National Aeronautics and Space Administration
Office of Inspector General

June 7, 2007

Joint Hearing Between the Senate Commerce Committee's Subcommittee on Space, Aeronautics, and Related Sciences and the House Science and Technology Committee's Subcommittee on Investigations and Oversight

Statement by:

Robert W. Cobb
Inspector General

110th Congress

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Before the

Subcommittee on Space, Aeronautics, and Related Sciences
Committee on Commerce, Science and Transportation
U.S. Senate

and

Subcommittee on Investigations and Oversight
Committee on Science and Technology
U.S. House of Representatives

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 United States 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 nine 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 two 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 five 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

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

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 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, eight months *after* the NASA Columbia accident investigation had been concluded (in August 2003). The idea that I would say the investigation was not going well eight 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 relate 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. Documents 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 four 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 personal 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 dollars 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 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

[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.

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.