

Statement of  
Michael C. Wholley  
General Counsel  
National Aeronautics and Space Administration

Before the

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

I have been asked to address five issues in my testimony today before the Subcommittee. As you may be aware, I met with the staff of the Subcommittee, as well as with staff of other committees, on April 27, 2007 for approximately three hours and addressed these five issues, as well as others, and answered to the best of my recollection and belief all of the questions posed to me.

1. You have asked me to address the April 10, 2007 meeting held by Dr. Griffin with the staff of the NASA OIG. Dr. Griffin had set out his purpose in holding such a meeting in his March 14, 2007 letter to Mr. Clay Johnson detailing the actions he intended to take after reviewing the HUD OIG Report of Investigation (ROI) on Mr. Robert Cobb, the NASA Inspector General. In his letter Dr. Griffin stated that:

“...I will schedule a meeting with the employees of the NASA Office of Inspector General to inform them that I have reviewed the ROI and I have taken the actions that I believe are necessary to address the ROI’s findings. Such a meeting will provide me an opportunity to listen to any concerns that may exist among the staff and to express my support for a strong and effective Office of Inspector General.”

I was in attendance at the meeting, arriving with Dr. Griffin and Mr. Paul Morrell, the Chief of Staff. The meeting was held in the video teleconference (VITS) room on the lower level at NASA and Dr. Griffin spoke initially for approximately ten minutes. He stated, as best I recall, something similar to what he had set forth in his letter to Mr. Johnson with respect to the ROI having revealed no evidence of a lack of integrity on the part of Mr. Cobb, nor did it indicate any actual conflict of interest or actual lack of independence on his part. I had watched Dr. Griffin’s interview on the C-Span program “Newsmakers” on Sunday morning, April 8, and his remarks at this meeting were similar to those he had articulated on that program. Dr. Griffin then opened up the floor for questions, and several questions were asked of and answered by Dr. Griffin. I believe that the meeting lasted a total of less than thirty minutes.

2. With respect to “[T]he subsequent collection and destruction of all video records of Administrator Griffin’s meeting with the OIG staff”, my involvement was as follows. At some point the morning after the meeting, Paul Morrell came into my office. This was not an unusual occurrence. He had what turned out to be several CD cases in his hand

and he sat at the table across from my desk. He appeared upset that, in spite of his direction to the contractor VITS operator that this closed meeting was not to be recorded, the meeting had been recorded. As best I recall he stated that someone in Public Affairs had asked that the meeting be recorded and had then asked that a number of copies be made. Mr. Morrell indicated that he had recovered the copies and that this meeting was not a public affairs event but rather a closed meeting called by the Administrator. I believe I told him that I clearly understood his pique that his direction had been overridden, and that this closed meeting had been recorded and copied. I believe that at the conclusion of our discussion I asked him to leave the recordings with me, and I put them on my desk. I want to categorically state that at no time, and in no way, did Mr. Morrell indicate to me that I should destroy these recordings. That did not happen.

Sometime either later that day or early the next day, I honestly cannot recall which, I reviewed relevant portions of the Federal Records Act (FRA) and, in particular, the definition of what constituted a record. I also briefly reviewed the Freedom of Information Act. I concluded that these were not "records" for purposes of the FRA, but also concluded that if they were retained and filed they could become "records" by virtue of that retention. From my perspective, and as I stated to the subcommittee staff, I did not believe it wise to have these in any way become "records" subject to release under the Freedom of Information Act. This was a closed meeting, specifically directed to not be recorded, and these DVDs were not Agency records at that time. I personally made the decision to destroy them, and I did so by breaking them into pieces and throwing them in the trash.

The next time I heard anything about these recordings was while I was on vacation in Florida the week of April 15<sup>th</sup>. In looking at my e-mails, I believe that I first learned of the request to provide a copy of the recording to this Subcommittee sometime in the late afternoon or early evening on April 18 when I learned of this Subcommittee's letter of the same date. I informed my staff that I did not have any copies of the recording and that I had previously destroyed them. At some later time, I learned that there had been other recordings made at other VITS locations.

3. Regarding my role in the response by Dr. Griffin to the report of the Integrity Committee, I became aware that "something" had been sent to Dr. Griffin from Mr. Johnson in his role as Chairman of the PCIE with regard to Report of Investigation of the Integrity Committee. To the best of my recollection, I became aware of this during a conversation with Mr. Morrell that occurred while we were at Ames Research Center in California at a Strategic Management Council meeting. This would have been either February 21st or 22nd. From reviewing my e-mails I have determined that on Monday, February 26<sup>th</sup>, Mr. Morrell gave me what had been delivered to Dr. Griffin. The "package" consisted of the January 22, 2007 letter from the Integrity Committee to Mr. Johnson; Mr. Johnson's transmittal letter to Dr. Griffin, a copy of the "Policy and Procedures" of the Integrity Committee, a copy of Executive Order 12993, a copy of a March 24, 1989 Memorandum Opinion from the Office of Legal Counsel to the Integrity Committee, and a CD marked "ROI IC 500, Vols I – III, -FOUO-" I asked my Executive Assistant to print all of the documents on the CD and put them in three ring binders. I

made arrangements to meet with Dr. Griffin and discuss how he wanted this handled. He indicated that he wanted the matter reviewed and that he wanted to know the full range of options open to him in light of the Report of Investigation. At some point, on either the 27<sup>th</sup> or 28<sup>th</sup>, I discussed with my Deputy, Keith Sefton, the possibility of having a newly hired individual, an experienced attorney who was due to begin working in my office on March 5<sup>th</sup>, look over the report and provide me her unvarnished opinion. I believed that this was a good option in light of her extensive experience and the fact that, so far as I was aware, she knew nothing about any of the matters or the parties involved. I asked Mr. Sefton to call her, confirm that she knew nothing about the case, and ask her if she could begin working on it at the earliest opportunity in light of the tight deadline that we were facing. She agreed to do so, and Mr. Sefton arranged to deliver a copy of the materials to her. I concurrently reviewed the materials. At the conclusion of her review she provided me her opinion. I arranged a meeting to brief Dr. Griffin, and had her, the newly hired attorney, brief him on her review. At the conclusion of her review, I indicated my full concurrence with her analysis. I then left all of the materials with Dr. Griffin, informed him that under the terms of Executive Order 12993 he was required to certify that he had reviewed the investigation, and that once he had arrived at his course of action we would prepare the transmittal letter back to Mr. Johnson. I believe that it was on Monday, March 12<sup>th</sup>, that I met with Dr. Griffin and received his direction on what actions he wished to take. We had previously discussed that his actions in his “general supervision” role over the IG were limited, and that several of the proffered options would in fact require the concurrence of the Chairman of the PCIE, Mr. Johnson. I prepared the draft response for Dr. Griffin’s letter back to Mr. Johnson after the meeting, then had to go on travel for the remainder of the week. In my absence, the attorney who had reviewed the matter and who briefed Dr. Griffin worked with Mr. Morrell to finalize the March 14<sup>th</sup> letter transmitted back to Mr. Johnson.

4. Topic 4 that I have been asked to address concerns the “[M]onitoring of Mr. Cobb’s actions under the corrective action plan proposed by Administrator Griffin.” As indicated in the March 14, 2007 letter from Dr. Griffin, he has directed that Mr. Cobb “...meet with the Deputy Administrator on a bi-monthly basis to discuss his implementation of his individual leadership/management plan and his professional growth with the Executive Coach.” I have no role in that monitoring process. The IG Act specifically authorizes that “general supervision” can be by the principal deputy, but cannot be “delegated” further. Of course, there still exist all of the options available to individuals who wish to file complaints against the Inspector General including the Integrity Committee, the EEO process, the Office of Special Counsel, and others. Dr. Griffin has publicly, and privately, stated that he wants an independent Office of Inspector General that is committed to its statutory charter.

5. I have been the General Counsel at NASA since July 26, 2004. My relationship with Mr. Cobb is both professional and amicable. Do we socialize together: no. I have never been to his home, nor he to mine. We are professional colleagues. As I stated to the staff during our three hour meeting, I find him to be a man of integrity, intelligent, focused on doing the best possible job he can, and very independent. And I like that in a person. From my perspective, he understands his role as an Inspector General, carries it

out with conviction and force, and we understand our boundaries very well. I was asked how often I talked with him and the answer is quite simple: every time I see him. We have worked together to establish an Acquisition Integrity Program, and both of us, and our respective staffs, firmly believe that it will pay great dividends to the Agency and to the government. We have also disagreed on the law on occasion, and he has the impediment of being as stubborn and argumentative as I am when we believe that we are correct. We have, on a number of issues, “agreed to disagree.”

As I stated to the staff with whom I met on April 27<sup>th</sup>, I do not think that anybody wishes more than I do that a recording of that meeting could be provided to this body. Your staff has apparently received allegations of what was said and done at that meeting that range from the patently false to the ridiculous. If a video or audio recording of the event existed, it would clearly demonstrate what actually occurred and we would not, perhaps, be having this hearing. There were, I believe, somewhere between 120 and 200 people, mostly OIG staff members including investigators, who were present at this meeting. To in any way imply that I destroyed the copies of the recordings in an attempt to destroy evidence of the substantive content of the meeting beggars belief. I recognize that memories and perceptions differ. That said, some of the allegations contained in the April 25<sup>th</sup> letter, and which were related to me in my meeting with the staffers on April 27<sup>th</sup>, were so false as to clearly imply an intent to mislead on the part of those who provided them.

This latter point leads me to comment on a subject that is of significant and growing concern to me. I believe that “facts” matter, and that before any individual, organization or agency is pilloried, before anyone’s reputation is destroyed publicly or privately, there is an ethical obligation to vigorously ascertain the truth, the factual underpinnings, of each and every allegation. I come here today with the firm conviction that such is the purpose of this hearing. My sense in this matter is that there has been, on the part of some of the people involved in this matter, a certain “sentence first, verdict later” mindset. My sense is that allegations have been slipped under the door or thrown over the transom, often anonymously or with the request of anonymity, and in all-too-many cases they are immediately given a mantle of “credibility” because they originate from someone “familiar with the issues” and therefore “must be true.” In the best of all possible worlds some level of skepticism, some kernel of “doubt,” some due diligence in ascertaining the facts must come into play. In the best of all possible worlds individuals making such allegations would be required to swear to the truth of what they are saying, and would be made aware of the consequences of any false statement. In the best of all possible worlds, judgment would be withheld, and inflammatory, inaccurate public releases and commentary would be curtailed until all allegations had undergone the scrutiny of rigorous analysis. While I recognize that such a “perfect world” may not be attainable, I nonetheless believe that each of us should do our part to come as close to it as possible.

Finally, I want to publicly apologize to everyone at NASA who has had to expend time and effort trying to find whether a copy of this recording still exists. I want to particularly apologize to Dr. Griffin and the leadership at NASA. This agency has

important work to do for this nation and its people, work that is critical to our national security and our economic future, and distractions like this are not helpful. I have spent my professional life trying to resolve problems and trying to make things better. Despite my honest and considered efforts in the matter of the destruction of the DVDs, I regret that I have failed to do so in this regard.