.

At the request of the House Science Committee, we performed an audit of safety related to Kennedy Space Center's Payload Ground Operations and found that various materials used in processing facilities at the Kennedy Space Center consistently failed required tests for flammability resistance and electrostatic discharge. These potentially hazardous materials included plastic films, foams, and adhesive (PFAs) tapes used by payload processing personnel under the center's Payload Ground Operations Contract. These materials had been used without approval of the Kennedy Safety Office since 1992. We also found that NASA had not identified, documented, and appropriately mitigated the risks of using these potentially hazardous materials, exposing personnel and flight hardware to increased risks.

On the audit of the United Space Alliance's (USA's) safety procedures under NASA's Space Flight Operations Contract (SFOC), we reviewed the oversight of USA's safety procedures for the Space Shuttle Program at the Lyndon B. Johnson

Space Center (Johnson). We found that the Johnson Safety, Reliability, and Quality Assurance Office (Johnson Safety Office) was not providing the required support to the Space Shuttle Program Safety Manager, for oversight of USA's safety activities. We also found that NASA's contractor surveillance plans do not address all SFOC requirements for safety; and USA's reporting to NASA of close calls and mishaps needed improvement. We concluded that NASA did not have adequate management controls in place to ensure (1) effective oversight of USA's safety operations under the SFOC, (2) better control over $13 million in annual Space Shuttle Program funds provided to the Johnson Safety Office, and (3) that adequate corrective actions are taken on all safety mishaps and close calls. This report and its results were discussed in the August 2003 *Report of the Columbia Accident Investigation Board* in Chapter 7, "The Accident's Organizational Causes."

We also reviewed USA's controls over the use of plastic films, foams, and adhesive tapes (PFA's) used in and around the Orbiter vehicles and other segments of the Space Shuttle such as the solid rocket boosters and main engines. We found that USA was routinely using in and around the Space Shuttle Orbiter vehicles, PFA's that had no record of being tested to ensure that the PFA's met NASA standards for flammability resistance, electrostatic discharge (ESD) rate, or compatibility with rocket fuel. In addition, neither Kennedy Space Center nor USA safety personnel had approved the use of these materials, thereby creating a potential safety hazard to personnel, the Orbiter vehicles, and other flight hardware and equipment.

Each of the highlighted reports addressed potentially serious safety issues within NASA and within the manned spaceflight program. I believe that the success of the Safety and Security Directorate was directly attributable to the outstanding professionalism and work ethic of the managers and staff and their collective dedication to the NASA mission. It also helped that the directorate's work was always supported by then-Inspector General Roberta Gross. Although we issued some controversial reports that were not always accepted by the agency, I always felt that the directorate had the complete support of senior OIG management including Ms. Gross. Further highlights from the initial years of the directorate included on two occasions, in 1999 and 2001, the directorate received the OIG Audit Report of the Year Award. One of these reports related to Contractor Safety Requirements and was transmitted by the NASA Administrator to every NASA Center Director, who was directed by the Administrator to implement the recommendations at their respective centers.

In late 2001, I was selected to be the Deputy Assistant Inspector General for Audits. In this position, I had four audit directorates that reported to me including the Safety and Security Directorate. The directorate continued to produce high-value audit products.

April 2002 to March 2005

In April 2002, Robert Cobb was appointed the NASA Inspector General. Although the Office of Audits initially continued to operate as previously, within 3 to 4 months there was a noticeable change. Specifically, there was considerably more involvement in writing, rewriting, and revising audit reports by the Inspector General. There was also considerable questioning of the audit results with Mr. Cobb frequently not agreeing with the conclusions and recommendations in audit reports. There was also what I would say was a general disrespect shown by Mr. Cobb for auditors in particular. Mr. Cobb would often make comments like "anybody can perform an audit" or when an auditor would mention something like compliance with government audit standards, he would make the statement that he had read the government audit standards and that all they were was "something for auditors to hide behind." He also on more than one occasion mentioned to me that the safety audit directorate had "produced nothing of value to the agency," that our audits were "archaeological digs" or that we were "too far in the weeds."

It was also during this time period that Mr. Cobb appeared to be providing our reports to agency officials for review and comment prior to official draft release in order to determine whether the agency would agree with our findings and recommendations. On one such occasion, a proposed draft audit report on the International Space Station (ISS) was provided to the NASA General Counsel to review prior to official release. The NASA General Counsel did not agree with a conclusion in the report related to the potential for NASA noncompliance with various international agreements on the ISS. Prior to release of the report, the audit team was instructed to remove this section from the report or the report would not be issued.

In instances like the previous one, if any of the senior audit managers were to disagree with Mr. Cobb or try to defend our conclusions and recommendations, we were subject to severe berating and profane language by Mr. Cobb. During these tirades about audits and auditors, I never once saw Mr. Cobb's Deputy Inspector

General ever support the audit staff or the rationale for their conclusions even though they were clearly supported by audit evidence. In fact, Mr. Cobb's Deputy often made matters worse for the Office of Audits despite having been an auditor himself for many years.

2003 Audit Reorganization

In January 2003, the Office of Audits was advised by Mr. Cobb that it would be merged with the Office of Inspections and that all senior management positions in the reorganized office would be moved to NASA Headquarters so that there could be "face-to-face accountability." Mr. Cobb frequently stated that he wanted these senior managers in Washington so that he could personally "choke them."

In February 2003, the Office of Audits was merged with the Office of Inspections into the Office of Audits. The new Assistant Inspector General for Audits (AIGA) selected to head up the new organization was the previous Assistant Inspector General for Inspections who had no experience either performing audits or managing any type of audit organization. The previous AIGA was placed in the position of Deputy AIGA.

As part of the reorganization, I was transferred to NASA Headquarters and reverted to my former position as Director of Safety and Security Audits. It was made clear to me by both the new AIGA and his deputy that Mr. Cobb never expected any of the senior managers like me, who were located at field centers, to accept the transfer to Headquarters. The new AIGA even mentioned that Mr. Cobb now had me where he could "choke me."

After arriving at Headquarters in April 2003, I had even more contact with Mr. Cobb. It was also during this time that the *Columbia* accident occurred and the investigation of its cause had begun. As the Director of Safety and Security Audits, my directorate assumed a large role in directing the work of the OIG related to the recommendations of the *Columbia* Accident Investigation Board (CAIB) which published its final report and recommendations in August 2003. In response to the CAIB report, I compiled a plan to review the agency's implementation of most of the recommendations. In addition, I was authorized to hire additional technical staff to assist with the work to be performed.

It was also during this period, that Mr. Cobb began further interference with the work of the directorate through either constant rewriting of products or attacking the work of the staff and technical experts to the point where findings and recommendations were either never officially issued to the agency or were issued unofficially by Mr. Cobb to various agency officials and thus never posted publicly to the NASA OIG website.

CAIB Organizational Recommendations

There are several instances of the stifling or covering up of audit results by Mr. Cobb that I can provide. For example, my staff and I were responsible for reviewing all agency actions and plans related to the organizational safety recommendations of the CAIB, specifically, (1) the establishment of an Independent Technical Engineering Authority (ITEA), and (2) straight line authority and funding for the Space Shuttle Program safety organization.

On at least three different occasions beginning in December 2003, my staff prepared audit reports basically concluding that NASA was not establishing the ITEA or Space Shuttle Program safety organization in the manner intended by the CAIB. Specifically, we stated that NASA had not fully achieved the reporting and funding independence for either function recommended by the CAIB. We concluded that Technical Warrant Holders—those individuals the NASA Chief Engineer empowered to ensure compliance with technical standards and requirements, lacked independence from major program influences. We further stated that NASA's plans to strengthen safety functions did not provide for a safety official at the centers to be accountable to the head of safety at NASA Headquarters. Based on the structure the agency was proposing, we concluded that the individuals ultimately held accountable for ITEA and safety would be subject to cost, schedule, and other pressures from the same program they would be responsible for independently assessing.

Despite drafting three reports with basically this same message over a period of 15 months, Mr. Cobb refused to release any of them. On a couple of occasions, these issues were addressed in either a letter signed by Mr. Cobb or an e-mail sent by Mr. Cobb to selected NASA officials.

On October 6, 2004, during my monthly Directorate briefing, the subject of this review was brought up and Mr. Cobb stated that my staff had spent almost a year reviewing the ITEA and Safety recommendations of the CAIB yet "had nothing to show for it." When I reminded Mr. Cobb that my staff had prepared three separate

audit reports that he chose not to issue, he stated that he was not satisfied with the message of the reports. I defended the work of my staff and stated that the reports were right on the issue and that they should be issued. I subsequently have been told that the current NASA Administrator made several of the organizational changes with safety and the ITEA that we had recommended in our reports despite the fact that they were never issued.

Cape Canaveral Air Station Command Destruct

During October 2004, my Directorate also received a referral from the NASA OIG Office of Investigations concerning a "potential safety issue involving command destruct" at the Eastern Test Range of Cape Canaveral Air Station. The allegation concerned a possible safety violation that occurred in conjunction with a launch of the Space Shuttle in 2002. Specifically, that during the June 5, 2002 launch of the Space Shuttle, the Commander of the Eastern Range overruled the "No-Go" recommendations of the Air Force's Mission Flight Control Officer (MFCO) and Chief of Safety and proceeded to declare the range "Go" for launch of the Space Shuttle. The reason for the "No-Go" recommendations of the MFCO and Chief of Safety was that there was a failure of the backup Command Destruct System which was not certified as mission capable prior to launch as required. The original allegation had been referred to the NASA OIG by the U.S. Air Force Inspector General in August 2003. After reviewing the allegation for any potential criminal violations, the Office of Investigations referred it to audits and my directorate because of the potential safety issues involved with the allegations.

Upon assigning this issue to a member of my staff, who was an Air Force officer with an extensive safety background, it quickly became apparent that there was substantial merit to the allegation and that the sequence of events, where the Range Commander overruled the MFCO and Chief of Safety and declared the range go for launch despite a less than fully certified Command Destruct System, was unprecedented. To verify that this situation did in fact occur, a total of 9 witnesses were interviewed who were present on console for the launch. We also reviewed various launch-related records. Since the NASA firing room and the range control center are not co-located, the NASA Launch Director and Mission Management Team Chair at the time relied solely on the Go recommendation of the Eastern Range Commander without any NASA independent verification. Both of these individuals also stated that they would not have launched had they known that the Air Force MFCO and Chief of Safety were "No-Go" for launch.

Upon completion of our preliminary work, my staff and I arranged to brief Mr. Cobb on February 23, 2005 on the results of our review to include the work remaining to complete the review and what our preliminary recommendations to NASA would be. The staff and I had previously met with Safety Officials at Kennedy in January 2005 and had obtained their agreement with our proposed recommendations. We received complete concurrence with our primary recommendation that NASA Safety must positively verify the Eastern Range status and range configuration prior to every launch. At the briefing on February 23, 2005, I was promptly told by Mr. Cobb at the completion of the briefing that this situation "was the Air Force's problem." While reporting of this situation would have been controversial to the agency, it was not a surprise to me that Mr. Cobb would not allow any further work on this assignment to be performed. I am unaware whether this situation concerning launches has ever been addressed or corrected.

Other Instances

While I have discussed the above two instances where my directorate was either interfered with by Mr. Cobb, not allowed to complete work, or not allowed to issue reports, there were numerous other examples of this type of behavior throughout my directorate or throughout the Office of Audits. For example, despite allegations of the possible NASA misuse of funds appropriated by Congress for security at Federal Agencies subsequent to September 11, I was told by the Assistant Inspector General for Audits that Mr. Cobb would not allow an audit of that area because it would only serve as an "archaeological dig" and would be embarrassing to NASA.

In another instance, an audit report was drafted by my Directorate addressing noncompliance at Kennedy Space Center with the Occupational Safety and Health Administration's (OSHA) Process Safety Management (PSM) standard. The draft report discussed the lack of PSM procedures for the transportation of highly hazardous chemicals via the Kennedy railroad. Specifically, neither the United Space Alliance (USA) nor Space Gateway Services (SGS) had developed PSM procedures for the railroad transportation of Space Shuttle solid rocket motor segments (which contain ammonium perchlorate) and nitrogen tetroxide (which was transported on behalf of the U.S. Air Force). Neither contractor believed that they were responsible

for the PSM program of the railroad and neither believed that the PSM standard applied to Kennedy railroad operations. The report illustrated the need for PSM procedures related to the railroad by discussing several railroad mishaps that had occurred over the previous 3 years. After reviewing the report, Mr. Cobb stated that the report was "based on a flawed premise" and directed that the report be rewritten to address the need for improved oversight and safety procedures for the KSC railroad itself, including inspections and maintenance of the railcars and the track. This direction required additional work by the audit team despite the fact that sufficient work related to the PSM issued had already been performed. Due to the change in direction of the assignment by Mr. Cobb, the OIG was not involved in any further actions related to PSM as it applies to the Kennedy railroad.

Conclusion

In summary, by constantly writing and re-writing audit reports, not allowing audits of potentially controversial issues to be performed or reports of completed audits to be publicly issued, constantly denigrating the audit staff in public and in private, intimidating auditors and staff through the use of verbal threats, foul language and intimidating gestures, Mr. Cobb showed that he lacked independence from agency officials and was willing to go to any length not to issue audit reports that would embarrass the agency. In my opinion, he clearly created and endorsed a hostile work environment. Thank you, and I would be pleased to answer any questions.

Senator NELSON. Ms. Herzog?

STATEMENT OF DEBRA HERZOG, SENIOR ATTORNEY, OFFICE OF THE INSPECTOR GENERAL, U.S. POSTAL SERVICE AND FORMER DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, NASA

Ms. HERZOG. Good afternoon. Messrs. Chairmen and Members of the Committees, I appreciate the opportunity to be here today to share my experiences on—as former Deputy Assistant Inspector General for Investigations under Inspector General Robert Cobb.

I began my Federal career 20 years ago—over 20 years ago, in 1983, as an assistant U.S. Attorney. I served in U.S. Attorneys' offices in such positions as chief of the narcotics section, regional coordinator of the Organized Crime Drug Enforcement Task Force, public corruption and white-collar crime chief, chief of major investigations. I also served on details with the Department of Justice and with the United States Customs Service. In the 4 years before joining NASA, I was Senior Advisor to the Assistant Commissioner in the Office of Internal Affairs at the United States Customs Service.

In November 2004, I was selected by Inspector General Robert Cobb as the Deputy Assistant Inspector General for Investigations at the NASA OIG. I served in that position until December of 2005, when I joined the U.S. Postal Service Office of Inspector General as a senior attorney.

My testimony today summarizes my experiences and observations during my tenure at the Office of the Inspector General at NASA.

During my pre-employment interview with Mr. Cobb, he expressed his unhappiness with management in the Office of Investigations, stating, "The investigators needed a grownup to supervise." I accepted the position, with the impression that Mr. Cobb wished to improve the quality of work at the NASA OIG, and believed that I would be instrumental in that effort.

One of my early experiences with Mr. Cobb was so disturbing that I considered leaving the OIG almost immediately afterwards. At a scheduled weekly meeting, Mr. Cobb, in front of his deputy

and my supervisor, berated me concerning a word in a letter. In an ensuing monologue, loudly peppered with profanities, Mr. Cobb insulted and ridiculed me. After the meeting, I told Mr. Cobb, one-on-one, that I did not expect my superior to use profanity, that the use of profanity was unacceptable, and I would not tolerate profanity. Mr. Cobb listened and gave me no indication if he agreed or disagreed. In the months to come, however, I regularly observed and heard of Mr. Cobb using profanity to berate and demean employees.

Mr. Cobb also exhibited a consistent lack of understanding of Federal law enforcement. In two cases approximately 6 months apart, Mr. Cobb was notified several hours before NASA OIG agents and FBI agents were to execute search warrants at NASA properties. Mr. Cobb said he would not allow the warrants to proceed before reading the affidavits, despite the fact that the responsible OIG supervisor had approved the warrants. The assistant United States Attorney assigned to the case thought the warrants were fine, and the warrants were signed by a United States magistrate judge. After reading the warrants, Mr. Cobb's opinions included: there was no probable cause, the assistant U.S. Attorney was stupid, and the NASA agents must have hoodwinked the magistrate. Mr. Cobb was also overly concerned about the possible reaction of NASA senior management. Finally, after much discussion, Mr. Cobb reluctantly allowed the agents to execute the warrants.

During my short tenure at NASA, at least five other warrants were issued and executed in locations other than NASA properties. Mr. Cobb did not express any interest in those affidavits or warrants.

The incident that convinced me that I could no longer be effective in my job occurred in August 2005. Mr. Cobb directed a case accepted for civil prosecution by the United States Attorneys Office in the Central District of California be withdrawn pending a review of the investigation at OIG headquarters. In my 17 years as a Federal prosecutor, I had never seen that done. Mr. Cobb claimed he was not aware that the case had even been presented to the U.S. Attorneys Office; however, a biweekly reporting document provided to Mr. Cobb in June proves otherwise.

Subsequently, Mr. Cobb claimed that the NASA special agent in charge of the case who wrote the withdrawal letter was trying to "set him up." The assistant U.S. attorney, however, had endorsed the work of the case agent, the case preparation, and the investigative report. Yet, in a subsequent meeting about the case, Mr. Cobb leaned over his desk, just feet from my face, his face red, his fists clenched, and screamed, at the same time slamming his hand down on the desk so hard that I jumped. "You know as well as I do that this report is a blanking piece of blank."

In closing, Mr. Cobb's arrogance, bullying style, and questionable independence limit his ability to lead the NASA OIG, and, in turn, has demoralized the NASA workforce. As an example, a recently hired employee, after only 2 days at the NASA OIG, called the agency she left, requesting her old job back, because most of her staff spent a good portion of the workday looking for a way out.

I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Herzog follows:]

PREPARED STATEMENT OF DEBRA HERZOG, SENIOR ATTORNEY, OFFICE OF INSPECTOR GENERAL, U.S. POSTAL SERVICE AND FORMER DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, NASA

My testimony relates to my experiences and observations while in the employ of the NASA Office of the Inspector General (NASA OIG). I was the Deputy Assistant Inspector General (DAIGI) for Investigations at the NASA OIG from November 29, 2004 through December 11, 2005. For more than half that period, I was Acting Assistant Inspector General (DAIGI) for Investigations.

I began my Federal career in 1983 at the U.S. Attorney's Office in the Eastern District of Missouri. In 1986, the U.S. Attorney appointed me to the position of Chief of the Narcotics Section and Regional Coordinator for the Organized Crime Drug Enforcement Task Force; one of thirteen regional coordinators nationwide. I held that dual position until my transfer to the Southern District of Florida in July 1990.

I transferred into the Southern District of Florida as a Supervisory Assistant U.S. Attorney. During my 8 years there, I held several supervisory positions in the Ft. Lauderdale Branch Office, including White Collar Crime/Public Corruption Chief, Chief of Major Investigations and Acting Managing Assistant U.S. Attorney. I supervised anywhere from 6 to 12 attorneys as a section chief, and approximately 40 attorneys and 20 support staff personnel while Managing Assistant.

In 1998, I accepted a one-year detail to the Department of Justice Campaign Financing Task Force in Washington, and then another year's detail to the Office of Internal Affairs at the United States Customs Service. At the conclusion of that detail, I accepted the position of Senior Advisor to the Assistant Commissioner, Office of Internal Affairs. As such, I assisted in supervising investigative activity of over 120 Federal agents in up to twenty field offices. The agents investigated allegations of criminal conduct and serious administrative misconduct by Customs employees.

I am currently a Senior Attorney at the U.S. Postal Service Office of Inspector General.

Mr. Cobb selected me as the Deputy Assistant Inspector General (DAIGI) for Investigations in late 2004. When I began working at the NASA OIG, Lance Carrington was Assistant Inspector General (AIGI) and my immediate supervisor. During my pre-employment interview Mr. Cobb, the Inspector General (IG) expressed his unhappiness with management in the Office of Investigations (OI), stating, "They need a grown-up back there." I accepted the position with the impression that Mr. Cobb wished to improve the quality of the work and believed I would be instrumental to that effort.

During my first weeks at the NASA OIG, I endured an episode so disturbing that I considered leaving the OIG. At a regularly scheduled weekly meeting among Mr. Cobb, his deputy and my supervisor, Mr. Cobb berated me, reacting to a word in a letter I'd edited. In the ensuing monologue, which was loudly peppered with profanities, he insulted and ridiculed me. I advised him after the meeting that I had never been spoken to like that in the workplace, that it was unacceptable, and that I did not expect my boss to use profanity, and I would not tolerate profanity in the workplace. I told him I could not continue to work there if it persisted. During the following months, I observed or learned that Mr. Cobb directed profanity at and humiliated and demeaned other employees. Gradually, I and many other employees as well as others involved in law enforcement lost all respect for Mr. Cobb.

Mr. Cobb exhibited a consistent lack of understanding concerning Federal law enforcement. This became most apparent in two cases, approximately 6 months apart, in which he clearly failed to recognize the propriety and value of Federal search warrants.

In the first case, Mr. Cobb was notified that search warrants were to be executed by NASA OIG agents and FBI agents at NASA's Stennis Space Center. I was not involved in the matter in anyway until I was called into a meeting regarding the warrant. Mr. Cobb apparently received the information that a warrant was to be executed at the Stennis Space Center within hours of the planned execution. Mr. Cobb said he would not allow the warrants to proceed before he read the warrant, despite the fact that NASA OIG agents and FBI agents were poised to execute the warrant, a NASA OIG supervisor approved the warrant and it was signed by a United States Magistrate Judge. Yet, after reading the affidavit in support of the warrant, Mr. Cobb opined that there was no probable cause established and maintained his position that the NASA agents should not execute the warrant. When reminded that an Assistant United States Attorney believed the warrant was sufficient and that a United States Magistrate Judge signed the warrant—his response was essentially that: (1) the Assistant United States Attorney involved was stupid,

and (2) that the assigned NASA agents must have "hoodwinked" the Magistrate. He actually said, "Who knows *what* our guys (the investigating agents) told the judge."

After much discussion, Mr. Cobb reluctantly allowed the agents to execute the warrant. However, his arrogance appeared to have interfered with any possibility of educating him in the matter. Six months later, the scenario was repeated.

On Monday, June 27, 2005, while I was Acting Assistant Inspector General for Investigations, the Resident Agent in Charge (RAC) at NASA's Marshall Space Flight Center e-mailed me. His e-mail informed that agents in his office were working with an Assistant United States Attorney on a search warrant for an NASA employee's office at the Marshall Center. The e-mail noted that the agents wanted to execute the warrant by Thursday, June 30, as the employee was about to be reassigned and they were concerned about losing evidence.

On Wednesday, June 29, the RAC called and advised that the Assistant United States Attorney approved the warrant and wanted to take it to the Magistrate Judge forthwith. I hadn't finished reading the affidavit, but as I am intimately familiar with the warrant review process in U.S. Attorneys offices and the in the courts, I advised the agents to proceed to the Magistrate as requested by the AUSA. After the warrant was signed by the U.S. Magistrate Judge, I e-mailed Mr. Cobb (who was out of town) advising that a warrant would be executed the following day at Marshall. I advised the Deputy Inspector General by e-mail and in person and provided a copy of the warrant and affidavit to him.

Mr. Cobb asked that I call him that evening. I did, and was greeted by his loudly-voiced accusations that there was no probable cause for the warrant; an interesting position as he had yet to see the affidavit in support of the warrant. I had sent it to him in encrypted form as required by agency policy and he was unable to open it on his Blackberry. As with the earlier warrant, Mr. Cobb was primarily concerned with first, why he I did not tell him about it earlier, and second, with the fact that it was a warrant at a NASA Center. He directed me to tell the agents they could not to execute the warrant (despite the fact he had not seen the warrant or affidavit). They in turn, had to advise the FBI agents working with them that they could not participate in the warrant execution the following day. The warrant allows for execution within 10 days of the date the U.S. Magistrate Judge signs it. I advised the agents not to tell the U.S. Attorney's Office, of Mr. Cobb's decision as I hoped to persuade Mr. Cobb to change his mind when I had an opportunity to speak with him in person. The FBI agents, however, said they would proceed with the warrant alone if the NASA OIG agents were not permitted to participate.

———Original Message———
From: Herzog, Debra (HQ–WRH10)
To: Cobb, Robert W. (HQ–WAH10)
CC: Howard, Thomas J. (HQ–WAH10)
Sent: Wed Jun 29 19:21:18 2005
Subject: Search warrant

Moose:

If, after reading the affidavit you still believe that the warrant should not be executed, Jim Haughton is prepared to walk you through the case in D.C. on Friday. I want to reiterate, however, that I am fully responsible for authorizing this warrant.

I believe that using criminal processes in a criminal investigation, particularly this one, is appropriate and acted accordingly. I also believe that everyone else involved acted with the same sincere belief.

Jim had the affidavit faxed this evening so it should be at KSC in the morning.

My Palm is not receiving/sending mail again, so I am working from my laptop. I have a medical appointment tomorrow afternoon so will be out of the office after 2. You can reach me on my cell. Feel free to call me at home if you need to.

Debbie

When Mr. Cobb arrived back in the office on July 1, 2007, I met with him and the Deputy Inspector General for several hours. The meeting was lengthy, and at times, Mr. Cobb called in his counsel. Mr. Cobb's expressed concerns were: (1) the NASA Center Director's reaction to OIG executing a warrant and what he would say when the Center Director called asking why the OIG was at his center. (2) that the Assistant United States Attorney didn't know what he was doing and by implication, as the warrant was signed by a U.S. Magistrate Judge, that he did not either, and (3) the agents were only undertaking this warrant because they were "out to get him."

In both of these search warrant matters, it was Mr. Cobb's position that everyone supporting the warrant—the agents, the prosecutor, me, the U.S. Magistrate—were either wrong, out to get him, stupid, or all of the above. Throughout this episode, Mr. Cobb kept referring back to the first warrant and its issues and accused me and the agents of pursuing this warrant "to rub his face in it."

In my short tenure at NASA, at least 5 other warrants were issued and executed at locations other than NASA property. Mr. Cobb did not express *any* interest in those affidavits or warrants.

The last incident and the one that convinced me I could no longer be effective in my job, occurred just 2 months later. In June 2005, agents in the field office presented a case to the Civil Frauds Division of the U.S. Attorneys Office for the Central District of California. The case was accepted for civil prosecution. A letter outlining the case and containing a number of attachments was provided to the Assistant U.S. Attorney assigned to the matter.

On Tuesday, August 23, 2005, en route to conduct in-service training for the NASA OIG Western Field Office, I received an e-mail from Mr. Cobb regarding a case. The e-mail began:

> I would like [the Western Field Office Special Agent in Charge] to send (ASAP) a letter to the U.S. Attorney withdrawing the August 1 report on the Genesis investigation pending a review of the investigation at OIG headquarters.

I took the opportunity to consult with the Western Field Office Special Agent in Charge and Counsel to the Inspector General the next morning as we were all at the same training. I wanted to see if they knew of any reason why Mr. Cobb would direct this withdrawal. When I determined they did not, I e-mailed Mr. Cobb. In my e-mail I asked Mr. Cobb if there was any urgency to the request as the Western Field Office Special Agent in Charge and I wished to speak with him or in the alternative, have him speak with the AUSA before this "withdrawal" was undertaken. He directed me to do as previously instructed. The Western Field Office Special Agent in Charge wrote the letter and delivered it to the U.S. Attorney's Office.

After reviewing the letter, Mr. Cobb told me he thought the Western Field Office Special Agent in Charge was trying to "set him up." He said he only meant to withdraw the document, not the case. That was simply not true. His e-mails made it quite clear that he thought the case should be re-evaluated to determine if it should have been referred to the U.S. Attorneys Office in the first place. He also claimed he was not advised the case had been presented, but a bi-weekly case reporting document provided to Mr. Cobb in June unmistakably contradicts his claim.

The Assistant United States Attorney assigned to the matter, a 10-year veteran of her office and Deputy Chief of the Civil Frauds Division, wrote a letter applauding the efforts of the agents on the case, expressed her support for the case and outlined potential legal theories. At a meeting between the two of us, Mr. Cobb insinuated to me that we "had" the AUSA write the letter. He leaned over his desk, just feet from my face, his face red, and his fists clenched and screamed at the same time slamming his hand on his on desk so hard I jumped. ". . . you know as well as I do that this report is a fucking piece of shit" (or "crap").[1]

Mr. Cobb's arrogance, his abusive, bullying style, absence of managerial experience, limited understanding of investigative processes, egotism and misplaced sense of self-importance make it impossible for him to successfully manage and lead an organization.

Many employees left, many are trying to. As recently as last week, a newly-hired employee who took the job because it was a promotion, called the agency she left requesting her old job back after only 2 days at the NASA OIG. The new hire said that much of the staff spent a good portion of the workday looking for a way out.

Senator NELSON. Mr. Carrington?

STATEMENT OF LANCE CARRINGTON, DEPUTY ASSISTANT INSPECTOR GENERAL INVESTIGATIONS, OFFICE OF THE INSPECTOR GENERAL, U.S. POSTAL SERVICE; AND FORMER ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, NASA

Mr. CARRINGTON. Mr. Chairman and Members of the Committees, I appreciate the opportunity to appear today to share my ex-

[1] I am unsure which at this time which of these words he used.

perience as the former NASA Assistant Inspector General for Investigations.

Senator NELSON. Pull that microphone a little closer.

Mr. CARRINGTON. Yes, sir.

My professional life is one of public service, starting with over 6 years of active duty in the United States Army and 12 years in the Army Reserve. I spent 17 years with the NASA Office of Inspector General, and the last 2 years with the Postal Service Office of Inspector General. In 25 years of public service, I have served as a Federal law enforcement officer, manager, and executive.

When I became the NASA OIG Assistant Inspector General for Investigations, in September 2002, Mr. Cobb told me his expectations of my performance included being responsible for everything that happened in the Office of Investigations, and he further expected me to know every detail on every case at all times. We had over 400 open cases. It was an impossible expectation for anyone.

Mr. Cobb complained that agents couldn't write, and he referred to their work as "crap," regardless of case successes. He also referred to the agents as "knuckle-draggers." He would disparage agents in front of the rest of the office. To help mitigate Mr. Cobb's negative attitude about the agents, I personally reviewed and edited every investigative report or document that Mr. Cobb would see.

I repeatedly asked Mr. Cobb what his expectations were and what we could do better. He always replied that he didn't know, but, when he saw it, he would tell me.

Other than Mr. Cobb telling me to keep him informed of anything and everything, he never told me what he wanted, in the 3 years I was there.

Mr. Cobb became upset because the agents worked criminal and civil cases under the direction of the U.S. Attorneys Office. He would tell me, and other senior managers, that agents don't work for the U.S. Attorney, and for us to make sure the agents knew their boss was the IG.

Mr. Cobb's personal interaction with the staff consisted of yelling and demeaning. And the more it affected them, the more he did it. In one instance, Mr. Cobb had asked an attorney for a legal opinion, but, after he heard her opinion, he told her her legal opinion didn't count, that his legal opinion was the only one that counted. He then proceeded to demean and ridicule her in front of the group.

Mr. Cobb routinely used profanity when he spoke to me and other employees, stating, "F them" and "GD them." It was a regular occurrence that offended many people in the office. On one occasion, Ms. Debra Herzog, my deputy, was trying to make a legal point with Mr. Cobb from her perspective as a former Federal prosecutor. Mr. Cobb did not agree with her, so he leaned forward and yelled and cussed at her. As tears began welling in her eyes, I changed the subject so we could leave the room.

At my performance review sessions, Mr. Cobb would say he wasn't happy. When I asked him for details, he would say that everything was wrong, and I had better fix it. He never provided me with any specific examples.

Once, I showed Mr. Cobb a $3.94 million settlement check payable to NASA, we had just received. Mr. Cobb's response was, it

didn't mean anything to him. I asked him why, and he said, "Because I had nothing to do with it." I explained that it was representative of our office. He told me it didn't matter, because he didn't have anything to do with it.

Mr. Cobb appeared to have a lack of independence when NASA officials were the subjects of investigation or if arrests or search warrants were obtained for NASA facilities. Mr. Cobb would question every aspect of these cases, much more than the non-NASA-subject cases. It gave us the appearance that he wanted to derail them before the agents were given adequate time to investigate the allegations. There were cases where search warrants were obtained for NASA offices and computers, but Mr. Cobb declared that there was no probable cause, and he didn't want the NASA agents executing the warrants. I explained to Mr. Cobb that the cases were joint with the FBI, and the searches would be executed anyway. He then allowed us to participate.

Our Houston office was asked by the NASA—the Johnson Space Center Legal Office to assist the Texas Rangers with their ongoing investigation into an alleged missing ring, property of one of the female *Columbia* astronauts. The Rangers had exhausted all leads attempting to determine if the ring existed and whether it was stolen. As a last resort, the Rangers drafted a Crime Stoppers Alert they planned to distribute to the media, and, as a courtesy, asked the OIG to review it. I provided Mr. Cobb a copy of the draft alert. Mr. Cobb became very upset, lost his temper, and yelled and cussed at me, saying that if the media got a hold of it, he would have to resign. I reminded him that it was not our case, and that we were merely assisting the Rangers, at the request of NASA. Later that evening, Mr. Cobb called me at home and proceeded to yell and use profanities at me again. Mr. Cobb was so loud, I had to go into the garage so my family would not hear him. Mr. Cobb would not listen or try to understand it was the Rangers decision. He continued to yell and use profanities, saying that he would have to resign if the alert was released.

I didn't understand why Mr. Cobb was so upset about the alert, until weeks later, at an OIG senior staff meeting. Mr. Cobb mentioned the NASA Administrator had previously ordered him and all NASA senior staff not to speak or do anything with the *Columbia* astronaut families. I then realized that if the OIG was associated with the Rangers' Crime Stoppers Alert, Mr. Cobb considered himself to be in direct violation of the order from the NASA Administrator.

Mr. Cobb told me he didn't like the special agent in charge at Goddard Space Flight Center, and directed me to get rid of him. I asked Mr. Cobb why, because he was doing a good job. Mr. Cobb said he didn't want him around. I told the special agent in charge if he was offered an opportunity elsewhere, he should take it, because Mr. Cobb did not want him around. About a month later, he left to take a job with the Transportation Security Administration.

A short while after the special agent in charge departed, Mr. Cobb told me he wasn't happy with me, but this time he threatened to make me the special agent in charge at Goddard. I asked Mr. Cobb for specific reasons, and he said he was just not happy. I told him I had done everything he had asked me to do.

Mr. Cobb was never happy with anything we did in the Office of Investigations. I finally asked him if he even wanted us working cases. He told me, "No." And I said if that was the situation, then he didn't need me around. He agreed. So, I told him I would seek employment elsewhere. Two weeks later, I gave him my 2-weeks notice.

I will be pleased to answer any questions you may have.

Senator NELSON. Dr. Light?

STATEMENT OF DR. PAUL C. LIGHT, PAULETTE GODDARD PROFESSOR OF PUBLIC SERVICE, ROBERT F. WAGNER SCHOOL OF PUBLIC SERVICE, NEW YORK UNIVERSITY

Dr. LIGHT. It's a pleasure to be here today. I'm not going to talk about this particular case. What I'd like to do is give you a little background on the expectations of Congress in enacting the 1978 Act regarding the kind of person they hoped would serve as Inspector General.

I should note that Congress, in passing the 1978 Act, had many options for creating a much closer relationship between the Inspector General and the head of the establishment, be it a Secretary or an Administrator. Congress did not accept that alternative vision of the Inspector General, despite uniform opposition from the Executive Branch and from the President of the United States; they eventually worked toward an agreement to create a quasi-independent Inspector General in order to assure the kind of safe harbor, if you will, for investigations and auditing that we see in the statute now.

In terms of expectations from the Inspector General in behavior and operations, I'm going to highlight five specific areas.

The first is that Congress expected, and demanded in statute, that there be expertise in the Inspector General, that the individual appointed as Inspector General have specific skills that would allow him or her to effectively discharge their duties. The primary focus of this list of expertise was on auditing investigations, a set of skills that would allow the Inspector General to discharge his or her duties effectively.

In reading through the legislative record on the history of the statute, and also the precedent set in the early appointments, we see that there is also an expectation that the Inspector General be a strong manager of the office. Congress understood that the Office of Inspectors General would—Offices of Inspectors General would be small, that they would have relatively meager resources in the grand scheme of things, and that they would have to be well managed to produce the highest level of productivity possible. Therefore, Congress expected that the individuals would be of the highest caliber possible, including expertise in management.

They also expected, for a second characteristic, that the Inspector General be a leader who was a wise steward of the resources at his or her disposal. The Offices of Inspectors General are fragile entities. They are not particularly popular within their agencies. It's not that individuals run from them, but it is rare that the Office of Inspector General employees are greeted with great friendship and glory when they enter to make their investigation or audit presence known.

Number three, Congress expected that the Inspectors General be assertive. The mandate in the statute is actually extremely broad, in terms of what the Inspector General—Inspectors General are allowed to do. They're to inspect and audit and examine, for the purpose of improving the economy and efficiency of government, not just piling up statistics about small-caliber fraud, waste, and abuse. They're to reach toward the broadest agenda possible and maximize their impact through—their activities through the powers that they were given in the statute, which are significant.

Number four, the Congressional designers expected maximum independence. This is, in fact, a lonely job. The individual who serves as Inspector General must, at the—on the one hand, have a strong relationship with the Administrator, but it must be independent. Sad to say, there are very few ways in which the Inspector General can forge the kind of close friendships that we sometimes see envisioned without compromising the appearance and/or substance of his or her behavior. And we have to be careful about that. You might wish to play golf with the Administrator, but you create the appearance, in doing so, of a compromised freedom of investigation. And once that compromise occurs, you can never get it back.

Number five expectation is integrity, that the individual who serves has an impeccable reputation, that he or she is the source of strong morale, a sense of *esprit de corps* within the office, and a strong commitment to the most effective operation possible. Through the exercise of independence, through the assertiveness in using the wide range of responsibilities embedded in the statute, this integrity becomes the essential coin of the realm in the IG's performance.

I'd be delighted to talk with you further about these expectations and how we get them through the appointments process, or not, and will look forward to receiving your questions.

Thank you very much.

[The prepared statement of Dr. Light follows:]

PREPARED STATEMENT OF DR. PAUL C. LIGHT, PAULETTE GODDARD PROFESSOR OF PUBLIC SERVICE, ROBERT F. WAGNER SCHOOL OF PUBLIC SERVICE, NEW YORK UNIVERSITY

Thank you for the opportunity to appear before this joint hearing on the controversies surrounding the National Space and Aeronautics Administration's Inspector General (IG), Robert Cobb. I am not an expert on his case, but have studied the IG concept for twenty years, and hope to provide a brief overview of the authorities and expectations embedded in the 1978 Inspector General Act.

The current controversy surrounding Robert Cobb stems from authorities and expectations embedded in that act. Passed against nearly uniform Executive Branch opposition, the bill created Offices of Inspector General (OIGs) in 12 departments and agencies, adding to the two statutory OIGs that already existed—one in Health, Education, and Welfare (about to be divided into the departments of Health and Human Services and Education) and the other in Energy. By 1988, the concept had been expanded to include the rest of the Federal Government, including 33 small-entities. Subsequent expansions have created either OIGs in 57 Federal establishments, some headed by Senate-confirmed IGs and others led by Presidentially-appointed IGs.

The basic thrust of the IG Act, under which Mr. Cobb serves as a Senate-confirmed appointee, was remarkably simple. On one level, it consolidated what were then dozens of separate, often scattered audit and investigation units into single operations headed by a Presidential appointee. On another level, it created new expectations for economy and efficiency in government through the appointment of IGs

with impeccable integrity and thoughtful leadership. Being an IG was always to be an exceedingly difficult post, placing the occupant in the sometimes precarious position of speaking truth to power at both ends of Pennsylvania Avenue. But given enough resources and integrity, the OIGs were to help rebuild trust in government through their aggressive pursuit of accountability in all corners of their establishment.

Authorities

Compared to most of the bills that passed in 1978, the Inspector General Act was almost invisible. Reorganizing the varied audit and investigation units into single-headed Offices of Inspector General was hardly the stuff of which major controversies are made. Nor was the IG statute particularly complex—it lays out the responsibilities and authorities of each OIG with clarity.

Yet, whatever its legislative history or complexity, there is no question Congress gave the IGs unmistakably broad authorities. Under statute, the IGs to provide direction for conducting audits and investigations both including and relating to the programs and operations of their establishments, they had a long list of ancillary duties: review existing and proposed legislation and regulations for impacts on economy and efficiency, coordinate relationships between the department or agency and other Federal agencies, state and local governments, and non-governmental entities, and, most importantly, *promote the general economy, efficiency, and effectiveness of their establishments*.

Broad as this invitation is, what made the IG concept much more significant was the decision to protect those new units through at least three devices.

First, even though each IG was to be a Presidential appointee and removable without cause, each was to be selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." Further, each IG, not the President nor the head of the establishment, was to appoint an Assistant IG for Audit and an Assistant IG for Investigations, and each IG was given full authority to undertake whatever audits and investigations he or she each deemed necessary to improve economy and efficiency. There was to be no interference from Congress or the President on the OIG's workplan or agenda.

Second, every IG was to have access to all "information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence" needed for an audit or investigation, the right to request assistance from within the agency and information from across government, the authority to subpoena documents (but not witnesses or testimony), the right to hire and fire staff, and "direct and prompt" access to the Secretary or Administrator whenever necessary for any purpose. Moreover, neither the head of the establishment nor the second in command was to prevent or prohibit the IG from "initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

Third, every IG was bound by a two-fold, dual-channel reporting requirement. One was a relatively simple semi-annual report to the head of the department or agency. Automatically forwarded unchanged to Congress within 30 days, each report was to include a description of every significant problem, abuse, and deficiency the IG encountered in the previous 6 months, as well as lists of recommendations and results. The other was a so-called "7 day letter" report to the head of the department or agency to be used only in the event of "particularly serious or flagrant problems, abuses, or deficiencies." This much shorter report was also to be transmitted unchanged to Congress, but within 7 days.

Expectations

As one might expect, Congress did not give these substantial authorities without a strong sense that the IGs would be above reproach in using them. Members of Congress spoke frequently about the need for the highest commitment to faithful execution of the IG mandate, and the hope that Presidents would take that faithful execution seriously in the appointment of each IG, whether subject to Senate confirmation or Presidential appointment without confirmation.

Reading through the record accompanying the Act and its twenty-five years of implementation, one can discern at least five qualities that Congress expected the IGs to meet:

1. Expertise: Congress clearly expected each IG to have substantial knowledge of auditing and investigations, and made that expectation clear in the demand for significant experience in these areas. Although the list of qualifications allows for the appointment of individuals who clearly share the President's philosophical agenda, the focus was to be on expertise in actually executing the du-

ties of the office. Simply put, Congress expected the IGs to be experts in their field. For the most part, it is an expectation well met over the years, in part due to consultation with leading IGs on potential replacements. Under no circumstances was the IG post to be a destination for the hard-to-place or underqualified. Although Congress did not expect the IGs to be rocket scientists, whether literally or figuratively, it did expect the IGs to be above reproach in their ability to direct the high-impact work of their offices.

2. Leadership: Despite the substantial authorities for audit and investigation, Congress understood that the OIGs would not be the largest units in their establishments. Therefore, Congress expected that the IG would provide the kind of managerial leadership to generate the highest productivity and *esprit de corps* from what would, and have been, relatively small units. Under no circumstances would Congress have embraced the appointment of an IG who would undermine the productivity of his or her unit through employee abuse or practices that in any way created a hostile work environment. Members wanted the IGs to strengthen their offices, create healthy working conditions, and build units stronger than the sum of their parts. If the IGs encountered employees who were under-performing, Congress expected the IGs to take direct action to remove them from their posts. But above all, the IGs were to leave their units stronger when they moved on to other assignments. A hostile work environment was not just anathema to effectiveness in the search for improved performance, it would set an example for other units in the establishment. The IG simply cannot create a situation in which his or her employees lost faith in their leadership due to managerial practices that undermine productivity.

3. Assertiveness: Congress clearly wanted the IGs to have substantial freedom to follow their instincts in developing an independent audit and investigation agenda. Toward that end, they expected the OIGs to pursue any and every lead they wish, allocate personnel where they felt the greatest returns would be harvested, and be aggressive in tackling problems from the top to the bottom of the establishment. Hence, they gave the IG substantial authority to launch any audit or investigation deemed responsible, and expected the IG to use his or her judgment, and his or her judgment alone, to determine the OIGs agenda.

These authorities were to be used to build an agenda that would improve the economy and efficiency of the establishment. Although the IGs must make tough choices about how to deploy their OIG resources, they were to create the broadest impact possible, including programmatic evaluations if necessary. They were not to be mere fraud busters, though attacking fraud, waste, and abuse was to be part of their agenda. They were also to ask tough questions that others could or would not. Under all circumstances, the OIGs were to be a safe harbor for speaking truth to power on the broadest possible agenda. They were not to be lapdogs, but watchdogs.

4. Independence: The IGs are not just any Presidential appointees. Although they do serve at the pleasure of the President, they are given substantial independence in their work. Congress expected this independence to be guarded aggressively. Under no circumstances was the IG to compromise his or her independence by giving others in the establishment, Congress, or the White House a determining voice in setting the audit and investigation agenda. Thus, Congress expected the IGs and their offices to be astutely independent. Although the OIGs would clearly need the cooperation of the senior leadership of their establishments to implement their recommendations for improvement, they were not to create the appearance or reality that the head of their establishment was somehow altering or setting the course of the OIGs workplan.

Although this expectation clearly has costs to the IGs, not the least of which is a degree of isolation from the senior leadership team, most IGs have been able to handle the expectation with ease. This has meant that the IGs must maintain a sense of distance from any hint that the head of the establishment has a direct say in the OIGs workplan—no golf games, intimate lunches, even team-building retreats. And, in the same spirit of independence, the senior leadership team must maintain its distance from the OIG—no all-staff meetings to scold the office, no memoranda outlining what the head of the establishment wants in or out of the workplan, no sense that the OIG is somehow beholden to the head of the establishment or that it will be punished through staff and budget cuts if it adopts a particular audit or investigation strategy.

In a very real sense, IGs must isolate themselves from the senior leadership team even as they try to cultivate a working relationship that will allow them access when needed to assure that the senior leadership team follows their rec-

ommendations for action. After all, the vast majority of IG recommendations involve administrative, not legislative action. Hence, the job has been described as like straddling a barbed wire fence. But this access cannot be distorted in such a way as to create the appearance that the head of the establishment is somehow "the boss" of the OIG, especially, but not exclusively, in setting the OIGs agenda. That responsibility belongs to the IG, whose ultimate boss is the taxpayer.

Presidents can remove IGs without cause, of course, implying that Congress expected them to always remove IGs with cause, including instances when the IG cedes his or her independence to another actor. IGs are free to listen to all opinions regarding their agenda perhaps, but not to create the impression or reality that they are taking direction. To do so would create an impossible dependence and cooptation that would undermine their presence as an independent source of recommendations to Congress and the President. It would also severely compromise the IG's ability to investigate upward into the executive suite of the establishment.

5. Integrity: Congress expected the IGs to be men and women of impeccable integrity and honesty. Along with the exhortation to maintain full independence, Congress hoped that the President would make every effort to find individuals for appointment who could be trusted with the authorities and mandate embedded in statute. Although Congress did not create a special appointment mechanism (such as the one used for the appointment of the Comptroller General) or term of office (such as the fifteen year term also governing the Comptroller General), it merely assumed that Presidents would understand that the IGs had to bring both the reputation and substance of integrity to their posts. After all, they would be under constant watch by the establishments they would audit and investigation, and could not tolerate even the hint that they played favorites or curried favor in their work. They had to be more than just experts in auditing and investigation, they had be exemplars in their behavior. Under no circumstances did Congress expect that the IGs could be effective under a cloud of suspicion regarding their integrity.

6. Courage: Finally, Congress expected the IGs and their offices to be courageous in their work. The IGs and OIGs were never going to be the most popular employees in their establishment—Congress knew that many in their establishments would oppose them, fear them, and work to undermine them. They also knew that many in their establishments would fashion arguments against OIG findings using every tool at their disposal, sometimes stonewalling the OIG, other times using gossip to undermine the IG as somehow less than effective or independence.

Thus, the IGs had to show the courage of their convictions in stating their intention to use their authorities to take any course in meeting their mandate, even if that course led upward to the highest levels of the agencies. Toward this end, the IGs and their offices had to draw a bright line between informing the head of the establishment of their workplan and letting the head of the establishment determine their workplan. *Under no circumstances was the IG to create even the slightest appearance that he or she had somehow delegated their authorities upward for any reason*.

As with so much that occurs in organizations, appearance is often just as important as reality in affecting these kinds of expectations. It may be that an IG can be best friends with the head of the establishment, and still maintain independence, but the appearance is created that the head of the establishment has a special voice in setting the workplan. It may also be that the head of the establishment can have a brass-tacks meeting with the OIG staff to explain what he or she wants in or out of the workplan, and not intimate the office into a cowering compliance, but the appearance is created that the head of the establishment again has a special voice in determining the workplan.

In this regard, Congress clearly understood that the IG's effectiveness would be determined in part by the head of the establishment who could bully, intimate, cajole, and otherwise attempt to influence the IG into following some leads and not others. Congress also understood that some IGs might be tempted by the opportunity to socialize with the head of the establishment as part of the normal give and take of life in a highly stressful environment. But by NOT insulating the appointments process with a special appointment mechanism or term of office, Congress seemed to be saying that such behavior would never occur if the basic qualifications for IG appointment were meant. After all, what kind of auditor or investigator would curry favor or socialize with those who might be committing fraud,

waste, and abuse? Not one who would be given the enormous authorities and independence embedded in a statute such as the 1978 Inspector General Act.

Later Congresses also understood that the IG's effectiveness would also depend on the protection of the Deputy Director for Management at the Office of Management and Budget. This individual would act as a buffer during moments of intense conflict between the IG and his or her establishment, assure that appointments were the highest quality, coordinate the IG community, protect budgets and employment, and serve as a "court of last resort" in particularly difficult cases involving questions regarding the competence and behavior of individual IGs. As long as the Deputy Director for Management took these assignments seriously, Congress saw no need for a government-wide inspector general or new appointment mechanism. But, to the extent that the Deputy Director of Management might be conflicted in this role—for example, by playing a significant role in the selection of an IG in a previous post—or ignore the role altogether, Congress may yet have to revisit its earlier decisions.

Ultimately, however, the quality of an IG's work depends on his or her own willingness to stand independent and courageous in the face of inevitable opposition. Each IG must be willing to accept responsibility for her or her behavior, and acknowledge when their independence has been compromised, fairly or unfairly, and exit office gracefully, even if the President of the United States has expressed support. It is up to the IG to be a wise steward of the mandate and office he or she oversees, and a wise steward of the tremendous authority he or she wields. Absent a sense of personal integrity that might eventually lead to his or her resignation, an IG cannot provide the leadership needed to make the IG concept a success. Integrity simply cannot be legislated or demanded through executive order. It must come from the individual IG in those quiet moments of self reflection about duty. That is the ultimate protection of the independence that is so essential for the faithful execution of the 1978 Act.

Senator NELSON. Ms. Brian?

STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT (POGO)

Ms. BRIAN. Chairmen Nelson, Gordon, and Miller, thank you so much for inviting me to testify today.

My name is Danielle Brian, Executive Director of the Project On Government Oversight, or POGO.

POGO is an independent nonprofit that has, for 25 years, investigated and exposed corruption and misconduct in order to achieve a more accountable Federal Government.

The subject of this hearing raises a number of very timely issues. Inspector General offices play a tremendously important role in advancing good government practices, but only if they're led by independent and qualified IGs.

Next year will be the 30th anniversary of the 1978 Inspector General Act. This is the perfect time to demonstrate—to determine the strengths, and possible weaknesses, of the IG system, given the current investigations into several IGs.

It is the independence from the agency the IG is overseeing that gives the office its credibility. Not only the actual independence, but also the appearance of independence, allows the IG's stakeholders, including the Administrator, Congress, the IGs, auditors and investigators themselves, and potential whistleblowers, to have faith in the office. In this case, it appears Inspector General Robert Cobb no longer enjoys that credibility with any of the constituencies, other than the Administrator's office.

Mr. Cobb disputes the basic facts in both cases that are focused on by the PCIE. However, even if one were to discount the two cases as inconclusive, there remains indisputable evidence that Mr. Cobb simply does not understand the need to, or even how to, re-

main at arm's-length from NASA's Administrator. For example, he defends himself in his testimony for today's hearing against these findings by, incredibly, citing NASA Administrator Michael Griffin's approval of his work as proof he should remain the NASA IG. That, in itself, indicates how insensitive Mr. Cobb is to the problem. In fact, Administrator Griffin should be the very last person he cites as evidence of his independence.

Much has been made in the press of Mr. Cobb's golfing and lunches with former NASA Administrator Sean O'Keefe, which are disturbing, but are really just atmospherics if they are, by themselves, the only instances of possible lack of independence. But what you see, given the testimony you've heard today and all the other pattern of behavior, is simply breathtaking. It's untenable that, according to the PCIE report, that Mr. Cobb has conferred with NASA's Administrator and General Counsel on the scope and finding of his audits, that he has, at least twice, delayed the execution of search warrants, expressing concerns that NASA managers, or the staff or vendors who were the targets, would be unhappy. He's even asked, "Are we going to be apologizing to them?"

In addition, while quantity does not equal quality, a reduction of nearly 50 percent in the number of reports, audit reports, means many topics are not receiving the attention they would have under past NASA IGs. One possible reason for this drop is the fact that Mr. Cobb disbanded the IG's Safety Audit Team in the fall of 2005, only 2 years after the *Columbia* Space Shuttle tragedy. The PCIE report indicates, and we heard further testimony today to confirm this, that Mr. Cobb made it clear to his staff he didn't believe they had the technical knowhow to challenge NASA's engineers, despite the fact that engineers were members of his staff. Given that the *Columbia* Accident Board concluded that NASA's safety culture has eroded, there may be no more important task for NASA's IG than safety audits to prevent future tragedies.

A final example of Mr. Cobb's inability to protect the NASA IG office from the appearance of a lack of independence is the now-infamous all-hands meeting of all-IG staff held by Administrator Griffin. Not only should the head of an agency play no role in determining the work scope of the IG, but the fact that the IG himself did nothing to stop him is further evidence that Mr. Cobb clearly does not understand what it means to be an IG. I can only imagine the impact on the morale of the IG staff, and in particular on those whistleblowers who were sitting in the room.

With this atmosphere, you can imagine the reception NASA whistleblowers met when they go to the IG for help. Now, as nearly half of the IG staff have left or were removed from office, those whistleblowers, as well as staff leaving, have come forward to Senator Nelson and the PCIE, revealing the deeply troubled inner workings of their office, and alleging that Mr. Cobb was turning a blind eye to the concerns of external whistleblowers, as well as internal staff. Senator Nelson should be congratulated for stepping in to assist these insiders.

So, what should be done? The record reflects Mr. Cobb's overriding sense of loyalty to NASA's image above a sense of duty to the public and the Congress. POGO agrees with Chairmen Nelson, Gordon, and Miller, as well as the PCIE, that Inspector General

Cobb has clearly demonstrated an appearance of a lack of independence from NASA. It is because of this behavior that I believe Mr. Cobb is unable to fulfill his role as an Inspector General.

An opportunity will be missed, however, if Congress does not look at this case in the broader context. During the Reagan Administration, a small group of IGs from the PCIE recruited and screened IG nominees. They then supplied lists of candidates from which the White House could select. This peer review was an important way to ensure that unqualified or partisan people were not placed in the role of IG. The Congress should consider recreating that model. Ultimately, however, it is essential that Congress play a more active role in overseeing the IGs the way these two committees are doing today.

POGO is also beginning an investigation into the IG system to determine if there are other ways to ensure these important offices can meet their mission, and we look forward to providing you with our findings when our investigation is complete.

[The prepared statement of Ms. Brian follows:]

PREPARED STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT (POGO)

Chairmen Nelson and Miller, thank you for inviting me to testify today. My name is Danielle Brian, Executive Director of the Project On Government Oversight (POGO). POGO is an independent nonprofit that has, for over 25 years, investigated and exposed corruption and misconduct in order to achieve a more accountable Federal Government.

The subject of this hearing raises a number of timely issues. Inspector General (IG) offices play a tremendously important role in advancing good government practices, but only if they are led by independent and qualified IGs. Next year will be the 30th anniversary of the 1978 Inspector General Act. This is the perfect time to determine the strengths and possible weaknesses of the IG system given the current investigations into several IGs.

The intent of Congress in creating these watchdogs was to have an office within agencies that would balance the natural inclinations of agency or department heads to minimize bad news, and instead give Congress a more complete picture of agency operations. That intention is clearly shown by Congress' decision to break with tradition, and create a dual-reporting structure where IGs would report not only to the agency head but also directly to Congress itself.

It is this independence from the agency the IG is overseeing that gives the office its credibility. Not only the actual independence, but also the *appearance* of independence allows the IG's stakeholders, including the Administrator, Congress, the IG's auditors and investigators, and potential whistleblowers, to have faith in the office. In this case, it appears Inspector General Robert W. Cobb no longer enjoys that credibility with any of the constituencies other than the Administrator's office.

Over the past year, POGO has held monthly bipartisan Congressional Oversight Training Sessions for Capitol Hill staff. We regularly tell participants that the IGs at agencies within their jurisdiction can be important allies and sources of honest assessments. Unfortunately, we also have to point out that not all IGs are qualified and independent.

In the case of NASA IG Cobb, current and former IG staff allege, and the President's Council on Integrity and Efficiency (PCIE) confirms, an abuse of power and the appearance of a lack of independence. Mr. Cobb disputes the basic facts in both cases cited by the PCIE.[1] However, even if one were to discount the two cases as inconclusive, there remains indisputable evidence that Mr. Cobb simply does not understand the need to, or even how to, remain at arms length from NASA's Adminis-

[1] One of the cases Mr. Cobb disputes involves the hacking of sensitive computer data regarding NASA rocket engines, know as the ITAR case. It is worth noting that, whether or not he was required to report to the State Department in the ITAR case, numerous IG staff stated he aggressively undermined the issuance of a report on it. Their impression was that Mr. Cobb did not want to embarrass NASA. As a point of comparison, the Department of Energy's Inspector General has issued numerous reports about cases similar to the NASA computer hacking case.

trator. For example, he defends himself against these findings by citing NASA Administrator Michael Griffin's approval of his work as proof he should remain the NASA IG. That, in itself, indicates how insensitive Mr. Cobb is to the problem. In fact, Administrator Griffin should be the last person he cites as evidence of his independence.

Much has been made in the press of Mr. Cobb's golfing and lunches with former NASA Administrator Sean O'Keefe, which are somewhat disturbing. But those are really just atmospherics. From POGO's perspective, there are far more troubling problems. It is untenable that, according to the PCIE report, Mr. Cobb has on occasion conferred with NASA's Administrator and General Counsel regarding the scope and findings of his audits. Furthermore, Mr. Cobb at least twice delayed the execution of search warrants approved by law enforcement, expressing concerns that the NASA managers whose staff or vendors were the targets would be unhappy. Mr. Cobb reportedly even asked, "Are we going to apologize to them?" In response to questions from investigators, Mr. Cobb confirmed that he would give the NASA Administrator a heads up regarding impending search warrants. There is no way of knowing what impact the disclosure of secret warrants had on investigations.

Another problem is that, although IGs are given a wide latitude to staff their offices, Mr. Cobb's frequent reorganization of the audit section has made his office anything but more productive. Since he took office, the number of audit reports has plummeted from an average of 51 reports annually to only 26 annually. While quantity does not equal quality, a nearly 50 percent reduction in the number of reports means many topics are not receiving the attention they would have in the past. One possible reason for this drop is that Mr. Cobb disbanded the IG's safety audit team in the fall of 2005—only 2 years after the *Columbia* Space Shuttle tragedy. The PCIE report indicates that Mr. Cobb made it clear to his staff that he did not believe they had the technical know-how to challenge NASA's engineers, despite the fact that engineers were members of his staff. Given that the *Columbia* Accident Board concluded that NASA's safety culture has eroded, there may be no more important task for NASA's IG than safety audits to prevent future tragedies.

A final example of Mr. Cobb's inability to protect the NASA IG Office from the appearance of a lack of independence is the infamous all-hands meeting held by Administrator Griffin. At this meeting, Administrator Griffin spoke to IG employees, with Mr. Cobb present, and allegedly rebutted the findings of the PCIE report—findings based on the allegations made by numerous IG employees. NASA Assistant IG for Investigations Evelyn Klemstine testified before the House Science Committee that Administrator Griffin's inappropriate directions to the IG staff regarding the types of investigations and audits they should be performing was in no way protested by Mr. Cobb. Administrator Griffin allegedly went on to inform the IG staff that they shouldn't bother with work that involved less than $1 billion in NASA funds—an extraordinary threshold under any circumstances. Not only should the head of an agency play no role in determining the work scope of the IG, but the fact that the IG himself did nothing to stop him is further evidence that Mr. Cobb clearly does not understand what it means to be an IG—independence and the *appearance of independence* are everything. I can only imagine the impact on the morale on the IG staff, and in particular on those whistleblowers who were sitting in the room.

With this atmosphere, you can imagine the reception NASA whistleblowers meet when they go to the IG for help. One whistleblower, a NASA research pilot, refused to fly what he believed was an unsafe aircraft, and was then was reassigned and grounded in apparent retaliation. He reported his experience to the IG, only to be met with inaction. Others found the same lack of action, or were simply forwarded without investigation by the IG to the Office of Special Counsel to be sentenced to a bureaucratic black hole.[2] As nearly half of the NASA IG staff left or were removed from the office, some of them came forward to Senator Nelson and the PCIE revealing the deeply troubled inner workings of their office, and alleging that Mr. Cobb was turning a blind eye to their concerns. Senator Nelson should be congratulated for stepping in to assist these insiders.

So what should be done? The record reflects Mr. Cobb's overriding sense of loyalty to NASA's image above a sense of duty to the public and Congress. POGO agrees with Chairmen Nelson and Miller, as well as with the President's Council on Integrity and Efficiency (PCIE), that Inspector General Cobb has clearly demonstrated

[2] While it may be appropriate to refer a whistleblower case to the Office of Special Counsel to determine whether a prohibited personnel practice has occurred, it is also necessary for an IG themselves to investigate whether there is a need for corrective action regarding the underlying problem at the agency.

an appearance of a lack of independence from NASA. It is because of this behavior that I believe Mr. Cobb is unable to fulfill his role as an Inspector General.

An opportunity will be missed, however, if Congress does not look at this case in the broader context. During the Reagan Administration, a small group of IGs from the PCIE recruited and screened IG nominees. They then supplied lists of candidates from which the White House could select. This peer review was an important way to ensure that unqualified or partisan people were not placed in the role of IG. The Congress should consider recreating that model. Ultimately, however, it is essential that the Congress play a more active role in overseeing the IGs.

POGO is beginning an investigation into the IG system to determine if there are other ways to ensure those important offices can meet their mission. We look forward to providing you with our findings when our investigation is completed.

Senator NELSON. Thank all of you for your testimony.

The House has a vote in progress. So, we're going to be switching out. I want to call on Chairman Gordon, so that he can ask a couple of questions, and then run to vote.

Chairman GORDON. Thank you, Mr. Chairman. It'll only be one.

Ms. Brian and Mr. Light, we appreciate you being here, and your good testimony. I have but one question for you.

One of the facts that's clear from the sworn testimony taken during the investigation of Mr. Cobb is that Sean O'Keefe was allowed to make the decision to get rid of his old Inspector General and choose his new one. He also had two key staffers, including his chief of staff, brief Mr. Cobb on the problems between his office and the Inspector General's office that he wanted fixed. Mr. Cobb actually testified that he thought, "Hey, this was easy. You don't need to convince me."

Professor Light and Ms. Brian, is that the way a President should choose an Inspector General?

Ms. BRIAN. Certainly not. The entire purpose of the Inspector General is that they are supposed to be there both to oversee the agency on behalf of the Congress, and to make the place honest and more accountable. And the fact that they're, sort of, handpicked, and with those kinds of criteria, is utterly unacceptable.

Chairman GORDON. It was widely understood, at the time, that the decision to remove the incumbent Inspector General was driven by a desire for more compliance among the future Inspector General. The incumbent, at that time, was removed summarily from office, which sent a signal that the Administrator was looking for somebody more compliant. That signal was well sent. Whether or not that signal was followed is a subject for this group to examine, this combination of committees to examine. But the way in which the outgoing IG was fired, and the new IG was hired, create, in part, a sense that this was all about getting somebody into the job who was compliant. And that starts the appearance ball rolling.

Representative FEENEY. Mr. Chairman, I'll probably be leaving in a moment or two, but—I don't have any pressing questions, but if it pleases the Chairman, I'd be happy to ask one or two.

Senator NELSON. Please go ahead.

Representative FEENEY. Well, thank you very much. And I appreciate your hospitality, as my senior Senator.

Mr. Carrington, one of the incidents that is referred to is the Texas Rangers' investigation into a missing ring. In his testimony—in his written testimony, Mr. Cobb suggests that, after some investigation, it turns out that there was never a ring to be missing in the first place. Were you aware that—is that the case,

to your knowledge? Were you aware of this investigation, about whether or not there was a ring that, in fact, was missing?

Mr. CARRINGTON. Yes, sir, I'm aware of it. The ring was never conclusively established to not exist. I mean, there were medical reports that determined—made a—made an assumption that the item on the hand was not a ring. However, there were witnesses that gave sworn statements to the Rangers that reported that they found the—or they observed a ring on the hand. How—so, it was never conclusive, either one way or the other. But, again, it wasn't our investigation. We were assisting them with coordinating with NASA and assisting them with other matters. So, I was never—I felt at—based on what I had seen, I wasn't sure whether or not it—they did or did not have a ring.

Representative FEENEY. You—so, you—to this day, based on your review of the facts, you don't know whether there was a ring in the first place, one way or the other.

Dr. Light, both you and Ms. Brian have been very consistent in describing the appropriate role of the IGs, and how they should be appointed, and how they should conduct themselves. One thing that we haven't talked a lot about here is that in your testimony you indicate that the IG should be independent of influence—"any influence from above," is the way Ms. Brian talks about, but you also talk about independent of any pressure from the White House or, for that matter, from Congress. And I guess the question is, What's the appropriate role in Congress's oversight? Ms. Brian suggests we need to be a lot stronger in overseeing all sorts of Inspector General issues throughout the Government. Is there a danger, in your opinion, that Congressional oversight of IGs, in and of itself, if it's overzealous, could put some inappropriate pressures on IGs in their role, and, in essence, sacrifice their independence?

Dr. LIGHT. It depends on the nature of the investigation. An investigation of this nature, where you're examining the independence of the IG, can only reinforce and strengthen IG timber in making recommendations to you and the Administration for action. There's intimidation of all kinds. If Congress were to bring an IG in front of a subcommittee or a committee to berate that IG for undertaking an audit or investigation, that would have a chilling effect on the IG's independence. But I don't see a history of that having been done.

Representative FEENEY. Thank you.

And, with that, I really appreciate the Chairman's indulgence, and, again, his hospitality. Thank you.

Ms. BRIAN. Sir, could I also—could I respond to the point you were making there? I just wanted to make the point——

Senator NELSON. Please.

Ms. BRIAN.—of course, if there were overzealous oversight, that would be a problem. I don't know that—I was not suggesting overzealous oversight at all. And I do think it's important—as Dr. Light was just suggesting, there's a big difference between oversight of the quality of the work of an office, rather than trying to direct a particular finding by an IG, which, I think, of course, would be totally inappropriate interference on the part of the Congress.

Senator NELSON. And I recall that one of you testified that you think that some statutory change with regard to the initial selec-

tion, so that it's a selection based on merit, as opposed to personal friendship, would be appropriate. That is your testimony.

Ms. BRIAN. That's right. That was the informal arrangement during the Reagan Administration; and sometime, I think, in the early 1990s, that fell out of practice, and I think that's something important for the Congress to reconsider.

Dr. LIGHT. There has been a proposal pending, before the Homeland Security and Government Affairs Committee, for a term of office for the Inspectors General, which would be mainly hortatory. I think the 30-year anniversary is an opportunity for Congress to take a look at this concept and see whether we've gone too far in the appointments process, politicized it too much, what can we do to reverse it, so I encourage you to encourage your colleagues on that committee to engage that issue.

Senator NELSON. Ms. Herzog, you described two occasions when Mr. Cobb asked you to delay the service of a search warrant, once in December 2004, regarding a case at Stennis, and again in June 2005, in a case at Marshall. Would you describe those two incidences?

Ms. HERZOG. Certainly.

In the instance in December 2004, I had just been at NASA for a matter of weeks, if not days, and was more of an observer than a participant until the discussion arose about whether or not there was probable cause contained in the warrant. I came into the situation at a time when Mr. Cobb had decided that the agents should hold off on executing the warrant. He read the affidavit, and, even after reading the affidavit, said, "I don't think there's a crime here." At that point, based on my past experience—I have handled and litigated literally countless search warrants—I tried to explain to Mr. Cobb that an assistant U.S. Attorney, who was going to be responsible for the prosecution of the case and litigating the search warrant, reviewed the warrant, seemed—clearly was happy with the warrant, and a magistrate judge signed it. I mean, a magistrate judge found there was probable cause. And he asked his counsel whether or not he thought there was probable cause, and his counsel said, "No, I don't think so." And, with all due respect to his counsel—he's a very smart and learned man—he has never litigated a search warrant or prepared a criminal case in his life. It's kind of like asking an eye doctor to do heart surgery. I mean, I don't answer questions I don't know anything about. I believed, at the time, that I was the expert in the room on criminal process and procedure. I thought that's why I was hired, to deliver that—those skills to the office. And, after a lot of conversation, Mr. Cobb finally allowed the agents to go ahead.

It was embarrassing for the agents, because they were conducting this investigation in concert with the FBI, and there they were, you know, standing literally with a foot out the door, ready to go execute the warrant, and they had to tell the FBI agents, "Our boss says we can't do this."

The second instance was much more troubling. That search warrant came in several days before Mr. Cobb saw it. At the time that I finally had an opportunity to review it, he was out of town. I had not even quite finished reviewing the warrant when I got a call from the agent assigned to the case, saying that the Assistant U.S.

Attorney wanted to bring it to the magistrate right then. There was an issue of timeliness in that warrant, because the fellow's office that was going to be searched was going to be changing jobs, and the agents wanted to get into the office before he started packing up boxes and perhaps destroying documents.

I personally delivered a copy of the warrant and affidavit to the Deputy Inspector General, who was in town, and e-mailed a copy to both he and Mr. Cobb. Mr. Cobb was out of town, and could not open the warrant on his BlackBerry, because it was sent encrypted. He and his deputy apparently had a rather lengthy telephone conversation, and I was advised by his deputy to expect a phone call at home that evening. I did—or, actually, to call Mr. Cobb, which I did. And we had a rather contentious telephone conversation about whether or not there was probable cause for that warrant.

In both cases, one of his concerns was—and it's almost a direct quote, "What am I going to tell the center director when he asks me what our guys are doing down there?" And my response is, "How about, 'Our job—we're doing our job,' and it's really none of their business what we're doing there. It's an enforcement activity." I asked if he was concerned that these guys—you know, going in, in raid jackets and big guns. It was clear he didn't know how search warrants were executed when they were done on business premises in offices. I said, "These guys are going to be going in plain clothes, maybe even suits and ties, knocking on a door, 'Here we are. We've got a warrant to execute. Please remain outside while we do that.'" I mean, it was—it was, kind of, you know, Search Warrant 101.

The second instance, it appeared, in addition to Mr. Cobb's concern that, you know, the agency might have trouble with the warrant, "Well, what if he's innocent?" Well, that happens. That's what happens in the criminal justice system. That's why we have all of the safety and the controls that we have over the system. It happens. "Are we going to apologize to this man?" Well, no, we don't do that. Do U.S. Attorneys offices apologize to people when they're acquitted? I don't think so.

At one point, I said to Mr. Cobb, "Listen, this search warrant doesn't say you can do this if you want to, do this if you feel like it. It says, 'You are commanded to execute this warrant. This is a court order.'"

Senator NELSON. Signed by a Federal magistrate judge.

Ms. HERZOG. Signed by a Federal magistrate judge. At which point, he said to me, "You're telling me that there is never an occasion when a warrant is not executed?" And I said, "Absolutely not." I mean, there are times—I've been involved in cases, for example, when an informant has popped up at the last minute, and the investigators have decided to stay covert, so they go and explain that to the magistrate, and they say, "Listen, you know, we've decided to stay covert, we're not going to execute the warrant." Short of a situation like that, I'm not aware of an agency just, you know, willy nilly yanking a warrant.

When I described that process, Mr. Cobb said, "Well, then I want you to call the assistant U.S. Attorney and have the assistant U.S. Attorney get that warrant pulled." He left the room to go into his office. I don't know for what. When he came back, he was off that

topic, luckily for me, because that would have been my last act there.

It was one of the most exhausting and painful conversations I have had in my professional life. It was just a horrifying exercise, and——

Senator NELSON. In your experience, as a prosecutor or in an office of an inspector general, is it a practice that you've seen before for management to delay action on a search warrant after the warrant has been signed by a judge?

Ms. HERZOG. I have personally never known that to happen, at—you know, other than the exceptions I've described.

Senator NELSON. Is it common practice for search warrants to require approval by the IG himself? Is that a common practice?

Ms. HERZOG. It's not a practice at the agency I currently work at, which is an Inspector General's office, and I don't know whether it's a practice at other IGs. And, up until these two instances, it was not a practice at the NASA Inspector General's office.

Senator NELSON. Putting on your prosecutorial hat, as an assistant U.S. Attorney do you think that Mr. Cobb's actions could be construed as obstruction of justice?

Ms. HERZOG. I think, particularly with regard to the second warrant, but for my involvement in the case, the warrant would not have proceeded, and that would have been an obstruction of justice.

Senator NELSON. Did the delay in serving those warrants affect either of the cases being investigated?

Ms. HERZOG. It definitely did not affect the first case, and I do not believe it affected the second case, but I'm not sure.

Senator NELSON. In one of the incidences, someone was moving out of their office, that search warrant, if it had been delivered immediately, would have prevented those records from being packed up?

Ms. HERZOG. Yes. Well, because we don't know what—if anything else was there 3 days earlier, when the warrant should have been executed, we really don't know whether we lost anything. It's a possibility, but I don't think the agents ever determined whether or not they actually missed anything.

Senator NELSON. Do you have an opinion as to why Mr. Cobb wanted to block those search warrants?

Ms. HERZOG. I think primarily—he was primarily concerned with the reaction of the center directors at the centers where those warrant were to be executed. That was an overriding concern. He also, with the second warrant, believed that somehow this was an exercise wherein people were out to get him, "They're rubbing this in my face," he said, "They're"—you know, "They're doing this again to rub it in my face." And he thought that I delayed telling him about the search warrant for the same reason.

Chairman Miller? And then I will go to you, Senator McCaskill.

Representative MILLER. Thank you, Mr. Chairman.

The House is having two votes, and I believe that they will be the first two. They're both procedural issues. I think they'll be the first two that I will have missed, this Congress, but I wanted to stay here for this. I may need you to sign a note to my constituents, however.

[Laughter.]

Representative MILLER. I do ask unanimous consent to enter a packet of documents into the record.

Senator NELSON. Without objection.

Representative MILLER. OK.

[The information previously referred to follows:]

The following documents are in the Appendix of this Hearing:

1. August 15, 2003, letter from Hon. Robert W. Cobb to Hon. Sean O'Keefe entitled "Subject: Observations on the Independence of the *Columbia* Accident Investigation Board."
2. *Policy and Procedures for Exercising the Authority of the Integrity Committee of the President's Council on Integrity and Efficiency,* April 24, 1997.
3. *Quality Standards for Federal Offices of Inspector General,* dated October 2003.
4. Excerpts from Semiannual Report, Office of Inspector General, NASA, September 30, 2004 (pp. 1–5).
5. Excerpts from transcript of interview of Hon. Robert W. Cobb, conducted by Office of Inspector General, Department of Housing and Urban Development, June 27, 2006 (pp. 40, 44, 54, 78, 94, 98, 104, 106, 114, 125).
6. Excerpts from Record of Investigation of Hon. Robert W. Cobb, Office of Inspector General, NASA, August 30, 2006 (pp. 49–54, 59, 140–142, 195–197, 206–217, 222–225, 231, 266–271).
7. Report in the form of a letter dated January 22, 2007, from James H. Burrus, Jr., Chair, Integrity Committee to Hon. Clay Johnson III, Chairman, Integrity Committee, President's Council on Integrity and Efficiency.

Representative MILLER. They have been reviewed by both the majority and the minority staff.

First, Ms. Herzog, Mr. Carson, Mr. Carrington, Mr. Cobb has said in his testimony that the HUD Inspector General invited anyone to come forward who had anything bad to say about Mr. Cobb. He complained bitterly about the procedures of the HUD Inspector General, and the PCIE report, generally. Were you invited to come forward and make complaints, or did you step forward on your own?

Mr. CARSON. I was contacted by the HUD OIG, and mentioned that they wanted to interview me as part of—that my name had come up in several conversations with other people that had been interviewed, and they wanted to talk to me as part of the investigation.

Representative MILLER. OK.

Mr. Harrington—Carrington? Excuse me.

Mr. CARRINGTON. Yes. No, sir, I was not invited. I was contacted and asked to speak.

Representative MILLER. OK.

How about you, Ms. Herzog?

Ms. HERZOG. The HUD investigators contacted me.

Representative MILLER. OK.

Mr. Cobb also says that the staff was unhappy with him because he was insisting upon higher standards for the Office of the Inspector General. Do you agree with that? Do you agree that the standards set by Mr. Cobb were higher?

Ms. Herzog?

Ms. HERZOG. No. I don't think they were higher at all, and I'm not sure what the standards were. In fact, whenever reports or documents were prepared, and Mr. Cobb was unhappy with them, if any of us tried to get from him what it was he was looking for—you know, "What is it you want?"—his response was, "I'll know it when I see it."

Representative MILLER. OK.

Mr. Carson and Mr. Carrington, did you think the standards in the OIG's office were higher under Mr. Cobb, or lower under Mr. Cobb?

Mr. CARSON. Having spent almost 16 years there in a very—the organization was very professional, very responsive to the concerns of the Congress when we had special requests—I believe the standards were lowered.

Representative MILLER. OK.

Mr. CARRINGTON. Yes, sir.

Representative MILLER. Mr. Carrington?

Mr. CARRINGTON. I think that—I recall that he did have high standards. I won't doubt him there. He—but the standards—the bar was set so high, it was impossible to reach, to the point where things didn't happen. I recall him saying, "I don't go into a—any type of issue without four aces in my hand." And so, we were never going to reach the standard that he had set for me.

Representative MILLER. OK.

A lot of the testimony from the three of you in particular has been with—going to the personal abusive relationship that Mr. Cobb had with his staff. There are people like that in the world. Some of them become bosses. Many people have worked for bosses who appear to go through life on full flame, as appears to be the case with Mr. Cobb, but are still able to get their work done. Was this different? Were you able to get your work done, or did his conduct interfere with getting the work done? And how?

Ms. Herzog, you can start.

Ms. HERZOG. I think, at least, I was able to get my work done eventually. I did find those occurrences disturbing, and, at times, particularly on the last occasion, when he practically came across the table at me, I took the next day off of work. I mean, I was shaking when I walked out of his office. It was horrible. And I have to say, I've been yelled at by the best of them. You know, I have appeared in Federal court before judges who, lawyers like to commonly say, think they're the closest thing next to God, maybe other than Congresspeople.

[Laughter.]

Representative MILLER. We don't hold a candle to judges.

[Laughter.]

Ms. HERZOG. And, you know, I've had my life threatened, I've been in protective custody, I've been stalked by a man that I prosecuted. I have been under all kinds of stress and in stressful situations. I have never experienced anything like what I experienced when Mr. Cobb went on one of his—I hesitate to call them "rampages," but——

Representative MILLER. OK. I know my time is about to expire, but Mr. Cobb apparently told the staff, and told the HUD IG, and has told our staff, in looking into this matter, that he wanted a collaborative relationship with the management of NASA, that he believed he would get the recommendations of the IG's office implemented—he'd be more likely to get them implemented if he had a cooperative, collaborative relationship, if he were a part of the team. Then that seems to be very much contrary to what Ms. Brian and Dr. Light have said is what Congress intended in the Inspector

General Act of 1978, but was it your experience that the recommendations of the IG's office got implemented more readily because of Mr. Cobb's good relationship with Mr. O'Keefe or others?

Mr. CARSON. In my case, in the safety directorate, our reports were being rewritten, changed, revised; rewritten, changed, revised. The process was to the point of being insane. We couldn't even get recommendations or reports out the door that we had previously never had an issue with, as I mentioned in my statement. Two times, Report of the Year, special requests from the Safety and Mission Assurance Associate Administrator, from this committee, from the House Science Committee, and we couldn't even get reports out the door.

Representative MILLER. OK.

Mr. Carrington?

Mr. CARRINGTON. The—ours was a little different, and I used a different process when getting reports out. The IG Act required us to notify the Department of Justice, the Attorney General. So, when allegations came in, we immediately started working with them and in joint cases with the FBI. And so, our cases took a little different—our reports took a little different road. So, anything that did come through, you know, the—it was very difficult to get the report out in any possible timeframe.

Representative MILLER. Ms. Herzog?

Ms. HERZOG. I, for most of the time I was there, worked for Mr. Carrington. And, at the time he left and I was acting, I tried to implement some procedures that made it a little easier and may—actually ended up over-complicating things, because they were not quite accepted at face value. I really don't have an answer to that question.

Representative MILLER. OK.

Just one more—Mr. Carson, in your testimony before the HUD IG, you described the relationship with Mr. Cobb, Mr. O'Keefe, and Mr. Pastorek——

Mr. CARSON. Yes.

Representative MILLER.—as the "Holy Trinity." What was the origin of that phrase? Was that your phrase?

Mr. CARSON. No, it wasn't my phrase. It was a phrase that I had heard used by various officials and employees in NASA headquarters that referred to those three as the "Holy Trinity."

Representative MILLER. What——

Mr. CARSON. No, I did not originate that. That was just something I had heard numerous times.

Representative MILLER. What did it mean?

Mr. CARSON. What did it—it meant that basically everything in the agency went through those three individuals.

Representative MILLER. OK.

Mr. CARSON. The—you know, that the—it was inferred that they ran the agency.

Representative MILLER. Mr. Herzog, did you hear that phrase? And what did you understand it to mean?

Ms. HERZOG. Well, I never actually knew what the "Holy Trinity" was. I'm Jewish.

[Laughter.]

Ms. HERZOG. It wasn't in my repertoire. But I did understand that it meant—I believed it meant the people in power, and aligned in power.

Representative MILLER. OK.

Mr. Carrington?

Mr. CARRINGTON. Yes. I'm Catholic, so I——

[Laughter.]

Representative MILLER. You know very well what it means.

Mr. CARRINGTON.—I know what it means. And it was a—I had heard the reference before, and it was not by our people at the IG's office. I heard it from NASA employees. I had a large source network of NASA employees, and they would refer to the group, the three, as the "Holy Trinity," because they had such a close relationship that if you talked—if one said something, the other one would know immediately.

Representative MILLER. OK.

Mr. Carrington, you mentioned frequently working with the FBI and U.S. Attorneys office as part of your role in the IG's office. Did the assistant U.S. attorneys that you were working with come to different conclusions about the same information in the course of those investigations?

Mr. CARRINGTON. Different conclusions than the Inspector General—than Mr. Cobb?

Representative MILLER. Right.

Mr. CARRINGTON. Yes. Mr. Cobb had—has a lot of experience in the area of conflict of interest and ethics, from his background, and so, he knows that pretty well, and probably better than a lot of prosecutors, because those cases don't really get prosecuted that often. And I recall one instance in Norfolk, down there, where Mr. Cobb actually felt that there was a violation—a technical violation, and the U.S. Attorney's office didn't agree with him, and—because they were looking at it from a prosecutor perspective. So, in that instance, there were disagreements. He—on other areas, where he didn't have that background or expertise, he didn't see things the same way as the prosecutors, so there were a lot of differences. And, in some instances, he would say, "Get him on the phone, let me talk to him right now." And—which, you know, my experience with IGs, is not a normal thing that happens.

Representative MILLER. Did he ever say he could, or did, go over their heads?

Mr. CARRINGTON. Yes, sir. He—in particular, the one in Norfolk, he told the senior prosecutor there, the supervisor, that he could go over his head, he could go to the U.S. Attorney in the Eastern District of Virginia. And the prosecutor said, "Yes, you can. And what's going to happen is, the U.S. Attorney's going to call me, and I'm going to tell him the same thing, and that's going to be the end of it."

Representative MILLER. How about to Mr. Gonzales? Did he ever say he could call Alberto Gonzales?

Mr. CARRINGTON. He would just make references, that I recall, that, you know, he had worked for Mr. Gonzales, and then this—Mr. Gonzales was a friend of his, and that he could call—you know, go all the way to the top in the Department of Justice.

Senator NELSON. Senator McCaskill?

Senator McCaskill is the former elected auditor of the State of Missouri.

Senator McCaskill?

STATEMENT OF HON. CLAIRE McCASKILL, U.S. SENATOR FROM MISSOURI

Senator McCASKILL. Thank you, Mr. Chairman. And thank you for calling this hearing today.

I just don't know where to start. I've spent all of my adult life as either a prosecutor or an auditor, and I understand the difference between the two roles. It doesn't appear to me that Mr. Cobb understood the difference between the two roles, and that an auditor's job—I just can't fathom an auditor second-guessing a court order of a search warrant. You cooperate with law enforcement. Your job is to provide them information. Your job is never to try to second-guess professional law enforcement work.

In the time I have with this panel, there are so many questions I would like to ask all of you, but I'd like to focus for a minute on Mr. Carson. You remind me of some of the career auditors that I was fortunate enough to encounter when I took the job as State Auditor. You've been—27 years, you've been doing this, under a variety of different administrations, and I'm willing to bet, knowing auditors like I know auditors, that you saw your job as your job, regardless of who is in charge in Washington, at that given moment in time.

I want to congratulate you on the work you did as it related to safety. I can imagine no higher calling as an auditor than to be tasked with the responsibility of safety audits as it relates to the NASA program. I have such respect for the Chairman because of the work he's done in this area, and the heart of this Nation breaks when we lose people in the NASA program because of safety issues. And so, I congratulate you on that work.

And I would like to specifically ask you that, in your testimony—and I'm sorry I missed it; I was on the floor, on the immigration bill—but you quote, several times, some things, and I'm curious if these are your recollections or if you took notes, as it related to some of the things that Mr. Cobb said to you, relating to his refusal to issue audit reports that you had done in this important area.

Mr. CARSON. Personal notes—I had notes, but when I left NASA, I basically left everything in my office. I wasn't about to take anything out of there, except for some copies of documents that, you know, I thought may come in handy one day.

The workpaper files for these audits, I believe the staff of—my staff papered the files with reports that weren't issued, review comments, you know, information like that, that would support everything I've said, as far as not issuing reports.

Now, some of the comments, no, they're just things I'll never forget.

Senator McCASKILL. Well, obviously, "Anybody can perform an audit" is one that would stick in my mind.

Mr. CARSON. Right. And that was a common—that was a common statement. And——

Senator McCASKILL. "Something for auditors"—I mean, calling the Yellow Book "something that auditors can hide behind"——

Mr. CARSON. Right.

Senator MCCASKILL.—is jaw-dropping, from an IG.

Mr. CARSON. And we were——

Senator MCCASKILL. That, in and of itself, is absolutely completely incomprehensible, that an IG in the U.S. Government would call the Yellow Book something for auditors to hide behind. Are you confident that that is what he said, Mr.——

Mr. CARSON. Oh, absolutely.

Senator MCCASKILL.—Carson?

Mr. CARSON. Absolutely.

Senator MCCASKILL. And him saying that, "Your safety audits had produced nothing of value to the agency"—I look forward to reviewing those audits in detail. I have not. And, you know, one of the frustrating things for auditors is when they do good work, is worrying if anybody ever reads the whole thing. And I know you all relate to that.

I'm particularly concerned by his unilateral decision to not issue audit product. That is a huge decision for the head of an audit agency to make. First of all, it wastes taxpayer dollars, because when the audit work has been done, the taxpayers have spent a lot of money. So, if in fact, there is some reason for an audit report not to be issued, there should be some documentation of that by the head of that audit agency as to why that audit was not issued. Were you ever given, or, to your knowledge, did Mr. Cobb ever prepare, a written document that laid out why an audit report that had been completed was not issued by your agency?

Mr. CARSON. No. But there is—there would be evidence in the working-paper files of what—like in my written testimony, I talked about the audit reports that became e-mails or unofficial e-mails to NASA officials late at night. We do have that. But, no, never any written reason why. That's why, in my—in my testimony, when I talk about, a year into the review of the organizational recommendations of the *Columbia* Accident Investigation Board, my staff had written three reports addressing the way NASA was going about implementing straight-line safety and mission assurance, straight-line funding, and independent technical engineering authority, and I go to a monthly directorate update with Mr. Cobb, and he says to me, "You've worked on this for over a year, and you've got nothing to show for it." And, I'm sorry, but, at that point, I had to defend the work done by my staff, and I said, "We've issued"—or, "We've written three different reports, talking—making recommendations about that, and they were never issued."

Senator MCCASKILL. And let me also follow up on that, because I understand, from your testimony, that you believe, or you have knowledge, that he was calling the administrators of your agency prior to a draft of the report? So, this wasn't a review of a draft, but that he was checking in with the top management of the——

Mr. CARSON. Well, that——

Senator MCCASKILL.—agency——

Mr. CARSON.—was the general counsel, yes.

Senator MCCASKILL.—with the general counsel.

Mr. CARSON. Yes. On——

Senator MCCASKILL. In your 27 years of working as an auditor, have you ever known of the head of an audit agency to call the auditee with feedback prior to a draft of the audit?

Mr. CARSON. No. No, absolutely not.

Senator MCCASKILL. I mean, that is a violation of Yellow Book government auditing standards, isn't it?

Mr. CARSON. Well, it's definitely a violation of the independence standard, I would say.

Senator MCCASKILL. Absolutely. Absolutely. Was there ever any attempt on the part of Mr. Cobb to understand that he was, should be subjected to the Yellow Book standards part of an audit organization? Did he understand that, in his role as head of the audit organization, that he was, in fact, an auditor, himself?

Mr. CARSON. Early on, we did try to—and I know my boss at the time did try to bring up—you know, in our senior staff meetings on the audit side, he would talk about expressing concern about Yellow Book and professional audit standards. And, you know, it was relayed to all the managers in the organization, that we "use that as a crutch to hide behind."

Senator MCCASKILL. Dr. Light, is there anything specific that exempts IGs from Yellow Book? For people who don't know the Yellow Book is, in fact, like the Code of Professional Responsibility for government auditors. Is there anything that exempts IGs from having to respect the provisions of the Yellow Book standards of government auditing?

Dr. LIGHT. Nothing whatsoever.

Senator MCCASKILL. And is there anything that specifically directs them to be subject to the Yellow Book standards of professional government auditing?

Dr. LIGHT. Highest professionalism possible. It's embedded in, and applied in, the statement of qualifications in the IG Act itself. I don't think Congress felt, at the time, that it had to say "abide by the Yellow Book."

Senator MCCASKILL. Right.

Dr. LIGHT. That's just—you know, beyond required.

Senator MCCASKILL. Kinda like brushing your teeth.

Dr. LIGHT. Yes.

Senator MCCASKILL. Yes.

Dr. LIGHT. "The sun will come up in the morning" kind of——

Senator MCCASKILL. All right. Thank you.

Thank you, Mr. Chairman.

Senator NELSON. Dr. Light, in Exhibit Number 2, which is the Integrity Committee's finding with respect to the abuse of authority, what effect does such conduct have on the effectiveness of an Inspector General?

Dr. LIGHT. You know, I've been thinking about this as we've been going through the—this conversation today. The most powerful product of an IG and the OIG is the deterrence effect of their work. That's where the independence and the integrity really works its will so that people understand that there is an independent place to go, a safe harbor for whistleblowers, and that there is a consequence for malfeasance and misfeasance. This is where this kind of behavior would have had its most pernicious impact, in reducing the sense, among NASA employees and contractors—and if you

have to decide what that exposure is, in terms of risk—their sense that they would be held accountable for what they did or did not do. I think that's where the effect is most pronounced.

Senator NELSON. Mr. Carson, I have a series of questions for you.

On the Space Shuttle, there is a Destruct System that is redundant, so there are two. And it is the awesome responsibility of an Air Force officer at the Cape Canaveral Air Force Station, should that Space Shuttle go off of its intended trajectory and head toward a populated area, such as very nearby Cocoa Beach or Titusville, Daytona Beach, that that safety officer has the responsibility of destructing. The launch criteria is, both the primary and the backup have to be working. That's the launch criteria.

Now, you handled an investigation into the status of the Range Safety Systems during the June 5, 2002, launch of the Space Shuttle. What did your inquiry determine?

Mr. CARSON. Senator, I received the—it was actually a referral. The Air Force had looked into it, and then had referred it to the NASA OIG, our Office of Investigations, and it was a potpourri of issues about the Command Destruct System, the procurement of the Command Destruct System, but they referred it over to us after closing it out. They gave it to our Office of Investigations, who determined there was no criminal activity. And Lance—Mr. Carrington's group referred it to me as a safety issue, because of the—the Command Destruct System was nonoperational.

I had an Air Force officer assigned to my safety group who had been an investigator on the *Columbia* Accident Investigation Board, came to work for me after the Board had released its final report, and spent a 2-year detail. We got the referral in 2004, and the officer who worked for me started doing some interviews, investigating down at the Cape. He and I went down in January 2005; we met with NASA, determined that everything we heard, that the mission flight control officer and the chief of safety for the Air Force were both no-go for that launch, and were overruled by the range commander.

Senator NELSON. That was as a result of a 2-year investigation, and that's what the report stated.

Mr. CARSON. No, the 2-year—no. We only had it for a couple of—we got it 2 years after—NASA OIG got involved with it 2 years after the actual incident itself. But nothing had been done, apparently, to that point. The Air Force gave it to us and said, "You may want to look at the launch safety issues."

Senator NELSON. OK. So, what happened?

Mr. CARSON. We investigated. The Air Force officer working for me and I went down to Cape in—to the Cape in January 2005. We met with NASA safety officials, we—everyone we talked to, it was unprecedented that a chief of safety and a mission flight control officer would be—were no-go for launch, but were overruled. So, we talked to the NASA folks. NASA folks had a representative in the range. The NASA firing room and the range are two different facilities. NASA had a safety official, knew something was going on, but never communicated to the launch control center that there was an issue with the go—the Command Destruct System on the range. When it—when the final poll came around, the range commander said they were go for launch, overruling the two safety officials,

and the launch took place, with an—with a nonoperational backup Command Destruct System.

We came back. We met with NASA officials. We told them what the issue was. They agreed. We said we were going to make a recommendation that NASA put a safety official on the communication link in the range operations control center. That was going to be our recommendation. We came back—NASA was in complete agreement with us, the safety folks down at Kennedy. We came back in February 2005, we briefed Mr. Cobb, and, at that meeting, he said, "Let the Air Force handle it."

Senator NELSON. So, at the end of the day, did NASA's Office of the Inspector General release any report on the findings to NASA management?

Mr. CARSON. Senator, I left NASA about 3 weeks later, and, to my knowledge, I have never seen anything related to that issue.

Senator NELSON. Did your organization conduct an audit of NASA's compliance with the recommendations of the *Columbia* Accident Investigation Board report?

Mr. CARSON. Yes, we did. We conducted a number of audits and inspections related to all the recommendations in the *Columbia* accident report.

Senator NELSON. And what was the ultimate disposition of that case?

Mr. CARSON. I've—I left the NASA—I left NASA before the final report was ever issued, if there was a final report ever issued.

Senator NELSON. So, we don't know if the findings that NASA was not—you do not have personal knowledge that NASA was not implementing the *Columbia* Accident Investigation Board's recommendations.

Mr. CARSON. No, I don't.

Senator NELSON. OK.

Let me flip it to you, Chairman Miller.

Representative MILLER. Thank you, Chairman Nelson.

Senator McCaskill asked about Yellow Book standards, which I'm not sure the average person would know anything about, but Senator McCaskill, based on her professional background, knows very well, and is shocked by, the deviation—the flagrant deviation from those standards, and asked if the standards for the Inspector General were different from those standards expected of auditors, generally.

Are any of you familiar with the *Quality Standards for Federal Offices of Inspector General,* which I held up before, in the opening statement?

Ms. HERZOG. Yes, sir.

Representative MILLER. OK. And these standards are issued, pursuant to an executive order, to provide professional standards, standards of conduct, for an Inspector General. Is that correct? The statute itself has the purpose of establishing independent and objective units within each agency, the Inspector General's office. These standards say that, "objectivity imposes an obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence is a critical element of objectivity. Without independence, both in fact and in appearance, objectivity is impaired." Is

that your understanding, all of you, of the obligations of an Inspector General?

Ms. BRIAN. Yes, sir.

Mr. CARRINGTON. Yes, sir.

Mr. CARSON. Yes, sir.

Ms. HERZOG. Yes, sir.

Representative MILLER. OK. Under the provisional independence, again, it says that, "the opinions, conclusions, judgments, and recommendations of an Inspector General should be impartial, and be viewed as impartial, by knowledgeable third parties." And then it discusses impairments, what may detract from the independence, both actual and apparent, and it says that, "personal impairments—personal impairments of staff members result from the relationships and beliefs that cause OIG staff members to limit the extent of an inquiry, limit disclosure, or weaken the—or slant their work in any way. OIG staff are responsible for notifying the appropriate officials within the organization if they have any personal impairments to independence."

Now, we've heard testimony from the three of you with respect to this particular case. We've got a voluminous record from the IG of HUD. We've had staff interviews. And what we understand is that Mr. Cobb met or played golf frequently with the NASA Administrator, Sean O'Keefe, met him in his office for drinks, went to lunch with him on a regular—on a weekly basis, frequently in the NASA cafeteria, so other employees saw them there, the three of them—Mr. O'Keefe, Mr. Pastorek, and Mr. Cobb—and that he sent audits, reports, to Mr. O'Keefe and others for their review before issuing them, and changed things that they didn't like.

Does that meet the requirement of independence? Is that a personal impairment?

Ms. Brian?

Ms. BRIAN. Yes, it certainly is an impairment.

Representative MILLER. Does it violate these standards, in your judgment?

Ms. BRIAN. I don't think there's any question that it does.

Representative MILLER. Dr. Light?

Dr. LIGHT. Same. Same answer. It is an impairment, and it violates those standards.

Representative MILLER. The standards of professional conduct——

Dr. LIGHT. Right.

Representative MILLER. And these are issued by the PCIE which includes all the Inspectors General, themselves. So, this is the view of Inspectors General of what their professional obligations are. Is that correct?

Dr. LIGHT. That's correct. I mean, you know, on one level it seems so small. You know, lunch at the cafeteria, or maybe the Administrator gives the IG a couple of mulligans on the golf course, whatever. It seems so small. But the appearance effect in the agency as a whole, to whistleblowers and others, that there may be some sort of clear relationship between the agenda for auditing and investigation and the personal relationship is enough to destroy the integrity of the office, in terms of its creating the deterrent effect that it aims to create.

Representative MILLER. Ms. Brian, you're shaking your head.

Ms. BRIAN. No, and I—and I'm just thinking, that, certainly in the context of all the other activities, of checking with them—if the staff were aware that he's checking with them on the scope of what audits should be even before they're begun, I mean, those kinds of things are just unimaginable to professional staff at IGs.

Representative MILLER. OK.

To the ordinary person without a professional background, there probably is a sense of, "What's the problem with going to play golf with someone? What's the problem with meeting someone from work for drinks? What's the problem with going to dinner with someone, or lunch with someone, from work?" But that's not the expectation of the Inspector General.

Ms. BRIAN. That's correct. And, as I said in my testimony, those are, sort of, atmospherics. At one level, if that were the only thing happening, I think the golf may not have happened all that often—I think, a couple of times—but if that's all that had happened, that may not merit the kind of concern that the Congress has, at this point. But, when you put it in the context of all the other activities, that's when I think it becomes overwhelming.

Dr. LIGHT. One IG once described this job as being like straddling a barbed-wire fence, it's extremely difficult to do. And it does impose on the auditor or the IGs, you know, an isolation, a posture that is not comfortable at all in one's day-to-day work, but that requires a courage and perseverance that goes beyond, sort of, the personal gratifications of socializing and so forth. You just have to keep that in mind as you look at these things, as the effect on the professionalism of the staff.

Representative MILLER. OK. And the description that Mr. Cobb made of wanting to have a good relationship, wanting to ingratiate himself with Mr. O'Keefe so that he could get his recommendations accepted and implemented, is that consistent with these standards and your understanding of what the professional obligations of an Inspector General are?

Dr. LIGHT. It is the IG's ultimate goal to see the recommendations of audits and investigations turned into action. That does not require ingratiation. That requires respect and integrity among all parties. One of the people we're not talking about at depth here is the Administrator and what he sought to accomplish through this relationship. We haven't talked about the deputy director of OMB for management, who has a role, governmentwide, to protect the Inspectors General from undue influence. So, you know, there is a desire to have your recommendations adopted, and you want to have a good professional relationship with the leadership team, but, under no circumstances do you give away your independence. Your recommendations are adopted because they're the right thing to do, not because you're friends or pals with the Administrator.

Representative MILLER. OK.

Ms. BRIAN. I would concur. I mean, basically, you get your recommendations implemented because of the strength, the power of the information that you have, and the respect you have for it, not because of your friendship.

Representative MILLER. In these standards, there is also a discussion of external impairments. External impairments to inde-

pendence occur when the OIG staff is deterred from acting objectively and exercising professional skepticism by pressures, actual or perceived, from management and employees of the reviewed entity or oversight organizations.

Impairments include external interference or influence that could improperly or imprudently limit or modify the scope of OIG work, or threaten to do so, including pressure to reduce, inappropriately, the extent of work performed in order to reduce costs or fees.

Again, asking the management what they want to investigate, running drafts by them before publishing drafts, editing it based upon their concerns, is that an external impairment?

Ms. BRIAN. There's no doubt. And the fact that, even after the Congress has begun its investigation, to allow the Administrator to come in and speak to the——

Representative MILLER. Well——

Ms. BRIAN.—entire IG staff, and——

Representative MILLER. That was my——

Ms. BRIAN.—during that conversation, minimize the findings of the PCIE, which is problematic in itself, but then starts—tells them what he thinks they should do, including only doing investigations that involve $1 billion of savings, with the IG sitting there, and allowing it, to me, is absolute evidence that he simply doesn't really understand the problem at all.

Representative MILLER. OK. That was actually my next question, but that's OK.

Dr. Light, would you agree with Ms. Brian's——

Dr. LIGHT. I think we're in close agreement on pretty much everything here.

Representative MILLER. OK. With respect both to asking in advance, exchanging e-mails——

Dr. LIGHT. You know——

Representative MILLER.—sending e-mails about——

Dr. LIGHT.—you develop your agenda for the office from conversation and from observation. It's not, you know, unacceptable to talk to the Administrator about what you intend to do, and to have the Administrator say to you, "Well, I'd sure like you to focus on X or Y." But, at no point does the IG give the control of the agenda to someone other than him- or herself. That is just not acceptable. It's a bright line. So, can you have a conversation with the Administrator about what you're going to do, you know, where things are going. That's fine. You know, can you use that information to circumscribe or to somehow curtail your activities? Absolutely not. You have to follow the statute's direction, which is extremely broad, broader than many people recognize, in its intent.

Representative MILLER. I don't think you've spoken directly to the mandatory meeting that—as Ms. Brian did—of the staff of the OIG, the Office of the Inspector General, and NASA with Dr. Griffin, in which he addressed the PCIE report with respect to Mr. Cobb and basically said, "Moose is my boy."

Dr. LIGHT. That is a meeting that should never have occurred, in my judgment. It reflects a lack of understanding somewhere about the nature of the relationship between the Administrator and the Office of Inspector General. Should never have happened. Tremendous chilling effect on the independence of the OIG.

Representative MILLER. OK.

Thank you.

Senator NELSON. Senator McCaskill?

Senator MCCASKILL. I, unfortunately, am going to have to preside over the Armed Services hearing at 4:30, so I'm going to have to leave to do that in just a few minutes, so I will not be here for the next witness's testimony.

But I do want to speak to the auditors on the panel a little bit about the nature of audit reports, in terms of how conservative they are. And I notice that Mr. Cobb, in his testimony, wants to diminish the fact that this report that was issued by the HUD IG, by the President's Council on Integrity and Efficiency. Could you speak briefly about the requirements for every finding an in audit to be referenced, and how strict the requirements are in government auditing, in terms of nothing is put in a report that cannot be documented by direct reference. And that's when you refer to your "workpapers," obviously, that's the guts of an audit that is used to glean the information that is reviewed and reviewed and reviewed for references. You know his testimony about this report, and the fact that it didn't show any illegality, and you know this is a bruising report, since this is a peer review, in essence. Am I correct, that, for Mr. Cobb, the Integrity Committee's report is his peers passing judgment on his ability to do this job? And could any of you reference the conservative nature of you guys? In my experience, it's very hard to ever question an audit, because of your training and the way you view what you do, in terms of the documentation.

Mr. CARSON. Well, just to speak for audits—not investigations, but for audits, like you mentioned, I mean, we have a very thorough—every organization I've ever belonged to, we have a very thorough—what we call "referencing process," where an audit report is referenced back to supporting work, supporting documents, interviews, what have you, and then a third party, not even associated with the audit, will usually come in and do a—what we call an "independent referencing," checking the facts and figures in every report, someone who wasn't even involved with the job——

Senator MCCASKILL. Clean read.

Mr. CARSON. Yes, ma'am.

Senator MCCASKILL. And when he took some of these reports and wanted to change findings, wanted you to change findings, did you explain to him about referencing, and that this was not a matter of him waving a magic wand and the audit report changing, that every finding has to be referenced? Did he understand that concept?

Mr. CARSON. We—the auditors—we auditors, the management team, we argued those things constantly, but—towards the end, I mean—I mean, it shows, by the number of people that have left, we just refused to go along with it, at some point. Yes, I mean, we only tried to publish what we could support. I can't say we published anything that wasn't supportable, but mostly it was things being taken out of reports.

Senator MCCASKILL. How many auditors have left NASA OIG since Mr. Cobb has taken over?

Mr. CARSON. I have no idea, but it's quite a few. All I know is, the entire senior management team that I worked with, upon his arrival, of probably 15 to 17 senior auditors, there may be one left.

Senator MCCASKILL. And what about the number of audits that have been performed? I realize that in a couple of instances he took audits and made them e-mails to management, or he took an audit and changed it into a letter, so there was never any public document issued——

Mr. CARSON. Right.

Senator MCCASKILL.—that the public would know that he was doing his job as an independent IG on these operations. How many times did that occur? And what about the product, in terms of the number of audits that were issued under his tenure?

Senator NELSON. Senator McCaskill, if you'll look at that chart, and if you all will put that chart up on the easel, you'll see the number of audits and the terms of the two previous IGs——

Senator MCCASKILL. Yes.

Senator NELSON.—in NASA.

Senator MCCASKILL. Thank you, Mr. Chairman.

Did you have a severe staff shortage that occurred under Mr. Cobb that would have accounted for this kind of reduction——

Mr. CARSON. No, not at——

Senator MCCASKILL.—in the number of audits?

Mr. CARSON.—not at all. I can attribute it to—I think we were doing just as much work, but the reporting process was so—the process was: there was no process. We couldn't get anything out. It was more painful—it was more painful to the audit teams to try to issue a report than to just look the other way at issues. That's how bad it got toward the end.

Senator MCCASKILL. So, it was easier to start another audit even though I'm sure it took a lot longer, under Mr. Cobb, to complete audits, it was easier just to not fight it, and go on? I mean——

Mr. CARSON. Well, or not—or not——

Senator MCCASKILL. Fewer starts?

Mr. CARSON. No.

Senator MCCASKILL. Did he approve the starts? Did he approve the initial starts?

Mr. CARSON. Some, yes. I mean, we—it was talk—we were talking, earlier, about planning and the influence of the agency over planning. I mean, there were several—I had security as a responsibility, also, and, after 9/11, the agency received quite a large appropriation for security—supplemental security funding. And that was my number-one security priority audit, and I was never allowed to start—and I had allegations from sources throughout the agency that some of that money may have been misspent, and I was never allowed to start that audit.

Senator MCCASKILL. I noticed, also in his testimony, and I've got to get this in now, because I have to leave, I found a certain irony, Mr. Chairman, that Mr. Cobb, in one instance, defended himself by saying that he had done something better than the Department of Justice, which is a little ironic, in light of the current situation that we have at the Department of Justice. I thought that was an interesting defense of his behavior, that he would draw that comparison.

And, I've got to say, before I leave, and thank you, to all of you, for being here, I don't know why we're here, because it's obvious to me that this Inspector General doesn't "get it." And it seems to me that his resignation should have occurred a long time ago. And the fact that he hasn't resigned is an insult, I believe, to Inspectors General throughout government that are doing their jobs with independence and integrity and courage, and to all the auditors that are out there working in the Federal Government, doing the best they can to hold our Government accountable.

Our job—your job is not to make the people you work for look good. Your job is to reassure the taxpayers that we're doing our best.

And clearly, this is an Inspector General that doesn't understand that obligation. And, to me, it is a vaulted and honorable obligation that one should relish and embrace. And I want to go on record as saying I believe that if Mr. Cobb does not resign immediately, that I certainly hope other Senators will join me in recommending that he be removed from his position. And I thank all of you for being here today.

Senator NELSON. Thank you, Senator McCaskill.

And if your Armed Services meeting concludes, if you would come back, your expertise is certainly valuable and has lent great credibility to the questioning today, from the depth of your experience as a prosecutor and as an auditor.

Dr. Light, I wanted to clear up just a couple of little loose threads here, and then, if Chairman Miller doesn't have any more questions, we'll proceed.

Representative MILLER. I don't, of this panel. A vote has just been called in the House that is one I can't explain missing, back home. In fact, it has to do, particularly, with North Carolina, and it's a bill that I've cosponsored in three Congresses now, and it's going to a vote for the first time. So, I really do need to go vote on that, but I will be right back.

Senator NELSON. OK.

All right. Dr. Light——

Representative MILLER. It hasn't been called yet. It'll be called shortly.

Senator NELSON. OK.

In this case, the head of the PCIE elected to send the Integrity Committee's findings to the NASA Administrator, which we've already discussed, for him to take corrective action. In a case like this, where, the independence of the IG is at issue, how much sense does it make that the agency's management would decide his punishment?

Dr. LIGHT. I think the finding should go to the deputy director for management of the Office of Management and Budget. However, in this particular case there is a conflict of interest, in that the current deputy director for management was the director of the Office of Presidential Personnel, which selected the Inspector General for appointment. Therefore, you would move this up a notch, and the findings would go to the deputy director of the Office of Management and Budget. And that's where it should reside, and then be discussed in the councils of the White House to decide

what to do with this particular appointee; but not to the head of NASA, I'm afraid.

Senator NELSON. At NASA, the ultimate disposition of the Cobb case was determined after a review by NASA's general counsel, and the general counsel admits, in some of the testimony that these committees have received, to a sort of mentoring relationship with Mr. Cobb, and that he had discussed the investigation with Mr. Cobb at weekly intervals throughout. How credible is the NASA general counsel's review and recommendations in this case?

Dr. LIGHT. Well, I don't think they're particularly credible, are they? You have the substance of the argument in the cases, as I understand it through brief exposure, that the IG has been compromised due to his relationships with the Administrator and senior leadership team, of which he is a part, and wants to be a part, wants to ingratiate himself, and you would not have your general counsel involved in that conversation.

The instinct of the administrators and general counsels all across government are, to some extent, not to have a strong inspector general. It's an uncomfortable thing to have in your midst. And you would not look to them to make the decision on whether a friendly inspector general would stay in office or not.

Senator NELSON. Well, thank you, Ms. Herzog, Mr. Carson, Mr. Carrington, Ms. Brian, Dr. Light. Thank you for your testimony.

The first panel, we will dismiss, and we will call up Mr. Cobb.

Representative MILLER. And, Chairman Nelson, I misunderstood. I will probably have a vote in about half an hour, but, when I get called, I will have to go to that.

Senator NELSON. OK. All right.

[Pause.]

Senator NELSON. Mr. Cobb, your written statement has been received. It is a part of the official record. We would like for you to summarize it for us, and then we will have some questions. You may proceed.

STATEMENT OF HON. ROBERT W. COBB, INSPECTOR GENERAL, NASA

Mr. COBB. Thank you, Chairman.

My name is Robert Cobb. I am the Inspector General at NASA.

Today, I respond to unjustified allegations against me, as reported by the Integrity Committee. The Integrity Committee found that I did not break any laws or act illegally.

Senator NELSON. Pull it a little closer.

Mr. COBB. Turning it on is helpful, also. Thank you.

The Integrity Committee found that I did not break any laws or act illegally. Moreover, the Integrity Committee did not suggest that any matter covered in the wide-ranging investigation was mishandled by the NASA OIG. However, the Integrity Committee did reach certain other conclusions which are demonstrably invalid.

Anyone seeking to learn the truth about the Integrity Committee's finding should examine my written statement, which makes clear that the findings are a travesty.

Failing to find actual lack of independence, the Integrity Committee asserts an appearance of lack of independence in, specifically, two instances, one involving a proposed Crime Stoppers no-

tice, and the other relating to the investigation by my office into the illegal copying of International Traffic in Arms Regulations designated materials. I prove in my written statement that these assertions are utterly devoid of merit.

As regards independence, the Inspector General Act, its legislative history, and PCIE guidance mandate a good working relationship between an Inspector General and the agency head. The Inspector General Act states that the Inspector General is, "to report to, and be under the general supervision of, the agency head." The agency head, under the Inspector General Act, is "required to render assistance to the Inspector General in the Inspector General's execution of his responsibilities." And the Inspector General is, among other things, "required to keep the agency head currently informed of problems and to recommend policies to promote the economy and efficiency of the agency."

The legislative history of the Inspector General Act—in particular, the report of the Committee on Governmental Affairs, U.S. Senate, Report Number 95–1071, to accompany H.R. 8588, which I request be added to the record, states emphatically, quote, "The Committee believes that Inspector General's efforts will be significantly impaired if he does not have a smooth working relationship with the Department head." The Committee continued, quoting the ATW Inspector General, "To be truly effective, the Inspector General must have a close relationship with the Secretary, enjoy his confidence and respect, and be responsive to his concerns, both as to his specific assignments and as to the Inspector General's overall function in the agency."

The Committee continued, "The Inspector General can be the agency head's strong right arm in rooting out fraud, abuse, and waste, while maintaining the independence needed to honor his reporting obligations to Congress. The Committee does not—the Committee does not doubt that some tension can result from this relationship, but the Committee believes that the potential advantages far outweigh the potential risks."

The chair of the PCIE has issued guidance in 2004, and again in 2006, that encourages productive and respectful working relationships between agencies and Inspectors General. I also request that that guidance be submitted for the record.

I gained the confidence of Administrator O'Keefe, and I have the confidence of Administrator Griffin. This is not because of lack of independence. In fact, there's been any number of instances when my view of matters differed from the Administrator or his senior staff, or when OIG investigations have related to the most senior officials of the agency. It is because of my demonstration of independence that these Administrators express confidence in me, so the relationship has been exactly as anticipated by Congress when it enacted the Inspector General Act.

I'm proud of the management initiatives that have been executed during my tenure as Inspector General which have ensured that those matters most significant to NASA are well resourced and managed. Our investigation into improprieties by the Boeing Corporation which resulted in the recovery to NASA of over $100 million last summer was an example of a matter that benefited from

substantial OIG management involvement, including substantial attention from me.

At NASA, I have taken the responsibilities of office under the Inspector General Act seriously and without compromise to root out and prevent fraud, waste, and abuse, and to promote the economy and efficiency of the agency. I have worked with NASA management in the manner contemplated by the Inspector General Act. I have upheld my oath to support and defend the Constitution of the United States. My staff and I have worked very hard to gain respect by building expertise in the areas in which we conduct our work, by ensuring that our work is performed in a fair and balanced manner, by making sure that the work is supported by law and relevant facts, and by making sure that NASA OIG organization reflects the economy and efficiency of operations that we demand of the agency we oversee. As a result of this dedicated effort, I proudly stand behind the work of the NASA OIG. I believe the NASA OIG to be a much stronger organization today than when I became the NASA Inspector General.

Thank you.

[The prepared statement of Mr. Cobb follows:]

PREPARED STATEMENT OF HON. ROBERT W. COBB, INSPECTOR GENERAL, NASA

Chairmen, Members of the Subcommittees, my name is Robert W. Cobb. I am the Inspector General at NASA, having been appointed to that position by President George W. Bush on April 16, 2002, after confirmation by the U.S. Senate. Prior to that, from January 2001, to April 2002, I was an Associate Counsel to the President, with primary responsibility for handling ethics program matters for the White House and the financial disclosure process for nominees to Executive Branch positions requiring Senate confirmation. For 9 years, from 1992 to 2001, I was a staff attorney at the Office of Government Ethics, and, from 1986 to 1992, I was an attorney in private practice.

Today, for the first time, I am responding publicly to unjustified allegations against me. Until now, I have deferred to the process of the Integrity Committee (IC) of the President's Council on Integrity and Efficiency (PCIE); that process is now concluded.

The IC opened an administrative investigation of my activities as Inspector General in December 2005, purportedly pursuant to its authority under Executive Order (EO) 12993, and closed the investigation in April of 2007. The Inspector General of the Department of Housing and Urban Development (HUD OIG) conducted the investigation at the request of the IC. The results of the investigation reflect that I did not break any laws or act illegally. [Exhibit A] The IC did not suggest that any matter covered in the wide-ranging investigation was mishandled by the NASA OIG. But the conclusions the IC did reach were as flawed as the investigation on which they were based, and are demonstrably invalid. The IC acknowledged the weakness of its own conclusions by not submitting any recommendation to the PCIE Chair, even though EO 12993 mandates such a submission. I attach Exhibit B, an annotated version of the IC's January 22, 2007, letter, detailing the IC's false and misleading recitation of facts and law and the broken and dysfunctional process pursuant to which the IC's conclusions were reached. My concerns about the investigative process are catalogued in my correspondence with the IC, with relevant correspondence being attached. [Exhibits C–R] For just one example, while I was notified by the IC that the investigation concerned safety matters, to my knowledge, none of the witnesses I identified at the outset of the investigation were interviewed. [Exhibit D]

The Chair of the PCIE decided that the results of the investigation did not warrant a referral to the White House for further action. Instead, the PCIE Chair forwarded the report to Michael Griffin, the NASA Administrator, to consider "what actions, if any, you propose to take." [Exhibit S] Upon review of the IC's report, the NASA Administrator concluded that the Report of Investigation (ROI) "does not contain evidence of a lack of integrity on the part of Mr. Cobb, nor is there support in the ROI for any actual conflict of interest or actual lack of independence on his part." [Exhibit T] The NASA Administrator has publicly stated that I did not abuse

the power of my office, that there has been no action on my part to compromise safety, and that my independence is not in question.[1] Nevertheless, Administrator Griffin committed to arranging for me, with the concurrence of the PCIE Chair, management training and coaching to address management concerns raised by the IC investigation. [Exhibit U] I have agreed to receive the executive training and coaching, and I have already begun to implement these measures.

In his review of the IC's report, Administrator Griffin observed:

> In the 2-years that I have [been NASA Administrator], I have seen a high quality work product from the OIG reflective of a staff and its leadership dedicated to carrying out the mission entrusted by law to the IG. IG Cobb is technically sound, highly conscientious, fully engaged in his work, and he brings rigorous analysis to the OIG work product. [Exhibit V]

That the PCIE Chair determined the matter did not warrant referral to the White House and that NASA, in contemplating whether any action should be taken, would challenge conclusions of the IC is not surprising because the IC's negative conclusions do not withstand reasonable examination. This is fundamentally because the IC's criticisms are not based on facts or law and are wrong. They are wrong as the result of an investigation flawed in design and execution and without respect for even the most basic notions of due process and fairness—or compliance with law and procedural requirements. [See Exhibit B for detail]

Notwithstanding thousands of hours of investigation by the HUD OIG, including eleven hours of my interview, neither the HUD OIG nor the IC could find a single instance where some action or non-action on my part during the previous 5 years evidenced lack of independence. Indeed, Alan Li, former Director, Acquisition and Sourcing Management at the Government Accountability Office (GAO), who was responsible for handling NASA issues for GAO, stated before a group of Congressional staff I was briefing that I was the most independent IG he had ever seen. (Despite being advised of this, the IC and the HUD OIG did not interview Mr. Li.) Failing to find actual lack of independence, the IC asserts an appearance of lack of independence in specifically two instances, one involving a proposed Crime Stoppers notice and the other relating to the illegal copying of International Traffic in Arms Regulation (ITAR) designated materials, which I will prove in this Statement (and Exhibit B in greater detail) are utterly devoid of merit. In the Crime Stoppers matter, the IC gets the facts wrong, and any action other than that I took would have been reprehensible. In the ITAR matter, there was no action I should have taken that I did not, and the actions I am alleged to have failed to take were not necessary, not required, and not the subject of any serious recommendation or discussion. Yet the IC relies on this house of sand to conclude that I caused a perception of lack of independence.

In connection with the Crime Stoppers notice, the IC first ignores the reality that by virtue of NASA OIG senior management involvement, a serious mistake was averted. One year after the Space Shuttle *Columbia* accident, members of the NASA OIG staff had proposed that the OIG join the Texas Rangers in announcing that the public's help was needed in connection with the alleged theft of a ring from the finger of a deceased astronaut. After consultation with senior OIG staff, I directed that additional investigation be conducted to determine whether a ring actually had been on the astronaut's finger at the time of the tragedy. It became clear that there was no ring on the finger of the astronaut, and, therefore, there was no credible evidence of a theft. Public suggestion that persons involved in the recovery effort were involved in such a heinous crime would have been most inappropriate. Again, to be clear, there was no ring on the remains of the astronaut and, therefore, there could not have been a theft of a ring from those remains.

In its review, the IC misleadingly omits any reference to the compelling photographic evidence that belies any notion that issuing a Crime Stopper notice might be appropriate. Compounding the unfairness of ignoring critical contrary evidence, the IC overreaches to find an appearance issue where there was none by relying on nonsensical HUD OIG reports of witness testimony. So, for example, the IC recounts in its January 22 letter that:

> According to [redacted], IG Cobb said the whole NASA *Columbia* investigation was not going well, NASA wanted it finished, and for the outcome to reveal nothing that would make NASA look bad or shake the public's trust in NASA.

The relevant discussion from which this account derives took place in April 2004, 8 months *after* the NASA *Columbia* accident investigation had been concluded (in

[1] Michael Griffin C-SPAN Newsmaker interview on April 8, 2007.

August 2003). The idea that I would say the investigation was not going well 8 months after it was finished is facially incredible. Yet the IC relies on this obviously mistaken statement to reach its conclusion on appearance of lack of independence, notwithstanding that the endorsement of the proposed Crime Stopper notice would have been a dereliction of my duty.

The IC recounts that:

> The Texas Ranger involved in the investigation informed [the] HUD OIG that he believed someone at NASA wanted the investigation shut down because if it got out that the ring was stolen, questions would be asked as to the conduct of the whole NASA investigation into the *Columbia* accident.

Reliance on this statement reflects the IC's stubborn persistence to make something out of nothing. As there was no stolen ring, the premise for the belief stated is nonsense. Moreover, the statement reflects an overall ignorance of the *Columbia* Accident Investigation Board's report issued in August 2003, known for its thorough examination of both the immediate and root causes of the *Columbia* accident. Inclusion of the statement and presumptive ratification by the IC of its relevance to the analysis of an "appearance" issue again reflects the IC's own total lack of understanding of relevant facts. It also shows that the IC's determination in this matter is based more on whatever anyone would say rather than whether there was any justification or credibility to his or her statements. The IC's methodology for determining an "appearance" problem allows it to make a negative finding when there are no facts to support it other than what some person, not in a position to know, says.

The IC also recounts that:

> Another NASA employee . . . recalls IG Cobb saying, "Can you believe how embarrassing that would have looked for the agency [NASA] if that [Crime Stoppers report] went out?"

Obviously, there would have been embarrassment if the OIG were to endorse publication of a false allegation that authorities participating in the recovery process robbed an astronaut's remains of jewelry. This incident should have resulted in a finding that senior staff properly avoided the loss of public confidence that would have resulted from issuing a misguided and false public cry for help. Instead, the IC relies on this statement in finding lack of independence. Again, there was no ring on the remains, and therefore no theft. Interestingly, after the NASA OIG declined to participate in the Crime Stopper report, the Texas Rangers, who had been investigating the matter for a year without the help of the NASA OIG, apparently decided themselves not to issue the Crime Stopper notice.

The IC's conclusion on the ITAR incident is similarly flawed. As a starting point, the ITAR matter was one the IC had previously considered and, after seeking and obtaining relevant information on the allegation, determined that "IG Cobb's response substantially demonstrated that IG Cobb had not engaged in any wrongdoing . . . the IC will take no further action concerning this matter and has placed this file in a closed status." [Exhibit W] EO 12993 specifically precludes further review by the IC of a closed matter.

The IC got the ITAR complaint right the first time, but in reopening the matter, the IC exhibits the same illogical approach and persistence in the face of the evidence that led to its invalid Crime Stoppers conclusion.

Again, the IC repeats allegations and treats them as true without any factual or legal analysis. The IC states, for example, "[t]he theft of ITAR matter must be reported to the Department of State." No legal support is cited for this statement and, in fact, I believe that there is none. Once this initial legal pillar is taken away, the rest of the house of cards falls away.

Moreover, as a factual matter, the theft of ITAR from the Marshall Space Flight Center was indeed informally discussed with the Department of State very soon after the illegal downloading of data occurred. The director of NASA's export control office informed me that the Department of State told him when he notified it of the intrusion that it had already seen the press report about the intrusion and that no voluntary disclosure of the loss was required because NASA had not violated the ITAR. Department of State reporting requirements relating to violations of ITAR and those regulations do not address theft of ITAR information from a Government agency. For voluntary disclosure provisions, see ITAR at 22 CFR 127.12.

Having overlooked the substantive rules that apply, the IC then goes on to ignore the vast bulk of the factual evidence relevant to its conclusion. The IC states that witnesses questioned my decision not to report the matter to the Department of State. However, all of the contemporaneous documentation of the investigation and related matters demonstrate that no recommendation to report was made. Docu-

ments in the investigative file consider the question of whether there may be a reporting requirement, but then reflect that if there is, NASA will take care of it. Regarding the Department of State, NASA had already informed them of the illegal access to NASA's systems at Marshall, even though no requirement to do so existed.

After the intrusion was identified in the press, as the index to the case file reflects, the NASA OIG worked in concert, from the very beginning of the investigation, with the Defense Criminal Investigative Service. Soon thereafter, the Federal Bureau of Investigation and the National Infrastructure Protection Center (NIPC) were aware of the matter. (Under Presidential Decision Directive 63, the NIPC was an interagency operation located at the FBI. Created in 1998, the NIPC was the focal point for the Government's efforts to warn of and respond to cyber attacks and served as the national critical infrastructure threat assessment, warning, vulnerability, and law enforcement investigation and response entity.) Appropriate international authorities were consulted. The Department of Justice was involved. The ITAR investigation has been ongoing for more than 4 years and has involved a substantial amount of NASA OIG resources. The idea that the NASA OIG failed to report anything or mishandled the matter is simply false, yet the IC restates unsupported allegations and accepts them *prima facie* in order to substantiate its notion of "appearance" of lack of independence.

This investigation was not about finding the truth. The investigators contented themselves with collecting isolated allegations from disgruntled persons who were invited to offer personal opinions and speculate about irrelevant matters. No effort was made to discover the truth of the underlying facts upon which these allegations were based—with the result that many of the allegations repeated in the IC letter are based on false premises and should have been (as was in the ITAR case) dismissed long ago.

The failure of the IC to follow the EO and its procedures in this case inevitably led to an investigation conducted without any applicable legal standards. Without specific guidance from the IC, the investigators simply invited people to make complaints, without regard to whether the complaints were a proper area of inquiry or had any basis in fact. The result was that the vast bulk of the investigation is unusable for any proper purpose, because it concerned matters outside the scope of the IC's jurisdiction and involved matters that amounted to nothing more than idle gossip. In the end, because of the IC's departure from established procedures, a great deal of time and money was utterly wasted.

In stark contrast to the IC's investigation, which proceeded without any apparent concern for due process, compliance with the controlling EO, and other legal requirements, I have worked very hard to ensure that NASA OIG operations, audits and investigations have been conducted in accordance with the Constitution and laws of the United States. For this, I have occasionally met resistance from a few staff members and now have been investigated for these same acts. In one instance, I asked a question about the validity—the Constitutionality—of a search warrant and was told by a member of my staff that my very asking the question amounted to an obstruction of justice, notwithstanding that counsel to the IG also questioned whether the facts on which the warrant were based constituted a crime. And it is interchanges in which I displayed passionate insistence on compliance with the Constitution and laws of the United States, in the face of unjustifiable recalcitrance on the part of a member of my staff, which was at the heart of the IC conclusion that I created a hostile work environment as to one employee. Somehow, by taking appropriate actions pursuant to the available facts and law, I engaged in what amounts to the legal impossibility of *interfering* in investigations for which I am by law and position accountable.

Just one example of my ensuring that our Office's operations are conducted in strict conformity with the law occurred in March 2004. I was presented with a letter by my staff to use new Patriot Act authority to engage in computer monitoring that required my signature to proceed. After I inquired into the facts, I determined that the statute did not authorize the OIG to monitor activity in the instance presented. I therefore refused to sign the letter. No illegal monitoring occurred as a result. Contrast this with the March 2007 audit report by the Department of Justice IG concerning the FBI's issuance of National Security Letters. That audit established that there was a systemic failure at the FBI to provide adequate assurance that the Patriot Act requirements were being observed in connection with the letters. Matters involving the use of investigative power require management, oversight, and strict abidance with legal requirements, and they have at the NASA OIG under my leadership.

The road to producing disciplined work at the high standard I demand has resulted in some discord. Some employees have not appreciated having their work tested inside the office to make sure it is founded in fact and law rather than per-

sonal opinion. Some have chafed at my direction that when we conduct investigations we have a clear understanding of possible wrongdoing based on law and regulation rather than supposition and personal notions of right and wrong. This imposition of rigor has resulted in the NASA OIG getting the work right. The exhaustive investigation of the IC notwithstanding, there has been no credible suggestion of any defect in OIG work product. As a result of the NASA OIG work product, real attention is being paid at NASA to perennial challenges in financial management, information technology security, and in areas relating to critical mission execution. Our investigative work product in administrative cases (where the benefit of an Assistant United States Attorney or other prosecutor is absent) is taken seriously and acted upon by NASA management. In contrast, when I began serving as the Inspector General at NASA, the agency's record in taking appropriate disciplinary actions based on IG investigations was inconsistent, at best. As for audits, the agency faced an inventory of approximately 400–500 outstanding audit recommendations that the OIG had made but the agency had not implemented. [See Exhibit L, specifically attachment 2 to Exhibit a, of that Exhibit]. While the OIG was making recommendations, they were not being implemented, in contrast to what has occurred during my tenure as IG.

In addition to the discomfort associated with the high standards for NASA OIG work that some employees might have felt, there was resistance to changes I directed to address what I perceived to be weaknesses in the organization and operations of the NASA OIG at the beginning of my tenure. Some of the most important changes were unpopular, but needed. While I have been subjected to criticisms relating to management, actually, the management steps taken under my leadership have been necessary to execute the OIG mission more effectively and efficiently. Attached as Exhibit X is a list of some of the management initiatives that have been executed during my tenure as IG. These initiatives have led to an organization that approaches issues systemically rather than *ad hoc*, with mature quality control, accountability, and focus on the future as well as the present. The management strategy has focused on ensuring that we have those matters that are most significant to NASA well resourced and managed. Our investigation into improprieties by the Boeing Corporation, which resulted in the recovery to NASA of over $100 million last summer, was an example of a matter that benefited from substantial OIG management attention, including from myself. I believe the NASA OIG to be a much stronger organization today than when I became the Inspector General.

One might ask why the IC would engage in the type of far-flung, undisciplined, proceeding it has conducted. When investigations are not conducted with due process and compliance with legal and procedural requirements, when false and misleading information is leaked from the investigation to the press to try to create a negative perception about a public servant's integrity, and when the results of the investigation are characterized in a manner to support the objective of elected officials and those making the complaints, an inference may be drawn that the investigation is not being conducted with independence. Ironically, the IC investigation is exactly the type of gross misuse of investigative power that I have taken careful steps to ensure does not occur at the NASA OIG.

Complainants and persons associated with the investigation have used the press to impugn my reputation. Because I was not notified until April 26, 2007, that the IC investigation was closed [Exhibit R], because the press is not the proper forum for addressing ongoing investigative matters (and because releasing information about investigations or complainants may be inappropriate), I have not publicly offered any rebuttal to the allegations against me. So naturally, news reports have been inherently one-sided. For example, *The Washington Post,* on February 3, 2006, in a front page story reported a number of allegations about my purported failure to investigate a number of safety issues. None of these allegations have been substantiated because no impropriety occurred.[2] The *Post* issued no follow up article to its front page story.

In November 2006, the *Orlando Sentinel* published information leaked from the investigation. (To its credit, the *Sentinel* subsequently reported information from NASA's former Administrator and General Counsel substantially debunking certain aspects of the leaked information.) Defending oneself during the course of an investigation invariably leads to the claim of interference with an investigation, and I

[2] One of the matters, involving pilots at the Langley Research Center who claimed they had been retaliated against for raising issues about safety matters, led to an earlier call for an investigation. [See Exhibit Y, and my response at Exhibit Z.] Two reviews of the matter, one conducted by a senior staff member at NASA Headquarters and one conducted under the auspices of the Aerospace Safety Advisory Panel, a statutory NASA advisory committee, agreed with the report of the NASA OIG.

have avoided that by giving the investigation my full cooperation and by saying almost nothing to the press. Now I am told by a lead Congressional investigator that the truth of matters is irrelevant and only perception matters: a perception engineered by those with agendas having nothing to do with truth. However, under the present circumstances and my steadfast belief that investigations should be conducted fairly and legally, I am compelled to state my views publicly in the hope that greater appreciation for the principles of due process prevail among those who are charged with the responsibility to carry out investigative activities.

Given the great lengths the HUD OIG went to try to establish a suggestion of wrongdoing and the extent of the overreaching of the IC to find, if not wrongdoing, appearance of it, and the absolute failure of both of them, in light of the truth, to show any wrongdoing or even appearance of it, the IC letter, with all its foibles and falsities stands, in contrast to its intent, as a complete and *de facto* exoneration of me and the NASA OIG.

At NASA, I have taken the responsibilities of office under the Inspector General Act seriously and without compromise to root out and prevent fraud, waste and abuse and to promote the economy and efficiency of the agency. I have upheld my oath to support and defend the Constitution of the United States. My staff and I have worked very hard to gain respect by following the Constitution and laws of the United States, by ensuring that our work is performed in a fair and balanced manner, by building expertise in the areas in which we conduct our work, by making sure the work is supported by law and relevant facts, and by making sure that NASA OIG organization reflects the economy and efficiency in operations that we demand of the agency we oversee. As a result of this dedicated effort, I proudly stand behind the work of the NASA OIG.

All exhibits are in the Committee files of the Senate Committee on Commerce, Science, and Transportation and can be downloaded from the following URL: *http://oig.nasa.gov/congressional/Exhibits060707.pdf*

List of Exhibits

A. Letter to James H. Burrus, Jr. from Clay Johnson, March 29, 2007 and Letter to Clay Johnson from James H. Burrus, March 29, 2007

B. Annotated letter to Clay Johnson from James H. Burrus, Jr., January 22, 2007

C. Letter to Hon. Robert W. Cobb from Chris Swecker, January 9, 2006

D. Letter to James Burrus from Robert W. Cobb, February 16, 2006, with Enclosures

E. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., February 22, 2006

F. Letter to James H. Burrus, Jr., from J. Sedwick Sollers, III, June 28, 2006

G. Letter to Robert Mueller from Hon. Robert W. Cobb, July 17, 2006

H. Letter to James Burrus from Hon. Robert W. Cobb, July 17, 2006, with Enclosures

I. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., August 8, 2006

J. Letter to James H. Burrus, Jr. from Hon. Robert W. Cobb, August 23, 2006

K. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., August 30, 2006

L. Letter to Integrity Committee from Hon. Robert W. Cobb, September 7, 2006, with Exhibits

M. Letter to Robert Mueller from Hon. Robert W. Cobb, November 17, 2006

N. Letter to James H. Burrus, Jr. from Hon. Robert W. Cobb, November 20, 2006

O. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., November 21, 2006

P. Letter to James H. Burrus, Jr. from Hon. Robert W. Cobb, December 18, 2006

Q. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., January 21, 2007

R. Letter to Hon. Robert W. Cobb from James H. Burrus, Jr., April 26, 2007

S. Letter to Michael D. Griffin from Clay Johnson, February 15, 2007

T. Letter to Clay Johnson from Michael D. Griffin, March 14, 2007

U. Memorandum to Hon. Robert W. Cobb from Administrator, March 30, 2007

V. Letter to Clay Johnson, III from Michael D. Griffin, March 29, 2007

W. Letter to Clay Johnson, III from Chris Swecker, October 29, 2004, with Enclosures

X. Examples of Management and Organizational Changes and Initiatives at the NASA OIG (2002–2007), and Memorandum to the AIG for Audits and AIG for Inspections and Assessments from the Inspector General, January 17, 2003

Y. Letter to Michael D. Griffin from Senator Bill Nelson, May 12, 2005

Z. Letter to Senator Bill Nelson from Hon. Robert W. Cobb, May 13, 2005, with Enclosures

AA. Letter to Kenneth M. Donohue from Chris Swecker, January 6, 2006

Senator NELSON. Mr. Cobb, I'm going to ask you the questions that Senator Chuck Grassley had stated in his statement that has been made a part of the record since he was not able to be here.

And I quote, "Mr. Cobb, do you believe that an Inspector General can continue to serve if he has lost the confidence of his staff and of the Congress?"

Mr. COBB. There are two parts to that question. The first is the confidence of his staff. I do not believe that I have lost the confidence of my staff. As to Congress, I believe if Congress, and those in Congress, review the work of the Office of Inspector General, and take that work that that—that the work is credible, and it's excellent work, and I stand behind all of it.

Senator NELSON. His second question is, "Do you believe an Inspector General can continue to serve who has been found by an independent investigation to have abused his authority?"

Mr. COBB. My statement—my written statement is clear on my views on the Integrity Committee's findings. I stand behind my written statement. And if the findings of the Integrity Committee are falsely based, then I don't see any problem with continuing to serve, under those circumstances.

Senator NELSON. Well, now, are you disputing the findings of the Integrity Commission as an independent investigation, that you have abused your authority?

Mr. COBB. Yes.

Senator NELSON. You're disputing that.

Mr. COBB. Yes.

Senator NELSON. You acknowledge that that's what the Committee report said.

Mr. COBB. The Committee report said I abused my authority insofar as—and I'm not quoting it exactly—that I created a hostile work environment as to one employee.

Senator NELSON. So, you think you can continue to serve, even though the independent investigation says that you abused your authority.

Mr. COBB. Yes. And I think the Integrity Committee itself recognized that by not making a recommendation regarding its findings to the PCIE chair.

Senator NELSON. Senator Grassley's third question is, "Do you believe an Inspector General can continue to serve if he is perceived as in the pockets of the people he is supposed to investigate?"

Mr. COBB. I guess it—from my perspective, it depends on whose perception that is. The reality, to me, is important, and there is no work in our office that has been compromised in any way, shape, or form. So—I'd be interested in discussing the work of our office, which I think has been outstanding during my tenure.

Senator NELSON. The next question from Senator Grassley is, "Do you believe an Inspector General can continue to serve if he has acknowledged verbally abusing staff on numerous occasions?"

Mr. COBB. Again, I think that the premise of the question is—I don't accept the premise of the question. There hasn't been "numerous occasions of berating of staff." There are a few instances.

Senator NELSON. So, all of the testimony brought forth in the Integrity Committee's report, do you dispute that?

Mr. COBB. I believe, as my statement indicates, that the HUD Inspector General's recitation of facts reflects a—an attempt to obtain the opinions of many persons who did not like the accountability that I brought to the NASA Office of Inspector General with respect to the work of that office, and there was no effort by the HUD Office of Inspector General to produce a balanced report regarding relevant evidence.

Senator NELSON. Well, let's forget then, what the Integrity Commission report has stated, and let me ask you, Did you use profanity in front of your employees?

Mr. COBB. Yes, I have.

Senator NELSON. Did you use profanity in front of women?

Mr. COBB. Yes, I have.

Senator NELSON. The statements that were made by the previous witnesses, are those true with regard to the use of profanity and the gestures that you had made?

Mr. COBB. There were many statements made. Certainly as regards to the testimony of Debra Herzog, there was at least one instance where I used profanity in her presence in an aggressive way, and I pounded the table. And I regret that.

Senator NELSON. Do you consider that verbally abusing staff?

Mr. COBB. I think that the characterization that that was verbally abusive is a fair characterization with respect to that one incident.

Senator NELSON. But no other times.

Mr. COBB. No, I didn't say that. I believe that there were three or four other times, in the 5 years that I've been the Inspector General, where, when I believed that either the activity of a particular person as regards me was disrespectful or was—and I don't use this in a legal sense—insubordinate, but, nonetheless, where a disregard for a determination or a decision that I had made was shown, and that occurred with Ms. Herzog.

Senator NELSON. I want to remind you of your obligations under the United States Code, number 18 U.S.C. 1001, to answer, truthfully, the questions propounded in a Congressional hearing. And what we're trying to do is to get your perspective with regard to a series of allegations that are quite serious, and are extensive.

So, Senator Grassley's concluding statement in his testimony, "The honest answering of these questions should lead you to make a decision as to what is best for NASA and the American people." And so, your conclusion is that you should stay as the Inspector General?

Mr. COBB. My conclusion is that I should stand up against an investigation that disregards the Constitution and due-process concepts that are built into it. And I believe that when our Government operates in a way that is abusive, that people should stand up against it.

Senator NELSON. And, in your opinion, for you to remain as Inspector General, that's in the best interest of NASA and the American people?

Mr. COBB. Yes.

Senator NELSON. Chairman Miller?

Representative MILLER. Thank you. My vote has begun, but I do want to get in a few questions.

Mr. Cobb, the Inspector General Act provides that, or the purpose of the Act is to provide a means for keeping the head of the establishment—in this case, NASA—and Congress fully and currently informed about problems and deficiencies. And I'm sure you're familiar with the *Quality Standards for Federal Offices of Inspector General,* which says that, "Inspectors General report both to the head of the respective agencies and to the Congress. This dual reporting responsibility is the framework within which Inspectors General perform their functions. Unique in government, dual reporting is the legislative safety net that protects the Inspector General's independence and objectivity."

Do you agree with that requirement, that you report both to the head of the agency and to Congress?

Mr. COBB. Yes, I do.

Representative MILLER. OK. Now, Senator Grassley's question was, "Can an Inspector General serve effectively if the Inspector General has lost the confidence of Congress?" And your response, basically, was that you didn't think you had lost the confidence of Congress. Without regard to your personal circumstances, can an Inspector General serve effectively if Congress has concluded that they cannot rely upon that Inspector General's work?

Mr. COBB. The Inspector General can continue to do the work, and there has been—and let me make absolutely clear that there has been no suggestion that the work of our office——

Representative MILLER. Well——

Mr. COBB.—is anything other than first-class.

Representative MILLER. I really thought that——

Mr. COBB. So——

Representative MILLER.—that question could have been answered "yes" or "no."

Mr. COBB. We've—we put out a first-class work product, and——

Representative MILLER. So, your——

Mr. COBB.—will continue to do so until such time—we will just continue to do—we have—there is no problem with the credibility of the work. And whether Congress chooses and elects to pick it up and read it is really up to Congress. We will keep Congressional staff informed of our activities, as we have throughout my tenure——

Representative MILLER. But your answer is, if we've lost confidence in you, it's our fault, not yours.

Mr. COBB. It's your decision. It's not—that's not anyone's fault. It may—if it's your decision——

Representative MILLER. But——

Mr. COBB.—there's not much I can do about that.

Representative MILLER.—in your——

Mr. COBB. I can just do my job.

Representative MILLER. In your written testimony, you questioned whether the PCIE report and their recommendations were within the authority of the PCIE. And, again, the PCIE is composed of all the Inspectors General, I believe. This particular report was reviewed by six Inspectors General as informed—as we've been informed by the Inspector General of HUD. Is that correct?

Mr. COBB. It's close. It's not exactly right. There's an Integrity Committee. It has several members, three of whom are Inspectors

General. There are three other members. One of the head of the Office of Government Ethics, the head of—the Office of Special Counsel. There's—the chair is the FBI chief of the Criminal Division. And there are others, *ex officio* members, who sit in it—in on committee meetings.

Representative MILLER. Mr. Cobb, 2 weeks ago the Subcommittee on Investigations and Oversight in the House, Science and Technology Committee, had a hearing about this, all-hands—mandatory all-hands meeting of the Inspector General's Office. Two witnesses from the agency, the chief of staff and the current counsel, Mr. Wholley. Mr. Wholley testified that the chief of staff handed him a stack of DVDs and said, "These DVDs should never have been made. You decide what to do with them," or some words to that effect. And he decided that he would destroy them, because, if he did destroy them, we would probably ask for them.

Now, in ordinary circumstances—and this was the meeting where Administrator Griffin talked to the OIG staff, to your staff, about the finding of the PCIE committee with respect to your conduct and the recommendations of the PCIE Committee, and why he was not adopting those recommendations, but doing something much less.

Now, in ordinary circumstances, some kind of conduct like that, we would turn to the Inspector General, and ask the Inspector General to look into it. Can we ask you to look into that?

Mr. COBB. Well, you certainly can ask.

[Laughter.]

Mr. COBB. And whether we would undertake an investigation, I have staff reviewing our role and what role we might have in connection with that particular activity. But, as you say, under normal circumstances—that was a very unusual meeting. Part of the problem that we would have, from my perspective in connection with conducting an investigation in that case, is all of the witnesses with respect to what occurred during that session are Office of Inspector General employees. Furthermore, there were several Office of Inspector General employees who were in possession of copies of the activity, and volunteered to give them back, in fact, knowing that they were going to be destroyed. And so, there are a number of issues associated with whether or not it would be appropriate for our office to be involved in an investigation of that activity.

Representative MILLER. All right——

Mr. COBB. But, the matter is under review.

Representative MILLER. Mr. Cobb, you heard me read aloud, to the previous panel, from the *Quality Standards for the Offices of Inspector General,* the provisions on personal impairments and external impairments. You said that you thought you were supposed to maintain a close relationship with the Administrator of NASA and the leadership of NASA. This provides, "Personal impairments to staff members result from relationships and beliefs that might cause OIG staff to limit the extent of an inquiry, limit disclosure, or weaken or slant their work in any way."

The testimony, which I think—some of which you have not disputed, or some of it is written, and is beyond dispute—is that it was frequently the case that you would ask in advance what you wanted the management to have you look at; you would send them

findings before you issued them; you would edit, based upon their recommendations; and that you met Mr. O'Keefe and Mr. Pastorek weekly for lunch, frequently in the dining room of NASA, where every employee in the place could see you there together; you met Mr. O'Keefe for drinks in his office; you played golf with him, on and on. You heard both Ms. Brian and Dr. Light say that that was a flagrant violation of the requirement that an Inspector General avoid personal impairments to their objectivity and independence. But you disagree with their conclusion.

Mr. COBB. I don't disagree with the conclusion or the tenor of the guidance that's in the Quality Standards. I don't accept all of the premises of the question that you asked.

And I would like to say that glaringly absent from all of the testimony that occurred earlier today is the fact that I do work with my senior staff in an extraordinarily collaborative way. So, for example, when I was asked whether I could go play—whether I would be playing golf with Mr. O'Keefe, I ran that by the 27-year counsel to the Office of—counsel to the Inspector General, and I discussed it at great length with my deputy, Tom Howard. Tom Howard's name hasn't been mentioned. He's been with our office for five years—for four and a half years, or four and three-quarters years—a 33-year veteran of the Government—or 24 years at Government Accountability Office, five years at the DOT IG, intimately familiar with all the Yellow Book standards. He's been in the auditing business for, now, 33 years. There wasn't a decision that was discussed earlier today that I didn't have Tom Howard closely involved in, in terms of analyzing the issues that were present.

Senator NELSON. Mr. Cobb, doesn't all of this testimony bother you? Doesn't the Integrity Committee, made up of other professional IGs, doesn't this bother you? Doesn't it give you some pause to think that you might not be right all the time?

Mr. COBB. There are a couple of questions you've asked. I'm certainly not right all the time. I make mistakes routinely. And that's why I have a very collaborative method of dealing with issues in our office involving, as I just mentioned, Tom Howard, very closely, and other members of the senior staff.

As for pause, as you know, Senator, you have sought investigation of me for more than 2 years now. And I've been under investigation, investigation that's been extraordinarily costly, involving more than a dozen HUD OIG investigators, looking through all of my e-mail, basically looking for anything that can be used to stain my reputation. So, yes, I have had substantial pause in connection with that activity.

Senator NELSON. Since you raise the issue, I want the record to reflect that one of the roles of an elected official is, when constituents refer complaints, to have those complaints referred to the proper authorities. You just made a statement that I had made an investigation on you. That's not true. The Integrity Commission, which is a lawfully constituted body, is the one who made the investigation. The complaints that this office and other members of this committee have received have been referred to them, and that's what started this whole process.

Mr. COBB. May I address my comment and your response to it?

Senator NELSON. Please.

Mr. COBB. What I referred to was a May 12, 2005, letter from you to Administrator Griffin asking for an investigation of work of the NASA Office of Inspector General in connection with a pilot matter down at the Langley Research Center.

Senator NELSON. That's correct.

Mr. COBB. And——

Senator NELSON. And that was——

Mr. COBB. And that's what I was referring to.

Senator NELSON. OK. Those were the first complaints that we were getting. And then, as the complaints continued to come in, then it was clear that there was a legally constituted authority in order to do the investigation. The investigation hasn't been done by this committee.

Mr. COBB. No, I understand that.

Senator NELSON. All right. Let me go over a number of issues. And, at the end of the day, I think what we're trying to get here is what's good for NASA. NASA is this little agency that's on the cutting edge, that's running a high-risk operation, and they certainly don't need any side distractions, like what's been going on. So, let's further explore.

On December 8, 2004, a team of your investigators, working with the FBI and an assistant U.S. Attorney, obtained a search warrant that was signed by a U.S. magistrate, Federal judge. The next day, the investigation team assembled at the Stennis Space Center as they prepared to serve the search warrant in this criminal investigation. That morning, you ordered your investigators not to proceed with the search warrant.

Would you share, for the committees, why you did that?

Mr. COBB. Yes, sir. And from—and, as a background, and just in terms of philosophy, I think this is an example of how you'll find that when Allen Li of the Government Accountability Office said, "I'm the most independent Inspector General that he's ever seen," this is an instance where I reflect that independence.

I reviewed an affidavit, I believe, in support of the search warrant, which had been signed. Upon my review—read it—it was brought to me, I looked at it—I couldn't understand what crime had been committed with respect to the facts that were alleged to have occurred, and I asked whether and what the crime was that was occurred, and I did not get an answer. Nobody knew. I did not think that the facts that were alleged in that affidavit constituted a crime.

I had a discussion with Ms. Herzog about that. She, as she testified earlier, indicated that that's, in effect, a matter for the defendant in a criminal case to litigate whether or not service of the search warrant is appropriate.

I asked for the counsel to the IG to come in and join us in the conversation that we were having. My recollection of these circumstances was that the counsel came in, I asked him if he had seen the search warrant, and he said, "Yes, I was wondering what the crime was that underpinned that search warrant."

So, what—and I'll go back, because there was something that I considered offensive. When I asked Ms. Herzog what the crime was, she asked—or she told me that I couldn't ask that question, that to ask that question was interfering with an investigation, or

the service of a search warrant, and intimating what she said today, that it was an obstruction of justice.

I had a question as to whether or not a search warrant, which was going to be served on a citizen of the United States—happened to be at a NASA center—whether it was a legal and valid search warrant, and I was told that I couldn't ask the question. I, again, had my counsel give me his opinion. He also questioned whether or not there had been—whether there was a suggestion of a crime in connection with that activity.

We had a vigorous debate as to what we should do under those circumstances. The result of that debate was that my counsel, counsel to the IG, would personally communicate with the assistant United States attorney. He did, and was told that the assistant United States attorney was very comfortable with the service of the search warrant, and we did not take the matter any further.

Senator NELSON. How many days was the search warrant delayed?

Mr. COBB. I don't believe it was delayed one day.

Senator NELSON. So, in this situation, even though it had been investigated by the FBI, with the judgment of an assistant U.S. Attorney, and a Federal judge, you rendered their decision wrong, and yours right, to delay the process.

Mr. COBB. I wouldn't say that I—said that my view was right. I had a question as to what the crime was that was alleged to have occurred in connection with this activity, and—and I think that the—my recollection was that the answer was theft of proprietary information, and the problem was—from my standpoint, was that the information had been created by a government employee on government time, and my limited knowledge of that particular area was that information produced by a government employee on government time is not proprietary information, so, if someone took it and used it for another purpose, that would not be theft of proprietary information. So, I asked the question of whether or not this constitutes a crime. And that's the basis for this notion that I was somehow improperly interfering with an investigation.

But, I must say, this is reflective of my independent attitude when it comes to asking questions that I think are appropriate under the circumstances.

Senator NELSON. If that were the only time, that would be innocent enough. But that is just one of a pattern, because the situation repeated itself on June 30, 2005, in a criminal investigation at the Marshall Space Flight Center. Your agents, along with the agents of the FBI, were preparing to serve a search warrant that had been sworn by an assistant U.S. Attorney and signed by a magistrate judge. And, again, you halted the search warrant, moments before it was to be served. Why did you do that?

Mr. COBB. Well, again, I don't necessarily accept the premise—all the premises of the question that you pose. But I also admit that my recollection of exactly what occurred with respect to that particular search warrant, and whether it was even a search warrant at the time, or was it a contemplated search warrant—I'm not that familiar. I do remember having a question, and the fundamental question I was—I think I was getting into, in connection with that one, was whether we were better off serving a search

warrant or going and gathering the evidence, which we would have been able to do at night without a search warrant.

Senator NELSON. Well, Mr. Cobb, see, this is where you get into trouble, because this was a different assistant U.S. Attorney than the one in the Stennis case, it was a different Federal judge than the Stennis case, and, again, you inserted your opinion instead of an assistant U.S. prosecutor, the FBI, your agents, and a Federal judge. And that's where you start to get into trouble. And part of the execution of criminal law is the timeliness of the search warrants. Delay gives time for suspects to dispose of evidence.

Now, how much of a delay was there in this particular time?

Mr. COBB. I don't recall, but I assure you that that's something that we would have discussed at great length at the time, and I do not believe that there was any negative impact associated with ensuring whether or not this was an appropriate—an appropriate use of NASA OIG resources in connection with this activity.

Senator NELSON. There's where you get yourself in trouble. You are interfering with the judgment of the criminal law system of a series of people who, by law, are charged with the responsibility of carrying out that law. And if there is a delay in that search warrant, there is the distinct possibility of the loss of evidence.

Now, in your testimony just a few minutes ago with regard to the Stennis case, you said the search warrant wasn't delayed more than one day. I want to call your attention to page 117 of the IC report. It says, "Burnell stated Cobb called Haughton and allowed them to execute"—this is on the Stennis case "to execute the search warrant at about 2 p.m. on December 9, 2004. After the search, Burnell recalled discussing with Haughton that the subjects may have been alerted, 'the subjects of the search warrant,' may have been alerted to the impending search, and possibly removed the evidence being sought. The Radiance employees were not surprised when the warrant was executed. Burnell states that he believes the element of surprise was lost because of the delay."

People charged, in the criminal justice system, with carrying out the law. This is where you're getting yourself in trouble: imposing your judgment for that of the legal authorities.

Let me ask you about the Command Destruct System. STS–111 launched on June 5, 2002, and one of the two required range safety systems was malfunctioning. That's the Command Destruct System which can destroy the solid rocket boosters in case of going off track. Your office did an investigation into that incident. Is that correct?

Mr. COBB. There was consideration of issues by Mr. Carson and another gentleman on our audit staff.

Senator NELSON. I don't understand your answer.

Mr. COBB. We have—we're divided, fundamentally, into two organizational—operational organizational elements: investigation and audit. This was not an investigation under our Office of Investigations. It was in our audit shop.

Senator NELSON. Well, let me continue. It was determined that an Air Force general went through back channels to the Kennedy Space Center center director, telling him that the range was green for launch, when the range safety officers were actually reporting red, which means that both systems were not go for launch. And

that's a launch criteria. Did your office complete an investigation in this incident?

Mr. COBB. I don't believe so.

Senator NELSON. And why not?

Mr. COBB. I was briefed on these issues, I believe, in February of 2005, along with my deputy and other senior managers in the NASA Office of Inspector General. You must realize that Mr. Carson was, during the course of the time he worked in the NASA Office of Inspector General, three and four levels below me, down the chain of command. So, all of those people up the chain of command would have been present for the briefing.

The fact was that, in this instance, the Air Force Office of Inspector General had, two and a half years previously, already considered the allegation that there was some impropriety associated with the conduct of the Air Force general, and had concluded, "that the general"—excuse me—that the general, "acted within his authority for range and public safety when he made the risk assessment and determined the range was a 'go for launch.'" Since there was no violation, any further investigation into this incident is not warranted." That was two and a half years prior to the time that the matter was brought to my attention in a briefing.

This was an Air Force general executing his authorities as an Air Force general, not on detail or assignment to NASA.

It's interesting, I think, that, when I was asked by the HUD Office of Inspector General about this same incident, in the end of June of 2006, that Administrator Griffin had, in connection with a launch just prior to that interview down at the Space Center, had overruled and bypassed the recommendation of his chief safety officer and, I believe, chief engineer, to proceed with a launch, notwithstanding the fact that they indicated that there was a no-go.

So, you know, people make command decisions and are responsible and accountable for them. And, to me, dedication of resources to find out whether or not this particular general, who had retired two and three-quarters years earlier, had exercised proper authority in a matter that was questionably under the jurisdiction of the NASA Office of Inspector General, did not, in my opinion, but also that of my senior staff, warrant additional examination.

Senator NELSON. So, you felt that the Air Force had investigated this, and it was a matter that was taken care of.

Mr. COBB. Yes, as regards the actions of the general. There were other issues that were legitimate issues, that were relevant to this, that were being considered. And that was the communication between the range and NASA officials, and to what extent those communications were acting in a way that kept people informed of what they needed to be informed of. And there was a red team that had been—and, quite possibly, as a result of the inquiries that Mr. Carson and his colleague were making—there was a red team that had been established by the Air Force, a joint NASA/Air Force red team, to consider the issues. They made recommendations, they established new procedures, and the—the issue that was most concerning about communication between the Air Force and NASA as concerned the range, the safety of the range, the safety of the astronauts, that those issues were addressed. And we examined that, and we believe that they were addressed.

Senator NELSON. And you did an investigation on that, on the issue of communication?

Mr. COBB. We conducted audit activities in connection with that communication, yes.

Senator NELSON. If that were to occur again, what would you do?

Mr. COBB. If what was to occur again?

Senator NELSON. Same thing. That they launch, and both of them aren't activated.

Mr. COBB. Well, one thing that I would do, that I don't know that the HUD Office of Inspector General did—in fact, I don't believe that they did—is, I would consult with those people who were intimately familiar with the range safety issues, and to the Integrity Committee and the HUD Office of Inspector General. I made—I made a fairly significant list of people who would be familiar with those issues, and I don't believe any of them were spoken to in connection with these activities.

Senator NELSON. Let me tell you what the difference is between you drawing a parallel with Dr. Griffin making decision to launch. In the one case here, we have an Air Force general overriding his Air Force officer who has said that they are red for launch, and the Air Force general says they are go, or green for launch, and then using back channels to the KSC center director. That, by the way, was reminiscent of all of the misinformation in the loss of *Challenger* back in 1986. That's one set of circumstances.

That is not parallel to the set of circumstances with which you just accused Dr. Griffin, where there is a flight readiness review with all the people present, all discussing their issues being on the table in front of everyone, and with the Administrator making the final decision in front of everybody, and then going back to the two that said no-go, and getting their approval to go. It's a totally different situation. One's secretive and back channels, the other is a recognized procedure in the launch operations, and is completely out in the open among all of the flight readiness team. Huge difference.

Let's put up that chart again on the work product. Why don't you just give us some comments about that, in how you compare to your two predecessors. This is the work product of your shop, the IG's shop.

Mr. COBB. Well, I can see the graph from here, and, for purposes of discussion——

Senator NELSON. Give him a copy of that, please.

Mr. COBB.—for purposes of discussion, let's assume that it's an accurate reflection of audit productivity.

Thank you.

To me—and maybe I could be criticized for this—the number of audits our office publishes is, to me, not necessarily the—is not my indicia of whether or not we're successfully carrying out our mission. And, in fact, I'd say, when I joined as Inspector General at NASA, the metric that was utilized for analyzing whether or not our office was effectively carrying out its mission was the number of recommendations it was making.

As a point of fact, I didn't think that that was an appropriate metric for our activities. And, furthermore, to me, the quality of the work was much more important. And, in that respect, there might,

especially if you look at the chart, see that there were a substantial number of audits that were generated three-quarters of the way through Roberta Gross's tenure. Interestingly, there was a significant downward slope toward the end.

But, in any event, the Office of Inspector General was generating many, many recommendations which were being accepted by the agency, and then not implemented. And to the—it became such a problem that the Internal Control Council at NASA identified it as an internal control weakness of the agency, that it had approximately 500 outstanding audit recommendations that it was not implementing. Office of Inspector General was issuing recommendations. Agency wasn't implementing them. That was a problem.

And I think that that problem was caused by many things, and I don't know that you want me to go into great detail on that. But part of it was the quality of the recommendations and whether or not they were implementable, from the standpoint of doing right by NASA.

So, from my perspective, when I became the Inspector General, first thing that I did was, I wanted—and I recognized that I did not have a substantial background in audit activities, so I hired a deputy who had, at that time, 28 years of audit experience, to help me in managing the audit activity of the office. And what we worked very hard to do was to make sure that our audit work was, as Mr. Carson indicated earlier—well, that our work was top notch.

Senator NELSON. But you would acknowledge that, on the number of audit reports, that your high of 19 is less than the average of the previous two IGs.

Mr. COBB. I acknowledge that the numbers here are less than what occurred under Bill Colvin and Roberta Gross.

Senator NELSON. Well, let's talk about safety-related audits. In the past 6 months, the only safety-related audit product was not a report, but it was a memorandum on stair access trucks used at the Dryden Research Center. Is that correct?

Mr. COBB. I'm not sure exactly which audits that we've published. We've published some significant audits in safety in the last—in the last—in the recent period. Space Shuttle program—problem reporting corrective action process at Kennedy Center—Space Center—needs improvement. That was one. But——

Senator NELSON. OK. I'm reading from Appendix B of the Office of the Inspector General's Semi-Annual Report, October 1, 2006, to March 31, 2007. I think this is your report. "During the period April 1 through September 30, the Office of Audits issued 19 products." And then, in the audit area of safety, there is a final memorandum on the review of the access stair trucks located at the Dryden Flight Research Center. And that's the only thing under audit safety.

Mr. COBB. We have many ongoing projects that are safety-related. You know, the idea that—you know, again, I'd say that the HUD Inspector General's report, as regards any safety-related issue, is remarkably deficient insofar as I identified a substantial number of people with safety expertise at NASA as people who potentially should be considered as witnesses, and the HUD Office of Inspector General did not interview a single one of them.

Senator NELSON. Well, it's a high-risk little agency where safety is absolutely key. This is one of the reasons you've got to have an independent IG. You've got to have an IG that's looking for those safety problems, other than access stair trucks at Dryden.

Mr. COBB. Senator, under my leadership, the NASA Office of Inspector General hired technical staff, safety experts. We've got somebody at the MMT meeting, going on today, regarding activities, keeping us apprised of issues that relate to Shuttle launch safety. We've got people now in the NASA Office of Inspector General who are engineering and technical experts, aerospace technologists, safety folks, that we didn't have when I started as NASA Inspector General. And it's because of my concern that we have competent, independent ability to ascertain what are real safety issues that we need to address, that we now have those people. There is no limit on the amount of attention, dedication of resources that my office has given to safety.

And on the investigation side, I'd say that, recently—and I think that you'll see, in that semi-annual report—many of our criminal prosecutions are parts- and test-fraud related. We had a case recently involving the falsification of test data for spacesuit batteries. We had another case where several people went to jail, on significant prison sentences in addition to substantial fines, associated with making false statements relating to—and altered test results of metal materials received—relating to the Space Shuttle wings. And I would just say that there's been no lack of dedication to safety-related issues at NASA under my leadership.

Senator NELSON. Well, I'm only looking at your report, and, of course, the question is begged, respectfully, audit area, financial management, you have four; audit area, procurement, you have two; audit area, space operations and explanation, one; audit area, other, one; audit area, quality control reviews, a couple; but under audit area, safety, the access stair trucks. So, I just simply point out from your own report, someone like me, in this committee, has got to raise these things, because safety is absolute. We can't afford the loss of another Shuttle, because you know what happens if that's the case.

Let me ask you about another issue that I stated in my opening comments. This one really concerns me. This is the theft of a $1.9 billion set of rocket plans. And it was never reported. And who knows who has that. It's allegation number 28, the theft of the ITAR-sensitive data from a computer at the Marshall Space Flight Center. The data involved was detailed design information on the Shuttle main engines, which are the most technologically advanced in the world, as well as design information for NASA's new advanced engine. The intellectual-property value of that is almost $2 billion. And the investigation into that incident ultimately determined that the data was downloaded by a hacker in South America or France, and, for a period of time, posted on the Internet where anybody could have gotten it. Anyone and everyone could have gotten it. And Lord knows who got it. And there are some folks, I can tell you, sitting in my capacity as the chairman of the Strategic Systems Subcommittee of the Armed Services Committee, there are sure folks on Planet Earth that we don't want to have these kind

of rocket designs that are very advanced. Namely, folks like North Korea and Iran.

Now, 4 years after the incident, the Department of Defense was finally asked to evaluate the national security implication of the compromised data. The request didn't come from your office, but from the HUD investigators who were investigating your conduct. And the Pentagon's conclusions are shown in Senate Exhibit 3.

Do you recall, anytime during 2002 or 2003, a member of your staff recommending that this incident be reported to the State Department, as is required under law?

Mr. COBB. Well, first, I don't accept your premise that this is required under law.

Senator NELSON. The gravity of this situation, you don't think, requires the reporting of this to the United States State Department.

Mr. COBB. I don't—the premise is—of your question was that there's a requirement under law to report this to the Department of State.

Senator NELSON. Well, you——

Mr. COBB. I have——

Senator NELSON.—you may——

Mr. COBB.—to this day——

Senator NELSON.—dispute it on the law. What is your opinion? Do you think it should have been reported to another agency?

Mr. COBB. Our office, as soon as we were informed of this activity, we worked in concert with the Defense Criminal Investigative Service, the FBI; the NIPC, the National Infrastructure Protection Center, was aware of it; we worked with international authorities. There was no act that our office did not take, that it should have, in connection with this activity. There was no serious discussion in our office, or presented to me, regarding a reporting requirement to the State Department. And, in fact, to this day, nobody has brought any specific indication of agency requirements to report this information.

But I do understand that, in August 2002, there was a conversation between the director of the Export Control Office at NASA with the Department of State, who indicated that voluntary disclosure under the ITAR was not required.

Senator NELSON. So, that's your position.

Mr. COBB. That's my position.

Senator NELSON. All right. A senior member of your staff reports that you worked with NASA to have the data classified so that its loss wouldn't be publicly disclosed. Is that true?

Mr. COBB. I don't believe that that is the case. I believe that there might have been the discussion, back at the time, as to whether or not, for example, the kind of conversation that we're having here today is something that should be made public, when there are national security concerns—Is it national security information?—and a question about classification often rises and is dealt with, as every other issue is, intelligently, and disposed of.

Senator NELSON. So, it's your position that you weren't required to report this to the State Department. You've stated that. Can't you see? You're getting into trouble with judgment here. Something of enormous defense importance to the United States, and you're

not sharing it with another agency whose responsibility it is to protect the secrets of the United States. Can't you see where all of this controversy has stirred up, and the chain of these things?

Mr. COBB. Again, our office took every action that was appropriate under the circumstances. The National Infrastructure Protection Center—under Presidential Decision Directive 63, the NIPC was the interagency operation located at the FBI. It was created in 1998. It was the focal point for the Government's efforts to warn of, and respond to, cyber attacks, and served as the national critical infrastructure, threat assessment, warning, vulnerability, and law enforcement investigation, and response entity. To my knowledge, they knew about it. The FBI knew about it. The DCIS were aware of it. International authorities—appropriate international authorities were aware of it. You know, and so, there was no—no limitation placed on any member of my staff, in terms of communication to any person about—and these communications were taking place not at my direction, but as a matter of normal course in the exercise of duties of staff members in our office.

Senator NELSON. Chairman Miller?

Representative MILLER. Thank you. I just have a few more questions.

Mr. Cobb, the finding of the PCIE was based predominantly on testimony and evidence given by employees of your office. And you have said that you are now reluctant to talk to your employees, that they twist your words, you think that they said unfavorable things about you because you came in and found an office that did not meet your standards, and you whipped them into shape, and you insisted that they improve, and that was why they resented you. You know, you do sound somewhat like Humphrey Bogart in *The Caine Mutiny,* when you describe your staff.

But I have not heard an explanation for why you think your peers—why other Inspectors General have been so critical. In your testimony, there is a tone of grievance, and—with having given 11 hours of testimony, although, in hearing your testimony today, I think it might have been shorter if yes-or-no answers—questions that contemplated a yes-or-no answer had gotten a yes-or-no answer. You obviously think you were treated unfairly. And it was an investigation conducted by the Inspector General of HUD, your peer. It was reviewed by other peers, other Inspectors General. Why do you think they treated you so badly? I cannot figure a motive for their treatment of you, if it is as bad as you believe is.

Mr. COBB. I can only say you request speculation on my part. I think that all I can say is, as regards the investigation, I've gone to great lengths in my statement and my attachment, Exhibit B, to reflect the falsities that are reflected in the Integrity Committee's report. And, you know, I think that you need to direct that question to them, on why they would conduct an investigation that would result in such falsities being published.

I would go further, to say that you will find no work of the NASA Office of Inspector General that has those types of false statements included in it, in terms of the important work that we do, both on the investigation side and on the audit side, but particularly as regards administrative investigations of NASA employees or the addressing of whistleblower complaints of which we've received many.

We go to great lengths to get our work right, and I can't say the same for what is reflected in the HUD OIG/Integrity Committee report.

There's this notion that the NASA Office of Inspector General was the land of milk and honey until Inspector General Robert Cobb arrived. And let me suggest that, in this very difficult business, that IGs straddle barbed-wire fences that we heard about earlier, which doesn't sound particularly comfortable, but may be *apropos*—Bill Colvin who was an Inspector General at NASA, was forced out as a result of allegations made by staff. Roberta Gross—and this is—I'm not making any statement about Roberta Gross or Bill Colvin and their competency or ability to do the job, I'm just saying—giving a little bit of insight into the NASA Office of Inspector General. Recently, there was a document from an—a year 2000 EEO case, which was 2 years before I came, and a footnote in that document—it's important to know that the complainant sought a class-action alleging that OIG employees over 40 years of age were being systematically discriminated against. The EEO counselor's report included statements from nine OIG employees who complained of discriminatory nonselections, and identified an additional 13 OIG employees who were interested in speaking with an EEO counselor regarding alleged discriminatory nonselections. That's 22 NASA OIG employees in the year 2000 concerned about discriminatory nonselections.

And I don't suggest—present that for the truth of the matter, only that—again, that—and Roberta Gross had Integrity Committee complaints filed against her, as well. This is part of the territory with respect to being an Inspector General.

What I stand for, whether you're talking about search warrants or you're talking about the work of the NASA Office of Inspector General, is that we get the work right based on the law and the facts. And there has not been any—and I credit, not myself, but the NASA OIG staff, for getting the work right—there has not been any suggestion that any work that we—that we've worked on, we didn't get right.

Senator NELSON. OK. I want to thank you for your indulgence. I want to thank you for the time. It's with a heavy heart that we leave this hearing, after 24 complaints, 79 allegations, a number of career law enforcement officials at HUD Office of Inspector General, and seven members of the Integrity Committee, and you have asserted that those people are all wrong and that you're all right.

And so, I go back to the question that Senator Grassley asked us to propound, "What are the honest answers to the questions that lead us to a decision about what's in the best interest of NASA, America's space program, and the American people?" And that's a judgment that you're going to have to live with.

The meeting is adjourned.

[Whereupon, at 5:31 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. CHUCK GRASSLEY,
U.S. SENATOR FROM IOWA

Good afternoon. I would like to begin by thanking Senator Nelson and Congressman Miller for calling this important joint hearing concerning the investigation of the NASA Inspector General by the President's Council on Integrity and Efficiency (PCIE). I regret that I am unable to attend your hearing in person but would appreciate having this statement placed into the record.

I have been a long-time advocate of government oversight. I am also not a newcomer to overseeing the overseers. For example, I conducted inquiries into the operation of the Offices of the Inspector General at the Department of Health and Human Services and the Postal Service.

As Ranking Member of the Committee on Finance, I consider government oversight to be a critical role of Congress. This role is especially crucial when it relates to an office such as the NASA Inspector General, an office which plays an important role in protecting lives, guaranteeing the integrity of vital government assets, and defending a budget of over $13 billion against waste, fraud, and abuse. The dedicated staff of the NASA Inspector General office is one of the last lines of defense for the NASA mission, and I applaud the work of the Senate Committee on Commerce, Science, and Transportation, as well as House Committee on Science and Technology, for their oversight work on this important matter.

Over a period of 14 months, the PCIE's Integrity Committee received eighteen complaints against NASA Inspector General Robert "Moose" Cobb. Then, in January 2006, the Integrity Committee referred the matter to the Office of the Inspector General in the Department of Housing and Urban Development (HUD). I also had a member of the HUD OIG's staff visit the Finance Committee staff to identify a number of concerns regarding the operation of the NASA OIG office.

The HUD OIG office conducted an extensive, independent investigation into the complaints lodged against Mr. Cobb, including 79 separate allegations. During the six-month investigation, staff in the HUD Inspector General office reviewed 26,259 e-mails, conducted 121 interviews, and cataloged 199 exhibits relating to the allegations. They interviewed 50 NASA employees and former employees. In all, the HUD investigators prepared a 289-page report substantiating allegations that Mr. Cobb abused his authority as Inspector General, and that he had created at least the appearance of a lack of independence between the Office of Inspector General and NASA management.

Created by the Inspector General Act of 1978, IG offices were intended to impartially investigate and audit programs and operations within their respective agencies to promote efficiency, and prevent waste, fraud, and abuse.

I'm alarmed by the evidence uncovered by the PCIE investigation. In fact, it appears that Mr. Cobb did not act in a manner consistent with the spirit and intent of that statute. According to the evidence, he has used this important position to interfere in the activities conducted by the investigative and audit divisions within his office for reasons that appear, at the very least, improper. In fact, Mr. Cobb repeatedly told employees that one of his priorities was to avoid embarrassing NASA. Evidence also indicates that he shied away from bringing investigations against high-ranking NASA officials.

From the evidence presented to me, Mr. Cobb hasn't simply tried to micromanage the activities of NASA IG staff; he has used the power of his office to insulate the agency from critical investigations and audits.

One such investigation concerned the theft of approximately $1.9 billion-worth of International Traffic in Arms Regulations data. This information, controlled by NASA, was illegally accessed by hackers and transmitted to locations in France. According to the PCIE investigation, Mr. Cobb dismissed worries over the theft of this data because, in his view, the data wasn't "stolen," since NASA was still technically in possession of the accessed information. That kind of thinking doesn't make sense to this Senator. That sort of hair-splitting suggests that Mr. Cobb would rather walk

a mile to avoid embarrassing NASA than walk across the street to let the American people know what really happened.

In another instance substantiated by the PCIE report, Cobb interfered with law enforcement activities initiated by his office. Specifically, he questioned the sufficiency of a search warrant sought by the Department of Justice and issued by a Federal magistrate. In fact, Mr. Cobb went so far as to say that the Federal judge had been "duped" into signing the warrant. Although the search eventually took place, Mr. Cobb's interference caused the search to be delayed by more than a week in a matter that is characterized as "very time sensitive." It also may have given the targets of the search a chance to receive advanced warning, which could create the opportunity to destroy evidence before it is seized.

Another troubling allegation substantiated by the PCIE investigation concerned Mr. Cobb's discussion of potential audits and investigative findings with former NASA Administrator Sean O'Keefe and former NASA General Counsel Paul Pastorek. This included e-mail warnings on upcoming investigations. Mr. Cobb also sought the advice of NASA management about the timing and issuance of OIG findings. Those simply are not the sort of communications an independent inspector general ought to be having with officials at the agency he oversees.

Time and time again, it appears that Mr. Cobb sought to protect himself and NASA's management at the expense of maintaining the integrity of the NASA Office of the Inspector General.

The allegations against Mr. Cobb and the subsequent findings of the Integrity Committee all point to deep and systemic problems with Inspector General Cobb and how he managed his office. These problems in turn call into question his ability to investigate allegations no matter where they lead, whom they implicate, or what they uncover. Whether it embarrasses NASA or not, the Inspector General needs to do his job. Moreover, the deference demonstrated by Mr. Cobb to NASA management raises questions about how he views his own duties to be ethical, independent, and to serve with integrity.

To paraphrase a quote attributed to Abraham Lincoln, if you want to test a man's character, give him power. By this test, Inspector General Cobb has not fared well.

The evidence against Mr. Cobb goes beyond the appearance of a lack of independence between the Office of Inspector General and NASA management. The PCIE investigation also substantiated allegations that Mr. Cobb abused Inspector General staff members, creating an atmosphere of hostility and fear. According to the PCIE report, Mr. Cobb abused his staff with vile and degrading language. As a result of his management style, the bulk of his experienced audit staff left the administration. By his own admission he cannot, and will not, communicate with a significant portion of his staff because he does not trust them and they do not trust him. Nearly a quarter of the staff was interviewed in the independent investigation, and all of them had negative things to say about Mr. Cobb. In fact, his management style has proven so abrasive that the NASA Administrator hired an "executive coach" to help Mr. Cobb learn how to better manage his staff, and has had to send him to a management "charm" school.

Additional concerns have also come to light regarding the process followed by the President's Council on Integrity and Efficiency that I am compelled to address. NASA management was provided with a completely unredacted copy of the PCIE report. This copy identified NASA employees by name. Specifically, it identified to NASA management those employees who cooperated with the PCIE investigation; who bravely spoke out about Mr. Cobb and other problems plaguing NASA. This effectively painted a target on the backs of NASA employees who provided information to PCIE investigators and to Congress. This is unconscionable. If we don't give a certain amount of protection to whistleblowers, if we can't ensure anonymity to those who speak with investigators about government wrongdoing, how can we expect anyone to cooperate with these investigations in the future? For this reason, I am requesting the Government Accountability Office to review the President's Council on Integrity and Efficiency and its procedures and operations.

It is clear to me that our ability to trust Mr. Cobb to effectively manage the Office of Inspector General and the vital functions that it seeks to carry out is in question. It seems that Mr. Cobb may care more about protecting NASA from embarrassment than he does about performing the critical functions of his office. An Inspector General must possess temperance, high ethical standards, and a firm understanding of the independent nature of that office. From the evidence presented, Mr. Cobb does not appear to possess these attributes.

So, in conclusion, I have some questions that I would like to pose to Mr. Cobb. In answering them, I hope he honestly places the mission of his office ahead of his self-interest. Mr. Cobb, do you believe that an Inspector General can continue to serve if he has lost the confidence of his staff and of Congress? Do you believe an

inspector general can continue to serve who has been found by an independent investigation to have abused his authority? Do you believe an inspector general can continue to serve if he is perceived as in the pockets of the people he is supposed to investigate? Do you believe an inspector general can continue to serve if he has acknowledged verbally abusing staff on numerous occasions? These would be my questions to Mr. Cobb. The honest answering of those questions should lead him to make a decision as to what is best for NASA and the American people. Thank you again for this opportunity.

PREPARED STATEMENT OF HON. KENNETH M. DONOHUE, INSPECTOR GENERAL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Chairmen and Ranking Members, and Members of the Committees, I am Kenneth Donohue, Inspector General of the Department of Housing and Urban Development (HUD OIG) having been confirmed to this position on March 25, 2002. Prior to becoming Inspector General, I spent twenty-one years in the United States Secret Service. After my retirement from that organization, I spent 7 years at the Resolution Trust Corporation as Assistant Director for Investigations, uncovering fraud and abuse among directors of failed savings and loans institutions.

The HUD OIG is one the original twelve Inspectors General authorized under the Inspector General Act of 1978. We are committed to our statutory mission of deterring and preventing fraud, waste and abuse and promoting the effectiveness and efficiency of government operations. While organizationally located within the Department, the OIG operates independently with separate budget authority. This independence allows for clear and objective reporting to the Secretary and to the Congress.

The HUD OIG conducts oversight on a Department that receives over $30 billion in annual appropriation for a myriad of programs including community development block grants, public housing, homeless and lead abatement, and nursing home and hospital mortgage insurance coverage. In addition to these areas, HUD also manages the Federal Housing Administration (FHA), a program that is the largest mortgage insurer in the world, providing coverage to over 34 million home mortgages and 47,000 multifamily projects since 1934. In the last fiscal year, FHA had an outstanding insurance portfolio of about $395 billion. HUD also manages securitizations worth billions of dollars in the Ginnie Mae program as well as maintains oversight of the regulatory agency that oversees the Fannie Mae and Freddie Mac programs. As you can see, we have a busy portfolio that requires us to maintain a significant pool of talented Federal criminal investigators and auditors on staff. Our semi-annual reports reflect our audit and investigative work as well as impressive criminal statistics and significant taxpayer funds put to better use.

On March 21, 1996, President William J. Clinton signed Executive Order 12993 that outlines procedures to be taken regarding administrative allegations against Inspectors General. This process is intended to mitigate the concern that Inspectors General, as designated by the Inspector General Act, are independent but can still be held accountable in the event that allegations of misconduct are valid. This process has been in place for years and has proven to be valuable in terms of maintaining credibility and integrity within the OIG community. The process is understood and accepted by the Inspectors General when they consent to their nomination and are confirmed by the U.S. Senate.

In early 2006, the Integrity Committee (IC) of the President's Council on Integrity and Efficiency (PCIE), a council comprised of Presidentially-appointed Inspectors General, asked the HUD OIG to investigate allegations of administrative misconduct it had received regarding the Inspector General of the National Aeronautics and Space Administration (NASA). The Integrity Committee Executive Order charter states that it shall first determine if there is a substantial likelihood that the allegations presented to the Committee disclosed a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, or abuse of authority. If the IC makes this preliminary determination, and further concludes that allegations cannot be referred to any agency with appropriate jurisdiction, it then refers the matter to the Chair who is to cause a thorough and timely investigation of allegations.

The January 6, 2006 letter I received from the IC Chair (the Federal Bureau of Investigations' Assistant Director, Criminal Investigative Division) stated, in part, that "*at a December 15, 2005 meeting, this matter was discussed and opined that due to the number of credible allegations, with a pattern of possible misconduct and/or wrongdoings by the NASA IG, the IC determined that an administrative investigation of the allegations is appropriate*." It further stated, "*It is requested that the in-*

vestigators you appoint conduct a thorough investigation to determine whether the alleged misconduct did, in fact, occur and develop a comprehensive factual report concerning the allegations and any additional issues which may be uncovered during the investigation. That report will serve as the basis for further action to be taken by the IC."

In a prior meeting, your committee staff asked that I speak to the process of what we went through regarding the development and implementation of this investigation. The PCIE IC forwarded 22 complaints that generated approximately 100 separate allegations. A team of HUD OIG Special Agents and Forensic Auditors conducted the investigation and completed the report. Each of the complainants was interviewed and more than 120 interviews were completed. Documents were obtained and analyzed, over 25,000 electronic mail messages were reviewed, and 199 exhibits were catalogued. The NASA IG was interviewed under oath and the interview was reported by a certified court reporter. The most significant of the allegations were grouped into the following general categories: lack of independence and impartiality; obstruction of justice; misconduct; safety issues; audit issues; and hostile/untenable work environment. The final Report of Investigation contained three sections; the first consisted of audit issues, the second of investigation issues, and the third of management issues.

We had previously successfully conducted another investigation at the request of the IC of an agency of similar size to our organization. It had involved multiple allegations, some of a complicated nature, which had also been forwarded by external entities including Congressional chairman. I was asked to conduct this investigation of the NASA IG because of our prior experience and of our position as an objective outsider. I did not seek this task but did not take the request lightly as I feel the process must be respected if the community is to maintain respectable credibility with Congress and the American citizens we serve. Though I intimately knew how cumbersome such an investigation could be, I accepted it at the urging of the then IC Chair despite a confluence of events around that time that made it even more arduous.

Shortly before this assignment, devastating hurricanes hit the Gulf Coast region and HUD became the primary agency for redevelopment activities. $17 billion in new HUD funding needed to be immediately overseen by the HUD OIG despite our having lost our office in New Orleans. This was in addition to the already underway, and also labor-intensive, emergency-related task that we had been given regarding emergency appropriations for HUD redevelopment and revitalization funds for lower Manhattan following the attack of September 11th. Unfortunately, we had also lost our office at World Trade Center 7 on that day.

Despite our previous experience performing IC work, this investigation, nevertheless, has taken a big toll on parts of my staff in terms of manpower and resources. At the time the HUD OIG was tasked in the early part of 2006, a Shuttle launch had been delayed for over two and a half years due to safety concerns in the aftermath of the explosion of the Shuttle *Columbia* and only one previous mission, a return to flight in the summer of 2005, had taken place. The next Shuttle launch was set for the summer of 2006. Though not in the initial IC direction to us, I felt strongly that, because there had been allegations relating to safety, I needed to complete our investigation and draft our Report of Investigation in time for this scheduled launch.

Indeed, we kept the FBI cognizant of developments for this very reason (the Integrity Committee staff consists of detailees from the FBI owing to the fact that the IC Chair is the FBI Assistant Director, Criminal Investigative Division and these agents perform much of the duties associated with the IC and its process requirements) and I met with Senator Nelson's staff to let them know if any critical safety issues emerged. To keep this timetable and to address all of the numerous, and sometimes lengthy and complex, allegations caused a hardship on my staff. We have, however, as a result of our dealings with the Oklahoma City bombings in which we lost staff, the September 11 attack, and the hurricanes become somewhat condition-hardened. On August 30, 2006, we turned over our Report of Investigation (ROI) to the Integrity Committee and briefed its members a short time later. Our time and resource commitment has not ended due to the extended deliberation of the IC into 2007 and to the continuing interest of entities such as the Congress and media. Accordingly, we have recently submitted a new request for a modest reimbursement of our expended funds.

I am not a member of the Integrity Committee nor was I privy to its deliberations once we completed our investigation and briefed the IC. I placed great weight on our having been chosen as outsiders to be objective and on our designated role as "finder of the facts." The IC's determinations, and the underlying process of how it

arrived at its findings, were unknown to me. Only recently was I made aware of its conclusions but I have not had access to its deliberative activities.

When I met with your staff previous to this hearing, I was asked specific questions relating to various aspects of an Inspector General. Being an Inspector General is one of the most difficult jobs in the Federal Government and remaining independent and objective is the benchmark of success. As Senator Grassley once characterized the position, "you're like a skunk at a picnic." Or as another IG once testified, "it is like straddling a barbed wire fence." I know that I am constantly striving to achieve a balance of what I believe it is to be a good public servant in this arena. It can be a challenging job to supervise a staff of disparate disciplines and to interact internally and externally with groups or individuals who do not always want to hear your sometimes controversial or painful findings. I do know, however, that I believe in the words that the Secretary that I work under has stated to me numerous times. He has said "I know that we are going to definitely disagree, many times and on many different things, but we will always agree to never be disagreeable."

As I stated to your staff during their questioning, it is crucial that the department or agency must respect the independence of the OIG, must understand why this unusual organization needs to be insulated from political pressures, and will, hopefully, come to realization that a strong OIG will ultimately benefit the effectiveness of its operations. Unfortunately, this epiphany does not always manifest. When it does by those who run America's Federal programs, however, it works to the betterment of government efficiency and, ultimately, to the benefit of the American taxpayer and the recipients of the programs it manages.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO HON. ROBERT W. COBB

All answers are to the best of my recollection, after review of pertinent information.

Question 1. Referring to the search warrant issued December 8, 2004, related to an investigation at the Stennis Space Center: Did you communicate, or cause any other person to communicate, the existence of the search warrant to any persons associated with the target of the search warrant?

Answer. No.

Question 2. Related to the same matter as Question 1: Please list all persons outside the NASA Office of Inspector General (OIG) with whom you discussed the search warrant between its issuance and its execution. Please describe the nature and content of any such communications.

Answer. On December 9, 2004, I believe I was conferenced into a conversation with Jay Golden, an Assistant United States Attorney (AUSA) regarding a question NASA OIG counsel had raised with him about whether the search warrant was supported by probable cause. In the context of my being the official ultimately accountable for the activities of the NASA OIG staff, I had raised a question as to whether the allegations, if true, were of conduct constituting a crime and, therefore, whether there was probable cause underpinning a warrant to be served by NASA OIG criminal investigators; the Counsel to the Inspector General believed that the affidavit in support of the warrant did not support a finding of probable cause, thereby inherently raising a question of legality of the warrant under the Fourth Amendment of the United States Constitution. The AUSA wished to proceed with the service of the warrant notwithstanding the question that had been raised. As the warrant was the AUSA's and the issuing Federal magistrate's responsibility and I believed the OIG had fulfilled its responsibility by raising the issue, I did not object to his decision to proceed with the warrant's execution. The warrant was served on the day planned.

Question 3. Referring to the search warrant issued June 30, 2005, related to an investigation at the Marshall Space Flight Center: Did you communicate, or cause any other person to communicate, the existence of the search warrant to any persons associated with the target of the search warrant?

Answer. No.

Question 4. Related to the same matter as Question 3: Please list all persons outside the NASA OIG with whom you discussed the search warrant between its issuance and its execution. Please describe the nature and content of any such communications.

Answer. I had no such discussions.

Question 5. Please describe the history and nature of your relationship with the Deputy Director of the Office of Management and Budget, Clay Johnson.

Answer. I would characterize my relationship with Mr. Johnson as professional.

From January 2001 to April 2002, I was an Associate Counsel and Special Assistant to the President as a member of the Office of the Counsel to the President. I reported through the Deputy Counsel to the Counsel. Mr. Johnson, as head of the Office of Presidential Personnel, was an Assistant to the President, two levels higher than I on the organizational chart and at a level equivalent to the Counsel to the President, who was also an Assistant to the President. I was responsible for ethics issues and frequently dealt with staff of the Office of Presidential Personnel in connection with the processing of Financial Disclosure Reports of persons under consideration for nomination and appointment to Executive Branch positions requiring confirmation by the U.S. Senate. The carrying out of this responsibility brought me into occasional contact with Mr. Johnson.

I also was responsible for the review of Financial Disclosure Reports of commissioned officers in the White House, including Mr. Johnson, providing briefings on ethics issues and answering questions related to compliance with certain laws and regulations, such as the Standards of Ethical Conduct for Employees of the Executive Branch. These responsibilities brought me into contact with most White House Office employees, including Mr. Johnson. Any contacts with him in carrying out these responsibilities were of a routine nature.

During the summer of 2002, I had occasion to play in a Saturday golf game with Mr. Johnson which was arranged by the then NASA Administrator.

After Mr. Johnson became the Deputy Director of the Office of Management and Budget, I came into contact with Mr. Johnson in his capacity as the Chairman of the PCIE. My contact with Mr. Johnson was generally limited to seeing and speaking to him occasionally at PCIE meetings.

Question 6. Please describe any communications between you and Clay Johnson between January 6, 2006, and the present time that related in any way to the NASA OIG. Please describe the date and nature of the communication, who initiated it, and the content.

Answer. I do not have records of contacts with Mr. Johnson, other than as disclosed below. My contacts with him during the period of the investigation by the Integrity Committee were initiated by me and were intended to keep Mr. Johnson informed of the actions I was taking in response to the investigation so that he would not be surprised. I believe I contacted Mr. Johnson prior to my sending my July 17, 2006, letters to the Director of the FBI and to the Integrity Committee to advise him of my plans to send those letters. Likewise, I may have called him prior to my sending my letters of August 23, 2006, and September 7, 2006, and I believe I called him in November of 2006 prior to sending my November 17, 2006, letter to the Director of the FBI about leaks of confidential information from the investigation to the *Orlando Sentinel.* In my communications to Mr. Johnson, I alerted him to the content of my letters (all of these letters were copied to Mr. Johnson, and are attached to my June 7 testimony as Exhibits) emphasizing that I had never received any honest notice of what I was accused of and that I was under an impression that I would not receive a copy of any "findings" or have an opportunity to respond to them and that the process defined in the governing Executive Order, 12993, was not being followed. In two instances, when I copied Mr. Johnson with my correspondence to the Integrity Committee, I wrote him notes of transmittal stating as follows:

8/24/06

Dear Clay:

Enclosed are my August 23 letter to Burros and my letter to Mueller of July 17. I believe the IC process is broken.

Aside from my letters, which are primarily focused on process, the 500 page transcript of my testimony fully demonstrates the offensive nature of this.

I understand the process, such as it is, will play out and patience is required.

Sincerely,

MOOSE

9/13/06

Dear Clay:

This is my submission In response to Burrus's letter of August 30. Note the first item on Exhibit A. The IC is broken and needs to be fixed. I will share some ideas

on the subject after the wasteful and abusive investigation I have been subjected to comes to an end.

Sincerely,

MOOSE

On those occasions I spoke to Mr. Johnson, his consistent response was that there is a process in place and it would have to play out. I believe, during a conversation in the fall, presumably in connection with my contacting him about the reprehensible leak of information from the investigation and my intent to report it, Mr. Johnson conceded that there were problems with Integrity Committee processes and that he expected that there would be some changes to Integrity Committee procedures made.

In January of 2007, I was informed by the Integrity Committee that it had forwarded a report to the Chair of the PCIE, Mr. Johnson. I called Mr. Johnson to see if I could obtain a copy of the Integrity Committee report. Mr. Johnson called me back and informed me that he would not be providing the report to me and that I would have to obtain it from the Integrity Committee. The Integrity Committee refused to provide me a copy of that report (which I subsequently obtained only after publication by a Congressional subcommittee on its website). In my conversation with Mr. Johnson about the Integrity Committee report, he read me one paragraph from the Integrity Committee's letter which summarized the conclusion of the Integrity Committee, he told me that he did not believe it was a White House matter, and he told me that he intended to send the report to the NASA Administrator for review. Mr. Johnson did not provide me with additional detail on the content of the Integrity Committee report. Subsequently, I copied Mr. Johnson on an e-mail request to Mr. Burrus relating to a commitment Mr. Burrus made to provide me with the HUD OIG investigative report responsive to a FOIA request that I had filed several months earlier. (As I was never provided, during the course of the Integrity Committee process, any proposed or final findings or conclusions of the HUD OIG or the Integrity Committee, I was deprived of an opportunity to respond to the findings and conclusions or the factual and legal basis for them. As subsequently demonstrated in my testimony on June 7, the conclusions of the Integrity Committee were without legal and factual basis.)

I sent Mr. Johnson by e-mail a copy of my prepared testimony for the June 7 hearing, possibly having called him prior to sending it to see if he wanted a copy of it. I do not recall any subsequent conversations with Mr. Johnson about the investigation. I did see him once socially (which was not prearranged) in the summer of 2007 and recall discussing in most general terms issues relating to IG reform legislation. I have communicated to him my recommendations for improvement to the Integrity Committee in the context of commenting on proposed legislation relating to Inspectors General. The e-mail exchange relating to this is attached, along with the attachment to the e-mail.

Question 7. Have you at any time discouraged an employee of the NASA OIG from pursuing a criminal investigation of former NASA [employee] (name deleted).

Answer. No.

In the context of my carrying out my supervisory responsibilities and as the official ultimately accountable for the NASA OIG's work, I try to keep informed as to the status of major or sensitive investigative activity and to ensure that investigative activity is properly resourced and focused. In various conversations with Office of Investigations personnel, I inquired, as I frequently do with respect to significant matters pending in the office, as to what we were finding through investigation and to what extent we believed that possible criminal activity was involved.

This case was no exception. In 2002, with respect to allegations concerning (name deleted) I raised a question of whether the allegations or facts known to the OIG, if true, constituted a crime. From the written summary provided to me by the Office of Investigations, the acts allegedly taken by (name deleted) occurred prior to his being a Federal employee, and it appeared that, as a legal matter, the theory of conflict of interest that was being investigated was a legal impossibility. The conclusion of the Office of Investigations, in coordination with the Department of Justice Public Integrity Section, was that there was no crime or other issue appropriate for further investigation and the investigation was closed.

With regard to a subsequent matter, I referred a question about (name deleted)'s activities to the Office of Investigations. Based on this and, I believe, other information that was received by the Office of Investigations, an investigation was opened. As is the case in all matters of alleged crime, the NASA OIG coordinated the allegations with a United States Attorney's office and subsequently other components of the Department of Justice. I cannot comment further given the legal status of this matter, except to say that I did not take action to stop or discourage a criminal in-

vestigation. Further details can be provided by our Assistant Inspector General for Investigations.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF THE INSPECTOR GENERAL
Washington, DC, August 15, 2003

Hon. SEAN O'KEEFE,
Administrator,
National Aeronautics and Space Administration,
Washington, DC.

SUBJECT: OBSERVATIONS ON THE INDEPENDENCE OF THE *COLUMBIA* ACCIDENT INVESTIGATION BOARD

Dear Mr. O'Keefe:

Here are some observations I have about the *Columbia* Accident Investigation Board (CAIB), particularly as regards CAIB independence. These observations result from my role as an observer to CAIB activities, a role which I sought and you effected by letter dated February 2, 2003.

Although NASA policy and the CAIB's original charter contained provisions that could have hindered an independent investigation, based on my observations, I believe the CAIB, under Admiral Harold Gehman's leadership, is and has been conducting its investigation independently and without undue influence from NASA. I say this while recognizing the reliance that any investigative body would have on obtaining information and analysis from NASA. I also note the time-sensitive nature of the Board's challenge in light of the status of the International Space Station.

The CAIB has been diligently focused on determining the cause(s) of the accident and the remedies needed to prevent future mishaps. The CAIB, despite the breadth of its inquiry and expertise, has not been chartered to conduct a public policy debate on the merits of human space flight or to examine whether, from a public policy standpoint, return to flight best serves the public interest. However, to the extent the Board distinguishes between return-to-flight and long-term recommendations, it will facilitate NASA's return to flight. Overall, it is my expectation that CAIB recommendations will help shape any debate on the public policy issues.

NASA and the public will be best served by the issuance of an accurate, constructive, and credible report by the CAIB. One possible impediment to the Board's ability to issue such a report would be a compromise of the CAIB's independence. Of course, "independence" is subjective. The CAIB has constituencies including NASA, Congress, the Administration, and the public. These constituencies and the media provide information, advice, requests, and expectations. The Board has been in contact with these constituencies and has sought to be responsive to their needs.

My conclusion that the CAIB is acting independently and without undue influence is based on my view that the Board can address the challenging questions associated with the loss of the Space Shuttle *Columbia* in good faith and without material impediments from organizational or personal conflicts of interest. I have primarily focused on the question of CAIB independence from NASA—the organization in the best position to interfere in the CAIB's pursuit of its objectives and with the most at stake in terms of the Board's report and recommendations.

Appointment of the CAIB

On February 1, 2003, at approximately 9 a.m., mission control at Johnson Space Center lost communication with *Columbia* during re-entry into Earth's atmosphere. At 9:15 a.m., NASA declared a mishap after determining that *Columbia* had experienced a critical failure in the atmosphere over eastern Texas. At 9:16 a.m., the Associate Administrator for Space Flight initiated the NASA Contingency Action Plan, a document that delineates the pre-planned contingency response to a space flight operations mishap. Within 24 hours of the *Columbia* accident, NASA had formally activated the CAIB and published its charter.

Independence of CAIB Questioned

The initial implementation of the CAIB was not without its difficulties. During the fast few weeks after the *Columbia* accident, Members of Congress and the news media expressed concerns that the Board would operate at the direction of the NASA Administrator and that NASA's influence would prevent the CAIB from conducting an independent and objective investigation. CAIB members themselves expressed concerns about taking direction from the NASA Administrator.

Revisions to the CAIB Charter

In connection with the issues regarding the CAIB's independence, I recommended that the Chairman consider four modifications to the Board's charter. These revisions addressed membership and staffing, direct supervision of the CAIB by the NASA Administrator, access to records, and review of NASA's management and fiscal environment relating to Shuttle crew safety. In a separate letter to the CAIB, I advised the Chairman that he should take steps to ensure its independence in connection with the participation of certain senior-level NASA executives on the Board. (See *Enclosures 1* and *2* for February 14, 2003, memoranda to the CAIB.) The CAIB was already contemplating independence issues, and it sought changes to the charter and took other actions to address these issues. NASA management was supportive of changes to the CAIB charter, which was revised several times.

As a result of one of the charter revisions, the CAIB was no longer required to follow the NASA mishap policy. This change provided the Board the ability to alter the organization and composition of its membership. For example, the change to the charter that permitted the CAIB to determine its own policies gave it the flexibility to make changes that would eliminate the perception of conflicts of interest in Board proceedings. Specifically, the Chairman replaced an *ex officio* member of the Board who was a NASA senior official whose NASA duties would likely fall under the broad scope of the CAIB's review. Another NASA senior official, while nominally an *ex officio* member of the CAIB in an administrative capacity, returned to his NASA duties with very little association with the Board after mid-March. While the officials had proven invaluable in helping establish the CAIB, the need for their services lessened as the Board became fully staffed and supported.

Ultimately, the CAIB Chairman added four new members with expertise in aeronautics, astronautics, physics, space science, and space policy. The changes to the charter, composition, and manner of operations were intended, in part, to address questions about CAIB independence.

Relationships Between NASA and Individual Board Members

In my view, the CAIB has been composed and operated in a manner that strikes an appropriate balance between those with limited or no prior dealings with NASA and those with familiarity with the Agency. The military members of the Board and the FAA employee have had, for the most part, little or no association with NASA beyond participating in mishap activities. Their collective expertise lies primarily in safety and accident investigations. In contrast, other Board members have had greater prior exposure to NASA operations. For example, based on publicly available information, seven of the thirteen CAIB members worked as NASA contractors or received NASA grants in the past. Two of these seven members have served on the NASA Advisory Council, and two are former NASA employees (one worked on the Gemini and Apollo programs in the 1960s, and the other is a former astronaut and member of the Rogers Commission, which investigated the *Challenger* accident). Another CAIB member was a White House Fellow at NASA and worked as the NASA administrator's executive assistant and White House liaison at the time of the *Challenger* accident. Also, one CAIB member is a full-time NASA employee. The breadth of experience of CAIB members has enabled the Board to engage in a comprehensive and independent examination of the Shuttle disaster.

The CAIB was criticized on the basis of independence because those persons who were added after the original composition of the Board were placed on the NASA payroll. Critics presumed that anyone receiving a paycheck from NASA would somehow be compromised. Without any exercise of supervision by NASA over these persons, there is no merit to a claim that NASA controls the actions of these persons or that they might be beholden to NASA because of the salaries' source. In some respect, making these persons NASA employees reduced the opportunity for conflicts of interest. In becoming Federal employees, these individuals became subject to conflict of interest laws that otherwise would not have applied.

CAIB Disclosure to the Public

To address the public's interest in the proceedings, the CAIB began holding press conferences and public hearings. However, public disclosure was complicated because the CAIB was conducting a safety investigation that extended a limited privilege to certain witnesses. Limited privilege protects witness statements from public disclosure. The theory behind a safety investigation is that an accident's cause(s) can be best determined in an atmosphere where admissions of mistakes and criticisms of superiors or programs are free from reprisal or retribution. As the objective of the CAIB is to identify the cause(s) of the accident rather than to place blame on particular individuals, the limited privilege procedure seems reasonably designed to assist in this regard. In my role as observer, I respected the principle of limited

privilege and, therefore, was not privy to the testimonies of those witnesses to whom limited privilege was extended. It is noteworthy that the privilege in no way protects information suggesting criminal activity.

As a result of the limited privilege protection, some information obtained by the CAIB will be withheld from public release. Pursuant to an arrangement with oversight committees, the CAIB is permitting inspection of the privileged testimony of witnesses by Congressional members and staff, subject to certain limitations. Heightened attention is warranted for proceedings that have not been entirely transparent. Congress, the Office of Inspector General, the media, and the public will generate additional scrutiny.

Office of Inspector General (OIG) Continuing Role in *Columbia*-Related Matters

The conclusions presented in this memorandum are based solely on my observations. (The conclusions are not the product of a formal audit conducted in accordance with generally accepted government auditing standards.)

Future activities are planned by the OIG to review the CAB's activities and the Agency's resulting implementation of the Board's findings and recommendations. We are currently conducting an audit of CAIB financial and procurement management. The audit is examining whether the CAIB established controls to ensure that cost expenditures were reasonable, necessary, and accounted for and whether the Board established contract agreements in accordance with the Federal Acquisition Regulation. We will also monitor the Agency's plans for implementing the Board's recommendations, including return-to-flight activities, and consider all referrals the Board makes to the OIG. In addition, the OIG will review NASA's contingency plans in the event one or more of the three remaining orbiters is subject to catastrophic loss or is otherwise out of service.

Because of the importance of its work to NASA, I sought to be an observer to the Board's activities and to make recommendations regarding CAIB organization on an ongoing basis rather than waiting until after a report is issued, when any recommendations I might have would be too late to be of any value. I also believed that proximity to CAIB activities would strengthen the ability of my office to follow up on CAIB-identified issues and to promote the efficiency and effectiveness of NASA.

I appreciate the opportunity to have served as an observer to the CAIB, which has permitted me to coordinate OIG activities with those of the CAIB and to make these observations.

Sincerely,

ROBERT W. COBB,
Inspector General.

Enclosures
cc:

Admiral Harold W. Gehman, USN (Ret.)
Chairman
Columbia Accident Investigation Board

Hon. Ted Stevens
Chairman
Senate Committee on Appropriations

Hon. Robert C. Byrd
Ranking Member
Senate Committee on Appropriations

Hon. Christopher Bond
Chairman
Senate Subcommittee on VA, HUD, and Independent Agencies

Hon. Barbara Mikulski
Ranking Member
Senate Subcommittee on VA, HUD, and Independent Agencies

Hon. John McCain
Chairman
Senate Committee on Commerce, Science, and Transportation

Hon. Ernest Hollings
Ranking Member
Senate Committee on Commerce, Science, and Transportation

Hon. Sam Brownback
Chairman
Senate Subcommittee on Science, Technology, and Space

Hon. John Breaux
Ranking Member
Senate Subcommittee on Science, Technology, and Space

Hon. Susan Collins
Chairwoman
Senate Committee on Government Affairs

Hon. Joseph Lieberman
Ranking Member
Senate Committee on Government Affairs

Hon. C.W. Bill Young
Chairman
House Committee on Appropriations

Hon. David R. Obey
Ranking Member
House Committee on Appropriations

Hon. James T. Walsh
Chairman
House Subcommittee on VA, HUD, and Independent Agencies

Hon. Alan Mollohan
Ranking Member
House Subcommittee on VA, HUD, and Independent Agencies

Hon. Tom Davis
Chairman
House Committee on Government Reform

Hon. Henry Waxman
Ranking Member
House Committee on Government Reform

Hon. Todd Russell Platts
Chairman
House Subcommittee on Government Efficiency and Financial Management

Hon. Edolphus Towns
Ranking Member
House Subcommittee on Government Efficiency and Financial Management

Hon. Adam H. Putnam
Chairman
House Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census

Hon. William L. Clay, Jr.
Ranking Member
House Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census

Hon. Sherwood Boehlert
Chairman
House Committee on Science

Hon. Ralph Hall
Ranking Member
House Committee on Science

Hon. Dana Rohrabacher
Chairman
House Subcommittee on Space and Aeronautics

Hon. Bart Gordon
Ranking Member
House Subcommittee on Space and Aeronautics

ENCLOSURE 1

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF THE INSPECTOR GENERAL
Washington, DC, February 14, 2003

Admiral HAROLD W. GEHMAN, USN (Ret.),
Chairman,
Columbia Accident Investigation Board,
Houston, TX.

Dear Admiral Gehman:

At the February 12, 2003, Congressional hearing on the *Columbia* accident, members of NASA's oversight committees expressed concern that the membership of the Board and its charter could limit the Board's ability to carry out its duties with independence and objectivity. In response to the concern expressed at the hearing, the NASA Administrator amended the Board's charter to expand your flexibility and remove any inference of NASA oversight.

In order to assist you and the Administrator in ensuring that the Board's activities are independent, here are some general ideas for your consideration. These could be worked into the guidelines section of the charter, any further amendment of the responsibilities listed in the charter, or in a letter summarizing your interpretation of the Board's responsibilities under the charter.

- The Board will add members and use independent technical expertise as necessary to reach independent conclusions and recommendations.
- The Board will not be subject to supervision by the Administrator or any, employee of NASA. Neither the Administrator nor any delegate of the Administrator will prevent or prohibit the Board from initiating, carrying out or completing any task regarding the investigation of the *Columbia* accident.
- The Board shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to NASA programs and operations that are relevant to the investigation of the *Columbia* accident.
- In considering all causes of the accident, the Board will review NASA budgeting and management to determine whether an environment could have existed that did not maximize human space flight safety.

I am prepared to discuss these suggestions or any other matter as the Board deliberates how it can effectively accomplish its mission in a technically sound and independent manner.

Sincerely,

ROBERT W. COBB,
Inspector General.

cc: NASA Administrator

ENCLOSURE 2

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF THE INSPECTOR GENERAL
Washington, DC, February 14, 2003

Admiral HAROLD W. GEHMAN, USN (Ret.),
Chairman,
Columbia Accident Investigation Board,
Houston, TX.

RE: INVOLVEMENT IN BOARD ACTIVITIES BY NASA EMPLOYEES

Dear Admiral Gehman:

The Board will need to be extraordinarily sensitive to the issue of NASA employees' involvement in Board activities. There is tremendous value in the information and views that these employees provide. On the other hand, these persons may appear to some to have loyalties to NASA and NASA programs that could impair their objectivity.

In particular, the Board's *ex officio* member (Bryan O'Connor) and executive secretary (Theron Bradley) are NASA's Associate Administrator for Safety and Mission Assurance and Chief Engineer, respectively. The Board will delve into NASA's safety and mission assurance and engineering programs. The Board should take steps to ensure independence in its evaluation of program management in these two areas. More, the Board must strive to prevent even the appearance of conflict of interest in these areas.

In addition, Scott Hubbard is the Center Director at the Ames Research Center. While Mr. Hubbard does not appear to have significant programmatic responsibilities relevant to the investigation, his status as a senior NASA official establishes the appearance of an organizational conflict that the other members of the Board need to be mindful of in the conduct of Board activities.

The Board has already taken some helpful steps:

1. The breaking of the Board into subgroups has taken the initial consideration of issues out of the boardroom and into smaller groups that do not include the executive secretary or the *ex officio* member.

2. The Board in at least one instance has had certain NASA employees step out of the room in connection with a briefing to assure the free flow of information to the Board and to minimize any appearance of conflicts of interest.

3. The Board has sought and obtained amendments to the charter to provide it greater independence from NASA.

The Board should consider taking the following steps:

1. When the Board collectively evaluates the program management of engineering and of safety and mission assurance, it should request that the program officials in these areas step out of the boardroom—except where those officials are answering questions about their programs posed to them by the Board.

2. The Board should treat any information obtained by witnesses from within the engineering and safety and mission assurance programs that is critical of program organization or management as being privileged from release to these program heads so that there is no organizational disincentive for witnesses from within those particular programs to provide information. Witnesses in these areas should be advised of the Board's policies in this regard and specifically asked if they want the information they have provided to be shielded from these program managers. NASA employees who are witnesses should be told that they might seek protection from reprisal by calling the Office of Inspector General, which is by statute obligated to protect whistleblowers.

I also note that since the revised charter indicates that the Board is subject to its own policies rather than those of NASA, there is no limit on the Board's ability to reorganize its support in such a way as to eliminate appearances of conflicts of interest that may arise by virtue of provisions in NASA's policies concerning mishap investigation.

I hope this is of assistance to you.

Sincerely,

ROBERT W. COBB,
Inspector General.

POLICY AND PROCEDURES FOR EXERCISING THE AUTHORITY OF THE INTEGRITY COMMITTEE OF THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Preface

In January 1995, the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) established an Integrity Committee (IC), pursuant to authority granted by Executive Order (EO) 12805.

In EO 12993, signed on March 21, 1996, the IC was formally recognized and specifically tasked by the President to receive, review, and refer for investigation, where appropriate, allegations of wrongdoing against an Inspector General (IG) or, in the limited circumstances defined in EO 12993, allegations against a staff member in an IG office (OIG). However, the authority granted to the IC by EO 12993 does not encompass the statutory IGs of the Legislative Branch.

EO 12993 directs the IC to "establish the policies and procedures necessary to ensure consistency in conducting investigations and reporting activities under [the] order." This document seeks to accomplish that goal.

The policy and procedures provide a framework for the investigative function of the IC. The IC must consider a wide variety of allegations of wrongdoing and analyze conflicting information during its deliberations. Such deliberations require discretionary determinations. The standards and requirements set out in this document provide the structure in which that discretion can be exercised. However, policy and procedures cannot be read to dictate determinative outcomes in any particular matter before the IC.

The IC policy and procedures were developed under the guidance of its Chairperson and were considered and accepted by the full IC. Drafts of the policy and procedures were vetted with the membership of the PCIE and ECIE. The IC policy and procedures also have the concurrence of the Chairperson and Vice Chairpersons of the PCIE/ECIE.

After conducting itself under these procedures for a period of time, the IC may determine that amendments are desired. In that event, the IC shall vote on any proposed amendment, which must be endorsed by its Chairperson. The IC win notify

the PCIE/ECIE Chairperson and Vice Chairpersons of the proposed change. Any substantive changes will be vetted with the membership of the PCIE and ECIE. Unless the Chairperson or Vice Chairpersons voice disagreement within thirty days, the proposed amendment will become final.

The IC remains dedicated to building and ensuring integrity in the IG community by fulfilling its responsibilities under EO 12993 and by leading discussions of, and ongoing education on, integrity issues.

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I. Statement of Policy

The IC serves as an independent investigative mechanism for allegations of administrative misconduct brought against IGs and, under certain circumstances, members of their staffs, as authorized by EO 12993.

Allegations against an agency OIG staff member, that implicate that agency's IC are within the jurisdiction of the IG.

Allegations against certain staff members must be referred to the IC when an IG, unable to refer them to another Executive Branch agency with investigative jurisdiction over the matter, determines that an internal investigation would lack objectivity, or would appear to lack objectivity.

The IC receives allegations, reviews them, and, where necessary, refers them for investigation either to an agency with jurisdiction over the matter or to an investigative team composed of selected investigators supervised and controlled by the IC's Chairperson.

The procedures which follow describe how the IC, in implementing EO 12993, will ensure timeliness, fairness, and consistency in conducting, and reporting, investigations and other activities.

II. Receipt and Initial Screening of Allegations

A. Receipt of Complaints

The IC receives complaints containing allegations from a variety of sources, among them private citizens and government officials. The IC will respond to all named complainants in writing, advising them that the allegations have been received. In the IC's reply, complainants will generally be advised that the IC concentrates its efforts on allegations of serious misconduct by an IG or an OIG staff member under the circumstances described in EO 12993. Complainants will also be advised that the IC will refer cases to other investigative bodies, close cases, or take other actions consistent with its discretionary powers under EO 12993. Complainants may contact the IC in writing to learn the status of a pending case; however, details of pending investigations will not be provided.

B. Screening of Complaints by the Working Group

1. *Initial Review.* The working group of the IC will conduct a timely, initial review of the complaint to determine whether the allegations made are credible and not frivolous, and fall within the IC's jurisdiction under EO 12993. Based on that review, a course of action for every allegation will be recommended to the IC for consideration at the next scheduled IC meeting. The working group may conduct, or cause to be conducted, administrative inquiries to obtain additional information.

(a) *Not Within Jurisdiction of the IC.* If an allegation of misconduct does not fall within the jurisdiction of the IC and/or is frivolous or lacks credibility, the working group will recommend to the IC that a letter be sent to the complainant advising of that determination and that no further action will be taken concerning the complaint.

(b) *Within Jurisdiction of the IC.* If a credible, nonfrivolous allegation of misconduct falls within the jurisdiction of the IC, the working group will refer the complaint containing the allegation to the Public Integrity Section of the Criminal Division of the Department of Justice for a determination of potential criminality.

2. *Assignment of Case File Number.* A document containing allegations will be assigned a file number as a record of the IC for indexing purposes in the FBI Central Records System.

C. Determinations by the Public Integrity Section

The Public Integrity Section will review each complaint referred by the working group of the IC to determine whether it presents information sufficient to warrant a criminal investigation. The working group will maintain the case file containing the complaint in a pending status until the conclusion of the Public Integrity Section's review. When a criminal investigation has been conducted, the IC Chairperson may request that the investigative authority provide, for IC review, a summary report of the results of the investigation as it relates to the jurisdiction of the IC. If during, or after, IC review of the matter, the IC Chairperson determines that additional information should be considered by the Public Integrity Section, the IC Chairperson will refer such information to the Public Integrity Section and maintain the allegation in a pending status.

D. Definitions

"Frivolous allegations" means those allegations that would not constitute criminal violations or administrative misconduct, even if they prove to be true.

"Administrative misconduct" means noncriminal misconduct, or misconduct that the Public Integrity Section declines to pursue on a criminal basis, that evidences a violation of any law, rule, or regulation; or gross mismanagement; gross waste of funds; or abuse of authority, in the exercise of official duties or while acting under color of office.

"Working group" means agency staff associated with the Chairperson of the IC, who is the FBI's representative to the PCIE. All IC correspondence is handled by the working group.

"Agency head" means the head of a department, agency, or Federal entity; or an IG who has referred allegations against a subordinate to the IC for investigation.

III. IC Meetings

A. Administrative Details

1. *Membership.* The IC is composed of the following members: a Chairperson, who is the FBI official designated by the Director of the FBI to serve on the PCIE; the Special Counsel of the Office of Special Counsel; the Director of the Office of Government Ethics; and three, or more, IGs, representing both the PCIE and the ECIE, appointed by the PCIE/ECIE Chairperson. The Chief of the Public Integrity Section of the Department of Justice, or his designee, attends the meetings in an advisory capacity.

2. *Frequency of Meetings.* The IC will meet at least once each quarter to review the status of all pending cases. More frequent meetings may be called at the discretion of the IC's chairperson. It is expected that an IC member will miss no more than two meetings a year.

3. *Location of Meetings.* IC meetings will be held at a location agreed upon by the members, usually at an IC member's agency.

4. *Records of Meetings.* A written agenda of each meeting, and decisions made pursuant to each agenda item, will be made and retained as a record of the IC.

B. Review of Allegations

1. *New Allegations.* The working group will provide a report to the IC describing allegations of administrative misconduct. The report will also list any new allegations unrelated to the allegations determined by the Public Integrity Section to warrant criminal investigation. In handling an allegation of administrative misconduct, *the IC must:*

(a) *determine whether the allegation is within its jurisdiction;*

Allegations that may be outside the IC's review authority include general, nonspecific complaints about the effectiveness of a particular IG. Those issues can be referred to other officials, as appropriate.

(b) *determine whether further investigation is necessary;*

Some allegations received by the IC may not warrant further investigation and, therefore, the IC may choose to take no further investigative action. The IC Chairperson will notify the complainant in writing of the IC's decision.

(c) *determine whether there is an Executive Branch agency with appropriate jurisdiction over the matter to conduct an investigation; and*

For example, equal employment opportunity complaints are referred to the Equal Employment Opportunity Commission, while allegations of illegal political activity, whistleblower retaliation, or prohibited personnel practices are referred to the Office of Special Counsel, or another agency as provided by law. In accord with Section 4(b) of EO 12993, the IC will request a summary of the findings from the investigative authority to which complaints have been referred.

(d) *determine how to handle investigations that do not fall within the investigative jurisdiction of another Executive Branch agency.*

EO 12993 allows the IC to request that the FBI conduct such investigations, or that such investigations be conducted by uninvolved OIGs under the control and supervision of the IC Chairperson. Should an investigation by such an OIG be required, the IC Chairperson, with the assistance of the PCIE/ECIE Chairperson if necessary, will request the assistance of IGs whose personnel have the requisite expertise. OIG investigators will be assigned to the IC with funding for the investigation provided in accord with EO 12993.

2. *Allegations Currently Under Investigation.* The IC may review the status of any investigations currently under way and will request expeditious and appropriate action, where necessary.

3. *Allegations for Which an Investigation Report Has Been Issued.* When the IG receives an investigative report, it must determine whether the report establishes any misconduct on the part of the subject of the investigation. If the report does not establish misconduct, the IC will close the matter and so notify the PCIE/ECIE Chairperson. The IC may also choose to forward such a report to the PCIE/ECIE Chairperson and suggest that the Chairperson share the report with the subject's agency head, and/or the subject, where appropriate (for example, where the allegation has become generally known and is now disproved or was initially referred to the IC by the agency head). However, if, in the IC's opinion, the report does establish misconduct or otherwise requires action, the IC shall refer the report to the PCIE/ECIE Chairperson with recommendations for appropriate action.

C. Notification to Complainants, Subjects, and Subjects' Agency Heads of IC Decisions

Notice of the IC's decisions to close, refer, or initiate investigations of allegations will be provided to the complainant, the subject, and the subject's agency head, when, and if, appropriate. Each may request in writing from the IC a general status update while the case is open. However, the IC will not provide details on pending investigations.

D. Review and Transmittal of Investigative Reports

EO 12993 requires that the IC forward to the PCIE/ECIE Chairperson investigative reports with IC recommendations for further action if the results of the particular investigation warrant such recommendations. The PCIE/ECIE Chairperson will then work with appropriate offices based on the investigative findings and recommendations of the IC. The PCIE/ECIE Chairperson may, when he or she deems appropriate, forward these findings and recommendations to the appropriate parties, such as agency heads of the subjects of the reports.

E. Disposition of Agency Head Reports

1. *Receipt From PCIE/ECIE Chairperson.* The PCIE/ECIE Chairperson is responsible for forwarding to the IC the agency heads reports on any actions taken in response to the investigative findings. In accord with section 4(d) of EO 12993, an agency head has sixty days to review an investigative report, take action or decide on a course of action, and to so notify the PCIE/ECIE chairperson. The PCIE/ECIE chairperson may choose to extend that time limit for another thirty days, if necessary.

2. *IC Review.* The IC will review the course of action taken by the agency head concerning the investigative findings, and if the IC believes that the action was appropriate, it will close the matter. If the IC has concerns regarding the action, it may so advise the PCIE/ECIE Chairperson and suggest an alternative. However, the IC has no power to compel any particular action.

IV. Policy Review

A. The IC Chairperson

As Chairperson of the IC, the FBI representative to the PCIE/ECIE is the Federal official with primary responsibility for: (1) the effective conduct of the IC; and (2) responses to inquiries regarding allegations received from Executive, Legislative, and Judicial Branch officials, in a manner consistent with applicable law. The IC Chairperson oversees the working group, the quality of IC investigative reports, and discretionary determinations. The IC Chairperson is also responsible for the timeliness of IC actions; and IC (and/or IC-led FBI) investigations. The IC Chairperson may recommend changes to the IC procedures as he or she finds necessary. The IC Chairperson will also issue an annual report to the PCIE/ECIE Chairperson on the status of complaints received by the IC.

B. The Chairperson and Vice Chairpersons of the PCIE/ECIE

The PCIE/ECIE Chairperson and Vice Chairpersons provide guidance and support to the Chairperson of the IC. After the completion of IC action on a matter within its jurisdiction, the PCIE/ECIE Chairperson and Vice Chairpersons may review with an IG, or with other appropriate parties, any allegations which appear to constitute a pattern of misconduct or gross mismanagement in a particular OIG.

V. Maintenance of IC Records

A. The Central Records System

1. *Content of Records.* All documents received or transmitted by the IC in fulfilling its responsibilities under EO 12993 (including, but not limited to, written complaints making allegations against IGs; IC correspondence; reports of administrative misconduct investigations; reports of final actions taken with regard to proven allegations; and memoranda providing the final dispositions of allegations determined to be frivolous, outside the jurisdiction of the IC, or otherwise closed without further investigation) will be collected and maintained as IC records in the FBI's Central Records System. The Central Records System consists of a numerical sequence of subject matter files and an index.

2. *Criminal Investigative Files Not Included as Integrity Committee Records.* The Integrity Committee records will not include any criminal investigative files with general investigative information arising out of Public Integrity Section referrals of criminal allegations to the FBI. However, Integrity Committee records may contain information from criminal investigative files when such information is the source of the alleged administrative misconduct. The FBI's criminal investigative files are maintained in the Central Records System under the subject matter of the criminal violation, and, therefore, will be separate from IC records.

B. Disclosure of Information Under the Freedom of Information Act

Third party requests (requests by individuals other than the IG or OIG staff member, who is the subject of the allegation) for information will be processed pursuant to the Freedom of Information Act (FOIA) (Title 5, U.S.C., Section 562), in accord with applicable law; regulations implementing the FOIA at Title 28, C.F.R. Part 16, Subpart A; and FBI FOIA policy and procedures.

C. Privacy Act Protection

1. *Restrictions on Disclosure.* The records of the IC will he maintained in accord with the Privacy Act of 1974 (Title 5, U.S.C., Section 552a), which restricts the disclosure of all records contained in a system of records maintained by an Executive Branch agency and retrieved by an individual's name or a personal identifier, such as a Social Security Number. The records may be disclosed only in response to the written request of, or with the prior written consent of, the individual, to whom the

record pertains, or under the conditions specifically set forth in the Act at Section 552a(b).

2. *Access by Individuals to Their Own Records.* Procedures for access by individuals to their own records have been established by the Privacy Act and in regulations implementing the Act at Title 28, C.F.R., Part 16, Subpart D. All disclosures of information requested from the IC records will be coordinated with the IC.

D. Physical Maintenance of Records

1. *Retention of Records* The records of the IC will be maintained by the working group in a restricted area.

2. *Disposal of Records.* FBI record disposition programs relevant to the Central Records System are conducted under the FBI Records Retention Plan and Disposition schedule approved by the Archivist of the United States and U.S. District Court, District of Columbia. Administrative records at Headquarters which meet the destruction criteria are destroyed after a period of 10 years or when administrative needs have expired, whichever is later.

Approved: William J. Esposito Date: 4/24/97
Chairman
Integrity Committee of the President's Council on Integrity and Efficiency

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QUALITY STANDARDS FOR FEDERAL OFFICES OF INSPECTOR GENERAL

President's Council on Integrity and Efficiency

Executive Council on Integrity and Efficiency; dated

October 2003

Foreword

On the 25th anniversary of the enactment of the Inspector General Act of 1978, as amended, the members of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) have updated the *Quality Standards for Federal Offices of Inspector General.* To commemorate the anniversary, we are issuing this update with a silver cover. The standards in the Silver Book set forth the overall quality framework for managing, operating, and conducting the work of Offices of Inspector General and will guide the Inspector General Community's efforts into the future.

GASTON L. GIANNI, JR.
Vice Chair, PCIE

BARRY SNYDER
Vice Chair, ECIE

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QUALITY STANDARDS FOR FEDERAL OFFICES OF INSPECTOR GENERAL

I. Introduction

A. Purpose

This document contains quality standards for the management, operation, and conduct of the Federal Offices of Inspector General (OIG). Executive Order 12805 gives the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE)[1] the responsibility for developing professional standards for OIGs.[2] The members of the PCIE and ECIE have formulated and adopted these standards. They are for OIG use to guide the conduct of official duties in a professional manner. These standards incorporate by reference the existing professional standards for audit, investigation, and inspection and evaluation efforts.

Public office carries with it a responsibility to apply and account for the use of public resources economically, efficiently, and effectively.[3] The OIGs have a special need for high standards of professionalism and integrity in light of the mission of the Inspectors General under the Act.[4] Because of this special need, the PCIE and ECIE have adopted the general quality standards contained in this document.

B. OIG Mission

OIGs have responsibility to report on current performance and accountability and to foster good program management to ensure effective government operations. The Inspector General Act of 1978 (IG Act), as amended, created the OIGs to:[5]

1. Conduct, supervise, and coordinate audits and investigations relating to the programs and operations of their agencies;
2. Review existing and proposed legislation and regulations to make recommendations concerning the impact of such legislation and regulations on economy and efficiency or the prevention and detection of fraud and abuse;
3. Provide leadership for activities designed to promote economy, efficiency, and effectiveness, and to promote efforts to reduce fraud, waste, and abuse in the programs and operations of their agencies;
4. Coordinate relationships between the agency and other Federal agencies, State and local government agencies, and non-government agencies to promote economy and efficiency, to prevent and detect fraud and abuse, or to identify and prosecute participants engaged in fraud or abuse;
5. Inform their agency heads and Congress of problems in their agencies' programs and operations and the necessity for and progress of corrective actions; and
6. Report to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

In addition to audits and investigations referenced in item 1 above, OIGs may conduct, supervise, and coordinate inspections, evaluations, and other reviews related to the programs and operations of their agencies.

C. Relationship to Federal Legislation and Regulations, and Federal and Professional Standards

OIG operations are subject to a variety of Federal legislation and regulations, and Federal and other professional standards, such as the IG Act, Single Audit Act, *Standards of Ethical Conduct for Employees of the Executive Branch,* the *Government Auditing Standards,* the PCIE *Quality Standards for Inspections,* and the PCIE/ECIE *Quality Standards for Investigations.* The standards contained in this document are derived from these and other requirements. However, these standards are not intended to contradict or supersede applicable standards or Federal laws and regulations. See *Appendix I* for a list of major laws, regulations, and standards that apply to OIGs.

An OIG may be a component of an entity that is not legally defined as a "Federal agency." For this reason, or other reasons, certain laws, regulations, or other guidance cited in this document may not be directly applicable to certain OIGs. Where a standard contained in this document is premised on law or other criteria that are not directly applicable to an OIG, OIGs are encouraged to adopt the underlying principles and concepts to their operations where appropriate and feasible.

II. Ethics, Independence, and Confidentiality

A. General Standard[6]

The Inspector General and OIG staff shall adhere to the highest ethical principles by conducting their work with integrity.[7]

Integrity is the cornerstone of all ethical conduct, ensuring adherence to accepted codes of ethics and practice. Objectivity, independence, professional judgment, and confidentiality are all elements of integrity.

Objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest.

Independence is a critical element of objectivity. Without independence, both in fact and in appearance, objectivity is impaired.

Professional judgment requires working with competence and diligence. Competence is a combination of education and experience and involves a commitment to learning and professional improvement. Professional standards for audits, investigations, and inspections and evaluations require continuing professional education (see the Managing Human Capital standard). Diligence requires that services be rendered promptly, carefully, and thoroughly and by observing the applicable professional and ethical standards.

Confidentiality requires respecting the value and ownership of privileged, confidential, or classified information received and protecting that information, and safeguarding the identity of confidential informants. In some instances, legal or professional obligations may require an OIG to disclose information it has received.

B. Standards for Ethical Conduct for Employees of the Executive Branch

The Inspector General and OIG staff shall follow the *Standards for Ethical Conduct for Employees of the Executive Branch* [8] (Ethical Standards) and the Federal conflict of interest laws.[9] These standards require the Inspector General and the OIG staff to respect and adhere to the 14 principles of ethical conduct, as well as the implementing standards contained in the Ethical Standards and in supplemental agency regulations.[10] The first principle emphasizes that public service is a public trust, requiring employees to place loyalty to the Constitution, laws, and ethical principles above private gain.

Executive Order 12993 ("Administrative Allegations Against Inspectors General") [11] provides an independent investigative mechanism to ensure that administrative allegations against IGs and OIG senior staff are expeditiously investigated and resolved. The Order establishes a PCIE/ECIE Integrity Committee to receive, review, and refer such allegations. OIGs should maintain policies and controls to ensure that allegations are handled consistent with the executive order. OIGs should also have in place policies and procedures to ensure that criminal allegations against the IG or senior OIG staff are appropriately referred to the Attorney General.

Where a situation is not covered by a specific standard set forth in the Ethical Standards or in supplemental agency regulations, the Inspector General and OIG staff shall apply the principles underlying the standards in determining whether their planned or actual conduct is proper.[12] OIG staff should also consult with the Designated Agency Ethics Official or similar official within their agency or organization regarding application of the Ethical Standards.

C. Independence

The Inspector General and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The Inspector General and OIG staff have a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The Inspector General and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work.

1. Statutory Independence

The IG Act of 1978, as amended, established OIGs to create organizationally independent and objective units. This statutory independence is intended to ensure the integrity and objectivity of OIG activities. The IG Act of 1978, as amended, authorizes Inspectors General to:

a. Conduct such audits and investigations, and issue such reports, as they believe appropriate (with limited national security and law enforcement exceptions).[13]

b. Issue subpoenas for information and documents outside the agency (with the same limited exceptions).[14]

c. Have direct access to all records and information of the agency.[15]

d. Have ready access to the agency head.[16]

e. Administer oaths for taking testimony.[17]

f. Hire and control their own staff and contract resources.[18]

g. Request assistance from any Federal, state, or local governmental agency or unit.[19]

Inspectors General report both to the head of their respective agencies and to the Congress.[20] This dual reporting responsibility is the framework within which Inspectors General perform their functions. Unique in government, dual reporting is the legislative safety net that protects the Inspector General's independence and objectivity.

2. Personal Impairments

Personal impairments of staff members result from relationships and beliefs that might cause OIG staff members to limit the extent of an inquiry, limit disclosure, or weaken or slant their work in any way. OIG staff are responsible for notifying the appropriate officials within their organization if they have any personal impairments to independence.

3. External Impairments

Factors external to the OIG may restrict the work or interfere with an OIG's ability to form independent and objective opinions and conclusions. External impairments to independence occur when the OIG staff is deterred from acting objectively and exercising professional skepticism by pressures, actual or perceived, from management and employees of the reviewed entity or oversight organizations. OIGs should have policies and procedures in place to resolve or report external impairments to independence when they exist.

These impairments could include, but are not limited to, the following:[21]

a. external interference or influence that could improperly or imprudently limit or modify the scope of OIG work or threaten to do so, including pressure to reduce inappropriately the extent of work performed in order to reduce costs or fees;

b. external interference with the selection or application of OIG procedures, the selection of transactions to be examined, or access to records or personnel;

c. unreasonable restrictions on the time allowed to complete OIG work or reports;

d. interference external to the OIG in the assignment, appointment, promotion, or termination of OIG personnel;

e. restrictions on funds or other resources provided to the OIG organization that adversely affect the OIG's ability to carry out its responsibilities;

f. authority to overrule or to inappropriately influence OIG judgment as to the appropriate content of reports;

g. threat of replacement over a disagreement with the contents of an OIG report, conclusions, or the application of an accounting principle or other criteria; and

h. influences that jeopardize the continued employment of the IG or other OIG staff other than incompetence, misconduct, or the need for OIG services.

4. Types of Services

Auditors and audit organizations within OIGs have a specific independence standard[22] required by *Government Auditing Standards.* This standard requires that, while auditors have the capability of performing a range of services for their clients, in some circumstances it is not appropriate for them to perform both audit and certain nonaudit services for the same client. The standard is based on two overarching principles:

a. Auditors should not perform management functions or make management decisions; and

b. Auditors should not audit their own work or provide nonaudit services in situations where the amounts or services involved are significant/material to the subject matter of the audit.

In addition to its application to OIG audit activities, the first overarching principle should be applied broadly to all OIG activities. Specifically, OIG staff, and others under OIG direction, should not perform management functions or make management decisions for their agency.

OIG audit organizations should take steps to ensure that auditors under contract to the OIG do not have independence impairments.

5. Conflicting Financial Interests

An OIG staff member's objectivity and independence may also be affected by personal financial interests that are held by the staff member or by certain family members, or by positions the staff member holds as a trustee, director, officer, or employee of an outside organization. OIG staff should notify appropriate officials within their organization if they have a potentially conflicting financial interest.

D. Confidentiality

Each OIG shall safeguard the identity of confidential sources and protect privileged, confidential, and national security or classified information in compliance with applicable laws, regulations, and professional standards.

Congress has provided specific authority for withholding the identities of agency employees who make complaints to the OIG. Under Section 7 of the IG Act of 1978, as amended, the OIG may receive and investigate complaints or information from employees concerning the possible existence of an activity constituting a violation of law, rules, or regulations; mismanagement; waste of funds; abuse of authority; or a substantial and specific danger to the public health or safety. The Inspector

General shall not, after receipt of such complaint or information, disclose the identity of the agency employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable.

The Freedom of Information Act, the Privacy Act, the Civil Service Reform Act, the Health Insurance Portability and Accountability Act,[23] the Trade Secrets Act,[24] and other Federal statutes and case law provide certain protections for the identities of sources and for sensitive information obtained. Additionally, the relevant professional standards provide guidance on the use, protection, and reporting of privileged and confidential information. OIGs must follow the guidance contained in these authorities.

III. Professional Standards

A. General Standard

Each OIG shall conduct, supervise, and coordinate its audits, investigations, inspections, and evaluations in compliance with the applicable professional standards listed below.

For audits: Government Auditing Standards, issued by the U.S. General Accounting Office (GAO).

For investigations: Quality Standards for Investigations, accepted by the PCIE and ECIE and consistent with appropriate Department of Justice directives.

For inspections and evaluations: Quality Standards for Inspections, accepted by the PCIE and ECIE, *Government Auditing Standards,* or other appropriate professional standards.

IV. Ensuring Internal Control

A. General Standard

The Inspector General and OIG staff shall direct and control OIG operations consistent with the *Standards for Internal Control in the Federal Government*[25] issued by the GAO. These standards require that internal control be part of an entity's management infrastructure to provide reasonable assurance that (1) operations are efficient and effective; (2) financial reporting is reliable; and (3) operations are in compliance with applicable laws, regulations, and professional standards.

Internal control is a continuous built-in component of operations, effected by people, that provides reasonable but not absolute assurance, that the OIG's objectives will be met. Internal control considerations include the following:

B. Efficient and Effective Operations

OIGs should strive to conduct their operation in the most efficient and effective manner. Each OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction. OIGs derive much of their credibility to perform their work by demonstrating the ability to efficiently and effectively use and account for public funds.

C. Control Environment

OIG management and staff should establish and maintain an environment throughout the organization that fosters a positive and supportive attitude toward internal control and conscientious management. Key factors affecting the control environment include the following:

1. Integrity and ethical values maintained and demonstrated by OIG management and staff, the organizational structure and delegations of authority and responsibility, and OIG management's philosophy and operating style.

2. OIG management's commitment to competence and human capital policies and practices (see the Managing Human Capital standard).

3. OIG management's relationship with the Congress, their agency, and the Office of Management and Budget (OMB).

D. Risk Assessment

The Inspector General should provide for an assessment of the risks the OIG faces from both external and internal sources. Risk assessment includes identifying and analyzing relevant risks associated with achieving the OIG's objectives, such as those defined in strategic and annual performance plans, and forming a basis for determining how risks should be managed. Risk assessment methodologies and the formality of their documentation may vary from OIG to OIG, depending on the OIG's size, mission, and other factors.

E. Control Activities

The Inspector General should establish and implement internal control activities that ensure the OIG's directives are carried out. The control activities should be effective and efficient in accomplishing the OIG's control objectives.

Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives. Control activities are an integral part of the planning, implementing, reviewing, and accountability activities. Control activities include supervisory reviews at all levels to ensure compliance with applicable professional standards, controls over information processing, physical control over vulnerable assets, establishing and reviewing performance measures and indicators, and segregation of duties.

F. Information and Communication

The Inspector General should ensure that information is recorded and communicated to internal OIG management and others within the OIG who need it and in a form and within a time-frame that enables them to carry out their internal quality control and other responsibilities.

For the OIG to control its operations, it must have relevant, reliable, and timely communications relating to internal and external events. Information is needed throughout the OIG to achieve all of its objectives.

G. Monitoring

The Inspector General should ensure that monitoring assesses the quality of performance over time and ensures that the findings and recommendations of quality assurance and other reviews are promptly resolved.

The monitoring standard discusses three different types of activities: ongoing monitoring, self-assessment evaluations, and quality assurance reviews. Ongoing monitoring occurs in the course of normal operations and is continuous. Self-assessment evaluations and independent external reviews can be useful in focusing directly on the controls' effectiveness at a specific time.[26] The scope and frequency of these independent reviews should depend primarily on the assessment of risks and the effectiveness of ongoing control monitoring procedures.

1. *Ongoing monitoring* occurs in the course of normal operations. It is performed continually and is ingrained in the agency operations. It includes regular management and supervisory activities,[27] comparisons, reconciliations, and other actions employees take in performing their duties. Ongoing monitoring should include policies and procedures for ensuring that the findings of separate quality control evaluations and quality assurance reviews are promptly resolved.

2. *Self-assessment evaluations,* conducted by the unit or activity itself, include a reassessment of the risks associated with a particular activity and can include periodic reviews of control design and direct testing of internal controls, depending on the risk associated with the activity.

3. *Independent external reviews* are conducted by sources not assigned to the unit being reviewed. These reviews are distinct from ongoing management and supervision, and encompass the entirety of internal control, including administrative operations and professional services (audits, investigations, inspections, and evaluations). Quality assurance is intended to assess the internal controls of the entire OIG or specific OIG components. The Quality Assurance Program is a type of independent review that focuses on complying with professional standards in conducting professional services (see the Maintaining Quality Assurance standard).

V. Maintaining Quality Assurance

A. General Standard [28]

Each OIG shall establish and maintain a quality assurance program to ensure that work performed adheres to established OIG policies and procedures; meets established standards of performance, including applicable professional standards; and is carried out economically, efficiently, and effectively.

External quality assurance reviews provide OIGs with added assurance regarding their adherence to prescribed standards, regulations, and legislation through a formal objective assessment of OIG operations. OIGs are strongly encouraged to have external quality assurance reviews of audits, investigations, inspections, evaluations, and other OIG activities. Each OIG shall participate in the external quality assurance review programs required by the PCIE and ECIE.

B. Quality Assurance Program

Because OIGs evaluate how well agency programs and operations are functioning, they have a special responsibility to ensure that their own operations are as effective as possible. The nature and extent of an OIG's quality assurance program depends on a number of factors, such as the OIG size, the degree of operating autonomy allowed its personnel and its offices, the nature of its work, its organizational structure, and appropriate cost-benefit considerations. Thus, the program established by individual OIGs could vary, as could the extent of their documentation. However, each organization should prepare appropriate documentation to demonstrate compliance with its policies and procedures for its system of quality assurance.

1. The quality assurance program is an evaluative effort conducted by reviewers external to the units/personnel being reviewed to ensure that the overall work of the OIG meets appropriate standards. The quality assurance program has an internal and external component.

2. The internal quality assurance program can include reviews of all aspects of the OIG's operations. The reviews are conducted by internal OIG staff that are external to the units being reviewed. The internal quality assurance program is distinct from regular management and supervisory activities, comparisons, and other activities by OIG staff performing their duties. Thus, an audit supervisor ensuring that audit reports are properly referenced to working papers is an example of regular supervision whereas an independent reviewer evaluating the referencing process is an example of internal quality assurance.

3. External quality assurance reviews are conducted by independent organizations not affiliated with the OIG being reviewed.

C. Elements of an Internal Quality Assurance Program

1. An internal quality assurance program must be structured and implemented to ensure an objective, timely, and comprehensive appraisal of operations. The internal quality assurance reviews should be conducted by individuals who are not directly involved in the activity or unit being reviewed and who do not report to the immediate supervisor of that activity or unit.

2. The same professional care should be taken with quality assurance reviews as with other OIG efforts, including adequately planning the review, documenting findings, developing supportable recommendations, and soliciting comments from the supervisor of the activity or unit reviewed.

3. The Inspector General shall implement necessary improvements on a timely basis.

D. Elements of an External Quality Assurance Program

1. The purpose of the external quality assurance program is to provide an additional and external level of assurance that the OIG conducts its audits, investigations, inspections, and evaluations in compliance with applicable professional standards.

2. The objective of the external quality assurance review is to determine whether the internal control system is in place and operating effectively to provide reasonable assurance that established policies and procedures and applicable professional standards are being followed.

3. Organizations and individuals managing and conducting external quality assurance reviews should be highly qualified and comply with specific supplemental guidance issued by the PCIE and ECIE to ensure the highest level of review quality. Individuals conducting these reviews should have a thorough knowledge of the applicable professional standards and the environment relative to the work being performed.

4. The reviewers should be independent of the organization being reviewed, its staff, and the work selected for review.

5. The reviewers should have knowledge related to performing an external quality assurance review and use professional judgment in conducting and reporting on the results of the review.

6. The review should be sufficiently comprehensive to assess whether the internal quality assurance program meets its objectives.

7. The external reviewers and the organization under review should prepare and sign a Memorandum of Understanding regarding fundamental aspects of the review. Possible topics include scope; staffing and time-frames; discussion of preliminary findings; reporting; handling of requests for reports, letters of

comment, and review documentation; and procedures to address disagreements on findings and recommendations.

8. OIGs should provide copies of final reports resulting from external quality assurance reviews to the head of the agency or department and to the Chair and the Vice Chairs of the PCIE or ECIE, as appropriate. Upon request and subject to applicable law, the reports and letters of comment should be made available to the public in a timely manner.

9. OIGs should have procedures in place to address findings and recommendations contained in external quality assurance reviews.

10. The external quality assurance program can be extended to cover other OIG operations.

VI. Planning and Coordinating

A. General Standard

Each OIG shall maintain a planning system assessing the nature, scope, and inherent risks of agency programs and operations. This assessment forms the basis for establishing strategic and performance plans,[29] including goals, objectives, and performance measures to be accomplished by the OIG within a specific time period.[30]

The Inspector General and OIG staff shall coordinate their activities internally and with other components of Government to assure effective and efficient use of available resources.[31]

B. Elements of the Planning Process

OIGs should develop an appropriate planning process, giving consideration to the following elements:

1. Use a strategic planning process that carefully considers current and emerging agency programs, operations, risks, and management challenges. This analysis will identify the nature of agency programs and operations, their performance measures and anticipated outcomes, their scope and dollar magnitude, their staffing and budgetary trends, their perceived vulnerabilities, and their inherent risks.

2. Develop a methodology and process for identifying and prioritizing agency programs and operations as potential subjects for audit, investigation, inspection, or evaluation. The methodology should be designed to use the most effective combination of OIG resources, including previous OIG work and input from OIG staff. Also, the OIG should consider the plans of other organizations both internal and external to the agency.

3. Use an annual performance planning process that identifies the activities to audit, investigate, inspect, or evaluate and translates these priorities into outcome-related goals, objectives, and performance measures. As part of this planning process, OIGs should consider agency actions to address recommendations from prior OIG work. Because resources are rarely sufficient to meet requirements, the OIG must choose among competing needs.

C. Coordination Considerations

1. In planning work, the OIG should coordinate, where applicable, with agency management to ensure that OIG priorities appropriately consider agency needs. The OIG should take into consideration requests from the Congress, the OMB, other external stakeholders, the PCIE, the ECIE, complaints from employees and, as appropriate, private citizens. By using this information, along with the OIG's knowledge of agency objectives and operations, the OIG can plan its work based on the relative costs and benefits.

2. The OIG should minimize duplicative work. The OIG should coordinate its work internally and with other groups (both inside and outside the agency) performing independent evaluations of agency operations and programs. This coordination should identify the nature and scope of other reviews, both planned and completed, to avoid duplicating others' work. Coordinating with the GAO is particularly important. As part of the planning process, each OIG should coordinate as needed with GAO representatives to exchange and discuss tentative plans for the next fiscal year.[32] If duplication is identified, every effort should be made to resolve it.

3. The OIG will closely coordinate, if applicable, with the Department of Justice with respect to criminal and civil investigations in compliance with investigative standards and applicable deputations and accompanying Memoranda of Understanding.

4. When OIG staff identify problems that might affect other offices, agencies, or arms of government, the OIG should coordinate with them and their respective OIGs. Where appropriate, joint or coordinated audits, investigations, inspections, or evaluations may be performed to fulfill all the interested parties' requirements.[33]

5. Because of the close interrelationships among many Federal programs, situations will arise where audit, investigation, inspection, or evaluation activity by one OIG will require work with another agency's program or administrative staff. In such cases, the OIGs will coordinate in order to facilitate the efficient accomplishment of the work.

D. Prevention

OIG planning should develop a strategy to identify the causes of fraud, waste, abuse, and mismanagement in high-risk agency programs, and to help agencies implement a system of management improvements to overcome these problems.[34] OIG prevention efforts may include the following:

1. A routine procedure for OIG staff to identify and report prevention opportunities as these may come up in their work, and for OIG managers to refer these to agency management, as appropriate;

2. Special awareness and training initiatives designed to alert agency employees to systemic weaknesses in the programs and operations of their agencies;

3. Review and comment on initial design of new agency programs and operations;

4. Analyses of audit, investigative, and other OIG reports to identify trends and patterns;

5. Education and training to ensure that appropriate OIG staff have requisite abilities in the loss prevention area, as well as fraud detection and prevention; and

6. An effective means for tracking the implementation of recommendations.

VII. Communicating Results of OIG Activities

A. General Standard

Each OIG shall keep agency management, program managers, and the Congress fully and currently informed of appropriate aspects of OIG operations and findings. OIGs should assess and report to the Congress, as appropriate, on their own strategic and annual performance and the performance of the agency or department for which they have cognizance. Each OIG shall also report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of criminal law.

B. Keeping the Head of the Agency Informed[35]

1. Through periodic briefings and reports, the Inspector General should keep the appropriate department and agency heads advised of important undertakings of the OIG, its outcomes, and any problems encountered that warrant the department or agency head's attention.

2. The Inspector General should timely advise department and agency heads, consistent with requirements of confidentiality, of any agency official who attempts to impede or fails to require a contractor under his or her responsibility to desist from impeding an audit, investigation, inspection, evaluation, or any other OIG activity.[36]

3. The Inspector General should timely alert department and agency heads, consistent with requirements imposed by confidentiality and the prosecutive system, to examples of egregious misconduct and waste.

C. Keeping the Congress Informed[37]

1. The Inspector General shall report to the Congress, as required by the IG Act of 1978, as amended, and other legislation, regulations, and directives.

2. The Inspector General may also inform the agency head and Congress through the 7-day letter (IG Act of 1978, as amended, Section 5(d)), or other appropriate means of particularly serious programmatic or administrative problems that contribute to fraud, waste, abuse, or mismanagement in agency operations and programs.

3. If the results of an audit, investigation, inspection, or evaluation indicate that deficiencies in Federal law contribute to fraud, waste, or abuse, these matters

may be brought to the attention of the Congress, and may include recommendations for statutory change.[38]

4. The Inspector General shall also report to the Congress and OMB on management challenges facing the agency or department and progress in meeting the challenges.[39]

D. Keeping the Congress and Agency Informed on Performance [40]

1. Each OIG should annually assess its own performance by evaluating actual to planned performance.

2. Each OIG should have sufficient information to conduct performance evaluations, *e.g.,* a history of past results to show prior performance, a strategic and annual planning process to show expected performance, and a management information system to show actual performance.

3. Each OIG should report annually on its actual performance as compared to its performance goals, either as a contributing part of their agency reporting under the Government Performance and Results Act of 1993 (GPRA), if appropriate, or independently to their agency and Congress.

4. Inspectors General may also advise the Congress on the performance goals, measurement process, and results of the agencies and departments for which they have cognizance.

E. Keeping Program Managers Informed

The OIG should make a special and continuing effort to keep program managers and their key staff informed, if appropriate, about the purpose, nature, and content of OIG activity associated with the manager's programs. These efforts may include periodic briefings as well as interim reports and correspondence.

F. Keeping Ethics Officials Informed

The OIG should make a special and continuing effort to keep the Designated Agency Ethics Official or similar official informed about OIG activities, including the results of investigations and allegations of ethical misconduct where appropriate, that related to the ethics official's responsibilities for the agency's ethics program.

G. Keeping the Attorney General Informed [41]

The OIG shall notify the Department of Justice and seek a prosecutive opinion whenever the OIG develops evidence of a Federal crime.

H. Elements of Effective Reporting [42]

1. All products issued should comply with applicable professional standards and conform to the OIG's established policies and procedures.

2. Whether written or oral, all OIG reports should be objective, timely, and useful.

3. All products should be adequately supported.

VIII. Managing Human Capital

A. General Standard [43]

Each OIG should have a process to ensure that the OIG's staff members collectively possess the core competencies needed to accomplish the OIG mission.

B. Human Capital Processes

Each OIG's process for ensuring that its staff members possess the requisite qualifications should encompass processes for recruiting, hiring, continuously developing, training, and evaluating their staff members, and succession planning to assist the organization in maintaining a workforce that has the ability to meet the OIG's mission.

C. Core Competencies

Staff members must collectively possess the professional competence (*i.e.,* teamwork, leadership, communication, technical knowledge, critical thinking skills, abilities, and experience) to perform the work assigned. In addition, staff must individually meet requirements established by the Office of Personnel Management for their respective job series and by applicable professional standards.

D. Skills Assessment

To ensure that the OIG staff members collectively possess needed skills, the Inspector General and key managers should assess the skills of their staff members and determine the extent to which these skills match the OIG's requirements. OIG management is responsible for deciding the methods by which identified needs can

be met by hiring contractors or outside consultants, using staff members who possess the requisite skills, developing staff members and providing training, or recruiting new staff. Each OIG must also ensure that staff members meet the requirements for continuing professional education contained in the applicable professional standards.[44]

IX. Reviewing Legislation and Regulations

A. General Standard

Each OIG shall establish and maintain a system to review and comment on existing and proposed legislation, regulations, and those directives that affect either the programs and operations of the OIG's agency or the mission and functions of the OIG.[45] The system should result in OIG recommendations designed to (1) promote economy and efficiency in administering agency programs and operations; (2) prevent and detect fraud and abuse in such programs and operations; and (3) protect the integrity and independence of the OIG.

B. Elements of Legislative and Regulatory Review

1. OIGs should assure independent and timely formulation and, to the extent within their control, transmission of OIG recommendations so that authorities dealing with the matters concerned can adequately consider the OIG comments. This requires early identification of legislative, regulatory, and those key administrative or directive issues of particular interest to the OIG.

2. OIGs should seek implementation of agency procedures that routinely provide for OIG review or comment on legislative and regulatory proposals of interest to the OIG and on agency-wide directives.

3. OIGs should have written procedures for and conduct appropriate reviews, as necessary, of authorizing legislation, regulations, and directives during investigations, internal audits, inspections and evaluations, and other OIG activities, particularly when it appears that a lack of controls or deficiencies in law have contributed to fraud, waste, abuse, and mismanagement.

X. Receiving and Reviewing Allegations

A. General Standard [46]

Each OIG shall establish and follow policies and procedures for receiving and reviewing allegations. This system should ensure that an appropriate disposition, including appropriate notification, is made for each allegation.

B. Elements of a System for Receiving and Reviewing Allegations

This system should ensure that:

1. The OIG has a well-publicized vehicle through which agency employees and other interested persons can submit allegations of fraud, waste, abuse, and mismanagement, preserving anonymity when possible.

2. Each allegation is retrievable and its receipt, review, and disposition are documented.

3. Each allegation is initially screened to ensure that urgent and/or high priority matters receive timely attention and facilitate early determination of the appropriate courses of action for those complaints requiring follow-up action.

4. Based on the nature, content, and credibility of the complaint, allegations are appropriately reviewed.

C. Feedback

The OIG may establish a mechanism for providing feedback to parties who submit allegations. This feedback can be furnished in summary form through such vehicles as an employee newsletter, a semiannual report digest, or other means.

ENDNOTES

[1] Executive Order 12805, dated May 11, 1992, updated the charter for the President's Council on Integrity and Efficiency and created the Executive Council on Integrity and Efficiency.

[2] Executive Order 12805, Section 3(c), states that individual members of the Councils should, to the extent permitted under law, adhere to professional standards developed by the Councils. This section gives the Councils the authority to establish standards for quality.

[3] *The Standards for Internal Control in the Federal Government,* published by the U.S. General Accounting Office (GAO) in November 1999, require that "Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management." The Internal Control Standards define internal control as an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: (1)

effectiveness and efficiency of operations, (2) reliability of financial reporting, and (3) compliance with applicable laws and regulations.

[4] The IG Act (Public Law 95–452), Section 2, established *independent and objective units* to review agency activities.

[5] IG Act, Sections 2 and 4.

[6] This standard was adapted from the *Standards for Ethical Conduct for Employees of the Executive Branch* and the American Institute of Certified Public Accountants' Code of Professional Conduct, Section ET 53–56, and the Institute of Internal Auditors' Code of Ethics.

[7] IG Act, Section 2, established independent units to review agency activities. Section 6(a)(2) gives the Inspector General responsibility for independently determining the nature and extent of the work necessary.

[8] Codified in 5 C.F.R. Part 2635 (January 1, 2002 Edition), as amended at 67 FR 61761–61762 (October 2, 2002).

[9] 18 U.S.C. Sections 202–209.

[10] 5 C.F.R. Section 2635.101(a). The 14 general principles restate the principles of ethical conduct set forth in Executive Order 12674, as modified by Executive Order 12731.

[11] Executive Order 12993, Section 2, dated March 22, 1996, gives the PCIE and ECIE Integrity Committee the responsibility for receiving, reviewing, and referring for investigation allegations of wrongdoing against Inspectors General and certain OIG staff members.

[12] 5 C.F.R. Section 2635.101(b).

[13] IG Act, Section 6(a)(4).

[14] IG Act, Section 6(a)(4).

[15] IG Act, Section 6(a)(1).

[16] IG Act, Section 6(a)(6).

[17] IG Act, Section 6(a)(5).

[18] IG Act, Section 6(a)(7), (8), and (9).

[19] IG Act, Section 6(a)(3).

[20] IG Act, Sections 2(3), 4(a)(5), and 5(b).

[21] *Government Auditing Standards,* Section 3.19.

[22] *Government Auditing Standards,* Section 3.11–Section 3.25.

[23] 42 U.S.C. Section 1320d–2 and implementing regulations cover the privacy of individually identifiable health information.

[24] 18 U.S.C. Section 1905 prohibits OIGs from disclosing confidential proprietary data obtained during the course of conducting their work unless such disclosure is authorized by law.

[25] The Federal Managers' Financial Integrity Act of 1982 requires GAO to issue standards for internal control in government. The Office of Management and Budget issues implementing guidelines and specific requirements.

[26] The *Standards for Internal Control in the Federal Government* state that: "Separate evaluations of control can also be useful by focusing directly on the controls' effectiveness at a specific time. The scope and frequency of separate evaluations should depend primarily on the assessment of risks and the effectiveness of ongoing monitoring procedures. Separate evaluations may take the form of self-assessments as well as review of control design and direct testing of internal control."

[27] The *Government Auditing Standards,* the *Quality Standards for Investigations,* and the *Quality Standards for Inspections* all require that work be adequately supervised through higher level review and approval.

[28] This standard is based on the *Standards for Internal Control in the Federal Government* and the quality control and assurance standard in the *Government Auditing Standards* (Section 3.49).

[29] The Government Performance and Results Act of 1993, Section 3(a), requires each agency to develop a 5-year strategic plan, and, in Section 4(a) and (b), to prepare annual performance plans and reports. A January 28, 1998 memorandum from OMB to the PCIE and the National Science Foundation OIG requires each OIG that has a separate line item account in the President's Budget Appendix to submit a performance plan. The OIGs can either include goals, objectives, and measures in their agency's strategic and performance plans or develop their own strategic and annual performance plans and performance reports.

[30] OMB Circular No. A–123, *Management Accountability and Control,* Section 2, states that management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and ensuring that programs are managed with integrity and in compliance with applicable law.

[31] Throughout the IG Act, the IGs are given responsibility for coordinating their activities. In Section 4(a)(1), (3), and (4), the IGs are to coordinate the following: Section 4(a)(1) audits and investigations relating to the programs and operations of the agency; Section 4(a)(3) other activities carried out or financed by the agency for the purpose of promoting economy and efficiency or preventing and detecting fraud and abuse in its programs and operations; Section 4(a)(4) relationships between the agency and other Federal agencies, State and local governments, and nongovernmental entities with respect to (A) all matters relating to promoting economy and efficiency or preventing and detecting fraud and abuse in programs and operations administered or financed by the agency; or (B) identifying and prosecuting participants in such fraud or abuse.

[32] IG Act, Section 4(c).

[33] According to Executive Order 12805, Section 3(a), the PCIE and ECIE shall continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and shall develop plans for coordinated, Government-wide activities that address these problems and promote economy and efficiency in Federal programs and operations. These activities will include interagency and inter-entity audit and investigation programs and projects to deal efficiently and effectively with those problems concerning fraud

and waste that exceed the capability or jurisdiction of an individual agency or entity. The Councils shall recognize the preeminent role of the Department of Justice in law enforcement and litigation.

[34] The IG Act of 1978, as amended, Section 2(2)(B), requires OIGs "to provide leadership and coordination and recommend policies for activities designed . . . to prevent and detect fraud and abuse. . . ." Section 4(a)(3) reiterates the OIG's mission "to recommend policies for, and to conduct, supervise, or coordinate other activities . . . for the purpose of . . . preventing and detecting fraud and abuse."

[35] IG Act, Section 2(3), requires that OIGs keep the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of programs and operations and the necessity for and progress of corrective action. Section 4(a)(5) and Section 5(b) require semiannual reports.

[36] IG Act, Section 6(b)(2).

[37] See footnote 35.

[38] IG Act, Section 4(a)(2).

[39] 31 U.S.C., Section 3516(d), requires OIGs to summarize what the IG considers to be the most serious management and performance challenges facing the IG's agency and briefly assess the agency's progress in addressing those challenges. This requirement is triggered by the agency's consolidation of reports made to the Congress, OMB, or the President.

[40] See footnote 29.

[41] IG Act, Section 4(d).

[42] OMB *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* require agencies to adopt a basic standard of information quality (including objectivity, utility, and integrity) as a performance goal and take appropriate steps to incorporate information quality criteria into agency information dissemination practices. Quality is to be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated. Agencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate, and, as a matter of good and effective agency information resources management, agencies are to develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated. The *Government Auditing Standards,* the *Quality Standards for Investigations,* and the *Quality Standards for Inspections* all address reporting standards for individual audit, investigative, and inspection or evaluation reports.

[43] The *Standards for Internal Control in the Federal Government* identifies one factor affecting the control environment as management's commitment to competence. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal control. Management needs to identify what appropriate knowledge and skills are needed for various jobs and provide training as well as candid and constructive counseling, and performance appraisals. The Standards also discuss good human capital policies and practices as another critical environmental factor. This includes establishing appropriate practices for hiring, orienting, training, evaluating, counseling, promoting, compensating, and disciplining personnel. Executive Order 12805, Section 3(b), states that the PCIE and ECIE shall develop policies that will aid in the establishment of a corps of well trained and highly skilled Office of Inspector General staff members.

[44] The *Government Auditing Standards,* the *Quality Standards for Investigations,* and the *Quality Standards for Inspections* each require that the personnel collectively possess the skills and abilities to perform the assigned tasks and require continuing professional education.

[45] The IG Act, Section 4(a)(2), gives IGs the responsibility to review existing and proposed legislation and regulations and make recommendations in the semiannual reports on the impact of legislation or regulations on the economy and efficiency of administering the agency's programs and operations or in preventing and detecting fraud and abuse.

[46] IG Act, Section 7.

APPENDIX I

Legislation, Executive Orders, Standards, and OMB and Other Guidance Impacting the Inspector General Community

Document[a]	Description
Legislation	
The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. (P.L. 95–452)	Establishes independent and objective Offices of Inspector General.
Accounting and Auditing Act of 1950, 31 U.S.C. §§ 713, 714, 718, 719, 3326, 3501, 3511–3514, 3521, 3523, 3524. (P.L. 97–258).	Requires the head of each executive agency to certify that the agency's systems for internal accounting and administrative control comply with standards prescribed by the Comptroller General.

Legislation, Executive Orders, Standards, and OMB and Other Guidance Impacting the Inspector General Community—Continued

Document[a]	Description
Budget and Accounting Act of 1921, 31 U.S.C. §§ 501, 502, 521, 522, 701–704, 711, 712, 716, 718, 719, 731, 771–779, 1101, 1104–1108, 1111, 1113, 3301, 3323, 3324, 3521, 3522, 3526, 3529, 3531, 3541, 3702. (42 Stat. 20)	Assigns responsibilities for government accounting, auditing, and financial reporting to improve evaluations of Federal Government programs and activities by better identifying sources of funding and how the funding was applied.
Federal Financial Management Act of 1994, 31 U.S.C. §§ 331, 501 note, 3301 note, 3332, 3515, 3521. (P.L. 103–356)	Requires all agencies covered by the Chief Financial Officers Act to prepare annual, agency-wide financial statements.
Federal Financial Management Improvement Act of 1996, 5 U.S.C. App. § 5; 10 U.S.C.§§ 113 note, 2315; 15 U.S.C. § 278g–3; 28 U.S.C. § 612; 31 U.S.C. §§ 3512, 3512 note, 3521; 38 U.S.C. § 310; 40 U.S.C. §§ 1401 notes, 1441 note; 41 U.S.C. § 251 notes. (P.L. 104–208)	Provides for the establishment of uniform Federal Government accounting systems, accounting standards, and reporting systems.
Federal Managers Financial Integrity Act of 1982, 31 U.S.C. §§ 1105, 1113, 3512. (P.L. 97–255)	Provides for establishment, implementation, and evaluation of accounting and administrative controls regarding financial management activities.
Government Performance and Results Act of 1993, 5 U.S.C. § 306; 31 U.S.C. §§ 1101 note, 1105, 1115, 1115 note, 1116–1119, 9703, 9704; 39 U.S.C. §§ 2801–2805. (P.L. 103–62)	Provides for the establishment of strategic planning and performance measurement in the Federal Government.
Government Management Reform Act of 1994, 2 U.S.C. § 31, 31 note; 3 U.S.C. § 104; 5 U.S.C. §§ 5318, 6304, 6304 note; 28 U.S.C. § 461; 31 U.S.C. §§ 331 note, 501 note, 1113 note, 3301 note, 3332, 3515, 3521. (P.L. 103–356)	Improves the efficiency of Executive Branch performance by enhancing reporting to the Congress through elimination and consolidation of duplicative or obsolete reporting requirements.
Chief Financial Officers Act of 1990, 5 U.S.C. §§ 5313–5315; 31 U.S.C. §§ 501 notes, 502–506, 901, 901 notes, 902, 903, 1105, 3511 note, 3512, 3515, 3515 note, 3521, 3521 note, 9105, 9106; 38 U.S.C. § 201 note; 42 U.S.C. § 3533. (P.L. 101–576)	Improves the general and financial management of the Federal Government.
E-Government Act of 2002, 5 U.S.C. §§ 3111, 3701–3707, 4108, 8432 note; 10 U.S.C. §§ 2224, 2332; 13 U.S.C. § 402; 15 U.S.C. §§ 176a, 278g–3, 278g–4; 18 U.S.C. §§ 207, 209; 28 U.S.C. § 1913 note; 31 U.S.C. §§ 503, 507; 40 U.S.C. §§ 305, 502, 11331, 11332, 11501–11505, 11521, 11522; 41 U.S.C. §§ 266a, 423; 44 U.S.C. §§ 101 note, 3501, 3504–3506, 3531, 3541–3549, 3601–3606. (P.L. 107–347)	Provides for the independent review of Federal agency information technology security by Offices of Inspector General.

Legislation, Executive Orders, Standards, and OMB and Other Guidance Impacting the Inspector General Community—Continued

Document[a]	Description
Clinger-Cohen Act of 1996, 5 U.S.C. § 571 note, 5315; 5 U.S.C. App. 3 § 11, 11 note; 10 U.S.C. §§ 1701 note, 2220, 2249, 2302, 2304, 2304 note, 2304e, 2305, 2305a, 2306a, 2306 note, 2306b, 2315, 2323, 2324, 2350b, 2372, 2384, 2397, 2397a–2397c, 2400, 2401 note, 2405, 2409, 2410, 2410b, 2410d, 2410g, 2424, 2431, 2432 note, 2461, 2533, 2539b, 2662, 2702; 15 U.S.C. §§ 278g–3, 637, 644, 789; 16 U.S.C. § 799; 18 U.S.C. § 281; 22 U.S.C. § 2761, 2761 note; 28 U.S.C. § 612; 29 U.S.C. § 721; 31 U.S.C. §§ 1352, 1558, 3551–3554; 38 U.S.C. § 310; see 40 U.S.C. §§ 11101–11103, 11301–11303, 11311–11318, 11331, 11332, 11501–11505, 11521, 11522, 11701–11704; 41 U.S.C. §§ 10a note, 11, 15, 20a, 20b, 22, 35 note, 43a, 43b, 44, 45, 57, 251 note, 253, 253a, 253b, 253l, 253m, 254b, 254d, 255, 257, 264a, 265, 266, 401–434, 601, 605, 612, 701; 42 U.S.C. §§ 6392. (P.L. 104–156)	Provides for OMB oversight of information technology development and acquisition, agency management of IT investments, and establishment of standards by NIST.
Reports Consolidation Act of 2000, 31 U.S.C. §§ 3116, 3501 note, 3515, 3516, 3521. (P.L. 106–531)	Encourages and authorizes report consolidation; makes report formats more useful and meaningful; improves the quality of information reported; enhances the coordination and efficiency of such reports.
Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501, 7501 notes, 7502–7505. (P.L. 104–156)	Requires that the *Government Auditing Standards* be followed in audits of state and local governments and nonprofit entities that receive Federal financial assistance.
Privacy Act, 5 U.S.C. § 552. (P.L. 93–579)	Places limitations on how Federal agencies collect, use, and disclose information about individuals (U.S. citizens and resident aliens). Gives individuals the right to have access to records maintained on them by agencies and the right to seek corrections to those records, subject to various exemptions.
Freedom of Information Act, as amended, 5 U.S.C. § 552. (P.L. 104–231)	Holds the government accountable to the governed; it establishes a statutory right, enforceable in court, for persons (individuals, corporations, *etc.*) to have access to Federal agency records, subject to certain exemptions.
Whistleblower Protection Act, 5 U.S.C. §§ 1201, 1201 notes, 1202–1206, 1208, 1209, 1211, 1211 note, 1212–1219, 1221, 1222, 2302, 2303, 3352, 3393, 5509 notes, 7502, 7512, 7521, 7542, 7701, 7703; 22 U.S.C. § 4139.	Protects the rights of, and prevents reprisals against, Federal employees who disclose governmental fraud, waste, abuse, and other types of corruption or illegality.
Health Insurance Portability and Accountability Act. (PL 104–191)	Covers the privacy of individually identifiable information.
Trade Secrets Act, 18 U.S.C. § 1905.	Prohibits OIGs from disclosing confidential proprietary data obtained during the course of conducting their work unless such disclosure is authorized by law.

Legislation, Executive Orders, Standards, and OMB and Other Guidance Impacting the Inspector General Community—Continued

Document[a]	Description
Federal Conflict of Interest Laws, 18 U.S.C. Sections 202–209.	Establishes criminal prohibitions for employees of the Executive Branch.
Executive Orders	
Integrity and Efficiency in Federal Programs, Exec. Order No. 12805, 57 FR 20627 (May 11, 1992).	Establishes the PCIE and ECIE and describes their functions and responsibilities.
Administrative Allegations Against Inspectors General, Exec. Order No. 12993, 61 FR 13043 (March 21, 1996).	The PCIE and ECIE Integrity Committee shall receive, review, and refer for investigation allegations of wrongdoing against IGs and certain staff members of OIGs.
Standards	
Standards for Internal Control in the Federal Government, GAO/AIMD–00–21.3.1 (November 1, 1999).	Establishes overall framework for establishing and maintaining internal control and for identifying and addressing major performance and management challenges and areas at greatest risk of fraud, waste, abuse, and mismanagement.
Government Auditing Standards: 2003 Revision, GAO–03–673G (June 2003).	Establishes standards for government audits.
Quality Standards for Investigations, PCIE/ECIE (September 1997).	Establishes standards for investigative efforts conducted by criminal investigators working for Federal Offices of Inspector General.
Quality Standards for Inspections, PCIE (March 1993).	Establishes standards for inspections and evaluations conducted by Federal Offices of Inspector General.
Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635 (2003).	Establishes general principles for ethical conduct of employees of the Executive Branch.
Statements of Federal Financial Accounting Standards, Federal Accounting Standards Advisory Board (May 2002).	Accounting principles for Federal Government reporting entities issued by the Federal Accounting Standards Advisory Board.
Codification of Statements on Auditing Standards (Including Statements on Standards for Attestation Engagements), American Institute of Certified Public Accountants (2003).	Auditing standards for financial audits.

Legislation, Executive Orders, Standards, and OMB and Other Guidance Impacting the Inspector General Community—Continued

Document [a]	Description
OMB Circulars, Bulletins, and Guidelines	
Various OMB Circulars, Bulletins, and Guidelines	Establish requirements and guidelines for implementing: • internal controls. • management accountability and control. • Federal financial systems. • management of Federal information resources. • audits of states, local governments and nonprofit organizations. • financial accounting principles and standards. • financial statement audits. • information dissemination.
Other Guidance	
Guide for Conducting External Quality Control Reviews of the Audit Operations of the Offices of Inspector General, PCIE (February 2002).	Provides guidance on conducting external quality control reviews of OIG Offices of Audit.
Guide for Conducting Qualitative Assessment Reviews for the Investigative Operations of Inspectors General, PCIE/ECIE (2002).	Provides guidance on conducting external qualitative assessment reviews of OIG investigative operations.
GAO/PCIE Financial Audit Manual, GAO–01–765G (July 2001).	Provides guidance on conducting financial statement audits.

[a] Some OIGs are not components of an entity legally defined as a "Federal agency." Therefore, some of the cited laws, regulations, or other guidance may not be directly applicable by law to all OIGs. In these cases, principles or concepts of the guidance may be adopted by the OIG entities as a matter of policy.

APPENDIX II

Members of the PCIE/ECIE Advisory Committee to Revise the Quality Standards for Federal Offices of Inspector General

ROBERT MCGREGOR, *Chair*
Federal Deposit Insurance Corporation

EMILIE BAEBEL
Small Business Administration

DAVID BERRY
National Labor Relations Board

PATRICIA BRANNIN
Department of Defense

HELEN LEW
Department of Education

DAVID LONG
Department of Health and Human Services

PETER MCCLINTOCK
Small Business Administration

JEROME PERSH
Department of Transportation

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
April 1–September 30, 2004

SEMIANNUAL REPORT

From the Inspector General

Since April 2002, when I became the NASA Inspector General, the Office of Inspector General (OIG) has undergone significant changes in its organizational structure and workforce. These changes are intended to improve our ability to root out crime, fraud, waste and abuse, and to promote economy and efficiency at NASA.

Specifically, during this semiannual period the OIG has enhanced the management of the Office of Investigations by establishing a Deputy Assistant Inspector General for Investigations position at Headquarters and adding Resident Agents-In-Charge to our offices at NASA's larger Centers. In the Office of Audits we continued to implement the reorganization strategy created in April 2003 to improve and diversify the skill mix of the audit staff by hiring technical experts and management analysts. We also established an Office of Management and Planning to consolidate the management of our information technology services, strategic planning and development, budget, human resources, and administrative services.

Throughout the transition, we have conducted meaningful work in both the Office of Audits and the Office of Investigations. This semiannual report reflects on some of our activities that resulted in published audit works, such as our assessment of the quality assurance process for the redesigned Solid Rocket Booster bolt catchers, and on results from our investigative work including indictments, prosecutions, and convictions for crimes relating to NASA.

The semiannual report does not reflect some other work we are doing or have done to improve the Agency. For example, some of our Office of Audits activities this period have included monitoring various financial management, contract, and Return To Flight matters that do not necessarily fall within the parameters of announced audits and will not result in published reports. Also, investigative work often is not published due to privacy concerns and a desire to maintain confidentiality of sources and investigative techniques. We also frequently answer Congressional inquiries or provide information to Congressional oversight committees on matters of interest to the Legislative Branch, and these activities often do not involve the generation of public reports.

Although our work may not always result in a published report, we do not hesitate to present our independent views to the Agency on a broad range of topics. The use of alternative communication strategies, such as formal and informal briefings, allows the OIG to inform the Agency of critical matters in real-time so management can take action before issues become problematic.

Allegations of Reprisal and Whistleblowing

In this semiannual period, the OIG dedicated a significant amount of time and resources investigating allegations of reprisal against NASA and contractor employees for raising safety and other concerns. In fulfilling the office's overall mandate, the OIG can and does look at whatever matters it thinks most important to protect the taxpayers' investment in NASA, which may include examining whether management fairly addresses concerns raised by employees on myriad topics.

In the wake of the Space Shuttle *Columbia* accident, a perception arose that NASA culture at times has muted the free flow of information. The OIG is trying to assist the Agency in ensuring that the NASA workplace encourages the free flow of information, especially pertaining to safety, and that those who conscientiously raise issues are protected from reprisal. While the OIG does not have the authority to undo personnel actions taken as reprisal, the OIG can be an advocate to the NASA Administrator to seek redress where appropriate and report to Congress on Agency activity. (The independent agency vested with the responsibility to protect civil service whistleblowers is the Office of Special Counsel [*http://www.osc.gov*].)

Whistleblower matters are often difficult to untangle because they involve professional disagreements and personality conflicts. The OIG often relies on sources, including confidential and anonymous sources, to conduct its business. Sources may surface fraud, waste and abuse, violations of law, safety issues, and ways of improving the Agency. However, sometimes after conducting an investigation or audit, our office is unable to validate a source's statements. Notwithstanding the challenges associated with these matters, the OIG believes it plays an important check and balance to Agency action. To reflect our views, we published a white paper, *Handling Disagreement with Superiors' Decisions and Whistleblowing,* which can be found on our Website at *http://www.hq.nasa.gov/office/oig/hq/whistleblower.pdf.*

Peer Review

During this semiannual report, under the purview of the President's Council on Integrity and Efficiency (PCIE), our Office of Audits completed a time-consuming and expensive review of the Department of Treasury OIG's Office of Audits, and the Department of Justice OIG finished its peer review of the NASA OIG Audit program. The peer reviews conducted were compliance audits that determined whether audit policies comply with government auditing standards and if audits are conducted in accordance with those policies, but did not determine whether the audits were meaningful or timely. The peer-review compliance audits, while useful for their intended purpose, are not designed to determine whether the taxpayers' money is being used economically or even appropriately.

My office has made recommendations to the PCIE Audit Committee and its workgroup on peer-review standards that they revise the standards to include steps to assess the economy, efficiency, and timeliness of OIG audits. We will continue to advocate overall improvements in the OIG audit peer-review process.

This report fairly summarizes the activities of the NASA Office of Inspector General during the reporting period.

ROBERT W. COBB,
Inspector General.

EXCERPTS FROM TRANSCRIPT OF INTERVIEW OF HON. ROBERT W. COBB, CONDUCTED BY OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, JUNE 27, 2006 (PAGES 40, 44, 54, 78, 94, 98, 104, 106, 114, 125)

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A. I don't know.

Q. You don't recall?

A. Not me.

Q. You don't know?

A. I don't know. If I'm right in saying Jackie Arends was the person in the Office of Presidential Personnel whom I was dealing with, whether she or someone else made the arrangements, I do not know.

Q. OK. The interview was with whom?

A. Sean O'Keefe.

Q. When did that interview take place?

A. I have a date in mind. Whether it is right, I don't know. February 6, 2002.

Q. Where did the interview take place?

A. In his office.

Q. And that would be NASA headquarters?

A. Yes.

Q. Other than—had you met Mr. O'Keefe prior to this interview at NASA headquarters?

A. I do not believe that I had ever met him before that meeting. My recollection is that I don't—that I did not meet him before that meeting.

Q. OK.

A. I may have had a phone conversation with . . .

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. . . for integrity, my reputation for having done a first class job in connection with my duties at the Office of Government Ethics for 9 years, that all of my supervisory chain at the Office of. Government Ethics had found me to be an outstanding employee, and any one of them, whether it is Marilyn Glenn, Steve Potts, Gary Davis, any of the people I work for would have given me a complete recommendation that the counsel to the President, Al Gonzales, that Tim Flanigan, Deputy Counsel to the President, my colleagues in that office, the people in the Office of Presidential Personnel, the chief of staff——

Q. I would like him to be allowed to finish his answer.

A. That Mr. O'Keefe being a person who was working in the Administration when seeking a person who had the highest levels of integrity in questions with the execution of the job, that when he asked around, it might have been that many fingers pointed in my direction. He reached a conclusion based on that that I would be a perfect person to conduct the independent Office of Inspector General activities.

Which I note with some frustration we have yet begun to talk about.

Q. If I understand your response correctly, . . .

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. . . I don't recall, if there was such a conversation, it was not one that I rated as memorable. In other words, I don't recall it. Am I saying it didn't happen? No. I'm not saying it didn't happen. I don't recall it.

Q. You have no knowledge or recollection of Mr. Stadd approaching you at the behest of Mr. O'Keefe to ask whether or not you would be interested in the position as Inspector General of NASA?

A. I don't remember that conversation. I'm not denying whether it ever happened or not.

Q. How about Mr. Saleeba? Did you ever have any such conversation with Mr. Saleeba?

A. I don't believe so. I mean, I—again, I met with the both of them. My recollection as to what the content of that meeting was, was about Roberta Gross, her execution, position, what the legal—the legal standard was for removal.

Q. Did they state to you why she was being removed or what the reason for her removal was?

A. They stated they had a number of concerns about her performance as Inspector General.

Q. Do you recall what those concerns were?

A. Not specifically. Other than the overall . . .

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. . . than 3 years.

By Ms. Bahr:

Q. OK.

A. From April of 2002 to February of 2005.

Q. I forgot to take into account that you came in after—all right. My mistake.

A. I took—and with substantial discussion with my—again, I have a collaborative style of conducting business. I asked for Frank LaRocca's opinion. I asked for whoever my senior staff's opinions in connection with activities.

I don't always do what they say. We talk about it. I do what I think is right and—you know—the—that's the way I conduct business. In terms of my relationship with Sean O'Keefe, you know, I'd say we had a very good, professional working relation where if I thought there was an issue that he had to be concern about, I had no difficulty or problem communicating to him.

I tried to have as much contact with him as his schedule could tolerate. It made it so that I could be best informed as to what the issues of the day were at NASA.

I was not a person who came to senior management meetings typically. I was not a regular . . .

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A. If you have specific examples, it would be easier to talk about it.

Q. I agree with you complete frequently. I think there will be points later in the interview here we'll be able to do that.

Let's go back to the relationship between you as the Inspector General and the agency administrator.

You noted that you on approximately two occasions recall golfing with Mr. O'Keefe?

A. Yes.

Q. That would have been at his home in Virginia, correct?

A. Yes.

Q. Leesburg, I believe, Belmont?

A. Yes.

Q. Aside from that, did you have any other contact outside of the office, outside of NASA headquarters or NASA center a NASA facility whether you want to characterize it as social or business, were there other contacts?

A. In what time-frame.

Q. During the period that—how about let's start with prior to you becoming the Inspector General . . .

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. . . Understanding, going down, looking at every one of facilities, going to a launch.

I went to a launch in Bykanor, Russia, and let me tell you I learned more about NASA and the manner in which it does business by going to Russia and attending

a launch in Bykanor which is the rockets launched from the same facility that Sputnik went off in 1959 and looked to me like there hadn't been any improvement since then, you know——

Q. What other functions outside of NASA do you recall attending with Mr. O'Keefe or where Mr. O'Keefe was in attendance?

A. During the time that he was——

Q. That he was the administrator, yes.

A. Again, you know, I'd say there are any number of instances. He never came to my house. I went to his house after we played golf. I don't know if there were any instances where I went to his house. I can't recall any.

You know——

Q. Aside from your—I believe you said weekly lunches at NASA headquarters with Mr. O'Keefe, did you ever have lunch or dinner outside of NASA together?

A. Alone with Sean O'Keefe, me and him again . . .

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Ms. BAHR. I'm sorry to interrupt you, but there will be a line of questioning later where I think it would be more appropriate to address this. If for the moment we could go back to just what kind of interactions you had with Mr. O'Keefe, that would be most helpful.

The WITNESS. Your last question was what prompted that instance where I can recall having a drink with Mr. O'Keefe. I think—I can recall one other instance where that happened. It wasn't with just O'Keefe. It was with other persons on his staff. That was where I had been told that I was going to be appointed as the Inspector General to the Coalition Provisional Authority.

I think that—I'm not positive. I think that he might have invited me to have a drink relating to that at that time.

By Ms. Bahr:

Q. Did he recommend you for that post?

A. I have no idea.

Q. Do you know how you came to be suggested for the post? Or—-

A. I believe it was because for all those reasons that I was appointed to be the NASA Inspector General, that the people that I had worked with in . . .

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. . . that you recall having some contact outside of NASA in a social setting?

A. Well, again, there were many times where there were—there were meetings that took place. I remember there was a—there was a Shuttle upgrade conference which I attended. While at the Shuttle upgrade conference, which was either at Stennis or Michaud, which is the tank production facility in eastern Louisiana——

Q. How do you spell that?

A. M-i-c-h-a-u-d. But I'm probably misspelling it because I haven't spelled it before.

Q. Stennis would be S-t-e-n-n-i-s?

A. Right.

Q. OK.

A. I remember running into O'Keefe. We went over to Stennis for an event over there. It was a crayfish bake that he attended. I remember going to that on the premises of the Stennis Space Flight Center.

Q. But there were other NASA officials or senior staff members in attendance; is that correct?

A. Yes. And it might be that when we were attending those types of events, that there was interaction, social interaction, in effect, after—— . . .

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A. Ten. I'm guessing. Five. More than five. Less than 15 would be my guess.

Q. OK. In reviewing the records primarily your calendar and other records, I think we came to the determination there were 13 instances during the period that he was NASA administrator?

Mr. SOLLERS. Pretty good.

By Ms. Bahr:

Q. Generally what was the purpose of flying aboard the NASA aircraft, official aircraft, and was it always with Mr. O'Keefe there? Were there occasions when he wasn't aboard the aircraft?

A. I would say there would be a number of different reasons for why I might be on the NASA aircraft. But I'd say that fundamentally, I had an intent and whatever the reason for the intent was to, go to someplace that the NASA plane was going and took the opportunity either at my request or O'Keefe's request or whoever as an indication of availability to travel in that manner for a number of different reasons.

After substantial discussion with, as I've mentioned before, I have a collaborative relationship with my direct reports. This would be the kind of thing I would talk with them about.

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. . . going.

Q. In every instance?

A. Yes. I never requested that there be a NASA flight to take me someplace. In other words, never was the originator of a request for a flight that independent of something else that was going on. I might have asked whether or not I could go on a flight, which I believed would already be going to a certain locale.

Is there space available on the plane for me to go?

Yes, there is space available. Great. I'll go get on that plane. No cost. No additional cost to the government as far as I know. Now maybe there were instances where somebody was going on the plane but because I asked whether or not or was invited that they didn't get a seat on the plane and had to go commercial. That's a possibility.

But my assumption is there can be plenty of instances where—you know—I occupied a seat and saved the government money by virtue of my occupying it.

Q. OK.

A. As far as the appearance issue, Steve Spratt, good guy be dedicated Federal servant, if he . . .

EXCERPTS FROM RECORD OF INVESTIGATION OF HON. ROBERT W. COBB, OFFICE OF INSPECTOR GENERAL, NASA, AUGUST 30, 2006 (PAGES 49–54, 59, 140–142,195–197, 206–217, 222–225, 231, 266–271)

Pages 49–54

Allegation 8—Inspector General COBB squelched a finding on the Audit of Barters on the International Space Station Program after conferring with Paul Pastorek (Pastorek), former NASA Legal Counsel.

Investigative Findings

Former Audit Director Dennis Coldren submitted a complaint to the Integrity Committee of the President's Council on Integrity and Efficiency (*Exhibit 8*). On February 22, 2006, Coldren was interviewed (*Exhibit 25*). During the interview, Coldren provided an e-mail sent June 7, 2002, from Pastorek, to COBB regarding the Barters on the International Space Station Program Audit (Barters Audit).

In the e-mail, Pastorek tells COBB that there are two points in the Barters Audit about which he would discuss when they meet. Specifically, Pastorek noted in the e-mail that he wanted to discuss restricting the circulation of the Barters Audit because he had been advised by John Schumacher (Schumacher), NASA Associate Administrator for External Relations, that disclosure of the audit report findings, as was originally contemplated, would lead to showing foreign governments NASA's hand. Second, Pastorek stated he wanted to discuss his concern the audit report mentioned the possibility that NASA may have been in breach of their agreements with foreign countries if they took certain actions. Relative to that breach, Pastorek stated in his e-mail to COBB, "I question the conclusion and I would like to see the analysis. I am doing my own analysis and so far cannot understand such a conclusion."

Coldren stated that ultimately, through their chain of command [Alan Lamoreaux, former Assistant Inspector General for Audit and Kevin Carson, former Audit Director] the auditors who worked on the audit, James Griggs, Auditor-in-Charge and Barbara Moody, Auditor, were instructed to remove all audit findings from the. Barters audit report, and include only the audit findings reported under the heading of "other matters of interest." This effectively removed four pages of audit findings, and left roughly one paragraph detailing the findings relative to other matters of interest.

A review of the contents of April 2002 draft report's "Other Matters of Interest" section, which consisted of four pages, to the September 6, 2002 final report's "Other Matters of Interest" one paragraph, which was moved to the Executive Summary,

was conducted to make a determination if there were substantive changes from the draft to the final report. In addition, work papers were reviewed.

Draft Report

"NASA *risks noncompliance* with its intergovernmental agreement and Memorandums of Understanding if the Agency does not deliver the Habitation Module and the Crew Return Vehicle. The intergovernmental agreement and Memoranda of Understanding require NASA to supply a Habitation Module to support four crewmembers and a crew rescue vehicle to support the rescue and return of a minimum of four crewmembers. NASA has complied with the International Space Station (ISS) bartering agreements. However, because of ISS cost overruns and budget constraints, NASA reduced the ISS crew capability from seven to three. If NASA retains the reduced crew configuration, the Agency would be in noncompliance with the international agreements. Therefore, the agreements may need to be renegotiated, and NASA would likely be forced to assume a greater share of costs."

Final Report

". . . As a result, NASA deferred certain elements considered high risk, such as the habitation module and the crew return vehicle. If no alternatives are provided, the absence of the deferred elements will limit the permanent ISS crew to three. NASA and the international space agencies negotiated two ISS bartering agreements based on a percentage of utilization rights contemplated with a seven-person crew configuration. To the extent that the two bartering agreements may be affected by a reduction in planned on-orbit resources, NASA should coordinate with the affected partner."

Result of Review: The finding in paragraph one of the Draft Report, "NASA risks noncompliance with intergovernmental agreements" was *not* present in the final report.

On May 31, 2006, Pastorek was interviewed (*Exhibit 138*). Pastorek fielded a number of questions regarding the sharing of IG Audit reports. Specifically, a predraft of the NASA OIG Audit report on International Agreements/Bartering for the Space Station that COBB may have shared with him. Pastorek stated the IG frequently advised the Administration about upcoming. audits but that Schumacher or Jason (Jay) Steptoe, Associate General Counsel, NASA, would have handled any details. His only concern with this audit was that if too much information was in the report, NASA might destroy their negotiating position with foreign countries. Furthermore, Pastorek said the IG used a hypothetical situation to criticize NASA rather than using facts and the took issue with that type of audit.

Allegation 9—The substance of the audit report and recommendations was changed on an audit regarding the Independent Technical Authority and Safety and Mission Assurance.

Investigative Findings

On March 10, 2006, [redacted] was interviewed (*Exhibit 41*) based on information he provided to Senator Bill Nelson [Florida], which was forwarded to HUD OIG by the Integrity Committee of the President's Council on Integrity and Efficiency (*Exhibit 7*). During the interview, [redacted] stated there are several examples where Inspector General COBB has directly changed the substance of a report.

On April 18, 2006, a confidential source identified as T–6 was interviewed (*Exhibit 57*). Regarding the Independent Technical Authority (ITA) and Safety Mission Assurance (SMA) audit, assignment number A–04–004–00, T–6 provided the following information. After the *Columbia* Accident Investigation Board (CAIB) report was issued, 14 of the 29 recommendations made had to be addressed before NASA could "fly again." [redacted] several recommendations to audit, and to ensure that NASA was making the corrective actions. Part of the issue was the SMA group reported to the Center Director, who reported to the Mission/Program Director. Therefore, the very people that the SMA group was supposed to be overseeing were the same people they reported to and received funding from. T–6 stated that the bottom line was the safety staff was not independent, and NASA needed to change the organizational structure. GAO and an independent study found this issue as well. T–6 stated the audit team cited this in their draft audit report, and made recommendations, however, Inspector General COBB changed the report and the recommendations. In April 2005, Michael Griffin (Griffin) became the NASA Administrator. The first thing Griffin did was realign the Center Directors. Griffin made the change the audit team had recommended; the same change the audit team had been trying to convince COBB of over the previous year.

The first attempt to issue the above report was in December 2003. COBB sent a memo to NASA management, instead of an audit report with recommendations.

Afterwards COBB [redacted] did not receive a response [redacted] COBB replied, "Well then the next thing we issue will not be a willy-nilly memo."

The second attempt to issue a report was in March 2004. The audit team drafted a management letter with four recommendations. COBB reviewed the draft and made changes. Some of the changes the audit team did not know how to reference. Suddenly, COBB advised they had to issue something within the next day. On April 5, 2004, instead of issuing a management letter COBB sent an e-mail to NASA management. What had initially started as a management letter with four recommendations ended up as an e-mail with no recommendations.

The third attempt to issue a report "fizzled, and did not go anywhere." This was around August 2004. [redacted] were still trying to make the changes COBB wanted. At the same time they wanted to address the concerns the audit team had. T–6 stated nothing was issued this time.

The fourth attempt to issue a report was in October 2004. NASA appointed Walt Cantrell (Cantrell), NASA Deputy Chief Engineer, to come up with a plan to implement the *Columbia* Accident Investigation Board's (CAIB) recommendations. On October 15, 2004, COBB sent Cantrell an e-mail referencing the audit. COBB sent the e-mail without the audit team's review. This time, T–6 stated the audit team did not have concerns about the content of COBB's e-mail.

In November 2004, NASA issued a new plan. COBB asked the audit team to review it. In January 2005, the audit team briefed Evelyn Klemstine (Klemstine), the new Assistant Inspector General for Audit. The audit team told Klemstine, "At this point you might as well shut down the assignment because COBB is not going to issue anything." Klemstine did not close the assignment The audit team drafted a report in March 2005, titled "NASA's Technical Authority and Safety and Mission Assurance Lack Total Autonomy." In May 2005, the discussion draft was issued with one recommendation. In August 2005, the final report titled "Risks Associated with NASA's Plan for Technical Authority and Safety and Mission Assurance" was issued with no recommendation.

During the interview with [redacted] on March 10, 2006, Carson specifically mentions this ITA and SMA audit (*Exhibit 41*). According to [redacted] COBB told [redacted] "You guys have been on this for a year and have nothing to show for it." [redacted] was in this meeting and said nothing. [redacted] said they had written several reports, but COBB would not issue them. COBB told [redacted] "was missing the message." One of the recommendations [redacted] draft report was to eliminate the warrant holders from having to report to the Center Directors. COBB told [redacted] "You don't know what you are talking about in the recommendations." [redacted] recommendation was "right on" because when Griffin became the new NASA Administrator, Griffin made the change to NASA that [redacted] recommended in his audit report.

On April 19, 2006, [redacted] was interviewed (*Exhibit 62*). [redacted] reported an audit was conducted on NASA's SMA and ITA. [redacted] said the team had an issue with how the ITA reported up the NASA chain of command. The audit team recommended moving the ITA out of the SMA Directorate and having ITA personnel report directly to the NASA respective Center Directors. [redacted] said COBB did not agree with the audit team's recommendation. [redacted] advised the audit was conducted prior to Griffin's appointment to the position of NASA Administrator. [redacted] stated shortly after Griffin became NASA's Administrator, be independently implemented the audit team's recommendations.

On June 15, 2006, NASA OIG [redacted] was interviewed. (*Exhibit 157*). [redacted] mentioned the ITA Audit [redacted] recalled that the "auditors were very frustrated that COBB was not using the normal techniques to report the results of the audit" COBB would converse with NASA management and sometimes the findings and recommendations were not tracked. In his past experience with the NASA OIG, the process was a more "rigid structure." [redacted] stated, "Perhaps it's a better way to get quick responses or information to NASA, but if you don't keep track, how do you know if you are making a difference."

On June 19, 2006, [redacted] was interviewed (*Exhibit 163*). [redacted] stated that the ITA audit report was a good example of a report that COBB changed. She stated she would not have "gone down the same route" as COBB on this audit. She believes COBB's version of the report was "wishy-washy" and "watered down." [redacted] stated that there was a clear articulation of the issues in the draft audit report. By the time the report was finally issued, the findings in the report were "overcome by events." Meaning in this case, the audit was ongoing for years, and by the time they were finally ready to issue a report, Griffin became the NASA Administrator, and made the changes the audit team was trying to recommend in the audit report.

A review of COBB's e-mails found an e-mail from COBB to Bryan O'Connor, Associate Administrator, Office of Safety and Mission Assurance, NASA, dated March 17, 2004. In the e-mail, Associate Administrator O'Connor thanks COBB for coming by last night and restates his thoughts on the draft audit report. The last paragraph in the e-mail states, "Moose, in summary, I cannot agree with either of your two recommendations because I have such a problem with your three conclusions. Do we need to talk some more?" The timing of this meeting corresponds with the second attempt to issue a draft audit report, as discussed above in the interview with T–6.

On June 29, 2006, COBB was interviewed (*Exhibit 182*). COBB was asked about this audit, and his response to the allegation is located on page 403, line 14 through page 404, line 16 of his interview transcript. COBB stated:

> Q. How about on the independent technical authority audit report? One of your senior staff members stated that it was a good example of you changing a report, but they wouldn't have gone down the same route as you. Subjective, but that your version of the report was "wishy washy" and "watered down"?
>
> A. I would say in connection with what I recall that staff presented to me on a number of occasions, that the—their—what their articulation of what was going on in connection with the independent technical authority was inconsistent with the facts and to such a point that that was a circumstance where the communication by me to the agency in, I believe, it was December of 2003 was a product generated mostly by myself with some benefit of—and Tom Howard is not enthusiastic about the front office generating, but it was an issue with which I had substantial familiarity by virtue of my participation in the *Columbia* Accident Investigation Board, my involvement in the Aerospace Safety Advisory Panel, considerations of issues, my personal discussions with a number of officials throughout NASA on independent technical authority issues.

So I had some comfort with what I articulated in that letter. As compared to the discomfort I had With the product that had been generated by staff.

Allegation 10—Inspector General COBB stifled the publication of audit findings for an audit regarding Wind Tunnel Utilization.

Investigative Findings

On March 15, 2006, a confidential source identified as T–3 was interviewed to obtain information regarding allegations HUD OIG received from the Integrity Committee of the President's Council on Integrity and Efficiency (*Exhibit 44*). During the interview, T–3 stated, "COBB stifled the publication of audit findings," and provided several examples.

T–3 supervised audit assignment A–03–007–00, Wind Tunnel Utilization. Work was performed at Ames Research Center (ARC), Glenn Research Center, and Langley Research Center. The audit disclosed that ARC violated Office of Management and Budget policy by failing to bill private users the full cost of using the wind tunnels. Therefore, ARC was improperly subsidizing private industry, like Boeing. According to T–3, "The front office told me to drop the finding from the report." There were several other findings included in the draft report, however, none of them were as important as the full cost/subsidy finding. T–3 believes a finding like this would have embarrassed the Bush Administration because subsidies have been an issue between the U.S. and Europe.

T–3 recalled attending a meeting in which "COBB became so angry, he was practically spitting." T–3 believed this meeting was in regards to the wind tunnel issues, and took place in June 2003, in the conference room at NASA Headquarters. T–3 recalled that he, Deputy Inspector General Thomas Howard, former Assistant Inspector General for Audits (AIGA) David Cushing, and COBB were all in attendance. T–3 stated that COBB made unprofessional comments about the audit and the work that had been completed. COBB said that the audit staff had not done enough work to support the conclusions they were making in the audit.

T–3 said that COBB then agreed to look into the subsidy/wind tunnel issue in a later audit. The audit was subsequently initiated in January 2005 [Audit Assignment A–05–010–00]. T–3 stated this audit is currently in process, but it looks like COBB will not issue this report either.

For this second wind tunnel assignment, Audit Assignment A–05–010–00, a memorandum was issued on June 1, 2006, to NASA. The memorandum stated the OIG was closing the subject assignment because significant changes in the management of NASA's wind tunnels have invalidated the OIG's initial work.

On June 19, 2006, AIGA Evelyn Renee Klemstine (Klemstine) was interviewed (*Exhibit 163*). Klemstine stated if certain auditors forward reports to Headquarters "there is going to be problems." It would not matter whether the audit or the report

was the best, it would never be good enough. For example, if she forwards a report from Supervisory Auditor David Gandrud (Gandrud), it will not go through. This happened on the "Wind Tunnel" audit report written by Gandrud [Audit Assignment A–05–010–00]. Klemstine thought the second version of the report was good, however, COBB kept re-writing it over the next 6 months. By the time COBB was ready to issue the report, the report had no meaning because the findings were "overcome by events." Klemstine stated had the second version been issued, the report would have been timely and relevant.

Allegation 12—The number of audits has decreased and NASA OIG is not issuing as many reports as they used to.

Investigative Findings

HUD OIG interviewed several current and former NASA OIG employees to obtain information regarding allegations received from the Integrity Committee of the President's Council on Integrity and Efficiency. During several of these interviews, the following allegation was raised: "The number of audits have decreased and NASA OIG is not issuing as many reports as they used to."

A review of the number of audit reports and memorandums in NASA OIG's Semiannual Reports to Congress and the Office of Audits Central Information System (OACIS) from FY 2000 to FY 2006 was conducted (*Exhibit 184*). The results are indicated below:

Fiscal Year	Audit Reports	Memorandums	Audits Closed
2000	62	0	1
2001	40	0	8
2002	30	0	0
2003	29	3	8
2004	26	7	6
2005	29	2	7
2006*	7	9	2

* As of 1st semiannual reporting period.

On June 27 and 29, 2006, Inspector General Robert Watson (Moose) COBB was interviewed (*Exhibit 182*). COBB addressed the allegation during his interview, and his response begins at page 346, line 13 of his interview transcript. COBB stated, in part:

Q. While you were inspector general, to the best of your knowledge, do you know if the number of audits and audit reports have increased, decreased, remained the same?

A. I don't know, but I can tell you—

Mr. SOLLERS. You mean like on an annual basis?

By Mr. Febles:

Q. The semiannuals that you provide? Have they gotten thicker? Thinner?

A. The thickness of a semiannual is separate from the issue that you articulate.

Pages 140–142

Allegation 34—Inspector General COBB, in his e-mail correspondence with former NASA Administrator Sean O'Keefe (O'Keefe), might have inappropriately released law enforcement sensitive information.

Investigative Findings

On January 31, 2006, and April 24, 2006, [redacted] was interviewed (*Exhibits 19 & 75,* respectively) regarding [redacted] complaint to the Integrity Committee of the President's Council on Integrity and Efficiency, which was forwarded to HUD OIG (*Exhibit 1*). [redacted] COBB does not conduct business independently or carry out his duties in an impartial manner. [redacted] heard that COBB and former NASA Administrator O'Keefe were close.

A review was conducted of e-mails retrieved from the Microsoft Exchange government account of COBB (*Exhibit 24*). In one e-mail, it was determined COBB notified senior NASA management officials of impending search warrant executions and the existence of an undercover operation. The subject e-mail, dated June 16, 2004, was sent from COBB to O'Keefe. COBB's e-mail, titled "Re: bad parts case," states in part:

> "fyi. Working with FBI and Defense Criminal Investigative Service and the Department of Justice, we have been involved in an undercover operation tar-

geting suppliers of bad parts to NASA among others, including bad parts for Station, Shuttle and NASA aircraft. Search warrants are going to be served on six companies over the next couple of days. The names of the suppliers are not household names, and typically involve subcontractor suppliers. We have been involved in a number of similar investigations and, unfortunately, suppliers often represent that parts they are supplying meet specs when they do not. Sometimes the misrepresentation is made knowingly and intentionally. Serving of warrants is sometimes noticed by the media. Please keep close hold. I have sent this message to [redacted] and Pastorek."

Special Agent [redacted] reported the investigation mentioned in the subject e-mail referred to a joint NASA OIG investigation with the Federal Bureau of Investigation (FBI), on a government contractor, "Max's Marketplace" (NFI) (*Exhibit 125*).

On May 22, 2006, Special Agent [redacted] FBI, Huntsville Resident Agency, Alabama, and [redacted] FBI, Huntsville Resident Agency, were interviewed (*Exhibit 125*). [redacted] confirmed the subject of the case is Max's Marketplace and a number of other government contractors, involved in the production of substandard NASA parts. In June 2004, his office, together with NASA OIG, executed six simultaneous Federal search warrants throughout Alabama. [redacted] advised that approximately one-month prior to the execution of the search warrants, his office held a massive operations briefing at a hotel in Huntsville. Approximately 50 law enforcement officers involved in the executions were present. [redacted] stated neither O'Keefe, Paul Pastorek (Pastorek), former NASA General Counsel, nor Glen Mahone (Mahone) Assistant Administrator for Public Affairs, NASA, were invited to, or were present at, the operations briefing.

The search warrants, as per Straub, were obtained in coordination with David Estes, Assistant United States Attorney (AUSA), Northern District of Alabama. Prior to seeking the search warrants, NASA OIG placed one of their agents undercover to order parts from the various contractors.

Ponzo stated, "As I recall O'Keefe was the guy in charge of NASA at the time we did the search warrants." Ponzo felt that notifying O'Keefe might have been a protocol in the "NASA chain of command." Ponzo went on to state that in his estimation, NASA OIG making a notification to O'Keefe would be "no different" than his office notifying the FBI Director's Office in Washington, D.C.

Ponzo stated he was not familiar enough with the reporting requirements between the two agencies to comment as to whether COBB's actions were inappropriate. However, Ponzo was "definitely concerned" with COBB's notification to Mahone, in the NASA Public Affairs office. According to Ponzo, his office is required to direct any press related inquiries to the assigned AUSA.

On May 30, 2006, O'Keefe was interviewed (*Exhibit 137*). O'Keefe stated typically COBB would not brief him on criminal cases. It would be "very unusual" if COBB were to brief him on criminal matters. O'Keefe recalled one occasion when COBB briefed him on the status of criminal charges against a NASA employee who viewed pornographic material on a government computer. O'Keefe did not recall ever being briefed by COBB on the status of upcoming NASA OIG search warrants or undercover operations.

On May 31, 2006, Pastorek was interviewed (*Exhibit 138*). Pastorek noted there were rare occasions when he received a telephone call from COBB advising him of the arrest of a NASA employee. He believes this was done in an effort to afford NASA the ability to prepare should they receive a query from the news media. Pastorek was not given details of the event; merely that it was going to take place later that day.

On June 28, 2006, Deputy Inspector General Thomas Howard (Howard) was interviewed (*Exhibit 185*). Howard was asked about NASA OIG notifying NASA management in advance of search warrant operations. Howard's testimony is covered on pages 57 through 66 of the interview transcript, and he stated, in part:

Special Agent BAHR. OK. His relationship, Mr. Cobb's relationship, with Mr. O'Keefe, did it affect Mr. Cobb's ability to maintain his independence and impartiality as the NASA OIG?

Mr. HOWARD. No. None whatsoever.

Special Agent BAHR. You never saw any indication of that? Never had any reason to question it?

Mr. HOWARD. No. No.

Special Agent BAHR. OK. Did Mr. Cobb brief Mr. O'Keefe on or NASA senior management on NASA OIG, ongoing NASA OIG audits or investigations?

Mr. HOWARD. As I said, if during these meetings we thought there was something that warranted his attention, yes.

Special Agent BAHR. OK. How about on the investigation side of the house, what information, if any, would Mr. Cobb ever share with Mr. O'Keefe or anyone else on the NASA senior management?

Mr. HOWARD. If there were a search warrant executed, once we got word from the—through the investigative staff that the search warrant had been executed, if it was on NASA property, we would generally give Mr. O'Keefe a heads up and sometimes the affected——

Special Agent BAHR. Center director or——

Mr. HOWARD. Center director or mission head. Yes, it's a convoluted organization at NASA. So that was primarily—generally, in our policy, which I believe is still in writing was that essentially, the SAC would be responsible for notifying the Center director and that's a—that was a particularly sensitive issue because at the NASA Centers—I think at all, if not most—the guards are armed.

And so the—you know, just from a safety standpoint, we felt that the need—if we were going to be armed and making arrests that we needed to have some, coordination so that they would understand what was happening.

Special Agent BAHR. Between armed personnel and NASA OIG agents?

Mr. HOWARD. Yes. Yes.

Special Agent BAHR. And the security officers?

Mr. HOWARD. Yes.

Special Agent BAHR. These advisements of perhaps Mr. O'Keefe or any of the Center Directors or you referred to another——

Mr. HOWARD. The mission directors. Essentially, the——

Special Agent BAHR. Mission directors.

Mr. HOWARD.—heads of the major groups in headquarters.

Special Agent BAHR. So the advisements relative to the execution of search warrants this always took place after the warrants had been executed——

Pages 195–197

Allegation 47—Inspector General COBB maintained a close, personal relationship with former NASA Administrator Sean O'Keefe and former NASA General Counsel Paul Pastorek.

Investigative Findings

This allegation was predicated upon information obtained in eight interviews of current and former employees of the NASA OIG. These interviews were conducted to obtain information regarding various allegations HUD OIG received from the Integrity Committee of the President Council on Integrity and Efficiency. In those interviews, the employees alleged that COBB maintained a personal relationship with former NASA Administrator, Sean O'Keefe (O'Keefe) and former NASA General Counsel, Paul Pastorek (Pastorek). In addition, it has been alleged that this relationship has interfered with COBB's independence and may not have allowed him to remain impartial regarding audit and investigative findings.

During the investigation, e-mails sent between O'Keefe and COBB during their tenure at NASA and. NASA OIG respectively were reviewed. In addition, e-mails sent between COBB and Pastorek were also reviewed.

The following e-mails depict the type of relationship maintained (*Exhibit 118*).

1. E-mail Thread

"From: Sean O'Keefe
To: rcobb;
CC:
Subject: my apologies.
Date: Tuesday, June 15, 2004 1:53:04 PM
Attachments:

Moose—my apologies for standing you up for lunch today—I completely lost track of the time and have been overrun with demands today. I owe ya one—many thanks for your patience and understanding. regards, Sean"

2. E-mail Thread

"From: *SOKeefe@hq.nasa.gov*
To: Robert Cobb;
CC:
Subject: Apologies
Date: Tuesday, August 03, 2004 12:22:24 PM
Attachments:

Moose—on further reflection, I owe you an apology for today's behavior. For lots of reasons I was in a foul mood—you didn't deserve that. Points made, but could have been more effectively conveyed—thanks for not returning it in kind—"

3. E-mail Thread

"From: *SOKeefe@hq.nasa.gov*
To: Robert Cobb;
CC:
Subject: Departure
Date: Monday, December 13, 2004 8:18:45 AM
Attachments:

Moose—Before the rumor mill runs too hot and heavy, I wanted to advise ypu [sic] of a personal development. LSU has advised that they are considering me to be Chancellor. The LSU Board plans to vote on the recommendation on Thurs. If they offer, as I expect they will, I intend to accept. With tuition bills for the first of three looming, it is only a question of months on how much longer I could keep up this public service addiction. Life on the bayou will improve the situation immeasurably. Since I've pressed you to service, I owed you a heads up. I'll make it through Feb in the hopes of a successor confirmed by then. Best regards, Sean"

4. E-mail Thread

"From: Robert Cobb
To: *sean.okeefe@nasa.gov*
CC:
Subject: talk
Date: Friday, November 14, 2003 1:29:07 PM
Attachments:

Yesterday I received a call from WH personnel about being on the list of candidates for the position of IG of the Coalition Provisional Authority. They said if I were the guy, I would be detailed for 6 months, then back to NASA. I told them I would get back to them this afternoon to tell them if I am interested. I would like to discuss this with you; I will call you at 2:15 when, I understand, you may be between meetings."

5. E-mail Thread.

"From: Cobb, Robert W. (HQ–WAH10)
To: '*paul.pastorek@arlaw.com*';
CC:
Subject: Re:In DC today and tomorrow. Are you around? Will be at IMAX tonight too.
Date: Wednesday, September 21, 2005 10:40:18 AM
Attachments:

I am out of the building until after lunch. Family to be at Imax tonight. Plan to give you a hug!
Sent from my BlackBerry Wireless Handheld"

"———Original Message———
From: Paul G. Pastorek <*paul.pastorek@arlaw.com*>
To: Robert 'Moose' Cobb <*rcobb@hq.nasa.gov*>
Sent: Wed Sep 21 09:02:52 2005
Subject: In DC today and tomorrow. Are you around? Will be at IMAX tonight too."

6. E-mail Thread

"From: Paul Pastorek
To: *RCobb@hq.nasa.gov*;
CC:
Subject: Jazzfest
Date: Thursday, April 15, 2004 9:31:31 AM
Attachments:

Status of activities.

I have a friend who is working on reservations at Commanders Palace for either Thursday or Friday night.

I am also working on reservations at a place called Cuvee's which is terrific. I ate there for the first time last week. A relatively new place. If you want I can get you in at Emeril's instead. Let me know.

We can go with you or you can go off by yourself. You call the shot.

I also recommend you go to *http://www.nojazzfest.com/* and determine whether you want to go to evening activities on Thursday or Friday. In addition to the official Jazzfest acts, there is music all over town at any time of the evening so you could still do dinner and skip the big acts and see the others. If you want to do a big act, we can skip dinner.

Kathy would like to take your wife around town on Thursday while you are at the Conference. She can take her antique shopping, site seeing around town, or even to a Plantation home (or homes) outside the city.

Let me know what you think. Also let me know your flight arrival and departure times and that of your wife, if different, so I can make other recommendations."

Pages 206–217

Allegation 48—Inspector General COBB. screened potential audit topics and investigative findings through former NASA Administrator Sean O'Keefe (O'Keefe) and former NASA General Counsel Paul Pastorek (Pastorek).

Investigative Findings

[redacted] was interviewed regarding his complaint to the Integrity Committee of the President's Council on Integrity and Efficiency, which was forwarded to HUD OIG (*Exhibit 8*). On February 22, 2006, [redacted] was interviewed and provided the following allegation (*Exhibit 25*). [redacted] stated that he learned from [redacted] that COBB would meet with O'Keefe and/or Pastorek and "screen" potential audit topics, and audit findings. By doing this, COBB could determine O'Keefe's and/or Pastorek's "acceptability" of a potential audit topic, or an audit finding. [redacted] COBB used this same method to screen potential investigations, or investigative findings, to ensure they met with O'Keefe's or Pastorek's approval, and/or determine what audits and investigations the OIG would conduct.

Based on this information, a review was conducted of e-mails sent to and from COBB. The following are e-mails where COBB discussed audit and investigative information with NASA officials (*Exhibit 118*).

1. E-Mail Thread

"From: Robert COBB [*rcobb@hq.nasa.gov*]
Sent: 12/20/2002 12:45 PM
To: [redacted]
Cc: *sokeefe@mail.hq.nasa.gov*; *jcreedon@mail.hq.nasa.gov*; *ppastorek@mail.hq.nasa.gov*; [redacted]
Subject: facilities issues

We are looking into a couple of facilities issues;

1. NASA-wide wind tunnel use and efficiencies associated with that use;
2. NASA Research park at Ames.

I'd like to discuss with you these projects so we can take your views into account in designing our activities."

Followed by:

"From: *SOKEEFE@hq.nasa.gov*
Sent: Thursday, December 26, 2002 3:11 PM
To: *rcobb@hq.nasa.gov*
Subject: Re: facilities issues

Sounds good—thanks for the heads up—regards, Sean"

2. E-Mail Thread

"———Original Message———
From: Robert Cobb [*rcobb@hq.nasa.gov*]
Sent: 06/25/2003 01:32 PM
To: R CABANA <*rcabana@ems.jsc.nasa.gov*>; <*robert.d.cabanal@jsc.nasa:gov*>; <*robert.d.cabana@nasa.gov*>; Bill Readdy <*william.f.readdy@nasa.gov*>
Cc: *sokeefe@mail.hq.nasa.gov; fgregory@mail.hq.nasa.gov; David.M.Cushing@nasa.gov; thoward@nasa.gov*
Subject: astronaut report

My office was close to issuing a report on the astronaut corps at the time of the *Columbia* accident. I stopped release of the report because the message was not appropriate at the time. Given that NASA is contemplating a new astronaut class, I

believe. the circumstances have changed and the report should surface. My staff is coordinating with Code M audit liaison officials on this matter."

Followed by:

"From: *SOKeefe@hq.nasa.gov*
To: *rcobb@hq.nasa.gov; wreaddy@hq.nasa.gov;*
CC:
Subject: Re: astronaut report
Date: Thursday, June 26, 2003 10:01:36 AM
Attachments:

Thanks for the heads up, Moose. We'll watch it carefully and respond promptly."

3. E-mail Thread

"———Original Message———
From: Robert Cobb *[rcobb@hq.nasa.gov]*
Sent: 06/27/2003 05:44 PM
To: *sokeefe@mail.hq.nasa.gov*
Subject: Fwd: CAIB Observations Letter and Enclosures

Here is the draft of my observations on CAIB independence, with attachments. My expectation would be to issue the letter sometime before the CAIB issues its report. Please review and let me know what you think. I will be out the week of July 4, but will be receiving e-mail."

Followed by:

"From: *SOKeefe@hq.nasa.gov*
To: *rcobb@hq.nasa.gov;*
CC:
Subject: Re:Fwd: CAIB Observations Letter and Enclosures
Date: Sunday, June 29, 2003 10:44:16 AM
Attachments:

Thnks Moose—will advise/comment soonest."

4. E-mail Thread

"From: Sean O'keefe
To: *Robert.Cobb@hq.nasa.gov;*
CC:
Subject:
Date: Monday, July 07, 2003 10:27:35 AM
Attachments:

Moose—I've reviewed your paper on the Board independence issue. This is very timely and will likely be helpful input as the Board prepares to release its findings. We've tried to be responsive in the establishment and conduct of this investigation and your observations verify my impressions on that score thanks for the opportunity to comment. regards, Sean"

5. E-mail Thread

"At 04:43 PM 7/30/2003—0400, you wrote:

FYI. OIG may look into procedures for issuing bonuses to NASA's political >appointees. This is an issue Executive Branch wide and has received press >attention.>"

Followed by:

"From: Sean O'keefe
To: Robert Cobb;
CC:
Subject: Re: bonus issue
Date: Wednesday, July 30, 2003 6:57:24 PM
Attachments:

sure"

6. E-mail Thread

"———Original Message———
From: Robert Cobb *[rcobb@hq.nasa.gov]*

Sent: 04/26/2004 04:26 PM
To: *fgregory@nasa.gov*
CC: *sean.okeefe@nasa.gov; gwendolyn.brown-1@nasa.gov*
Subject: financial management hearing

FYI. I have been asked to testify on financial management at NASA on May 12 before the House Govt Reform Subcommittee on Government Efficiency and Financial Management. I plan to comply with the request."

Followed by:

"From: *SOKeefe@hq.nasa.gov*
To: Robert Cobb; *fgregory@nasa.gov;*
CC: *gwendolyn.brown-1@nasa.gov;* Paul Pastorek; John Schumacher;
Subject: Re: financial management hearing
Date: Monday, April 26, 2004 5:33:12 PM
Attachments:

Of course—that's during your retreat?"

7. E-mail Thread

"———Original Message———
From: Robert Cobb *[rcobb@hq.nasa.gov]*
Sent: 06/16/2004 02:11 PM
To: *sean.okeefe@nasa.gov*
Subject: bad parts case >fyi.

Working with FBI and Defense Criminal Investigative Service and the >Department of Justice, we have been involved in an undercover operation >targeting suppliers of bad parts to NASA among others, including bad parts >for Station, Shuttle and NASA aircraft. Search warrants are going to be >served on six companies over the next couple of days. The names of the >suppliers are not household names, and typically involve subcontractor >suppliers. We have been involved in a number of similar investigations >and, unfortunately, suppliers often represent that parts they are >supplying meet specs when they do not. Sometimes the misrepresentation is >made knowingly and intentionally. Serving of warrants is sometimes >noticed by the media. Please keep close hold. I have sent this message >to Mahone and Pastorek."

Followed by:

"From: *SOKeefe@hq.nasa.gov*
To: Robert Cobb;
CC:
Subject: Re: bad parts case
Date: Thursday, June 17, 2004 10:58:12 AM
Attachments:

OK—keep me posted—more incoming cowpies I suspect"

8. E-mail Thread

"———Original Message———
From: Robert Cobb *[rcobb@hq.nasa.gov]*
Sent: 01/12/2005 01:42 PM
To: *sean.okeefe@nasa.gov*
Subject: Strategic Planning

Sean: After receiving some inquiries from the Hill, we have been looking at the role of Dr. Elachi in connection with Strategic Planning activities. Quite obviously, the concern is about conflicts; we have found nothing illegal about it, and the question is do we have an opinion about the appearances. In connection with this, I am going to send an e-mail to Shoe requesting documents that reflect on Dr. Elachi's role. I wanted to give you a heads up. I have not had a discussion with Charles about this, although his folks know we are interested as we have been rummaging around in the contract and talking to his counsel's office and others. Of course, we are aware of NASA's counsel's approval of the arrangement and et cetera. I will be sure to discuss this with you and Charles before we report out.

Regards,
Moose"

Followed by:

"From: *SOKeefe@hq.nasa.gov*
To: Robert Cobb;
CC:
Subject: Re: Strategic Planning
Date: Thursday, January 13, 2005 1:13:35 PM
Attachments:

Thanks Moose—I think we touched all the right bases here and did it by the book in setting this up. As for appearances—Charles brings a lot to the equation and he is probably the most objective of all the scientists given that he doesn't represent any one discipline and he has mgt responsibilities that injects a sense of realism into our planning. As evidence, just look at how the road map teams have been assembled (in accord with FACA etc) and are operating vs the endless circular motion of the JSAC? I rest my case."

9. E-mail thread

"From: Robert Cobb
To: *paul.g.pastorek@nasa.gov;*
CC:
Subject: Fwd: KSC Case
Date: Wednesday, November 05, 2003 2:45:53. PM
Attachments:

FYI on Hi-Shear case. If you forward to others, please let them know that it is sensitive information about an ongoing investigation, not for general release.

X-Sender: *lcarring@198.116.64.6*
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Wed, 05 Nov 2003 14:26:30–0500
To: *Robert.W.Cobb@nasa.gov, thoward @nasa.gov*
From: 'Lance G. Carrington' *<lcarring@nasa.gov>*
Subject: KSC Case

Moose,
Here's a summary that can be shared with Code G regarding our ongoing investigation. This case pertains to the letters sent from KSC to Mr. Pastorek where USA asks KSC for access to the center to prepare for their civil case against High Shear.
Thanks, Lance

Hi-Shear Technology Corporation

Case Number: O–KE–00–0107–O

This investigation was initiated based on information provided by United Space Alliance (USA), Cape Canaveral, FL. It was alleged that Hi-Shear President George Trahan and Vice President Herb Salit were attempting to extort contracts from USA. USA operates as the Space Flight Operations Contractor (SFOC) under NASA contract #NAS9–20000. USA awarded Purchase Order (PO) #300531, valued at $596,539, to Hi-Shear for the production of 17-Second Delay Cutters, which are considered Launch Critical Hardware. After numerous delays caused by both USA and Hi-Shear, a new delivery date was being negotiated. The Cutters were complete, pending a final quality inspection by USA. Approximately $395,035 was paid to Hi-Shear under the PO. According to USA, on at least three occasions between December 28, 1999 and present, Salit attempted to extort the award of another USA PO that was in the pre-award phase, in exchange for the delivery of the Cutters. Hi-Shear also attempted to extort USA by tying the receipt of the bonnet thruster award to the delivery of forward and aft separation bolts.

The investigation was accepted by the U.S. Attorney's Office (USAO), Middle District of Florida. Several conversations between Salit, Trahan and a USA representative regarding the alleged extortion attempt by Hi-Shear were recorded. USA later terminated its contracts with Hi-Shear and qualified another firm to manufacture the separation bolts. As a result, Hi-Shear filed suit against USA.

Subsequently a target letter was issued to Salit. Salit initially agreed to plead guilty and cooperate in both the civil and criminal cases; however that agreement has not materialized due to Salit's demands. The USAO recently released copies of the recordings and transcripts to USA and Hi-Shear counsel for use in the civil trial, which was scheduled to begin October 27, 2003, but has been continued to address discovery issues.

Update: A draft OIG report of investigation is being prepared at the request of the USAO who intends to seek an indictment of Salit and Hi-Shear for violations

of Title 18 U.S.C. § 1951 (Interference with commerce by threats or violence). A final decision has not been made on seeking an indictment of Trahan.

Further examples of e-mails between COBB and O'Keefe may be found in (*Exhibit 113*).

On May 30, 2006, O'Keefe was interviewed (*Exhibit 137*). Asked, "How often did COBB brief you on audits and investigations prior to drafts being available, or before charges were filed?" O'Keefe stated that he would generally meet with COBB once a month (or more) on audit issues. For example, O'Keefe reported a major NASA OIG audit that received more of his attention than any other issue was the audit of "NASA financial statements." However, O'Keefe advised COBB had an "open door" to visit with him at any time concerning essential matters. With regard to NASA OIG audits, O'Keefe stated he always told COBB, "On anything, come to your judgments and let me know your recommendations." O'Keefe characterized COBB's involvement with the audit function as "proactive." As an example, O'Keefe stated COBB hired Deputy Inspector General Thomas Howard (Howard), an experienced audit manager from the Government Accountability Office, to further enhance NASA OIG's audit capabilities. O'Keefe advised NASA OIG audits generally centered on process and procedural issues, not specific NASA programs or missions. O'Keefe and COBB would regularly "collaborate" prior to audit activities, to determine which inquiries could most benefit the agency [NASA] and "the American people."

Mr. O'Keefe stated typically COBB would not brief him on criminal cases. It would be "very unusual" if COBB were to brief him on criminal matters. O'Keefe recalled one occasion when COBB briefed him on the status of criminal charges against a NASA employee who viewed pornographic material on a government computer.

COBB was interviewed on June 27 and 29, 2006. His response to questions associated with this area start on Page 72, line 19 through Page 78, line 23, and Page 87, line 17 through Page 94, line 8 of his interview transcript (*Exhibit 182*). COBB stated, in part:

Q. Do I understand correctly that Mr. O'Keefe was concerned about the audit function; and you had conversations about that, and not so much about the investigations function of NASA OIG; is that correct? He felt as if there were problems with the audit function?

A. You'd have to talk to him about what his recollection is and all that. It is difficult for me to characterize what he thought.

Q. Is that what he communicated to you?

A. My recollection of the conversation would be that we didn't get into specific activities or whatever but that just as a philosophy, that an Office of Inspector General has an opportunity to add value to an organization. And it should work hard to do that;

That's essentially it. I don't recall anything specific from the conversation, but I do remember him thinking—you know—and me being in full agreement that that is the nature. We might have talked about a consultative role, that in effect an Office of Inspector General can provide a consultation in connection.

You know, I'm aware and he is fully aware having been around government a long time of what the independent element is in connection with the activities after Office of Inspector General; and I can say that he and his staff accorded complete respect for that independence.

I never felt a circumstance where he articulated that I should—I should have some opinion or should—if he wanted us to do some kind of work, I told him the same thing I told every other senior manager in the agency.

Hey, we'd be happy to consider whether or not you thought there was a fertile ground for us to audit in connection with an activity, whether or not I can tell you not too many takers in that department of saying bring in your auditors and conduct an audit of our particular activity, but——

Q. All right. You touched on this in your last response. Your philosophy and/or understanding in regard to how an agency IG and the agency head should interact. You have made reference to a consultative relationship. Can you explain that and then what your philosophy under Mr. O'Keefe and under Mr. Griffin is as your role and Inspector General in your interaction with the agency head?

A. This is the kind of conversation we have in the office all the time. I'm collaborative in terms of my direct reports. When you get to the independence issue, you can have a group of people that are the most independent people in the world, and they never talk to anyone, because once you get out of the box and start talking to people, that's an incursion on your independence.

I can tell you in connection with audits that we've had. I've worried about whether or not our auditors at times were independent in connection with projects because there would be people who would come and in effect push an issue at auditors that suggest, gee, this program, my program should get more money than that one over there, it shouldn't. I can tell you. I've seen audit work where it felt like, gee, the program could have written the audit work.

We've had those. In terms of the consultative role, I think that might have been a word that O'Keefe used in that conversation. I don't recall specifically it would not be inconsistent with my impression of what he'd have said. Or there is a document that Clay Johnson in connection with the IG community has circulated with the assistance of the IG community that talks about in effect supposed to be a suggestive governance document between IGs and their agencies.

It is those types of things I'm talking about as being, in effect, at least from the O'Keefe side what they were looking for in connection with a role of an Inspector General.

Q. What did Mr. O'Keefe say he was looking for in his Inspector General?

A. My guess that he would have talked , about something, whether he used the word consultative or, that in effect you can go and obtain an independent analysis of issues and provide that to the agency, that that is a valuable—that is a valuable commodity, and that—you know—again getting it before—getting it early, getting advice early when the agency can take advantage of that information rather than after there has been a problem and a—you know, of note.

Q. So getting advice from the Inspector General as to an issue within the agency before as opposed to after the fact, after the milk is spilt, so to speak?

A. You go ask him what we talked about. It wouldn't surprise me if he had a completely different recollection. I'm walking away in that meeting with one impression. I don't know his impression. I'd say everything I said here is impressionistic of a conversation that may have lasted 45 minutes that took place four-and-a-half years ago.

Q. But you spent 4 years as the Inspector General under the O'Keefe administration, correct?

The WITNESS. Right. Unless my math is wrong, I think the overlap of our service was less than 3 years.

By Ms. Bahr.

Q. OK.

A. From April of 2002 to February of 2005.

I took—and with substantial discussion with my—again, I have a collaborative style of conducting business. I asked for Frank LaRocca's opinion. I asked for whoever my senior staffs opinions in connection with activities. I don't always do what they say. We talk about it. I do what I think is right and—you know—the—that's the way I conduct business. In terms of my relationship with Sean O'Keefe, you know, I'd say we had a very good, professional working relation where if I thought there was an issue that he had to be concern about, I had no difficulty or problem communicating to him.

I tried to have as much contact with him as his schedule could tolerate. It made it so that I could be best informed as to what the issues of the day were at NASA.

Q. If we could go back to the original question. In terms of what information did you share either with Mr. O'Keefe or with the center directors or any other senior staff members within NASA related to what was going on on the investigative side of the House?

A. On that, I was giving security as a coordinating point. I might ask a question, have we coordinated in security in connection with the search warrant that's going to be served at a certain center. That would be something that the staff level.

There might be certain investigations like a safety investigation. We get—give an example, prior to the launch of STS 114 last summer, we got an allegation there was a piece on the external tank that's a bad piece and this is about a month or 3 weeks before launch is supposed to take place. The fact that we're going to have a criminal investigation possibly arising out of this allegation, there's a weighing balance on how to handle it. I would talk with staff on what is our vehicle for communicating what we need—what limited information we need to communicate to the agency.

And typically, if we had, for example, a member of senior staff who was under investigation, I would sit down with my assistant Inspector General for investigations, my counsel, my deputy, Tom Howard, and we would sit and talk about what is the best time to communicate to the agency this sensitive information that we have so that it, for example, can take, in the instance of safety, a remedial action

to make sure we don't blow up seven astronauts on launch or alternatively, I can give you an example.

After getting an OK from whoever my IT was in questions with the administrator Griffin, our office in conjunction with DCIS was going to serve search warrants on orbital scientists. Griffin used to work there. I think he'd rather hear it from his Inspector General than see it on TV or read about it in the newspaper. Roughly simultaneous with the execution of the search warrants, by prearrangement with my investigative team, I would communicate to Griffin, hey, here's a heads up. We're going to be serving a search warrant in 15 minutes or 5 minutes. I don't know the articulation of time. It was close, worked out with my staff that. Would be my *modus operandi* on sensitive investigative matters whether O'Keefe, center directors, general counsel, anybody else.

I would just go and say, hey, we got an investigation going on such and such. Thought you ought to know. That would not be my—the manner in which I would deal.

Q. OK. What about search warrants? You spoke about communicating with the center directors relative to search warrants. How would that be communicated and in what time-frame?

A. Well, typically——

Q. Or arrests? Search warrants or arrests?

A. Typically, those types of things would be coordinated by my staff and would not involve a phone call by me in questions with the issue. How exactly to execute them. I would want—I would not want our armed agents going into a facility with other armed agents who were not under my employ without giving a notice to, for example, security. There are certain protocols that have been established of communicating with security, maybe communicating with chief counsel, or whatever, where we're going to be doing this.

Q. What about the center directors?

A. I typically would not be involved in picking up the phone and telling them that something was about to happen. There might be instances where we sent e-mails to some people, but that would not be a normal thing. Whatever I would do, again my *modus operandi* is whether it was Kevin Winters, Lance Carrington, it would be I'm thinking this person needs to know this certain information for the following reason. When would be an appropriate time to communicate that information?

And taking the lead from the investigators in terms of obviously you don't want to do anything that in any way, shape, or form can negatively impact an investigation.

And so I'm sensitive to that, and that's why I had a protocol that for myself was in effect. I'm not going to go tell somebody about an investigation unless people in my office are on board with the communications.

Let me tell you. We have a number of very serious and sensitive investigations that have been conducted throughout my tenure but right now, and this protocol and how we communicate with the agency, the agency—if you go and talk to—if you conduct an investigation involving a senior agency official and talk to five people, the likelihood, it is going to get back to them.

So how can you control that? You do the best you can. And—but you do it working with an eyes toward the prize in terms of what we're doing, how we do it, how we communicate the information we need to.

I wouldn't go off by my loan some and wing it in terms of what types of things we're looking at.

Q. If I understand you generally; it would be your staff that would make the contacts or communications to either the security personnel on centers or perhaps the center directors that was not generally something you did but were there occasions when that occurred specifically with the center directors when you would communicate directly with them as to either a search warrant or an arrest that was eminent?

A. I'm not coming up with examples to give you of where I made those calls. I cannot say definitively it didn't happen. I would say typically staff would handle those communications.

Q. What staff members?

A. The special agents in charge, or the resident agent in charge would, in effect, have the responsibility for making sure that the people that needed to know—especially, you can have a lot of safety issues in connection with a search warrant—that the people that needed to know about it would know.

Q. Was that protocol within the Inspector General's office, NASA Inspector General's office that one of the people that needed to know was the center director or the center directors?

A. I don't know what the paper says.

Q. What paper? Are you referring to NASA regulations?

A. Yes. What our internal guidance articulates in connection with this.

Q. What was the practice?

A. My guess is the practice was not consistently applied. That in effect it requires a judgment in every case as to what the sensitivities are in terms of carrying out the particulars. So it may—you know; it may involve a call to security office might involve a call to the facility people to get access to a particular portion of the building that would not otherwise be accessible.

But you wouldn't always call the people in a facility. Whether it involved a conversation with the chief counsel, I can tell from you my perspective, and what I would generally have communicated about this topic is we need to let the people know. We do not do our work in a vacuum. We need to let the people who need to know about certain activity know.

Pages 222–225

Allegation 50—Inspector General COBB frequently had lunch with former Administrator Sean O'Keefe and former General Counsel Paul Pastorek, which may have caused an appearance of lack of independence and impartiality.

Investigative Findings

On February 22, 2006, and March 10, 2006, [redacted] (*Exhibit 25*) [redacted] (*Exhibit 41*) were interviewed regarding complaints and information they submitted to the Integrity Committee of the President's Council on Integrity and Efficiency, which was forwarded to HUD OIG (*Exhibits 8 & 7,* respectively). In their interviews, [redacted] stated that COBB frequently had lunch with former Administrator Sean O'Keefe (O'Keefe) and former General Counsel Paul Pastorek (Pastorek), which may have caused an appearance of lack of independence and impartiality.

Based on these allegations, a review of COBB's e-mails was conducted. The following are e-mails between COBB, O'Keefe, and Pastorek that identify instances where they discussed having lunch:

1.

"From: Sean O'Keefe
To: *Robert.Cobb@hq.nasa.gov*;
CC:
Subject:
Date: Tuesday, May 06, 2003 3:09:48 PM
Attachments:

Moose—sorry I stiffed ya for lunch today. I spent quality time waiting for the House Govt Reform Cmte to fire up the hearing on human capital legislation. But I was in good company with the SEC Chairman—upon learning who I was holding up, his legis affairs rep advised as how I should tell our IG to cool his jets and get a life. just repeating the comment, clearly from someone who believes she knows you . . . too well, it would appear! t'was a pleasure talking with your better half. regards and apologies, Sean"

2.

"From: Robert Cobb
To: Paul Pastorek;
CC:
Subject: Re: lunch
Date: Tuesday, September 02, 2003 12:26:27 PM
Attachments:

Thank you, sir.

At 11:03 AM 9/2/2003—0400, you wrote:

Looks like Sean may be around after all, so I had [redacted] reserved a table at Columbia Cafe.

I think it is just you and me. Do you want to eat upstairs at noon or so or do something different?

Robert W. Cobb
Inspector General

National Aeronautics and Space Administration
Washington, D.C.

Paul G. Pastorek
General Counsel

National Aeronautics and Space
Administration
Washington, D.C."

On April 20, 2006, [redacted] was interviewed (*Exhibit 67*). According to [redacted] COBB and O'Keefe, along with other NASA senior staff, ate together every Tuesday. The lunches took place either in O'Keefe's office or sometimes in the Columbia Café, which is located next to O'Keefe's office. These lunches are reflected on COBB's calendar [redacted] provided the interviewing agents with printed copies of COBB's calendar covering the time period July 2004 through April 2006. [redacted] The lunch meetings were sometimes referred to by COBB as being at the "Administrator's hideaway." [redacted] stated the Administrator's hideaway was either O'Keefe's office or a reserved corner of the Columbia Cafe. According [redacted] COBB sometimes puts other lunch dates on the calendar and he sometimes puts down whom he was meeting for lunch, but sometimes he does not. [redacted] recalled that O'Keefe and COBB had lunch alone together on one occasion.

[redacted] advised COBB does not have lunch with the current NASA Administrator, Michael Griffin (Griffin). COBB and Griffin may have had a total of five meetings since Griffin became Administrator. Lately COBB has attempted to schedule meetings with Griffin and, Griffin has continually postponed the meetings to the point where they are ultimately not rescheduled.

A review was conducted of COBB's OIG official calendar for the period April 2002 to April 2006. This review showed that COBB met with O'Keefe for lunch at a minimum of two times per month from April 2002 through February 2005, the time period when COBB and O'Keefe were at NASA together. The lunches were called "Tag-Up" or "Administrator's Hideaway." Some of those lunches included [redacted] and Paul Pastorek. In addition, in some months the lunches exceeded two times per month.

COBB's schedule did not show evidence he continued those lunches with current Administrator, Michael Griffin.

On May 30, 2006, O'Keefe was interviewed (*Exhibit 137*). O'Keefe was asked how often he held "Director's luncheons" with COBB. O'Keefe stated, "I'm not sure. Once or twice a month I suppose, or more often." O'Keefe stated others often present at the luncheons included: Fred Gregory, Deputy Administrator, NASA; John Schumacher (Schumacher), Chief of Staff, NASA; and Courtney Stadd, Chief of Staff prior to Schumacher. O'Keefe stated the luncheons always had a working atmosphere.

On June 27 and 29, 2006, Inspector General Robert Watson (Moose) COBB was interviewed (*Exhibit 182*). His response to questions associated with this area start on Page 79 line 5 and Page 98 line 22 of his transcript, and states, in part:

A. But what I was part of was as his schedule would dictate, we—I tried to have a weekly luncheon with Mr. O'Keefe; and again his schedule was extraordinarily busy. If he wanted to talk to me at any time, I was available to talk to him. And to me, as a consequence of this interaction with Mr. O'Keefe, our office was able to get involved and make contributions and establish credibility that it formerly did not have.

Q. What credibility?

A. Well, for example, when we made an audit recommendation, the agency would implement it. That was something that did not—was not occurring as far as I can tell at least from a statistical review of what was going on under my predecessor.

Q. OK. You said that you would have weekly lunches with Mr. O'Keefe. You would attend staff meetings on not a regular basis, on average how often would you attend a senior staff meeting?

A. That would be a very exceptional circumstance that I would attend any kind of senior staff function. There were instances where it happened.

Q. Aside from your—I believe you said weekly lunches at NASA headquarters with Mr. O'Keefe, did you ever have lunch or dinner outside of NASA together?

A. Alone with Sean O'Keefe, me and him again I went to events attended by senior staff. At least one. I typically was not invited to those types of things.

Q. Why did you attend that particular one?

A. Because O'Keefe asked me to come to a particular event which was at the Stennis Space Flight Center in Mississippi there. Was a dinner afterward and I attended both of those at his request.

Q. Was there a specific reason why he requested you to attend?

A. Yes. There was a presentation that was going to be given by a contractor who had come in to analyze NASA culture and, in effect, a consulting firm. It was going to communicate about its finding and provide a status report. Because of my inter-

est in all of the *Columbia* accident investigation activities, including NASA culture, I had been involved in a lot of different aspects of that. O'Keefe thought it would be worthwhile for me to attend the presentation that those people were given and I did so.

Q. OK. Outside of that kind of lunch or dinner that obviously appears to be directly related to business, were there any lunches or dinners?

A. There may have been.

Q. Either one-on-one or with others in attendance? I'm generally talking about more of a social setting, smaller group?

A. I understand. We're. talking about a person where there'd be events at the Smithsonian. I would attend those for the same reason I articulated as attending other things so people can see who you are, so you can get information from people and pass it on to staff.

Q. That's more business related?

A. I understand. I'm seeing O'Keefe a fair amount. Not every week. But a fair amount. I'm Just trying to articulate. I cannot remember whether or not I ever went out to dinner. I think I would remember if I had a personal one-on-one dinner or one on two lunch or dinner with him. I don't recall it. Not while he was NASA administrator. It may have happened. I'm just trying to think. Whether there was a time where he called me up and said, Moose, we ought to go spend time together. I can't remember that happening. But. I'm not saying it didn't because I'm just saying I can't remember it.

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. . . their (yellow book) standards and hide behind their pencils." [redacted] stated that COBB ends his meetings by saying, "Everyone is in agreement now, right?" [redacted] said; "Who is going to question him or raise issues?" [redacted] noted that it was very clear to all the staff that you do not question what COBB states.

[redacted] recalled that in June or July 2005, COBB and [redacted] appeared at an Audit Liaison Representative (ALR) Conference. Somebody there asked COBB why so many people have departed NASA OIG. COBB replied that he, "wears them leaving like a badge of honor." [redacted] stated that over 100 employees have departed NASA OIG since COBB arrived. [redacted] advised NASA was once voted the best place to work, and now it is one of the worst.

[redacted] said the statement, "There are 1,000 people to take your place," was a commonly used saying by COBB. [redacted] recalled when one of the auditors who departed NASA OIG was staring out of the office window on his last day at work. When [redacted] asked him what he was doing, the auditor replied, I'm looking for the 1,000 people who are lined up waiting to take my place."

[redacted] stated that COBB is "a mean, vicious and arrogant man who needs to go." [redacted] believed COBB has "wrecked many careers," but feels he [redacted] got lucky and found another employment opportunity. [redacted] thought that he would end his career at NASA OIG and not be forced to go somewhere else. [redacted] explained NASA OIG staff went through a lot by saying, "reorganization after reorganization, foul language and intimidation, COBB misusing his investigative powers and having employees forced out and replaced with unqualified cronies."

On March 15, 2006, a confidentia1 source identified as T–3 was interviewed (*Exhibit 44*). T–3 stated there was a meeting of all staff at the Marshall Space Flight Center and "COBB humiliated and insulted the audit staff by stating that the auditors were incompetent." T–3 directly heard COBB say that he wanted the Audit Program Directors to be relocated to Headquarters so they "would be within choking distance." T–3 stated, "I thought this was a stupid thing to say." T–3 felt humiliated and insulted by COBB.

On July 23, 2004, COBB sent an e-mail to all OIG staff and referred to all the GS–15 Audit Program Directors in the field as "surplus." T–3 stated, "I've always had a good record, and it's how I became a 15; to be referred to as surplus is insulting and humiliating." T–3 stated "the staff here are highly demoralized." In discussions T–3 has had with NASA OIG auditors, more staff would have responded "disagreed," however, they feared the responses could be attributed back to them. T–3 also stated that there has been an "extremely high turnover," and believes at least 30 employees left last year alone.

In 2005, at a conference held at the Goddard Space Flight Center (GSFC) with all the NASA audit liaison representatives, someone raised the question to COBB as to the reason for the high turnover rate within NASA OIG. T–3 stated that COBB said he was "proud of the high turnover rate," and referred to the people who had left as "trash." [redacted] who once worked in NASA OIG and now is an audit

liaison representative at the [redacted], told T–3 that he "was shocked" to hear that from COBB.

On March 20, 2006, [redacted] was interviewed (*Exhibit 45*). [redacted] described COBB's management style as "kind of strange," and stated that you "never knew where you stood with him." [redacted] noted that to his knowledge, COBB did not have a background in management prior to . . .

Pages 266–271

Allegation 67—Inspector General COBB, former NASA Administrator Sean O'Keefe (O'Keefe), and former NASA General Counsel Paul Pastorek (Pastorek) would drink alcohol together.

Investigative Findings

[redacted]

Special Agent BAHR. OK. Generally, who was present at these meetings in Mr. O'Keefe's office at the end of the day?

Mr. HOWARD. Who—it varied. Whoever happened to have any business to be tip there at the time.

Special Agent BAHR. You mentioned the chief of staff?

Mr. HOWARD. Right.

Special Agent BAHR. Who was that at the time?

Mr. HOWARD. It was—well, there were a couple. First, it was Courtney Staid, and then later it was John Schumacher.

Special Agent BAHR. OK. How about the General Counsel for NASA?

Mr. HOWARD. Yes, he would be there on occasion, Paul Pastorek.

Special Agent BAHR. All right. Are you aware of—did—would they share in drinking within Mr. O'Keefe's office? Was there alcohol served?

Mr. HOWARD. On some occasions I believe there was. Yes.

Below is an excerpt from the transcript of COBB's interview conducted on June 27, 2006, where he addresses the issue of drinking alcohol with O'Keefe, beginning at Page 102, line 12 (*Exhibit 182*).

Q. Was there ever an occasion when you had drinks with Mr. O'Keefe at NASA headquarters within his office or anywhere—perhaps within your office or anywhere else within NASA headquarters?

A. I can remember one instance where I had—O'Keefe had social functions that took place up when there was a retiring employee or some type of event like that. There would be social functions and there would occasionally be alcohol there. I didn't go pull the GSA permit for whether or not they had obtained permission in connection with that.

I can recall an incident—not an incident, an instance where O'Keefe gave me a drink in his office.

Q. OK. Could you give us some background on what the occasion was, why were you meeting with him? How did it come about that you were sharing—were you having a drink as well?

A. I think he said to me that you look like you could use a drink, and I articulated that, OK. I don't know what he said. But I had a drink.

The specific instance there was again the *Columbia* accident in terms of the impact on the agency, like the *Challenger,* there were tremendously sensitive issues associated with—for example, I bet you no one here at this table even though they're fairly familiar with the *Challenger* incident has any understanding of what happened to the seven astronauts that were on that vessel.

The reason is that NASA is extraordinarily protective of that information, the well-being of the program, and the families of those who died. They know what happened. It is not like it's a secret. It is known. But it is kept secret.

Same thing is true in connection with *Columbia.* What happened with respect to each of the dead astronauts is something that is well known. We had an instance in February of 2004, where our service working with the Texas Rangers, this is one or——

Ms. BAHR. I'm sorry to interrupt you, but there will be a line of questioning later where I think it would be more appropriate to address this. If for the moment we could go back to just what kind of interactions you had with Mr. O'Keefe, that would be most helpful.

The WITNESS. Your last question was what prompted that instance where I can recall having a drink with Mr. O'Keefe. I think—I can recall one other instance where that happened. It wasn't with just O'Keefe. It was with other persons on his staff. That was where I had been told that I was going to be appointed as the Inspector General to the Coalition Provisional Authority.

I think that—I'm not positive. I think that he might have invited me to have a drink relating to that at that time.

Allegation 68—Inspector General COBB played golf with former NASA Administrator Sean O'Keefe (O'Keefe).

Investigative Findings

This allegation was received through interviews of nine individuals who alleged that COBB and O'Keefe played golf together. Based on those allegations a review of COBB's e-mails was conducted. The following are e-mails that identify instances where COBB discussed playing golf with O'Keefe:

1. E-mail Thread

"From: Robert Cobb
To: Sean O'Keefe;
CC:
Subject: Re:
Date: Tuesday, July 02, 2002 2:45:20 PM
Attachments:

I would love to, although kids and work have wrecked an at one time not embarrassing game. If the spot is still open, let me know details.

At 10:38 AM 7/2/2002—0400, you wrote:
Moose—don't recall if you are a golfer—I'm pulling together a foursome for this Friday AM, Clay Johnson and Alphonso Jackson (Deputy Secy at HUD). if you're interested, I'll send along particulars. best for the 4th—Sean"

2. E-mail Thread

"From: *SOKeefe@hq.nasa.gov*
To: *rcobb@hq.nasa.gov*;
CC:
Subject: Re:
Date: Friday, July 11, 2003 2:13:24 PM
Attachments:

Fabulous—let's plan to meet Sat around 11:30 or so at the pro shop or around the practice tee/putting green. Do recall how to get there?

———Original Message———
From: Robert Cobb *[rrcobb@hq.nasa.gov]*
Sent: 07/10/2003 05:48 PM
To: "Sean O'keefe' <*sean.okeefe.nasa.gov*>
Cc: *cobbj@sec.gov*
Subject: Re:

yes—
At 05:10 PM 7/10/2003—0400, you wrote:
>Moose—you up for golf Sat around noon?>"

3. E-mail Thread

"From: Robert Cobb
To: *sean.okeefe@nasa.gov*
CC:
Subject: golf buddy
Date: Monday, December 15, 2003 9:24:19 AM
Attachments:

What was the name of the guy who worked at the Naval Criminal Investigative Service that we played golf with at Belmont?"

On May 30, 2006, O'Keefe was interviewed and provided the following information (*Exhibit 137*). O'Keefe was asked, "Did you and COBB ever meet outside of work for drinks, golf, or other activities?" O'Keefe stated, "We did not socialize." However, he and COBB played golf together once or twice. O'Keefe could not recall when or where they played golf. Asked, "Did you golf together here [Belmont Country Club]?" O'Keefe stated, "I don't recall." Asked if he and COBB ever traveled together onboard NASA aircraft, O'Keefe stated he traveled in such a capacity with COBB once or twice, but could not recall any specific flight information. Asked if he ever traveled to Bermuda aboard a NASA aircraft, with COBB for the purpose of golfing, O'Keefe stated he has never traveled onboard NASA aircraft and engaged in golf activities following the official trip.

COBB was interviewed on June 27 and 29, 2006 (*Exhibit 182*). His response to questions associated with this area start on Page 81, line 20 and Page 94, line 9 of the transcript dated June 27, 2006.

Q. Did you have any social relationship?

A. I don't—I guess these kinds of questions ask for me to expand on the nature of my relationship with Mr. O'Keefe. I had a business relationship with him. Did we personally enjoy each other's company? I don't know let [sic] enjoyed my company. To me it was advantageous to me and my office that I spend a lot of time as much time, in effect, as I could with O'Keefe. When he asked me to come out to where he plays golf, I accepted that invitation. And I did that I think twice, to go out and play golf with him. Whether that's a social relationship or a business relationship, I can tell you that—you know—did I tell him I had kids? Probably. I tell him you know—about my wife? Probably. Where she worked. But from my standpoint—you know—that relationship was defined by—you know—my carrying out the job as Inspector General of the agency and being able to get access to the person who's chiefly responsible for policy and execution of the agency mission.

Q. I agree with you complete frequently. I think there will be points later in the interview here we'll be able to do that. Let's go back to the relationship between you as the Inspector General and the agency administrator. You noted that you on approximately two occasions recall golfing with Mr. O'Keefe?

A. Yes.

Q. That would have been at his home in Virginia, correct?

A. Yes.

Q. Leesburg, I believe, Belmont?

A. Yes.

INTEGRITY COMMITTEE
PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY
EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY
Washington, DC, January 22, 2007

Hon. CLAY JOHNSON III,
Chairman,
President's & Executive Councils on Integrity and Efficiency,
c/o United States Office of Management and Budget (OMB),
Washington, DC.

Dear Mr. Johnson:

The purpose of this letter is to inform you of the determinations made by the Integrity Committee (IC) at its meeting on December 13, 2006, regarding allegations of misconduct on the part of Inspector General (IG) Robert Cobb, National Aeronautics and Space Administration (NASA). In summary, the IC determined that certain actions on the part of IG Cobb, described in detail below, amounted to an abuse of authority. Other actions taken by Cobb were viewed as creating the appearance of a lack of independence and as not adhering to the *Quality Standards for Federal Offices of Inspector General* promulgated by the PCIE and ECIE. I will first outline the procedural history of the case, follow with a discussion of the particular conduct on the part of IG Cobb which the IC found troubling, and conclude with comment about some of the matters raised in the correspondence received from IG Cobb regarding the process.

Case Initiation and Investigation

Executive Order (EO) 12993 is the IC's charter for review of allegations of administrative misconduct made against an IG. The EO provides that on receipt of allegations, the IC shall first determine if there is a substantial likelihood that the allegations disclose a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, or abuse of authority. If the IC makes this preliminary determination, and further concludes that allegations cannot be referred to an agency of the Executive Branch with appropriate jurisdiction over the matter, it refers the matter to the IC Chair who is to cause a thorough and timely investigation of allegations to be conducted.

During its meeting on December 12, 2005, the IC reviewed several new complaints against IG Cobb and concluded there was a need for an administrative investigation. The IC also reevaluated other allegations regarding IG Cobb that it previously reviewed but which had not been the subject of an investigation. These were reevaluated because the IC wished to consider the full picture and determine wheth-

er the pattern of activity disclosed violation of law, rule, or regulation, or amounted to gross mismanagement, gross waste of funds, or abuse of authority. Following the IC decision to initiate the investigation, as IC Chair, I requested the Housing and Urban Development (HUD) Office of Inspector General (OIG) to conduct the investigation.

The IC forwarded complaints received against IG Cobb to the HUD OIG and their investigators organized the case into 79 separate allegations. The HUD OIG conducted a thorough investigation of 69 allegations and submitted its Report of Investigation (ROI) to the IC on August 30, 2006. The remaining 10 allegations were not investigated by the HUD OIG based on their conclusion that the information supporting the allegations was too vague or insufficient to justify continuing the inquiry. The IC concurred with that assessment. The ROI prepared by the HUD OIG is enclosed for your review. IG Cobb cooperated with this investigation and was interviewed, with legal counsel present, by HUD OIG investigators for more than 10 hours during sessions on June 27 and 29, 2006. At the conclusion of his interview, IG Cobb was allowed to both review and supplement his deposition. The IC also received correspondence from IG Cobb during its review of the matter that is also enclosed for your review.

Integrity Committee Review of the Report of Investigation

Over the course of three IC meetings, the allegations and the HUD OIG ROI were reviewed and discussed. Utilizing the ROI, the IC placed the allegations into four categories, as follows:

1. Abusive work environment.
2. Lack of independence.
3. Audit Division reorganization.
4. Other Matters.

The identifying numbers used below are those assigned by the HUD OIG. They are referred to in this letter as a matter of convenience but they have no other significance.

Abusive Work Environment

The IC evaluated nine allegations, appearing as numbers 52, 53, 57, 58, 59, 60, 61, 62, and 63 in the ROI, which fell under the broad category of abusive work environment. The IC determined that "abusive work environment" fit under the EO for jurisdiction purposes through the "abuse of authority" clause. The term "abuse of authority" is defined in the IC Policies and Procedures as:

> *arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons. There is no* ***de minimis*** standard for abuse of authority.

Allegation 53 was made by: [redacted] allegations are confirmed by interviews of two witnesses. According to the ROI, IG Cobb berated the [redacted] using a loud and nasty tone that included profanity in front of the [redacted] to the point of causing tears and her departure from the meeting. When the staff member returned to the meeting at which this occurred, she informed IG Cobb that profanity in the workplace was not acceptable; IG Cobb did not apologize for his behavior. On other occasions, he screamed at the same individual over the issuance of a search warrant and called the staff member's work a "fucking piece of shit" as he slammed his fist on the table next to the staff member. A witness confirms that IG Cobb's treatment of [redacted] was condescending, berating, and demeaning. IG Cobb's treatment of [redacted] was similar in that he routinely yelled and screamed at the individual as part of disagreements on positions taken by the individual in investigative matters.

Three other witnesses confirm IG Cobb's habitual use of profanity in the office while another, [redacted] confirms that IG Cobb referred to his staff as "fucksticks." According to the witness, under IG Cobb there were constant threats and intimidations creating in the witness' view a "hostile work place." Another witness describes IG's Cobb's lack of respect for NASA OIG employees by his referring to Special Agents in the field as "knuckle draggers." According to this senior employee, morale among NASA OIG staff was "horrible."

IG Cobb confirmed use of the F-word in his office and indicated he is "passionate when people are insubordinate to my face," but denies, "cursing" at employees.

The IC determined IG Cobb engaged in an abuse of authority as defined by the EO. IG Cobb's treatment of [redacted] detailed in allegation 53 was inconsistent with the high standards of conduct expected of senior executives. The IC viewed this

as more than an aggressive management style or a way of expressing dissatisfaction with employee performance but as arbitrary or capricious conduct, which affected the rights of senior employees to a non-hostile and abusive workplace.

The IC further determined that other conduct on the part of IC Cobb, as described in allegations 59 and 61 did occur. This conduct involved regular belittlement of the audit staff and putting his feet on the desk in the face of those sitting opposite as a sign of disrespect. The IC further determined the conduct did not rise to a level of abuse of authority.

Lack of Independence

The IC considered eighteen allegations, appearing as numbers 9, 10, 28, 29, 30, 31, 32, 34, 35, 37, 47, 48, 49, 50, 51, 66, 67, and 68 in the ROI, which fell under the broad category of lack of independence. The starting point for the ICs analysis is EO 12805 which established the President's Council on Integrity and Efficiency (PCIE) and the Executive Counsel on Integrity and Efficiency (ECIE). Section 3(c) of the EO provides that *"[t]he individual members of the Councils should, to the extent permitted under law, adhere to the professional standards developed by the Councils and participate in the plans, programs, and projects of the Councils."*

In October 2003, the PCIE and ECIE promulgated the *Quality Standards for Federal Offices of Inspector General, which* sets out quality standards for the management, operation, and conduct of the Federal Offices of Inspector General. Section II.A. of the *Quality Standards* establishes general standards for ethics, independence, and confidentiality, indicating that "[*i*]*ndependence is a critical element of objectivity. Without independence, both in fact and in appearance, objectivity is impaired.*" Section II.C. describes the independence standard with more detail:

> *The Inspector General and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The Inspector General and OIG staff have a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The Inspector General and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work.*

Six of the eighteen allegations within the subset labeled as "lack of independence" indicate that IG Cobb sought to develop and maintain a close relationship with former NASA Administrator Sean O'Keefe and that this effort contributed to an appearance that his independence was being compromised. The ROI and IG Cobb's interview documents these efforts:

- IG Cobb frequently joined Administrator O'Keefe in lunches intended for senior staff at NASA Headquarters.
- IG Cobb played golf on two occasions with Administrator O'Keefe.
- IG Cobb used the NASA aircraft for official travel on several occasions when Administrator O'Keefe was also traveling.
- IG Cobb referred to the Administrator as "his boss."
- IG Cobb sought guidance from Administrator O'Keefe on the audit design for at least two audits.
- IG Cobb sought Administrator O'Keefe's review of a draft OIG opinion regarding the independence of the *Columbia* Accident Investigation Board.
- IG Cobb advised Administrator O'Keefe about search warrants to be issued in a significant criminal investigation before those search warrants were executed.

An IG is required to keep the head of the agency fully and currently informed about fraud and other serious problems, abuses, or deficiencies relating to the programs and operations administered or financed by the agency. He has a responsibility to communicate with the Administrator. IG Cobb concedes his activities and responds that he has a "collaborative approach" with senior management and specifically agrees with the policy laid out by Administrator O'Keefe that an OIG has an opportunity to add value to an organization. None of these instances, standing alone, is sufficient to create an "appearance" problem, but it is the responsibility of the IG to consider how the combined affect of his interaction with the Agency head might cloud or be perceived to cloud his independence. Against this backdrop, the IC found two specific allegations warranting its detailed comment.

The fact pattern of allegation 28 involved a June 2002 computer intrusion and theft of International Traffic in Arms Regulation (ITAR) designated files from a NASA server worth about $1.9 billion. The matter was brought to the attention of NASA by a news reporter. The theft of ITAR data must be reported to the State

Department. The HUD OIG investigation revealed the primary responsibility to report the theft/compromise of ITAR data was the responsibility of NASA's Office of Security and Program Protection, known as "Code X." However, the investigation revealed that IG Cobb was aware that Code X was not reporting the theft/compromise and IG Cobb took no action to ensure the reporting was made to the State Department. The complainant believes that IG Cobb failed to report the matter to the Department of State and Congress to avoid embarrassment for NASA management.

Two witnesses, one of whom was [redacted] opined that if the appropriate NASA entity failed to report the loss, the reporting requirement would fall onto whoever had oversight over NASA, which would include the OIG. Under an OIG's oversight role, IG Cobb should have recognized Code X's misinterpretation of the reporting requirement and ensured that the proper parties were alerted. This is incumbent upon the IG by virtue of his position. Both witnesses questioned the independence of IG Cobb's decision to not report the theft/compromise or work to ensure Code X reported the theft/compromise. One of the witnesses opined that IG Cobb prevented the reporting of the matter because he was attempting to prevent public disclosure that would have embarrassed NASA. Another witness said IG Cobb viewed Code X as a "source of grief" and that the easiest way to handle matters involving Code X was to "acquiesce" to the Code X Director. Another senior NASA OIG official prepared a Memorandum for Record (MFR), dated 02/23/2006, concerning the ITAR matter. The MFR states in part:

> *It took over a year for the loss [referring to the Marshall Space Flight Center case] to be assessed by DOD, who opined the stolen ITAR had national security implications (no further information). For whatever reason, NASA senior management [Code X] failed to report the loss. By definition and purpose the OIG's oversight role, the IG [Cobb] should have recognized the Code X's misinterpretation and misplaced emphasis and ensured the proper parties were alerted. Even after being coached by experienced OIG staff, the IG failed to act.*

IG Cobb said he directed his staff to prepare a report regarding the compromise that was sent to the Marshall Space Flight Center and a copy provided to NASA management in April 2003. In his supplemental letter IG Cobb indicates that any delay in preparing that report was a result of his insistence that the NASA OIG staff do the grinding work to produce an accurate and relevant report. IG Cobb maintains that there was no clear legal requirement for the loss to be reported to the Department of State by Code X and that the matter was discussed informally with the Department of State upon learning of the intrusion.

Allegation 35 involves IG Cobb's actions in the investigation of an alleged theft of jewelry from the remains of a *Columbia* Space Shuttle Astronaut. The *Columbia* Space Shuttle exploded on February 1, 2003, during re-entry to the Earth's atmosphere. The explosion initiated over Texas en route to the planned landing at Kennedy Space Center. The remains of deceased Astronaut Laurel Clark were recovered shortly after the *Columbia* accident and a ring was allegedly present on, and then stolen from, her recovered remains. NASA OIG, in partnership with the Texas Rangers, pursued a joint investigation into the theft. As part of the investigative process, the Texas Rangers planned to release a "Crime Stoppers Report" to the public to assist in the recovery of the stolen ring.

[Redacted] the deceased Astronaut, and a NASA employee, supported the request for public assistance to find his wife's ring. [Redacted] said he met personally with IG Cobb who told him he would not issue a report on the investigation of the stolen ring. The meeting was tape recorded by [redacted]. At one point during the meeting, IG Cobb asked [redacted] to turn off the tape recorder. According to [redacted] IG Cobb said the whole NASA *Columbia* investigation was not going well, NASA wanted it finished, and for the outcome to reveal nothing that would make NASA look bad or shake the public's trust in NASA.

Two witnesses interviewed by the HUD OIG suggest that IG Cobb inserted himself in the investigation with the intent of ensuring NASA would not be embarrassed. [Redacted] states that when IG Cobb saw the Crime Stoppers Report, he (IG Cobb) went "ballistic." He recalled that IG Cobb, when discussing the report, stated, "how can you even think of allowing this to go out" and "I am going to have to resign if this report gets out." [Redacted] stated that at the time he did not understand IG Cobb's response, but later learned that NASA Administrator O'Keefe instructed everyone at NASA not to contact any Astronaut or their families. He opined that IG Cobb believed O'Keefe was his "boss" and IG Cobb would do whatever O'Keefe wanted.

Another NASA employee who requests confidentiality recalls IG Cobb saying, "Can you believe how embarrassing that would have looked for the agency [NASA] if that [crime stoppers report] went out?" The Texas Ranger involved in the inves-

tigation informed HUD OIG that he believed someone at NASA wanted the investigation shut down because if it got out that the ring was stolen, questions would be asked as to the conduct of the whole NASA investigation into the *Columbia* accident.

IG Cobb responds that the decision he made regarding the matter was that his office needed to conduct additional investigation to see if what was articulated in the draft crime stopper notice was right or wrong. He questioned the evidence that was being relied on to conclude that a ring had been stolen and directed further investigation be conducted before consenting to NASA OIG involvement in issuance of any public notice of a criminal act. In IG Cobb's view, publication of the notice based on the information would have been irresponsible. IG Cobb evaluated the evidence as not supporting the contention that the ring was stolen from recovered remains but was lost along with millions of pieces of *Columbia* and all other personal effects of the astronauts over thousands of miles of Texas and Louisiana.

The IC determined that neither allegation 28 or 35 substantiated an actual lack of independence on the part of IG Cobb that could be characterized as gross mismanagement, gross waste of funds, abuse of authority, or a violation of any law, rule, or regulation under EO 12993. The facts set out in allegations 28 and 35 did substantiate two specific instances in which IG Cobb's performance caused the appearance of a lack of independence not in keeping with the *Quality Standards for Federal Offices of Inspector General*. IG Cobb's decision not to act to ensure the ITAR theft/compromise was reported in a timely manner created the appearance of a lack of independence. This determination augments the IC's review of the matter in 2004 in which it relied only on the allegation and a response from IG Cobb. In that review the IC determined that IG Cobb had not engaged in any wrongdoing. In addition, IG Cobb's actions associated with allegation 35, including his statements to [redacted] and a confidential witness, created the appearance of lack of independence not in keeping with the *Quality Standards for Federal Offices of Inspector General*. While the *Quality Standards* do not have status of law, rule, or regulation, the IC views these standards as a benchmark for IG performance and applicable to all IGs through EO 12805, *Integrity and Efficiency in Federal Programs.*

Audit Division Reorganization

The IC considered six allegations, appearing as numbers 12, 14, 15, 17, 18, and 19 in the ROI, concerning IG Cobb's handling of audits and staffing for the auditing function of the OIG. The thrust of these allegations was that IG Cobb reorganized the office several times, decreased the number of audit reports and changed their format making it difficult for auditors to know which format to follow, and generally slowed the audit reporting process to a substantial degree. IG Cobb's actions were within the discretion of an IG. The IC determined that the ROI did not substantiate actions by IG Cobb that amounted to gross mismanagement, gross waste of funds, abuse of authority, or a violation of any law, rule or regulation as it relates to his handling of audit division reorganization matters.

Other Matters

The IC placed all remaining allegations in a general category referred to as "Other." In its review of theses allegations, the IC determined that they were not substantiated by information in the ROI, indicated no wrongdoing by IG Cobb, were outside the purview of the IC, or did not warrant further investigation. It is important to note that within this category there were some allegations involving whistleblower retaliation which is an area outside the purview of the IC. The whistleblower retaliation allegations were referred to the Office of Special Counsel, the agency with the appropriate authority to conduct inquiries on such matters.

Conclusion

The IC concludes that IG Cobb engaged in abuse of authority as an Inspector General by creating an abusive work environment. In addition, IG Cobb's actions created an appearance of a lack of independence outside the quality standards expected of an IG when he did not report the theft of NASA ITAR files and prevented the dissemination of a Crime Stoppers Report.

Issues of Due Process

During the course of the IC inquiry, IG Cobb expressed dissatisfaction with the IC process in multiple letters. He questioned the methodology by which IC directed an investigation, the degree of due process for him in that methodology, his inability to review the report prepared by the HUD OIG before it was presented to the IC, and what he perceives as a lack of fairness to him during the course of the investigation and the IC review.

The decision to investigate was made by the IC. IG Cobb received notice that an outside investigation would ensue. The letter did not purport to identify all of the matters to be investigated, but as IG Cobb was later informed, this letter was not intended to limit the authority of the IC to review other allegations of wrongdoing. IG Cobb was generally cognizant of the matters under investigation and answered extensively in the questioning during his interview. He was provided a copy of his interview transcript and given the opportunity to comment on the accuracy of the transcription or submit additional matters for consideration by the IC prior to IC's review of the report. His interview regarding allegations 28, 35, and 53 was extensive and he responded with seemingly clear knowledge of the matters about which he was being questioned.

In subsequent correspondence to the IC, IG Cobb did not question the accuracy of the transcription and did submit additional matters to the IC that went to the substance of allegations. IG Cobb's materials dealt generally with the matter of lack of independence and specifically with the substance of allegations 28 and 35, the compromise of ITAR data and Astronaut Clark's missing ring respectively. The additional information submitted by IG Cobb was provided to IC members shortly after it was received. While IG Cobb may not have been sent a letter detailing the specific allegations being investigated, he was more than able to respond to the allegations which ultimately form the basis for the IC's determinations in this case. IG Cobb also offered the names of witnesses to be interviewed by the HUD OIG and later suggested questions for those interviews. Some of those individuals had been interviewed by the HUD OIG but others, including many from outside the agency, were not.

IG Cobb did not receive a copy of the ROI prepared by the HUD OIG at the conclusion of the investigation under the Policy and Procedures of the IC. The ROI is available to him under the Privacy Act and implementing regulations of the Department of Justice. He has already submitted a request for the ROI which will be provided to him through that mechanism. The copy he receives will be redacted of personal information and other information as allowed by the Privacy Act and implementing regulations.

IG Cobb will be notified that the IC has concluded its review and is forwarding the matter for your consideration. He has not been informed about the IC's determinations or provided a copy of this letter.

Outside Inquiries

The IC has received both media and Congressional inquiries concerning this investigation. As part of the PCIE/ECIE, the IC considers its review a component of the overall process which you, as Chairman, have ultimate authority. Neither the IC, nor its members will provide any information or briefing on this matter unless it is specifically approved by your office. Until advised otherwise, as IC Chair, I will refer all media and Congressional requests on this matter to your office.

Please contact me if I can be of any further assistance in this matter.

Sincerely,

JAMES H. BURRUS, JR.
Chair, Integrity Committee.

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