



**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
OFFICE OF INSPECTOR GENERAL**

**ALLEGED ETHICS VIOLATION BY
THE NASA ADMINISTRATOR
INVOLVING MARATHON OIL CORPORATION**

INVESTIGATIVE SUMMARY

SEPTEMBER 20, 2010

Summary

This report summarizes a NASA Office of Inspector General (OIG) investigation into allegations that NASA Administrator Charles F. Bolden, Jr. inappropriately consulted with Marathon Oil Corporation (Marathon), a company in which he has a significant financial interest, while he was considering NASA's involvement with an alternative fuel development project. The project, known as the Offshore Membrane Enclosure for Growing Algae or OMEGA, seeks to produce fuel through controlled offshore reactions of wastewater and algae. Complaints received by the OIG claimed that Bolden engaged in a conflict of interest by consulting with Marathon. The allegations against Bolden became public on June 20, 2010, when an article appeared in *The Orlando Sentinel*.¹

On April 30, 2010, Bolden spoke by telephone with a senior Marathon official for approximately 10-15 minutes seeking her technical perspective on the viability of algae-based fuels. At the time of his call, Bolden was considering a proposed memorandum of understanding (MOU) between NASA and the Department of the Navy (Navy) relating to the OMEGA project. Also at that time, Bolden owned between \$500,000 and \$1 million in Marathon stock and had served on Marathon's Board of Directors for the 6 years immediately prior to his becoming NASA Administrator.

During the course of our investigation, we interviewed 15 NASA employees, including Administrator Bolden, Deputy Administrator Lori Garver, Ames Research Center Director Simon "Pete" Worden, Aeronautics Research Mission Director Jaiwon Shin, OMEGA's lead scientist Jonathan Trent, and General Counsel Michael Wholley, as well as officials from Marathon, the Navy, and the White House Counsel's Office. We also reviewed hundreds of e-mails and related documents from NASA and Marathon and consulted with officials at the Federal Bureau of Investigation, the Department of Justice, and the Office of Government Ethics.

In sum, we found no evidence that Bolden or Marathon received a present or promised financial benefit as a result of Bolden's call. We also found that the information Bolden received from Marathon did not cause him to withhold funding to the OMEGA project or to direct that the proposed MOU with the Navy be abandoned.

We concluded that Bolden's contact with Marathon regarding OMEGA did not violate federal laws or regulations pertaining to conflicts of interest. However, we found that the contact was not consistent with the Ethics Pledge he, as an Administration appointee, had signed, and that it raised concerns about an appearance of a conflict of interest involving the NASA Administrator and a large oil company to which he had financial ties.

When interviewed by the OIG about this matter, Bolden readily acknowledged that he had erred in contacting Marathon. Bolden said he has since recused himself from issues involving OMEGA and has received supplemental training regarding his ethical responsibilities.

In a related matter, we disagree with the determination made by NASA attorneys that it was not necessary to report Bolden's contact with Marathon to the OIG.

¹ Robert Block and Mark K. Matthews, *The Orlando Sentinel*, June 20, 2010, "NASA Boss Investigated for Possible Conflict of Interest on Biofuel Project."

Background

Bolden was confirmed as NASA Administrator on July 26, 2009. Upon confirmation, he signed standard ethics forms and agreements promising “not [to] participate personally and substantially in any particular matter that has a direct or predictable effect” on his financial interests or the financial interests of certain family members or business associates. In addition, he signed an “Ethics Pledge” stating in pertinent part that “I will not . . . participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients . . .” Under the Pledge, a “particular matter” is defined to include “any . . . communication relating to the performance of one’s official duties with a former employer . . . unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.”

Immediately prior to his appointment as Administrator, Bolden served on Marathon’s Board of Directors for approximately 6 years. Although he resigned this position upon assuming his NASA duties, he retained ownership of a substantial amount of Marathon stock. At the time of the events at issue in this investigation, this stock was valued at between \$500,000 and \$1 million.

History of the OMEGA Project at NASA

OMEGA is a relatively small research project run out of NASA’s Ames Research Center (Ames). The project’s lead NASA scientist and principal investigator is Jonathan Trent.² NASA’s website describes OMEGA as follows:

The OMEGA system consists of large plastic bags with inserts of forward-osmosis membranes that grow freshwater algae in processed wastewater by photosynthesis. Using energy from the sun, the algae absorb carbon dioxide from the atmosphere and nutrients from the wastewater to produce biomass and oxygen. As the algae grow, the nutrients are contained in the enclosures, while the cleansed freshwater is released into the surrounding ocean through the forward-osmosis membranes.

Potential benefits include oil production from the harvested algae, and conversion of municipal wastewater into clean water before it is released into the ocean. After the oil is extracted from the algae, the algal remains can be used to make fertilizer, animal feed, cosmetics, or other valuable products. This successful spinoff of NASA-derived technology will help support the commercial development of a new algae-based biofuels industry and wastewater treatment.³

Since 2008, Trent and Ames Director Worden have been actively and aggressively promoting OMEGA, and Trent has made numerous presentations about the OMEGA project to government,

² A principal investigator is the scientist in charge of an experiment or research project.

³ NASA Lunar Science Institute, “Offshore Membrane Enclosure for Growing Algae (OMEGA),” (April 1, 2010) <http://lunarscience.arc.nasa.gov/articles/OMEGA>

academic, and energy industry audiences. In fact, on his own initiative Trent made a telephonic presentation regarding OMEGA in September 2009 to Linda Capuano, Marathon's Vice President for Emerging Technology. Capuano told the OIG that although she found Trent's presentation interesting, she considered OMEGA to be at the concept stage, and that Marathon was not interested in participating in or pursuing OMEGA-related research. Apart from this single telephone conversation, Capuano said she has had no further contact with Trent.

In August 2009, shortly after her confirmation as NASA Deputy Administrator, Garver visited Ames and attended a presentation by Trent regarding OMEGA. Trent said he recommended to Garver that NASA fund the project at the \$10 million level. Prior to this time, OMEGA had secured only about \$800,000 in funding, primarily from a grant from the California Energy Commission along with a small contribution from Ames.

Bolden told the OIG that he remembered having conversations with Garver after her visit to AMES in which she expressed support for OMEGA, but did not believe that any of these conversations addressed the technical feasibility of OMEGA or NASA's role in alternative fuel development.

According to Shin, head of NASA's Aeronautics Research Mission Directorate (Aeronautics Directorate), after her visit to Ames Garver spoke to him about finding additional funding for OMEGA in the Aeronautics Directorate's research budget. Shin said that although OMEGA was an attractive concept for alternative fuels research, he told Garver that he viewed fuel development as an issue beyond the scope of NASA's role in aeronautics research. He said that prior to discussing OMEGA with Garver, he was aware that Worden and Trent were searching for additional funding for the project and described a June 2009 visit to Ames during which Trent briefed him on OMEGA and Worden strongly urged him to consider dedicating Aeronautics Directorate funds to the project, arguing that it could potentially lead to an alternative aviation fuel source. Shin responded that he would keep OMEGA under consideration, but saw no compelling reason why NASA should fund research beyond the scope of its Aeronautics mission. Shin told the OIG that in his view NASA should focus its funding on issues such as how to adjust combustible fuel engines to get the best performance from different types of biofuels rather than developing the alternative fuels itself. He also said the Department of Energy believed that other types of biofuels could be developed sooner and more readily than algae-based products.

Shin told us that despite his objections, Garver "urged" him to find \$10 million for OMEGA. He said it was difficult to identify this level of funding because \$10 million represented a significant portion of the discretionary part of the Aeronautics Directorate's annual research budget and would cause other research efforts to be displaced.⁴ Shin said he identified \$1 million of funding for the project, an amount he viewed as sufficient to support "conceptual and preliminary design" efforts, and transferred this money to Ames for OMEGA on November 2, 2009.

Shin told the OIG that for the remainder of 2009 Garver continued to pressure him to "fully fund" OMEGA. As a result, on January 8, 2010, the Aeronautics Directorate entered into a

⁴ NASA's Aeronautics Directorate received an appropriation of \$501 million in FY 2010. According to Shin, most of the Directorate's budget represents fixed research costs, with minimal funds available for discretionary projects.

written agreement with Ames under which it would provide OMEGA approximately \$10 million over 2 years, with the money phased in over that period subject to successful external reviews of the project. The agreement also required Ames to find “strategic partnerships” with other government agencies and private industry with the goal of transferring the OMEGA technology at the end of the 2-year period.

Shin told the OIG that following a successful preliminary design review in June 2010, he released additional funding to the OMEGA project and anticipates that more will follow before the end of fiscal year (FY) 2010. If subsequent technical reviews are favorable, Shin said the full \$10 million will be transferred to the project by the end of FY 2011.⁵ Shin said he made these funding decisions regarding OMEGA without Bolden’s involvement or influence.

Proposed Agreement with the Department of the Navy

In September 2009, Trent made a presentation on OMEGA before an energy conference sponsored by the Navy at which he met Rear Admiral Philip H. Cullom, Director of Environmental Readiness and Task Force Energy for the Navy. Cullom told the OIG that the Navy has been aggressively pursuing alternative fuels research and is committed to having 50 percent of its fuel consumption use alternative fuels by 2020. Cullom said he was particularly interested in OMEGA because it required no land use, involved minimal cultivation, and had environmentally friendly side-effects. He said he followed up with Trent about OMEGA after the conference.

Trent and Worden said they saw the Navy as a potential supporter of OMEGA research, and in April 2010 Trent drafted an MOU between NASA and the Navy with the hope that it would be signed and publically announced by “Earth Day” on April 22, 2010. According to Cullom, the Navy supported the agreement but recognized that creating an inter-agency MOU was a lengthy process.

Bolden and Shin both told the OIG that they first learned of the proposed MOU on April 5, 2010, when Shin received an e-mail from the Director of Ames’ Aeronautics Research forwarding Trent’s draft MOU. In response, Shin sent an e-mail back to the Director and Trent on which he copied Bolden, stating that he “welcomed the opportunity to collaborate with the Navy.” However, Shin told the OIG that he thought signing and announcing the MOU by Earth Day was highly unlikely. Bolden told the OIG that in his experience MOUs take “about a year” to finalize and that at the time he received Shin’s e-mail he felt he needed more information about the technical feasibility of OMEGA and NASA’s role in alternative fuel development.

In an effort to learn more about OMEGA, Bolden sent an e-mail to Shin on April 5 requesting a briefing. He also contacted NASA General Counsel Wholley and Mike O’Brien, NASA’s Deputy Assistant Administrator for International and Interagency Relationships, about the MOU. Both men told Bolden they were unaware of the proposed agreement and had not been consulted on the matter.

⁵ The OIG confirmed with the Aeronautics Research Resource Manager the following transfers to Ames for OMEGA: \$1 million on November 2, 2009; \$500,000 each on November 30, 2009, and on April 28, 2010; and \$3 million on July 8, 2010; for a total of \$5 million in funding to OMEGA in FY 2010.

Bolden said he met with Shin on April 6, 2010, and received a “full briefing on the technical merits” of OMEGA. Bolden said Shin informed him at this meeting that the Aeronautics Directorate was funding a “feasibility demonstration” of OMEGA. Shin said Bolden asked him how other parties viewed the technology and that he told Bolden what he had previously told Garver, Trent, and Worden: that NASA should not be spending \$10 million on a fuel development research project that was beyond the scope of NASA’s mission. Further, Shin said he told Bolden that the Department of Energy believed other types of biofuels could be developed more readily and that the Federal Aviation Administration preferred that NASA focus its aeronautics research on the development of combustible fuel systems that would allow the use of biofuels as well as traditional fuels. Shin described Bolden’s reaction to his briefing as “neutral.”

Bolden told us that by the end of the meeting he agreed with Shin’s views on the OMEGA project. Like Shin, Bolden said he believed that NASA’s aeronautics research should focus on the development of fuel systems rather than the fuels themselves, and that other government agencies and perhaps the private sector were better positioned than NASA to conduct fuel development research.

That same day, Bolden sent several members of his senior staff an e-mail stating that “we are quite a ways away from a NASA-Navy MOU on OMEGA” and that he was uncertain how much NASA should be investing in alternative fuels development when other government agencies have this responsibility. Garver responded to Bolden by e-mail the same day reiterating her support for the project, and asking Bolden not to “write this off yet.” In response, Bolden told Garver that he had “heard from some quarters (other agencies) that we could be more helpful as partners in ongoing research that may be ahead of ours” and that he would be seeking input from others inside NASA to help him get “up to speed” on the issue. He ended the e-mail by assuring Garver that “We’ll get to the right answer on this one!”

Bolden Contacts Marathon

Ultimately, the proposed Earth Day deadline for signing the MOU was postponed. However, Bolden told us that he still was seeking information about the feasibility of deriving fuel from algae. He said he recalled that Marathon might have some expertise in this area and decided to contact the company to gather additional technical information and perspective concerning the use of algae as biofuel.

Bolden said that in late April 2010 he contacted Marathon’s Counsel’s Office and asked to speak with someone at the company with knowledge of algae-based biofuels. He stated that he made this call from his NASA office or cell phone and consulted no one before doing so. Bolden said he considered for a “nano-second” that he should not make the call, but quickly reasoned that the contact was permissible because Marathon had no business connection to NASA, which he considered evident from the fact that he had been permitted to retain his Marathon stock when he became NASA Administrator.

Melody Halfen, a Senior Law Administrator for Marathon, told the OIG that Bolden contacted her on April 26, 2010, and asked to speak with someone at the company about biofuels development and OMEGA. Bolden’s request was ultimately directed to Capuano, Marathon’s Vice President for Emerging Technology. Capuano informed Marathon’s Chief Executive

Officer, Clarence P. Cazalot, of Bolden's call and outlined her intended response in an e-mail to Cazalot. In the e-mail, Capuano speculated that Bolden might request Marathon's participation in the OMEGA project and stated that she intended to decline such a request. She also told Cazalot that she planned to tell Bolden that she was prepared to host a teleconference to allow NASA to "present the technology to our biofuels team" and that Marathon "would be interested in analyzing fuel samples produced by the OMEGA process in order to provide feedback to NASA and [so that] Marathon could also understand and adapt to future sources of fuel."

Capuano told the OIG that she called Bolden on April 30 and told him that Trent had previously given her and other Marathon employees a comprehensive presentation on OMEGA. Capuano said she began her conversation with Bolden under the assumption that they were going to discuss possible participation by Marathon in the OMEGA project. Instead, she said Bolden asked for her views and insights on algae-based fuels in general. Capuano said that she provided Bolden with general information on the topic, including her view that people in the biofuels industry were over-focused on "reactors" and growing algae rather than addressing the more difficult and complex aspects of how to extract fuel from the process. Capuano said Bolden told her that he had received similar feedback from others.

According to Capuano, the call lasted about 10 minutes and she had no subsequent contact with Bolden. Capuano said the information she shared with Bolden was the same information she had provided on numerous occasions in public presentations and discussions, and that her discussion with Bolden had no effect on Marathon's approach to algae-based fuels. Nevertheless, she said she found the discussion with Bolden helpful because it confirmed that her perspective on algae-based fuels was similar to the perspective of others in the field.

Capuano's description of her call with Bolden is consistent with a post-call e-mail she sent to Cazalot:

I spoke with Charlie Bolden briefly. He is making investment decisions and wanted insight into algae.⁶

I spent a few minutes on a brief perspective we provided to the ExCo⁷ which ended with the conclusion that, while a lot of work is being done in growing algae, not much is being done in de-wetting and extracting to produce commercial volumes.

Also, Marathon has asked producers to provide samples of algae fuel, but we have not gotten sufficient samples to give us a good first hand understanding of the fuel characteristics.

Charlie responded that he was getting similar feedback from other sources and thanked me for my insight.

⁶ Capuano explained to the OIG that "investment decisions" was her term, not Bolden's, and that she used it in an attempt to describe Bolden's desire to get an assessment of algae-based fuels.

⁷ The abbreviation "ExCo" used by Capuano refers to Marathon's Executive Committee.

The call totaled about 10 minutes.

The call was helpful because Charlie validated that our independently developed perspective is similar to others.

Have a good weekend.

Bolden told the OIG that during the phone call Capuano told him about Trent's prior presentation to Marathon concerning OMEGA and said that Marathon had no interest at that time in obtaining fuel from algae or becoming involved in the OMEGA project. According to Bolden, Capuano told him that OMEGA simply did not have the capacity to produce fuel in sufficient quantities to interest Marathon. Bolden estimated that the conversation with Capuano lasted about 15 minutes, and said he had no subsequent contact with Capuano or anyone else at Marathon.

On May 2, 2010, Bolden sent an e-mail to Garver and Shin, with copies to five other senior NASA officials including Worden, stating that:

I continue to have doubts about the viability of this project [OMEGA], especially after discussions with representatives of the Marathon Oil Corporation who received a brief recently from Trent. I have found no one outside NASA who feels this is a good investment in research funds at this time due to significant problems with process control and any promise of production in quantities to be of any use to industry.⁸ As long as you feel comfortable, however, with the information you have received to date and no one else has strong objection, I suggest we keep the ball rolling on the MOU, but insure that we have our technical act together before the MOU is actually signed.

Garver responded to Bolden that same day, with copies to Shin, Worden, and others on the senior staff, stating:

Thanks for the reply. We obviously will continue to research it and make sure it is on track and of value. No one wants to go forward if this is not the case. We'll pursue the MOU while we continue to evaluate the effectiveness of the project technically.

The following day Worden sent an e-mail to Garver referencing Bolden's May 2 e-mail.

Jonathan [Trent] tells me he talked to some guy from Marathon Oil a year ago on the phone and that was it. In the interest of open government and transparency I think my folks are entitled to know who talked to Charlie and the basis of their criticism so we can respond. This is frankly the worst of NASA and I don't like it. It is "good ole boy" networks at it's [sic] worst and not worthy of NASA and this Administration. Anything I

⁸ Bolden told the OIG that he did not personally consult with any other agency or entity regarding algae-based fuels and that this reference was to the information he had received from Shin and Marathon.

can do about it? It seems to be happening a lot. Charlie talks to “someone” he knows – often an astronaut. We get “convicted” without knowing the evidence, the accuser or with any due process.

I know you are frustrated too. But this is the “Never the Straight Answer” NASA we came to fix. At least Griffin allowed us a day in court with an open discussion of the technical facts and conflicts of interest out on the table

In the meantime, we are lining up the technical counters. But to do a professional job I need to know the “facts” being used against us.⁹

Media Inquiry and NASA Office of General Counsel Involvement

On May 28, 2010, Bolden was contacted by a newspaper reporter seeking comment on his contacts with Marathon regarding the OMEGA project. Bolden declined to respond to the reporter’s questions and notified the NASA Office of General Counsel (OGC). At the time, General Counsel Wholley was out of the office on leave and therefore Bolden spoke with Richard W. Sherman, Deputy General Counsel, and Andrew Falcon, a NASA Associate General Counsel with ethics responsibilities.

Bolden said he summarized for the OGC attorneys the nature and extent of his communication with Marathon. At Falcon’s direction, an OGC attorney spoke with Marathon’s Capuano and Halfen by telephone and also consulted with a White House Deputy Associate Counsel regarding whether Bolden’s actions contravened conflict of interest laws or the Ethics Pledge he had signed as a Presidential appointee.¹⁰

Based on the information provided by Bolden, Halfen, and Capuano, the OGC attorneys concluded that Bolden’s contact with Marathon did not violate federal conflict of interest laws or regulations. OGC attorneys told the OIG that this conclusion was based on the fact that Marathon did not have a financial interest in OMEGA, was not a party to the proposed MOU with the Navy, and was not interested in participating in the OMEGA project.

With regard to the Ethics Pledge, OGC lawyers told the OIG that the White House Deputy Associate Counsel expressed the view that Bolden should have acted more prudently concerning his contact with Marathon and characterized his actions as a procedural violation of the Pledge. They said the Deputy Associate Counsel recommended that Bolden receive refresher ethics training, which the OGC lawyers said they provided to Bolden on June 1, 2010.

During his interview with the OIG, the White House Deputy Associate Counsel said that his office has made no formal determination as to whether Bolden violated his Ethics Pledge. However, he said that based on the limited facts before him at the time of his conversation with the OGC attorney, he believed that Bolden “could likely have violated” the Pledge, and that counseling was the appropriate response.

⁹ Portions of this e-mail were quoted in Block and Matthews’ June 20 *Orlando Sentinel* article.

¹⁰ Wholley learned of these actions the following week when he returned from leave.

At no point in this process did OGC attorneys alert the OIG about Bolden's contact with Marathon. When asked why not, they told the OIG that they saw no need to do so because it was clear to them that no crime had occurred.

Bolden told the OIG that at some point he raised with General Counsel Wholley whether he (Bolden) should inform the OIG about his contact with Marathon, but that Wholley told him it was not necessary to do so. Wholley told the OIG that when Bolden asked him about reporting the matter to the OIG he responded that reporting was not necessary because Bolden's contact with Marathon was not a criminal matter and therefore did not trigger a reporting obligation.

During his OIG interview, Bolden acknowledged that reaching out to Marathon regarding OMEGA was "inappropriate," and noted that he has since removed himself from any matters relating to the OMEGA project.

Analysis

Several federal ethics laws and regulations are potentially implicated by Bolden's contact with Marathon. First, 18 U.S.C. § 208 prohibits a federal government employee such as Bolden from participating "personally and substantially" in a "particular matter in which, to his knowledge, he . . . has a financial interest." Section 208 is a felony criminal statute that carries a maximum penalty of 5 years' incarceration.

Second, 5 C.F.R. § 2635.502 provides that "[w]here an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee" Unlike the criminal statute described above, section 2635.502 is an Executive Branch Office of Government Ethics (OGE) regulation and failure to comply with its terms could lead to disciplinary sanctions.

Third, as noted above, Bolden signed the Ethics Pledge pursuant to Executive Order 13490, which imposes a 2-year ban on participating in any particular matter involving specific parties that directly and substantially relates to his former employer.¹¹ Under the Pledge, a "former employer" includes any entity for which Bolden served as a director within the 2 years prior to his appointment as NASA Administrator and "particular matter" includes "any communication relating to the performance of one's official duties . . . unless the communication applies to a particular matter of general applicability and participation in the meeting or event is open to all interested parties." Accordingly, under the terms of the Pledge Bolden was prohibited from private communications with Marathon about official NASA business.

After consulting with federal prosecutors and attorneys from OGE, we determined that Bolden did not violate either Section 208 of the criminal statute or Section 502 of OGE's regulation.

¹¹ Executive Order 13490, entitled "Ethics Commitments by Executive Branch Personnel," was issued by the President on January 21, 2009. See <http://edocket.access.gpo.gov/2009/pdf/E9-1719.pdf>.

With regard to Section 208, there is no evidence that Bolden had a financial interest in whether NASA proceeded with the MOU with the Navy or in the amount of NASA funding OMEGA would receive. Although he owned stock in Marathon, there is no logical scenario in which Bolden's decisions regarding OMEGA would affect the value of that stock. Even OMEGA's supporters do not suggest that the project is anywhere near to producing fuel in the commercially viable amounts that would be needed to have an effect on the stock price of a company like Marathon. Moreover, despite his doubts about the project, Bolden did not take steps to limit NASA's funding of OMEGA or derail the proposed MOU. Finally, as the Justice Department prosecutors we consulted with noted, Bolden made no effort to conceal his communication with Marathon.

Similarly, we concluded that Bolden's actions did not violate Section 502 because although he had a "covered relationship" with Marathon due to his stock ownership, Marathon was not a party to the MOU or any other matter relating to OMEGA. As discussed above, Marathon, having previously been briefed about OMEGA by Trent, expressed no interest in participating in the project, a position that did not change after Bolden's conversation with Marathon executive Capuano.

With respect to the Ethics Pledge, we conclude that Bolden's actions did not comport with the commitments he made in the document. By signing the Pledge, Bolden agreed to refrain for 2 years from having private communications with Marathon or any other former employer concerning NASA business. Bolden's telephone call to Marathon related to his official decision regarding NASA's participation in the OMEGA project, occurred less than 2 years after his resignation from Marathon's Board of Directors, and was not open to all interested parties. Bolden concedes this contact was inappropriate. We agree.

Finally, Bolden's contact with Marathon raised the perception of an appearance of a conflict of interest on his part. Although, as discussed above, we found that no actual conflict of interest existed, Bolden's action predictably led to concerns both inside and outside NASA about whether his actions relating to OMEGA had been improperly influenced by a large oil company in which he held a substantial amount of stock.

As noted above, Bolden has received supplemental ethics counseling regarding his obligations under the Pledge and has recused himself from issues relating to OMEGA. We find these actions appropriate and sufficient to address our findings.

Apart from Bolden's conduct, one other aspect of this matter requires discussion. As noted above, although Bolden brought his contact with Marathon to the attention of the OGC, lawyers in that office did not advise the OIG about the matter and told Bolden it was not necessary for him to bring the matter to the OIG's attention. We disagree with the way the OGC attorneys handled this matter.

Pursuant to the Inspector General Act, the NASA OIG is charged with conducting "investigations relating to the . . . operations" of NASA [5 U.S.C. App. 3 § 4(a)(1)]. These investigations can be criminal or administrative in nature, and run the gamut from allegations of contractor fraud to concerns that a senior NASA manager had been removed from his position in

order to scuttle progress on the Agency's Constellation Program.¹² NASA policy directs Agency managers to "ensure that all allegations of violations of Federal criminal and civil law and all allegations pertaining to other crimes, fraud, waste, abuse, and mismanagement received by management are reported to the IG" [NASA Policy Directive (NPD) 9800.1B, NASA Office of Inspector General Programs]. That same NPD mandates that "any NASA employee who observes crime, fraud, waste, abuse, or mismanagement or receives an allegation of crime, fraud, waste, abuse, or mismanagement from a Federal employee, contractor, grantee, contractor or grantee employee, or any other source will report such observation or allegation to the OIG."¹³

Bolden's contact with Marathon – a company on whose Board of Directors he served immediately prior to his appointment as NASA Administrator and in which he holds at least \$500,000 in stock – at a minimum constituted potential abuse or mismanagement. Accordingly, we believe that OGC attorneys should have promptly reported this matter to us.

As discussed above, OGC attorneys told the OIG that they did not report the matter and told Bolden it was not necessary that he do so because they had concluded Bolden's conduct was not criminal. But both the Inspector General statute and NASA policy make clear that responsibility for investigating whether NASA employees have engaged in unethical conduct lies with the OIG. Nothing in either provision suggests that the OIG's investigative jurisdiction is limited to those acts that Agency managers or attorneys determine are likely to constitute a crime. Indeed, it is the OIG's responsibility, in consultation with federal prosecutors, to make determinations about whether NASA employees have engaged in criminal conduct.¹⁴

Finally, we believe that apart from the obligations imposed by the statute and NASA policy, OGC attorneys did not serve the best interests of the Administrator or NASA by failing to report the matter to the OIG. At issue was whether the top NASA manager had complied with his ethical obligations. Because the OIG enjoys a level of independence from the Administrator not shared by OGC attorneys, Bolden's actions should have been referred to the OIG for its review and disposition.

¹² See the NASA Inspector General's letter to Chairman, Committee on Commerce, Science, Transportation, dated July 13, 2010, regarding reassignment of the Constellation Program Manager.

¹³ In addition, a January 14, 2010, e-mail from Administrator Bolden to all NASA employees directed cooperation with the NASA OIG, and stated in pertinent part: "The OIG also serves as the point of contact for NASA employees to report possible criminal activity, fraud, waste, abuse, and mismanagement involving Agency funds or employees."

¹⁴ OGC attorneys expressed the view that their actions were both consistent with and necessary to fulfill their obligations to provide ethics advice to NASA employees. They stated that when an employee self reports a matter to them, as Bolden did, they must be able to gather information and make an independent assessment as to whether the described conduct presents a colorable violation. According to the OGC attorneys, in this case the only potential violation was the Ethics Pledge, and that was a matter for the White House rather than the OIG. We agree that Agency attorneys may properly make determinations that some matters brought to their attention as possible ethics violations are so far from the ethical line that they do not require referral to the OIG. However, for the reasons discussed above we do not agree that this matter involving the NASA Administrator falls into that category.